7-3-84
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# federal register

Tuesday
July 3, 1984

## Selected Subjects

**Animal Drugs**
Food and Drug Administration

**Authority Delegations (Government Agencies)**
Food and Drug Administration

**Aviation Safety**
Federal Aviation Administration

**Government Employees**
Personnel Management Office

**Hunting**
Fish and Wildlife Service

**Income Taxes**
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**Marketing Agreements**
Agricultural Marketing Service

**Medicare**
Health Care Financing Administration

**Organization and Functions (Government Agencies)**
Comptroller of the Currency

**Radio Broadcasting**
Federal Communications Commission

**Reporting and Recordkeeping Requirements**
Securities and Exchange Commission

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# Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Federal Home Loan Bank Board

**Securities**
Securities and Exchange Commission

**Surface Mining**
Surface Mining Reclamation and Enforcement Office

**Television Broadcasting**
Federal Communications Commission

**Tobacco**
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# Rules and Regulations

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 908

[Valencia Orange Reg. 333]

### Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 333 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 6–12, 1984. This regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

**DATE:** Regulation 333 (§ 908.633) becomes effective July 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, Chief, Fruit Branch, F&V AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674). The regulation is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The regulation is consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on June 26, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges. The committee reports the demand for Valencia oranges continues to decline.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

### PART 908—[AMENDED]

Section 908.633 is added as follows:

§ 908.633 Valencia Orange Regulation 333.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 6, 1984, through July 12, 1984, are established as follows:

(a) District 1: 176,000 cartons;
(b) District 2: 274,000 cartons;
(c) District 3: Unlimited cartons.

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

Dated: June 28, 1984.

Thomas R. Clark,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 84-17008 Filed 7-2-84; 8:45 am]
BILLING CODE 3410-02-M

## DEPARTMENT OF THE TREASURY

### Comptroller of the Currency

### 12 CFR Part 4

[Docket No. 84-20]

### Description of Office, Procedures, Public Information

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (Office) has completed the reorganization of its field structure. This final rule reflects the geographical composition of each district, changes the address of the Western District Office in San Francisco, and defines the supervisory management positions in the field organization.

**EFFECTIVE DATE:** July 3, 1984.

**FOR FURTHER INFORMATION CONTACT:** Susan Widmer, Reorganization Coordinator, Operations Analysis Division (202) 447–1723; or Jonathan H. Rushdoony, Attorney, Legal Advisory Services Division (202) 447–1820, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, D.C. 20219.

**SUPPLEMENTARY INFORMATION:** Prior final rules dealing with this subject were published in the Federal Register on April 19, 1983 (48 FR 16849) and on December 6, 1983 (48 FR 54584). The transition from a regional to a district office structure was completed March 31, 1984. The geographical boundaries of the six District Offices have now been finalized and the address of the Western District Office reflects the new location of that office.

The reorganization from a regional to a district office structure transfers the former Regional Administrators' authority to act on corporate applications to the senior executives of the new districts: the Deputy Comptrollers for the districts and the District Administrators. Each district's

office structure also includes a District Counsel and Directors for Administration, Bank Supervision, and Analysis.

### Notice and Comment

The Office has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to rules of agency organization and procedure.

### Reason for Immediate Effective Date

This final rule informs the public about a change in office organization that has already occurred. Confusion could result if the proper titles and addresses are not employed immediately.

### Regulatory Flexibility Act

A Regulatory Flexibility Analysis is required only for rules issued for notice and comment. Because this final rule pertains to office organization and is therefore exempt from notice and comment procedures, no Regulatory Flexibility Analysis will be prepared.

### Executive Order 12291

Section 1(a)(3) of Executive Order 12291 exempts from coverage regulations related to agency organization, management, or personnel. Since this final rule is so classified, no Regulatory Impact Analysis is required.

### List of Subjects in 12 CFR Part 4

National banks, Organization and functions (government agencies), Public information, Official forms, District offices, Field offices, Procedures, Delegation.

## PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

For the reasons given in the preamble, 12 CFR Part 4 is amended as follows:

1. The authority citation for Part 4 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. Section 4.1a is amended by revising paragraph (b) to read as follows:

**§ 4.1a Central and field organization; delegations.**

* * * * *

(b) *Field organization.* (1) Six district offices cover the United States, Puerto Rico, the Virgin Islands, Guam and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

| District | Area within district | Office address |
|---|---|---|
| Northeastern | Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands. | Comptroller of the Currency, 1211 Avenue of the Americas, Suite 4250, New York, NY 10036. |
| Western | Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington, Wyoming, Utah. | Comptroller of the Currency, 5 Fremont Center, 50 Fremont Street, Suite 3900, San Francisco, CA 94105 |
| Central | Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin. | Comptroller of the Currency, Sears Tower, Suite 5750, 233 South Wacker Drive, Chicago, IL 60606. |
| Southwestern | Arkansas, Louisiana New Mexico, Oklahoma, Texas. | Comptroller of the Currency, 1201 Elm Street, Suite 3800 Dallas, TX 75270. |
| Southeastern | Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia. | Comptroller of the Currency, Peachtree Cain Tower, Suite 2700, 229 Peachtree Street, NE., Atlanta, GA 30303 |
| Midwestern | Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota. | Comptroller of the Currency 911 Main Street, Suite 2616, Kansas City, MO 64105. |

(2) Twenty three field offices located in financial centers throughout the country support bank supervisory responsibilities of the districts.

(3) Each district office is headed by two senior executives, the Deputy Comptroller and a District Administrator. In addition, the office structure includes a District Counsel and Directors for Administration, Bank Supervision, and Analysis.

(i) The Deputy Comptroller (district) is the chief executive officer and manager of the district and contributes to the policy development of the Office.

(ii) The District Administrator assists the Deputy Comptroller on a day-to-day basis by directing the implementation of programs and policies regarding supervision and regulation of national banks.

(iii) The District Counsel serves as legal advisor in the district and administrative chief of the district's legal staff.

(iv) The Director for Administration (district) ensures that adequate resources are available to meet district needs.

(v) The Director for Bank Supervision (district) directs district bank supervision activities to ensure the safety and soundness of the national banking system to promote competitiveness, integrity and stability.

(vi) The Director for Analysis (district) provides analytical review of district banking and office operations which impact the effective supervision of national banks.

(vii) The Field Office Director, although not in the district office, works closely with the other district directors, supervises field examiners assigned to the geographical area, coordinates other supervisory functions, and serves as liaison between bankers, examiners, and the District Administrator.

* * * * *

Dated: June 27, 1984.

C.T. Conover,

*Comptroller of the Currency.*

[FR Doc. 84-17700 Filed 7-2-84; 8:45 am]

BILLING CODE 4810-33-M

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## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 330

## FEDERAL HOME LOAN BANK BOARD

## 12 CFR Parts 561 and 564

## Brokered Deposits; Limitations on Deposit Insurance

**AGENCY:** Federal Deposit Insurance Corporation and Federal Home Loan Bank Board.

**ACTION:** Notice of Order Enjoining the Implementation of Regulations.

**SUMMARY:** This notice publishes the Order of the United States District Court for the District of Columbia enjoining the implementation of the FDIC's and the FHLBB's regulations on limiting insurance coverage for brokered deposits.

**SUPPLEMENTARY INFORMATION:** On June 20, 1984, the United States District Court for the District of Columbia entered an Order declaring the Final Rules published at 49 FR 13003 (April 2, 1984) to be unlawful, enjoining the Rules implementation, and directing that the Order be published. It is the agencies' intent to seek appellate review of the District Court's action. Meanwhile, the following Order is published as directed by the Court.

Dated: June 27 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
*Executive Secretary.*

Federal Home Loan Bank Board.
John F. Ghizzoni,
*Assistant Secretary to the Board.*

Order

*In the United States District Court for the District of Columbia*

FAIC Securities, Inc., Plaintiff, v. United States of America, et al., Defendants; Civil Action No. 84-0959.

Securities Industry Association, Plaintiff, v. Federal Deposit Insurance Corporation, et al., Defendants; Civil Action No. 84-1136.

Filed June 20, 1984. James F. Davey, Clerk.

This matter has come before the Court on cross-motions for summary judgment.

Upon consideration of memoranda submitted, oral argument, and the entire record herein, and for reasons stated in the Court's accompanying Memorandum, it is hereby

Ordered that the motions of FAIC Securities, Inc. and Securities Industry Association for summary judgment are each granted; and it is further

Ordered that the defendants' motions for summary judgment are each denied; and it is further

Ordered that the Final Rule, published at 49 FR 13003 (Apr. 2, 1984), to become effective October 1, 1984, is declared unlawful and void as promulgated in excess of defendants' statutory authority; and it is further

Ordered that the defendants are hereby enjoined from implementing and effectuating said Final Rule; and it is futher

Ordered that defendants shall forthwith cause this Order to be published in the Federal Register.

Gerhard A. Gesell,
*United States District Judge.*
June 20, 1984.

[FR Doc. 84-17609 Filed 7-2-84; 8:45 am]
BILLING CODE 6714-01-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 220

[Docket No. R-0500]

### Credit by Brokers and Dealers; Regulation T; Technical Amendment

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; Technical Amendment.

**SUMMARY:** The Board is making a technical amendment to its final rule on Regulation T (Credit by Brokers and Dealers) published at 49 FR 9559 (March 14, 1984). This action is necessary to correct the omission of a word in section 220.14 of the Regulation.

**FOR FURTHER INFORMATION CONTACT:** Robert Lord, Attorney, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington D.C. 20551, (202) 452-2781.

**SUPPLEMENTARY INFORMATION:** Section 14 of the final rule in 12 CFR Part 220 (49 FR 9559, March 14, 1984) is corrected as follows:

The word "and" is added after semicolon in § 220.14(b)(2).

Board of Governors of the Federal Reserve System, June 27, 1984.
William W. Wiles,
*Secretary of the Board.*

[FR Doc. 84-17607 Filed 7-2-84; 8:45 am]
BILLING CODE 6210-01-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 563 and 571

[No. 84-322]

### Interest-Rate-Risk Management; Policy Statement and Final Rule

June 21, 1984.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Policy statement and final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), has formulated a statement of policy and related regulation to codify its expectations concerning the management of interest-rate risk and to require that the board of directors of each insured institution develop and implement a policy and procedures for the management of interest-rate risk.

**EFFECTIVE DATE:** July 30, 1984.

**FOR FURTHER INFORMATION CONTACT:** Douglas McEachern, Office of Examinations and Supervision, (202) 377-6392; Dan Brumbaugh, Deputy Chief Economist, Office of Policy and Economic Research, (202) 377-6775; or John Downing, Attorney, Office of General Counsel, (202) 377-6434.

**SUPPLEMENTARY INFORMATION:** On April 26, 1984, the Board proposed to add new sections 563.17-6 and 571.3 to its regulations of the Federal Savings and Loan Insurance Corporation (12 CFR 563.17-6, 571-3) to codify its expectations concerning the management of interest-rate risk. The proposed regulation and policy statement would require that the board of directors of an insured institution develop, adopt, implement, and periodically adjust a policy and procedures for interest-rate-risk management. The proposed policy statement and rule were designed to promote awareness and management of interest-rate risk on the part of the boards of directors of insured institutions. See Board Resolution No. 84-201 (49 FR 19307; May 7 1984).

A principal component of the income of thrift institutions is the difference between the yields earned on assets and the rates paid on liabilities. This component of income ("margin" or "spread") varies over time because the average interest rates paid on short-term deposits and other liabilities adjust more quickly to changes in interest rates than the average interest rates earned on long-term assets, primarily mortgage loans. Changes in interest rates also affect net asset values. Increases in interest rates, for example, lower net asset values because long-term interest-bearing assets in institutions' portfolios decline in value. This sensitivity of income and net asset values to changes in interest rates is commonly referred to as "interest-rate risk."

Substantial increases in interest rates together with mismatching of assets and liabilities have imperilled the viability of the thrift industry. Frequent periods of interest-rate volatility make planning for the continued management of interest-rate risk a necessity.

Because the analysis and management of interest-rate risk is an important task of responsible management and because many boards of directors have already instituted interest-rate-risk-management policies, the Board proposed adopting a policy statement and related rule codifying the Board's expectations concerning the management of interest-rate risk and requiring the board of directors of each insured institution to develop and implement a policy and procedures for the management of interest-rate risk.

As proposed, the rule would require the management of each insured institution to submit to its board of directors a report containing at least the following information: (1) Analyses of the difference between the dollar values of assets and liabilities with the same remaining term to repricing or "gap" analyses; and (2) analyses of the impact of differing market-interest-rate scenarios on earnings, net asset values, and regulatory net worth. The board of directors would then formally adopt an interest-rate-risk management policy to be implemented by management. Management would report periodically to the board of directors on the implementation of this policy and make

that information available to the Board's examiners. The board of directors would be required to review the results of operations at least quarterly and to adjust the policy as necessary and appropriate.

After a review of the public comments submitted in response to the proposal and upon further consideration and analysis, the Board has adopted the regulation substantially as proposed, with the modifications discussed below.

### Discussion of Comment Letters

The Board received 31 comments on the proposed policy statement and rule: 20 from federally chartered associations, eight from state-chartered associations, two from thrift trade groups, and one from a bank and trust company. Most commenters agreed that the proposed policy statement and rule would serve a valid purpose, though many recommended revisions in various respects. Five commenters who favored the proposal stated that they or associations they represented had programs to manage interest-rate risk and had found them to be of great benefit. In total, 16 commenters favored the proposed policy statement and regulation, 12 opposed it, and three stated no clear position. Those opposing the proposed policy statement and regulation primarily objected to them on grounds that they would impose a substantial paperwork burden or that small associations would find it difficult to meet the requirements of the proposed regulation.

### Regulatory Burden

The Board has considered the objection of several commenters that compliance with the proposed policy statement and rule would be unduly burdensome. In this connection, the Board notes that the proposal would place no additional reporting requirements on insured institutions, and that it is designed to utilize only that data currently required by Schedule H of the Board's quarterly financial reporting system. Thus, institutions' reporting and data-collection burden would not be increased. In response to an objection that the proposal would require duplicate reporting in the quarterly report to the Board and the management report to the board of directors, it was the Board's intention that the latter report should interpret for an institution's board of directors the data required by the quarterly report to the Board and, therefore, would not be duplicative; it is also noted that management's communication to its board may be in any format of the institution's choosing and is not required to be sent to the Board.

### Impact on Small Institutions

Five commenters asserted that compliance with the proposed rule would be difficult for smaller institutions have limited resources. One commenter from a small institution stated that it does not have the ability to analyze the impact of differing market-interest-rate scenarios on their earnings, net asset values, and regulatory net worth. In this regard, it is the Board's belief that small associations lacking the resources to conduct the described analyses should easily be able to secure consulting services or other assistance to perform those functions. In addition, the Federal Home Loan Bank system will, by the end of this year, have the capability of performing "gap" analyses for individual institutions of all sizes, utilizing the data reported on Schedule H of the quarterly financial reporting system, and will provide that information to institutions upon request. Moreover, it is the Board's strongly held view that any possible inconvenience to institutions in preparing and reviewing the analyses is heavily outweighed by the substantial risks institutions would incur by not being aware of and planning for the effect of changes in interest rates. No board of directors of an institution, however small, can overlook the effect of interest-rate risk without losing sight of its fiduciary duty to use care and skill in directing affairs of its institution.

### Function of the Board of Directors

Eight commenters maintained that boards of directors are not qualified to set policy in the area of interest-rate-risk management, and that they should be able to rely on the institution's management to take appropriate actions to manage interest-rate risk. One commenter suggested that the language in the last sentence of proposed section 571.3(b) be amended to recognize that boards of directors "set strategy for" managing various types of risk, but that they do not themselves manage such risks.

In response, the Board observes that the proposed policy statement and regulation do not require that boards of directors participate in the day-to-day management of risk. Their role is rather to obtain information concerning interest-rate risk and to set policy in that area. The proposed policy statement was not intended to impose new duties on boards of directors but merely to make explicit their existing legal duty to exercise care and skill in directing their associations. This duty cannot be regarded lightly, given the volatile nature of interest rates which directly affect the safety and soundness of institutions.

Boards of directors are free to obtain whatever assistance they believe is necessary to devise an interest-rate-risk-management policy. They may direct that management propose a policy which the board may then accept, reject, or modify. After setting the policy, the boards have the duty of monitoring the results of the program and of adjusting the policy for interest-rate-risk management. Because the board's role is to provide overall direction to management, not to make the daily operating decisions, the Board has adopted the commenter's suggestion cited above to clarify the last sentence of proposed section 571.3(b) to provide that the duties of boards of directors include "*overseeing*" the management of various types of risk which affect their institutions.

Three commenters recommended that the board of directors should not be required under proposed section 563.17-6(e) to review the results of operations on a quarterly basis, but rather that the frequency of the review should be left up to management and the board of directors. Given the volatile nature of interest rates, with the possibility of substantial damage to an institution's net worth over a brief period, and the availability of the data on which the necessary interest-rate-risk analyses can be based in the quarterly reports, it is the Board's view that review by the board of directors on a quarterly basis is desirable and that such review would not impose an unreasonable burden on insured institutions.

### Effect on Home Lending

One commenter expressed the view that increased interest-rate-risk avoidance may result in a reduction of the availability of fixed-rate mortgages. In response, the Board notes that it has long encouraged the use of a variety of lending instruments so that the maximum number of potential borrowers may be served. The Board believes that fixed-rate mortgages can be used, within the business judgment of boards of directors and management, consistently with the proper management of interest-rate risk.

### Types of Analyses

Several commenters suggested either that the proposed regulation should be changed so that it does not appear to foreclose the use of alternatives to "gap" analyses or that the method of analyzing interest-rate risk should be left entirely

to management and the board of directors. One commenter further expressed the view that the proposal would circumscribe an institution's business judgment.

As proposed, a board of directors would be required to obtain an initial report from management that contains "*at least* analyses of the difference between the dollar value of assets and liabilities with the remaining term to repricing, or 'gap' analyses." (emphasis added) The Board views the "gap" analyses described as a minimum requirement for the analysis of interest-rate risk. In part, "gap" analyses are specified because the information necessary to perform the calculations must be collected by the institutions in order to complete Schedule H of the Board's quarterly financial reporting system. It is true, however, that many institutions are already doing more sophisticated analyses. The Board encourages more comprehensive methods, providing they minimally include "gap" analyses as described in the proposal. Regarding the comments that management and its board of directors should be left entirely free to choose the method by which they determine interest-rate risk, the Board observes that any analyses of interest-rate risk which would prevent a mismatching of assets and liabilities such as occurred during the interest-rate crises of 1981 and 1982 would necessarily include "gap" analyses. The Board notes that the proposal would allow substantial discretion to the board of directors and management. For instance, the board could choose whatever interest-rate scenarios it believes appropriate in determining the impact of different interest rates on earnings, net asset values, and regulatory net worth. Moreover, while the board of directors would be required to review the results of operations in this area at least quarterly and to make such adjustments to its policy as it believed necessary and appropriate, no specific actions by the board of directors are required by the rule or policy statement. Appropriate policy adjustment would be left entirely to the board's discretion. For this reason the Board is of the view that an institution's business judgment would not be circumscribed by the proposal.

One commenter raised the question of whether the term "dollar value" as used in the proposed requirement that the "difference between the dollar value of assets and liabilities" be reported to the board of directors, requires a recalculation in terms of market value. Schedule H data is reported in terms of book value and, therefore, book value calculations would be acceptable. However, the Board does not intend to foreclose the use of more sophisticated forms of analysis of interest-rate risk if undertaken by institutions.

### Alternatives to the Described "Gap" Analyses

One commenter suggested a restricted "gap" analysis, pertaining only to the upcoming six-month period; the Board believes this would be insufficient for an adequate review of an institution's overall situation.

A commenter recommended the alternative of requiring the use of certain adjustable-rate mortgages to improve interest-rate-risk management, while another proposed an exclusion from the requirement for institutions with strong net worth. The Board does not believe that either of these suggestions adequately addresses the need for all institutions to maintain an ongoing awareness of their vulnerability to interest-rate risk and to plan for interest-rate changes.

### Applicability of the Requirements

One commenter raised the question of whether the term "insured institution" as used in the proposal is meant to include institutions chartered by the Board and whose accounts are insured by the Federal Deposit Insurance Corporation ("FDIC"). The Board notes that institutions that are chartered by the Board and whose accounts are insured by the FDIC are insured institutions, as defined in the Board's regulations, 12 CFR 561.1. Furthermore, these institutions are required to file quarterly reports with the Board that contain the basic information needed to perform "gap" analyses. For these reasons, the Board has concluded, as proposed, that such institutions will be required to comply with the policy statement and regulation.

### Suggestions for Additions to the Statement of Policy

It has been proposed that the Board add to the second sentence of its proposed section 571.3(b) language providing that actions designed to reduce interest-rate risk may increase other forms of risk "without use of sound underwriting and prudent investment practices." While the proposed addition is not incorrect in substance, the Board believes it unnecessary to add because the Board's attention to sound underwriting and investment practices is set forth at great length in many places in its body of regulations and other agency pronouncements. Similarly, one commenter has asked that the proposal make clear that the analyses for determining interest-rate risk require no more information than is required by the Board's own reporting system. The Board believes, however, that the discussion in this preamble will assist institutions in initiating the process and makes inclusion in the rule unnecessary; in addition, the Board does not wish to discourage institutions from conducting analyses which may be broader than the minimum set forth in the regulation and policy statement.

One commenter asked the Board to define further what is meant by the duty of boards of directors "adequately" to address the management of interest-rate risk, as provided in the last sentence of proposed section 571.3(a). It was the Board's intention that boards of directors "adequately" address interest-rate risk by obtaining a "gap" analysis from operating management, devising a policy for management of interest-rate risk, reviewing the operating results of the institution at least quarterly, and adjusting the policy for interest-rate risk management as necessary and appropriate. As these steps have been described in the regulation, the Board upon reconsideration deems the modifier in question to be unnecessary and has deleted it.

It has been proposed that management's report to the board of directors be in writing and the board's review be recorded in the institution's official minutes. The Board is concerned with the substance of its requirement and has determined to leave to the institution's discretion the appropriate method of memorializing its analyses and reviews.

### Effective Date

It was suggested that the initial report to the board of directors by management be presented by September 30, 1984. Another commenter suggested that proposed section 563.17-6(c) be revised to require that boards of directors adopt a policy for the management of interest-rate risk within 90 days of the effective date of the policy statement and rule. The quarterly financial reporting system on which the interest-rate-risk report is based will be in place and the first reports received by the Board by July 30, 1984. In order for institutions subject to this regulation to familiarize themselves with the reporting process and to improve their ability to provide accurate and complete information, the Board believes it is appropriate to give them an opportunity to prepare two sets of quarterly reports to the Board before requiring management to submit

interest-rate-risk reports to their board of directors. Reports are required to be submitted to the boards of directors on October 31, 1984, three months after the second quarterly report to the Board is submitted. The Board believes it unnecessary, however, to provide a deadline for boards of directors to adopt an interest-rate-risk-management policy.

A commenter suggested that the proposed policy statement and regulation contain a "sunset" provision or be instituted on a test basis. The Board firmly believes that greater awareness of and planning for interest-rate risk will be of great benefit to the thrift industry, particularly as it continues to implement recent additional statutory powers. Therefore, the Board has determined to adopt the policy statement and regulation as a final rule without a termination date, although of course amendment or rescission will be considered if experience so warrants.

**Final Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the policy statement and rule.

2. *Small entities to which the rule would apply.* The policy statement and rule would apply to all insured institutions.

3. *Impact of the policy statement and rule on small entities.* The proposal would not have a substantial impact upon a significant number of insured institutions which are small entities because it imposes no new reporting or data-collection burdens on such institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the policy statement and rule.* The policy statement and rule codify the Board's expectations concerning the management of interest-rate risk and require that boards of directors of insured institutions develop and implement a policy and procedures for the management of interest-rate risk. There are no alternatives that would have a less significant economic impact on insured institutions which are small entities.

**List of Subjects in 12 CFR Parts 563 and 571**

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 571, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations* as set forth below.

**Subchapter D—Federal Savings and Loan Insurance Corporation**

## PART 563—OPERATIONS

1. Add new § 563.17-6, as follows:

**§ 563.17-6 Interest-rate-risk-management procedures.**

Insured institutions shall take the following actions:

(a) The board of directors or a committee thereof shall review the institution's interest-rate-risk exposure and devise a policy for the institution's management of that risk.

(b) To assist in this review and formulation of policy, by October 31, 1984, the board of directors shall obtain an initial report from the management of the institution containing at least the following information:

(1) Analyses of the difference between the dollar value of assets and liabilities with the same remaining term to repricing, or "gap" analyses, together with assumptions used to adjust contractual maturities to anticipated maturities; and

(2) Analyses of the impact of differing market-interest-rate scenarios on earnings, net asset values, and regulatory net worth.

(c) The board of directors shall formerly adopt a policy for the management of interest-rate risk. The management of the institution shall establish guidelines and procedures to ensure that the board's policy is successfully implemented.

(d) The management of the institution shall periodically report to the board of directors regarding implementation of the institution's policy for interest-rate-risk management and shall make that information available upon request to the Corporation.

(e) The institution's board of directors shall review the results of operations at least quarterly and shall make such adjustments as it considers necessary and appropriate to the policy for interest-rate-risk management, including adjustments to the authorized acceptable level of interest-rate risk.

(f) See also § 571.3 of this Subchapter, containing the Corporation's statement of policy on interest-rate-risk management.

## PART 571—STATEMENTS OF POLICY

2. Add new § 571.3, as follows:

**§ 571.3 Interest-rate-risk management.**

(a) *General.* A principal component of the income of thrift institutions is the difference between the yields earned on assets and the rates paid on liabilities. This component of income ("margin" or "spread") varies over time because the average interest rates paid on short-term deposits and other liabilities adjust more quickly to changes in interest rates than the average interest rates earned on long-term mortgage loans. Changes in interest rates also affect net asset values. Increases in interest rates, for example, lower net asset values because long-term interest-bearing assets in institutions' portfolios decline in value. This sensitivity of income and net asset values to changes in interest rates is commonly referred to as "interest-rate risk." The larger the difference in average maturities between assets and liabilities, the greater the exposure to interest-rate risk. The interest-rate-risk management procedures required by § 563.17-6 of this Subchapter are intended to ensure that boards of directors and management of insured institutions address the management of interest-rate risk.

(b) *Other risk management.* While emphasizing interest-rate risk, this statement of policy is not intended to diminish attention paid to other forms of risk. The Corporation realizes that the means used to reduce interest-rate risk can increase other forms of risk, particularly the risk of default. In addition, the requisite degree of care and skill must be employed in pricing and structuring new assets, such as adjustable-rate mortgages, to reduce interest-rate risk and to ensure that the desired economic effect is achieved. The Corporation recognizes that the duties of boards of directors include overseeing the management of the various types of risk which affect their institutions

(Secs. 402, 403, 407, 48 Stat. 1250, 1257 1260, as amended (12 U.S.C. 1725, 1726, 1730))

By the Federal Home Loan Bank Board.

J. J. Finn,

*Secretary.*

[FR Doc. 84-17576 Filed 7-2-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-5]

## Alteration of VOR Federal Airways

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment redesignates segments of VOR Federal Airway V-13, revokes segments of V-13, V-18, V-66 and V-71 and establishes a new segment of V-272 to enhance the traffic flow within the Houston and Fort Worth Air Route Traffic Control Center's (ARTCC) areas.

**EFFECTIVE DATE:** August 30, 1984.

**FOR FURTHER INFORMATION CONTACT:** Brent Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

**SUPPLEMENTARY INFORMATION:**

### History

On April 16, 1984, The FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new segment of VOR Federal Airway V-272 between McAlester, OK, and Fort Smith, AR; to renumber V-13W between Harlingen, TX, and Corpus Christi, TX, and Palacios, TX, and Humble, TX; renumber V-13E between Humble, TX, and Shreveport, LA; revoke V-13W between Rich Mountain, OK, and Razorback, AR; revoke V-18S between Quitman, TX, and Monroe, LA; revoke V-18N between Shreveport, LA, and Monroe, LA; revoke V-66N and V-66S between Sulphur Springs, TX, and Texarkana, TX; and to revoke V-71E between Monroe, LA, and Natchez, MS, to enhance the traffic flow within the Houston and Fort Worth ARTCC's areas (49 FR 14970). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Three comments were received, all of which supported the proposed alterations. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a new segment of VOR Federal Airway V-272 between McAlester, OK, and Fort Smith, AR; renumbers V-13W between Harlingen, TX, and Corpus Christi, TX, and Palacios, TX, and Humble, TX; renumbers V-13E between Humble, TX, and Shreveport, LA; revokes V-13W between Rich Mountain, OK, and Razorback, AR; revokes V-18S between Quitman, TX, and Monroe, LA; revokes V-18N between Shreveport, LA, and Monroe, LA; revokes V-66N and V-66S between Sulphur Springs, TX, and Texarkana, TX; and revokes V-71E between Monroe, LA, and Natchez, MS, thereby enhancing the traffic flow within the Houston and Fort Worth ARTCC's areas.

### List of Subjects in 14 CFR Part 71

VOR Federal airways, aviation safety.

### Adoption of the Amendment

### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 30, 1984, as follows:

**V-13 [Amended]**

By deleting the words "27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline), Corpus Christi; including a W alternate from Harlingen, 23 miles 7 miles wide (3 miles E and 4 miles W of centerline), 4 miles 8 miles wide, via INT Harlingen 006° and Corpus Christi 193° radial; 34 miles standard width, 37 miles 7 miles wide (4 miles E and 3 miles W of centerline), to the words " the words including a west alternate via INT Palacios 017° and Humble 242° Humble" the words "including an east alternate from Humble via Daisetta, TX, to Lufkin;" the words " including an E alternate" and the words " including a W alternate from rich Mountain to Razorback via INT Rich Mountain 006° and Razorback 205° radials"

**V-18 [Amended]**

By deleting the words " including a S alternate via INT Quitman 109° and Shreveport 246° radials" and the words " including a N alternate and also a S alternate"

**V-66 [Amended]**

By deleting the words " including a north alternate via INT Sulphur Springs 060° and Texarkana 272° radials, and also a south alternate via INT Sulphur Springs 090° and Texarkana 240° radials"

**V-71 [Amended]**

By deleting the words "and also an E alternate via INT Natchez 341° and Monroe 105° radials"

**V-272 [Amended]**

By adding the words " Fort Smith, AR" after the words "McAlester, OK"

**V-407 [New]**

From Harlingen, TX; via INT Harlingen 006° and Corpus Christi, TX, 193° radials; Corpus Christi; via INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; via INT Palacios 017° and Humble, TX, 242° radials; Humble; Daisetta, TX; Lufkin, TX; to Shreveport, LA.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on June 22, 1984.

John W. Baier,

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 84-17501 Filed 7-2-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 24136; Amdt. No. 318]

## Air Traffic and General Operating Rules; 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:** July 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277

**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.

## List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

## 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 July 5, 1984.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—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 reasons, 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.

Issued in Washington, D.C. on June 26, 1984.

Kenneth S. Hunt,

*Director of Flight Operations.*

BILLING CODE 4910-13-M

## REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

### AMENDMENT 318 EFFECTIVE DATE JULY 5 1984

| FROM | TO | MEA |
|---|---|---|
| **§95 46 GREEN FEDERAL AIRWAY 6** | | |
| **IS AMENDED TO DELETE** | | |
| ANIAK AK NDB | CAIRN MOUNTAIN AK NDB | 6000 |
| **§95 49 GREEN FEDERAL AIRWAY 9** | | |
| **IS AMENDED TO DELETE** | | |
| CAIRN MOUNTAIN AK NDB | SPURR AK FIX | 13000 |
| 12000 MCA SPURR FIX, W BND | | |
| SPURR AK FIX | CAMPBELL LAKE AK NDB | 6000 |
| **§95 102 AMBER FEDERAL AIRWAY 2** | | |
| **IS AMENDED TO READ IN PART** | | |
| EVANSVILLE, AK NDB | CHIPS AK FIX | 10000 |
| *9000 MOCA | | |
| CHIPS AK FIX | BROWERVILLE AK NDB | 2000 |
| 1300 MOCA | | |
| **IS AMENDED TO DELETE** | | |
| DELTA JUNCTION AK NDB | CHENA AK NDB | 5000 |
| **§95 115 AMBER FEDERAL AIRWAY 15** | | |
| **IS AMENDED TO READ IN PART** | | |
| U S CANADIAN BORDER | N CHOLS AK NDB | 5000 |
| N CHOLS AK NDB | SUMMIT AK NDB | 7000 |
| *5100 MOCA | | |
| COSHLAN ISLAND AK NDB | HAINES AK NDB | 9000 |
| *8300 MOCA | | |
| HAINES AK NDB | DUCWASH CANADA NDB | 11000 |
| **IS AMENDED TO DELETE** | | |
| DELTA JUNCTION AK NDB | CHENA AK NDB | 5000 |
| **§95 227 RED FEDERAL AIRWAY 27** | | |
| **IS DELETED** | | |
| SUMMIT, AK NDB | JULIUS AK NDB | 9500 |
| 8700 MOCA | | |
| JULIUS, AK NDB | CHENA AK NDB | 4000 |
| *2600 MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95 239 RED FEDERAL AIRWAY 39** | | |
| **IS AMENDED TO READ IN PART** | | |
| OSCARVILLE, AK NDB | ANIAK, AK NDB | 2000 |
| *3500 MCA ANIAK NDB NE BND | | |
| 1400 MOCA | | |
| ANIAK, AK NDB | TAKOTNA RIVER AK NDB | 6000 |
| *5400 MOCA | | |
| MINCHUMINA AK NDB | JULIUS AK NDB | 4000 |
| **IS AMENDED TO DELETE** | | |
| JULIUS, AK NDB | CHENA AK NDB | 4000 |
| *2600 MOCA | | |
| **§95 240 RED FEDERAL AIRWAY 40** | | |
| **IS DELETED** | | |
| WOODY ISLAND AK NDB | KACHEMAK AK NDB | 6000 |
| KACHEMAK, AK NDB | *DUFOS AK FIX | 5000 |
| *5800 MCA DUFOS FIX SE BND | | |
| DUFOS AK FIX | CAMPBELL LAKE AK NDB | 2500 |
| **§95 1001 DIRECT ROUTES-U S** | | |
| **IS ADDED TO READ** | | |
| GRAND STRAND SC VORTAC | KINSTON NC VORTAC | 10000 |
| | | MAA-45000 |
| HOLSTON MOUNTAIN TN VORTAC | LONDON KY VORTAC | 10000 |
| | | MAA-45000 |
| NANTUCKET MA VORTAC | INTCPT V203 VIA ACK R 205 | 5000 |
| 5000 MOCA | | |
| SAULLEY FL VOR VIA RUN VORTAC 104 | VARRE FL FIX | 2000 |
| | | MAA 17500 |
| SNOWBIRD TN VORTAC | LONDON KY VORTAC | 10000 |
| | | MAA-45000 |
| SNOWBIRD TN VORTAC | WHITESBURG KY VORTAC | 10000 |
| | | MAA-45000 |
| **IS AMENDED TO DELETE** | | |
| KENNEBUNK ME VORTAC VIA YIN VORTAC 147 & ENE VORTAC 331 | U S CANADIAN BORDER | 15000 |
| 6300 MOCA | | MAA 31000 |



| FROM | TO | MEA |
|---|---|---|
| **§95 1001 DIRECT ROUTES U S —Continued** | | |
| **BAHAMA ROUTES** | | |
| **64V IS AMENDED TO READ IN PART** | | |
| BISCAYNE BAY FL VORTAC | HONOE FL FIX | 2000 |
| **§95 6001 VOR FEDERAL AIRWAY 1** | | |
| **IS AMENDED TO READ IN PART** | | |
| JACKSONVILLE FL VORTAC | STARY GA FIX | 4000 |
| 5000 MRA | | |
| 1700 MOCA | | |
| **§95 6002 VOR FEDERAL AIRWAY 2** | | |
| **IS AMENDED TO DELETE** | | |
| HELENA, MT VORTAC | VESTS MT FIX | |
| VIA S ALTER | VIA S ALTER | |
| | E BND | 10800 |
| | W BND | 9700 |
| 10300 MRA | | |
| VESTS MT FIX | MENAR MT FIX | |
| VIA S ALTER | VIA S ALTER | 9700 |
| 9200 MCA MENAR FIX NW BND | | |
| MENAR MT FIX | BOZEMAN MT VORTAC | |
| VIA S ALTER | VIA S ALTER | 8500 |
| 9300 MCA BOZEMAN VORTAC SE BND | | |
| BOZEMAN MT VORTAC | LIVINGSTON MT VORTAC | |
| VIA S ALTER | VIA S ALTER | 10400 |
| HELENA MT VORTAC | WAUTS MT FIX | |
| VIA N ALTER | VIA N ALTER | 9400 |
| 10700 MCA WAUTS FIX E BND | | |
| WAUTS MT FIX | DAXTA MT FIX | |
| VIA N ALTER | VIA N ALTER | 10000 |
| 10700 MCA | | |
| DAXTA MT FIX | PELLE MT FIX | |
| VIA N ALTER | VIA N ALTER | |
| | W BND | 10,[illegible] |
| | E BND | 7000 |
| PELLE MT FIX | DILLINGS MT VORTAC | |
| VIA N ALTER | VIA N ALTER | |
| | W BND | 7000 |
| | E BND | 6000 |
| DILLINGS MT VORTAC | MILES CITY MT VORTAC | |
| VIA N ALTER | VIA N ALTER | 6000 |
| **§95 6003 VOR FEDERAL AIRWAY 3** | | |
| **IS AMENDED TO READ IN PART** | | |
| LAYER MA FIX | KITTY MA FIX | 6000 |
| 2300 MOCA | | |
| KITTY, MA FIX | DOSOK MA FIX | 4500 |
| *2300 MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95 6004 VOR FEDERAL AIRWAY 4** | | |
| **IS AMENDED TO DELETE** | | |
| BAKER OR VORTAC | PUMPP, ID FIX | |
| VIA S ALTER | VIA S ALTER | 14000 |
| 8500 MOCA | | |
| PUMPP, ID FIX | BOISE ID VORTAC | |
| VIA S ALTER | VIA S ALTER | |
| | E BND | 5000 |
| | W BND | 10000 |
| BOISE, ID VORTAC | AROWS, ID FIX | |
| VIA N ALTER | VIA N ALTER | |
| | E BND | 9000 |
| | W BND | 8000 |
| 7000 MCA BOISE VORTAC, E BND | | |
| AROWS, ID FIX | DERSO ID FIX | |
| VIA N ALTER | VIA N ALTER | 11500 |
| 9800 MOCA | | |
| DERSO ID FIX | SOLDE ID FIX | |
| VIA N ALTER | VIA N ALTER | 12500 |
| 9200 MOCA | | |
| SOLDE ID FIX | KINZE, ID FIX | |
| VIA N ALTER | VIA N ALTER | |
| | NW BND | 12500 |
| | SE BND | 8000 |
| 11200 MCA KINZE FIX N W BND | | |
| KINZE ID FIX | BURLEY ID VORTAC | |
| VIA N ALTER | VIA N ALTER | 8000 |
| 7600 MOCA | | |
| ALADDIN CITY, ID VORTAC | ORNEY UT FIX | |
| VIA S ALTER | VIA S ALTER | 10100 |
| 11100 MCA ORNEY FIX E BND | | |
| ORNEY UT FIX | FORT DRIESER WY VORTAC | |
| VIA S ALTER | VIA S ALTER | 12000 |
| FORT DRIESER WY VORTAC | PORTER NAS WY VORTAC | |
| VIA S ALTER | VIA S ALTER | 10000 |
| **§95 6005 VOR FEDERAL AIRWAY 6** | | |
| **IS AMENDED TO DELETE** | | |
| FIND NV VORTAC | HAZEN NV VORTAC | |
| VIA S ALTER | VIA S ALTER | 10000 |
| 9200 MOCA | | |
| HAZEN NV VORTAC | LOVELOCK NV VORTAC | |
| VIA S ALTER | VIA S ALTER | 8000 |
| LOVELOCK NV VORTAC | DATER MONTANA NV VORTAC | |
| VIA N ALTER | VIA N ALTER | 11000 |
| 8000 MCA LOVELOCK VORTAC E BND | | |
| **§95 6007 VOR FEDERAL AIRWAY 7** | | |
| **IS AMENDED TO READ IN PART** | | |
| ESCANABA MI VORTAC | ALPENA MI VORTAC | |
| VIA E ALTER | VIA E ALTER | 3500 |

| FROM | TO | MEA |
|---|---|---|

### §95 6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| GERMS PA FIX | HARRISBURG PA VORTAC | 8500 |

### §95 6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| WOONS, RI FIX | MILIS MA FIX | 4000 |
| 1800 MOCA | | |
| MILIS MA FIX | BOSTON MA VORTAC | 3000 |
| 1900 MOCA | | |

### §95 6019 VOR FEDERAL AIRWAY 19

IS AMENDED TO DELETE

| | | |
|---|---|---|
| CRAZY WOMAN WY VORTAC | SHERIDAN WY VORTAC | |
| VIA E ALTER | VIA E ALTER | 7000 |
| SHERIDAN WY VORTAC | ARDMO MT FIX | |
| VIA E ALTER | VIA E ALTER | 8000 |
| ARDMO MT FIX | BILLINGS MT VORTAC | |
| VIA E ALTER | VIA E ALTER | |
| | E BND | 8000 |
| | W BND | 6000 |

### §95 6021 VOR FEDERAL AIRWAY 21

IS AMENDED TO DELETE

| | | |
|---|---|---|
| MORMON MESA NV VORTAC | MATZO UT FIX | |
| VIA E ALTER | VIA E ALTER | |
| | NE BND | 12000 |
| | SW BND | 9000 |
| MATZO UT FIX | CEDAR CITY UT VOR/DME | |
| VIA E ALTER | VIA E ALTER | 12000 |
| 11400 MCA CEDAR CITY VOR/DME, S BND | | |
| CEDAR CITY UT VOR/DME | MILFORD UT VORTAC | |
| VIA E ALTER | VIA E ALTER | 10000 |
| HELENA MT VORTAC | WOKEN MT FIX | |
| VIA W ALTER | VIA W ALTER | 9000 |
| WOKEN MT FIX | SHIMY MT FIX | |
| VIA W ALTER | VIA W ALTER | 9500 |
| SHIMY MT FIX | CHOTE MT FIX | |
| VIA W ALTER | VIA W ALTER | 9500 |
| 7000 MOCA | | |
| CHOTE MT FIX, | CUT BANK MT VORTAC | |
| VIA W ALTER | VIA W ALTER | 7000 |
| 6300 MOCA | | |

### §95 6031 VOR FEDERAL AIRWAY 31

| FROM | TO | MEA |
|---|---|---|

### §95 6031 VOR FEDERAL AIRWAY 31—Continued

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| HARRISBURG PA VORTAC | SELINSGROVE PA VORTAC | 4000 |

### §95 6032 VOR FEDERAL AIRWAY 32

IS AMENDED BY ADDING

| | | |
|---|---|---|
| RENO NV VORTAC | HAZEN NV VORTAC | 10000 |
| 9200 MOCA | | |
| HAZEN NV VORTAC | LOVELOCK, NV VORTAC | 8000 |
| LOVELOCK NV VORTAC | BATTLE MOUNTAIN NV VORTAC | 11000 |
| 8500 MCA LOVELOCK VORTAC NE BND | | |

IS AMENDED TO DELETE

| | | |
|---|---|---|
| ELKO, NV VORTAC | WELLS NV VOR | |
| VIA N ALTER | VIA N ALTER | 13000 |
| WELLS NV VOR | BONNEVILLE, UT VORTAC | |
| VIA N ALTER | VIA N ALTER | 12000 |

### §95 6035 VOR FEDERAL AIRWAY 35

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| DORMY FL FIX | DEEDS FL FIX | 5000 |
| 1300 MOCA | | |

### §95 6038 VOR FEDERAL AIRWAY 38

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| BENZO, WV FIX | ELKINS WV VORTAC | 5000 |
| *3900 MOCA | | |
| ELKINS, WV VORTAC | BUGEL WV FIX | 6400 |
| *8000 MRA | | |
| MITER VA FIX | GORDONSVILLE VA VORTAC | |
| | NW BND | 5000 |
| | SE BND | 4000 |

### §95 6044 VOR FEDERAL AIRWAY 44

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| ATLANTIC CITY NJ VORTAC | LEGGS, NJ FIX | 1800 |
| LEGGS, NJ FIX | *BEAMS, NJ FIX | 3000 |
| *8000 MCA BEAMS FIX N BND | | |
| 2000 MOCA | | |
| BEAMS, NJ FIX | GAMBY NJ FIX | 8000 |
| *6000 MRA | | |
| 2000 MOCA | | |

### §95 6051 VOR FEDERAL AIRWAY 51

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| JACKSONVILLE FL VORTAC | WAYCROSS GA VORTAC | 3000 |
| 2300 MOCA | | |



| FROM | TO | MEA |
|---|---|---|

### §95 6058 VOR FEDERAL AIRWAY 58

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| SALEM, CT FIX | TRAIT CT FIX | 2300 |
| *3000 MRA | | |
| 1500 MOCA | | |

### §95 6066 VOR FEDERAL AIRWAY 66

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| ABILENE TX VORTAC | CHAPI TX FIX | 4000 |

### §95 6085 VOR FEDERAL AIRWAY 85

IS AMENDED BY ADDING

| | | |
|---|---|---|
| RIVERTON WY VOR/DME | BOYSEN RESERVOIR WY VORTAC | 9600 |
| BOYSEN RESERVOIR WY VORTAC | CODY WY VOR/DME | 9600 |
| CODY WY VOR/DME | EDDAR, MT FIX | 8400 |
| EDDAR MT FIX | BILLINGS MT VORTAC | |
| | S BND | 8400 |
| | N BND | 7000 |

### §95 6086 VOR FEDERAL AIRWAY 86

IS AMENDED TO DELETE

| | | |
|---|---|---|
| SHERIDAN WY VORTAC | GILLETTE WY VOR/DME | |
| VIA S ALTER | VIA S ALTER | 7000 |
| GILLETTE WY VOR/DME | NEWCASTLE, WY VOR | |
| VIA S ALTER | VIA S ALTER | 7500 |
| NEWCASTLE, WY VOR | ZAMBI SD FIX | |
| VIA S ALTER | VIA S ALTER | 9300 |
| 9300 MRA | | |
| ZAMBI, SD FIX | RAPID CITY, SD VORTAC | |
| VIA S ALTER | VIA S ALTER | |
| | E BND | 8000 |
| | W BND | 9300 |
| 6500 MCA RAPID CITY VORTAC W BND | | |

### §95 6093 VOR FEDERAL AIRWAY 93

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| LAKE HENRY PA VORTAC | CAPPO, NY FIX | 4000 |
| CAPPO, NY FIX | PAWLING NY VORTAC | 4000 |
| *3500 MOCA | | |

### §95 6106 VOR FEDERAL AIRWAY 106

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| LAKE HENRY PA VORTAC | CAPPO, NY FIX | 4000 |
| CAPPO, NY FIX | PAWLING NY VORTAC | 4000 |
| *3500 MOCA | | |

### §95 6120 VOR FEDERAL AIRWAY 120

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| BILGO, IA FIX | BANCO IA FIX | 6800 |
| *2900 MOCA | | |

| FROM | TO | MEA |
|---|---|---|

### §95 6128 VOR FEDERAL AIRWAY 128

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| CHARLESTON, WV VORTAC | SWIFT WV FIX | 3300 |
| BITES WV FIX | *HAWKI WV FIX | 7000 |
| 8000 MRA | | |
| 6000 MOCA | | |
| HAWKI, WV FIX | VELLI WV FIX | 7000 |
| *6000 MOCA | | |
| VELLI WV FIX | BOIER WV FIX | 8000 |
| 6400 MOCA | | |
| BOIER, WV FIX | LURAY VA FIX | 9000 |
| *6100 MOCA | | |

### §95 6130 VOR FEDERAL AIRWAY 130

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| MARTHAS VINEYARD MA VOR | HYANNIS MA VORTAC | 1900 |

### §95 6133 VOR FEDERAL AIRWAY 133

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| ESCANABA MI VORTAC | MARQUETTE MI VOR DME | 3600 |

### §95 6139 VOR FEDERAL AIRWAY 139

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| CHUMR, NY FIX | TRAIT CT FIX | 4000 |
| *3000 MRA | | |
| 1200 MOCA | | |
| TRAIT CT FIX | WACKY RI FIX | 3000 |
| 1500 MOCA | | |
| PROVIDENCE RI VORTAC | DENNY MA FIX | 2100 |
| DENNY MA FIX | *CELTS MA FIX | 2500 |
| *2500 MRA | | |
| 1400 MOCA | | |
| CELTS, MA FIX | TONNI MA FIX | 3000 |
| *1400 MOCA | | |
| TONNI, MA FIX | EXALT NH FIX | 2500 |
| *5500 MRA | | |
| 1300 MOCA | | |
| EXALT NH FIX | SEEDY NH FIX | 2500 |
| 1300 MOCA | | |

### §95 6141 VOR FEDERAL AIRWAY 141

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| HYANNIS, MA VORTAC | DRUNK MA FIX | 2000 |
| *1500 MOCA | | |
| DRUNK, MA FIX | CELTS MA FIX | 2000 |
| *2500 MRA | | |
| 1500 MOCA | | |
| CELTS MA FIX | BOSTON MA VORTAC | 2000 |

### §95 6142 VOR FEDERAL AIRWAY 142

IS ADDED TO READ

| | | |
|---|---|---|
| MALAD CITY, ID VORTAC | ORNEY, UT FIX | 10100 |
| *11100 MCA ORNEY FIX E BND | | |

## §95 6142 VOR FEDERAL AIRWAY 142—Continued

| FROM | TO | MEA |
|---|---|---|
| ORNEY UT FIX | FORT BRIDGER WY VORTAC | 12000 |
| FORT BRIDGER WY VORTAC | ROCK SPRINGS WY VORTAC | 10000 |

## §95 6146 VOR FEDERAL AIRWAY 146

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| PROVIDENCE RI VORTAC *4000 MRA | COSSY MA FIX | 2000 |
| COSSY MA FIX | MARTHAS VINEYARD MA VOR | 2000 |

## §95 6151 VOR FEDERAL AIRWAY 151

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| WOONS, RI FIX *2200 MOCA | WHAMY MA FIX | 3000 |

## §95 6162 VOR FEDERAL AIRWAY 162

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| HUGUENOT NY VORTAC | CAPPO NY FIX | 5000 |
| CAPPO, NY FIX *3500 MOCA | PAWLING NY VORTAC | 4000 |

## §95 6167 VOR FEDERAL AIRWAY 167

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| PROVIDENCE RI VORTAC *1000 MOCA | FEAKE MA FIX | 2500 |
| FEAKE MA FIX | HYANNIS MA VORTAC | 1600 |
| HYANNIS MA VORTAC *9000 MRA 1500 MOCA | *SCUPP MA FIX | 5000 |
| SCUPP MA FIX 1000 MOCA | WENNIDUNK ME VORTAC | 5000 |

IS AMENDED TO DELETE

| FROM | TO | MEA |
|---|---|---|
| HANCOCK NY VORTAC | ELLAN NY FIX | 4000 |
| ELLAN NY FIX 3000 MOCA | KINGSTON NY VORTAC | 4000 |

## §95 6187 VOR FEDERAL AIRWAY 187

IS AMENDED TO DELETE

| FROM | TO | MEA |
|---|---|---|
| GRAND JUNCTION CO VORTAC VIA W ALTER | DONGO UT FIX VIA W ALTER | 10000 |
| DONGO UT FIX VIA W ALTER | VERNAL UT VOR VIA W ALTER | 8400 |
| 9500 MCA VERNAL VOR, N BND | | |
| VERNAL UT VOR VIA W ALTER | ROCK SPRINGS WY VORTAC VIA W ALTER | 11800 |

## §95 6187 VOR FEDERAL AIRWAY 187—Continued

| FROM | TO | MEA |
|---|---|---|
| BOYSEN RESERVOIR WY VORTAC VIA W ALTER | CODY WY VOR/DME VIA W ALTER | 9600 |
| CODY WY VOR/DME VIA W ALTER | EDDAR, MT FIX VIA W ALTER | 8400 |
| EDDAR, MT FIX VIA W ALTER | BILLINGS, MT VORTAC VIA W ALTER S BND | 8400 |
| | N BND | 7000 |

## §95 6205 VOR FEDERAL AIRWAY 205

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| SPARTA NJ VORTAC | SILKY NY FIX | 3000 |
| SILKY NY FIX | HOLZZ NY FIX | 4000 |
| HOLZZ, NY FIX | KINGSTON NY VORTAC | 3000 |
| KINGSTON, NY VORTAC | PAWLING NY VORTAC | 3000 |
| LAYER, MA FIX *2300 MOCA | KITTY MA FIX | 6000 |
| KITTY MA FIX 2300 MOCA | BOSOX MA FIX | 4500 |
| BOSTON, MA VORTAC 2100 MOCA | WETTR MA FIX | 3000 |
| WETTR MA FIX *9000 MRA 2100 MOCA | SCUPP MA FIX | 9000 |
| SCUPP, MA FIX *2100 MOCA | PEASE NH VOR | 3000 |

## §95 6219 VOR FEDERAL AIRWAY 219

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| SIOUX CITY IA VORTAC 6000 MRA 2900 MOCA | GRUVE IA FIX | 4500 |

## §95 6235 VOR FEDERAL AIRWAY 235

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| MORMON MESA NV VORTAC | MATZO UT FIX NE BND | 12000 |
| | SW BND | 9000 |
| MATZO UT FIX | CEDAR CITY UT VOR/DME | 12000 |
| 11400 MCA CEDAR CITY VOR/DME S BND | | |
| CEDAR CITY UT VOR/DME | MILFORD UT VORTAC | 10000 |
| MILFORD UT VORTAC | DELTA UT VORTAC | 9600 |
| DELTA UT VORTAC | FAIRFIELD UT VORTAC | 10000 |

## §95 6243 VOR FEDERAL AIRWAY 243

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| JACKSONVILLE FL VORTAC 2300 MOCA | WAYCROSS GA VORTAC | 3000 |



## §95 6247 VOR FEDERAL AIRWAY 247

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| SHERIDAN WY VORTAC | ARDMO MT FIX | 8000 |
| ARDMO MT FIX | BILLINGS MT VORTAC E BND | 8000 |
| | W BND | 6000 |
| BILLINGS MT VORTAC | PELIE, MT FIX W BND | 7000 |
| | E BND | 6000 |
| PELIE MT FIX | BAXTA, MT FIX E BND | 7000 |
| | W BND | 10500 |
| BAXTA MT FIX *10900 MOCA | WAUTS MT FIX | 13000 |
| WAUTS MT FIX *10700 MCA WAUTS FIX E BND | HELENA, MT VORTAC | 9400 |

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| CRAZY WOMAN WY VORTAC | SHERIDAN WY VORTAC | 7000 |

## §95 6298 VOR FEDERAL AIRWAY 298

IS AMENDED TO DELETE

| FROM | TO | MEA |
|---|---|---|
| DUNOIR WY VOR/DME VIA S ALTER | ROWEY WY FIX VIA S ALTER | 14000 |
| 11000 MCA ROWEY FIX NW BND | | |
| 13000 MOCA | | |
| ROWEY WY FIX VIA S ALTER | RIVERTON WY VOR/DME VIA S ALTER | 8000 |
| RIVERTON WY VOR/DME VIA S ALTER | CASPER WY VORTAC VIA S ALTER | 8200 |

## §95 6330 VOR FEDERAL AIRWAY 330

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| RIVERTON WY VOR/DME | CASPER WY VORTAC | 8200 |
| JACKSON WY VOR | DUNOIR WY VOR/DME | 12000 |
| DUNOIR WY VOR/DME | *ROWEY WY FIX | 14000 |
| *11000 MCA ROWEY FIX NW BND | | |
| 13000 MOCA | | |
| ROWEY WY FIX | RIVERTON WY VOR/DME | 8000 |

## §95 6337 VOR FEDERAL AIRWAY 337

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| U.S. CANADIAN BORDER | SAG NAW MI VORTAC | 3000 |

## §95 6365 VOR FEDERAL AIRWAY 365

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| LIVINGSTON MT VORTAC | BOZEMAN MT VOR/DME | 10400 |
| 9300 MCA BOZEMAN VOR/DME SE BND | | |
| BOZEMAN MT VOR/DME | MENAR MT FIX | 8500 |
| *9200 - MCA MENAR FIX NW BND | | |
| MENAR MT FIX *10800 MRA | *VESTS MT FIX | 9700 |

## §95 6365 VOR FEDERAL AIRWAY 365—Continued

| FROM | TO | MEA |
|---|---|---|
| VESTS MT FIX | HELENA MT VORTAC E BND | 10800 |
| | W BND | 9700 |
| HELENA MT VORTAC | WOKEN MT FIX | 9000 |
| WOKEN MT FIX | SHIMY MT FIX | 9500 |
| SHIMY, MT FIX *7000 MOCA | CHOTE MT FIX | 9500 |
| CHOTE, MT FIX *6300 MOCA | CUT BANK MT VORTAC | 7000 |

## §95 6391 VOR FEDERAL AIRWAY 391

IS ADDED TO READ

| FROM | TO | MEA |
|---|---|---|
| DOVE CREEK CO VORTAC | GRAND JUNCTION CO VORTAC | 12000 |
| GRAND JUNCTION CO VORTAC | BONGO UT FIX | 10800 |
| BONGO, UT FIX *9500 MCA VERNAL VOR N BND | VERNAL UT VOR | 8400 |
| VERNAL UT VOR | ROCK SPRINGS WY VORTAC | 11800 |

## §95 6444 VOR FEDERAL AIRWAY 444

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| BURLEY ID VORTAC *7000 MOCA | KINZE ID FIX | 8000 |
| KINZE ID FIX | SOLDE ID FIX NW BND | 12500 |
| | SE BND | 8000 |
| 11200 MCA KINZE FIX NW BND | | |
| SOLDE ID FIX 9200 MOCA | DIRCO ID FIX | 12500 |
| DIRCO ID FIX 9000 MOCA | ARGWS ID FIX | 11500 |
| ARGWS ID FIX | DOSE ID VORTAC E BND | 9000 |
| | W BND | 8000 |
| 7000 MCA DOSE VORTAC E BND | | |
| DOSE ID VORTAC | EMETT ID FIX | 5000 |
| EMETT ID FIX | PAYET ID FIX NW BND | 9000 |
| | SE BND | 5000 |
| PAYET ID FIX | BAKER OR VORTAC | 9000 |

## §95 6451 VOR FEDERAL AIRWAY 451

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| CINNY MA FIX 2500 MRA 1400 MOCA | CELTS MA FIX | 2500 |
| CELTS MA FIX 1400 MOCA | TONNI MA FIX | 3000 |
| TONNI MA FIX 5500 MRA 1300 MOCA | EXALT NH FIX | 2500 |
| EXALT NH FIX 1300 MOCA | SEEDY NH FIX | 2500 |

§95 6451 VOR FEDERAL AIRWAY 451—Continued

IS AMENDED TO DELETE

| FROM | TO | MEA |
|---|---|---|
| COSSY MA FIX<br>*4000 MRA | WHITMAN MA | 1900 |

§95 6475 VOR FEDERAL AIRWAY 475

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| MILIS MA FIX<br>1900 MOCA | BOSTON MA VORTAC | 3000 |

§95 6489 VOR FEDERAL AIRWAY 489

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| SPARTA NJ VORTAC | SILKY NY FIX | 3000 |
| SILKY NY FIX | HOLZZ, NY FIX | 4000 |
| HOLZZ NY FIX | KINGSTON NY VORTAC | 3000 |

§95 6512 VOR FEDERAL AIRWAY 512

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| CHARLESTON WV VORTAC | SWIFT WV FIX | 3300 |

§95 6536 VOR FEDERAL AIRWAY 536

IS AMENDED BY ADDING

| FROM | TO | MEA |
|---|---|---|
| SHERIDAN, WY VORTAC | GILLETTE, WY VOR/DME | 7000 |
| GILLETTE, WY VOR/DME | NEWCASTLE, WY VOR | 7500 |
| NEWCASTLE, WY VOR<br>*9300 MRA | *ZAMBI SD FIX | 9300 |
| ZAMBI SD FIX | RAPID CITY SD VORTAC | |
| | E BND | 8000 |
| | W BND | 9300 |

6500 MCA RAPID CITY VORTAC W BND



§95.7186 JET ROUTE NO 186

IS AMENDED TO READ IN PART

| FROM | TO | MEA | MAA |
|---|---|---|---|
| TOCCOA GA VORTAC | APPLETON OH VORTAC | 31000 | 45000 |

§95 7089 JET ROUTE NO 89

IS AMENDED TO DELETE

| FROM | TO | MEA | MAA |
|---|---|---|---|
| BISCAYNE BAY FL VORTAC | LAKELAND FL VORTAC | 18000 | 45000 |

## §95 8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

| AIRWAY SEGMENT FROM | AIRWAY SEGMENT TO | CHANGEOVER POINTS DISTANCE | CHANGEOVER POINTS FROM |
|---|---|---|---|
| **V-4** | | | |
| IS AMENDED TO DELETE | | | |
| MALAD CITY, ID VORTAC VIA S ALTER | FORT BRIDGER, WY VORTAC VIA S ALTER | 32 | MALAD CITY |
| **V 21** | | | |
| IS AMENDED TO DELETE | | | |
| HELENA, MT VORTAC VIA W ALTER | CUT BANK, MT VORTAC VIA W ALTER | 51 | HELENA |
| **V 141** | | | |
| IS AMENDED TO READ IN PART | | | |
| HYANNIS MA VORTAC | BOSTON MA VORTAC | 40 | HYANNIS |
| **V 142** | | | |
| IS AMENDED BY ADDING | | | |
| MALAD CITY ID VORTAC | FORT BRIDGER WY VORTAC | 32 | MALAD CITY |
| **V 298** | | | |
| IS AMENDED TO DELETE | | | |
| DUNOIR, WY VOR/DME VIA S ALTER | RIVERTON WY VOR/DME VIA S ALTER | 15 | DUNOIR |
| **V-330** | | | |
| IS AMENDED BY ADDING | | | |
| DUNOIR WY VOR/DME | RIVERTON WY VOR/DME | 15 | DUNOIR |
| **V-365** | | | |
| IS AMENDED BY ADDING | | | |
| HELENA MT VORTAC | CUT BANK MT VORTAC | 51 | HELENA |



| | | | |
|---|---|---|---|
| **V-444** | | | |
| IS AMENDED BY ADDING | | | |
| BOISE, ID VORTAC HOVEL, OR FIX #COP MEASURED FROM BOI VORTAC | BURLEY ID VORTAC BAKER OR VORTAC | 66 #25 | BOISE HOVEL |
| **V-32** | | | |
| IS AMENDED TO DELETE | | | |
| ELKO, NV VORTAC VIA N ALTER | WELLS NV VOR VIA N ALTER | 25 | ELKO |

[FR Doc 84-17570 Filed 7-2-84; 8:45 am]
BILLING CODE 4910 13-C

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 202, 230, 240, 250, 270 and 275

[Release Nos. 33-6540; 34-21108; 35-23344; IC-14013; IA-915]

### Remittance of Fees to Lockbox

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Temporary rule amendment.

**SUMMARY:** The Commission is publishing an amendment to its rules to permit filing fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania, starting August 15, 1984. This amendment is the result of the efforts of the Treasury Department to reform its cash management. In order to facilitate the collection of payments to the federal government, the Treasury Department has established a nationwide collection system utilizing lockboxes located at various banks. This amendment will bring the Securities and Exchange Commission into the lockbox system. The Commission believes that use of the lockbox system will minimize fee processing time, result in substantial cost savings for the federal government, and expand payment options available to the investment community.

**EFFECTIVE DATE:** August 2, 1984. Comments on the lockbox system will be accepted until December 31, 1984.

**ADDRESSES:** Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-26-84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** Carol K. Scott, Assistant General Counsel (202-272-2474), or Jeanne B. Carter, Attorney (202-272-2482), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** Beginning August 15, 1984, the commission is permitting filing fees to be remitted to a lockbox depository. The procedures covering payment of fees will be contained in new rule 202.3a.[1] Payment of fees required by the following current rules shall comply with the directions listed in new rule § 202.3a: § 230.111 under the Securities Act of 1933, § 240.0-9 under the Securities Exchange Act of 1934, § 250.107 under the Public Utility Holding Company Act of 1935, § 270.0-8 under the Investment Company Act of 1940 and § 275.203-3(b) under the Investment Advisers Act of 1940.[2] This new rule permits filers to continue to file fees with the Commission along with applicable filings, or to send fees to a Treasury Department designated lockbox depository in Pittsburgh, Pennsylvania, Utilizing two different methods: mail or wire transfer. Filers will continue to send or deliver the applicable filings to the commission regardless of the method of payment chosen.

Under current procedures, the Commission accepts and processes registration statements submitted pursuant to the Securities Act of 1933 only if they are accompanied by a correct fee in certified funds, *i.e.*, cashier's check, certified check, bank or postal money order or cash. Personal checks are not accepted. The Commission accepts personal checks for other filings, and implements certain collection procedures if the filings are not accompanied by the appropriate fees.

Under the amendment, filers may continue to transmit fees along with the filings, or may transmit required fees to a lockbox in Pittsburgh, Pennsylvania, either by mail or wire transfer. If a filer selects the lockbox method of transmitting fees, payments in the form of personal check, money order, certified check, cashier's check, or wire transfer will be considered received by the Commission at the time of their receipt by the lockbox depository. The Commission will verify receipt of fees through direct computer access to the lockbox depository. Personal checks will continue to be unacceptable for filings under the Securities Act of 1933.

Accordingly, the Commission is amending Part 202 of the Commission's rules[3] by adding a new § 202.3a to set forth the procedures by which fees will be accepted by the Commission. This rule will be effective 30 days after publication in the Federal Register and for eighteen months thereafter. After twelve months the Commission will consider whether to eliminate payment of fees directly to the Commission; and instead mandate payment of fees to a lockbox. While any such requirement will be published for notice and comment, the Commission is inviting comments on the temporary rule concerning lockbox procedures, and recommendations concerning expansion of lockbox options. Such comments should be received no later than December 31, 1984.

[1] 17 CFR 202.3a.

[2] 17 CFR 230.111, 240.0-9, 270.107, 270.0-8, 275/203-3(b).

[3] 17 CFR Part 202.

### List of Subjects

*17 CFR Part 202*

Administrative practice and procedure, Investigations, Securities.

*17 CFR Parts 230 and 240*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 250*

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

*17 CFR Parts 270 and 275*

Investment advisers, Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of Amendment

Title 17 Chapter II of the Code of Federal Regulations is amended as follows:

## PART 202—INFORMAL AND OTHER PROCEDURES

1. New § 202.3a is added as follows:

**§ 202.3a Instructions for filing fees.**

Payment of fees required by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0-9 (17 CFR 240.0-9), § 250.107 (17 CFR 250.107), § 270.0-8 (17 CFR 270.0-8) and § 275-203-3(b) (17 CFR 275.203-3(b)). Effective August 15, 1984, all such fees may be transmitted to a U.S. Treasury designated lockbox in Pittsburgh, Pennsylvania, by either mail or wire transfer; or may be transmitted directly to the Commission at 450 Fifth Street NW., Washington, D.C. 20549. If a filer selects the lockbox method of transmitting fees, payments in the form of personal check, money order, certified check, cashier's check, or wire transfer will be considered received by the Commission at the time of their receipt by the lockbox depository. Personal checks will continue to be unacceptable for filings under the Securities Act of 1933. The following instructions are for lockbox transmittals only.

(a) *Mail.* Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box

360055M, Pittsburgh, PA 15251. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information for each individual filing (preferably on the front of the check): Filing company's name, IRS identification number, form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific payment being sent for each filing if a check contains payments for multiple filings. Each response should be clearly labeled to indicate the data element to which it refers, *e.g.*, "IRS #: 53-0040540."

(b) *Wire.* Filers who wish to wire filing fee payments to the lockbox must contact their respective banks to determine the specific procedures utilized by each bank for wire transfer of funds. In addition, filers must inform their banks that the wire is to be sent to the Mellon Bank, American Banker's Association number *043000261*, that the Securities and Exchange Commission account number at Mellon is *910-8739*, and that the Commission is the recipient. The wire transfer must contain the following data elements (clearly identified) for each individual filing: filing company's name, dollar amount, IRS identification number, form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific payment being sent for each filing if a wire transfer contains payments for multiple filings. Wire transfers will be accepted from 9 a.m. to 3 p.m. weekdays (excluding holidays).

**§§ 230.111, 240.0-9, 250.107, 270-.0-8, and 275.203-3 [Amended]**

2. The following sentence is added at the end of § 230.111 (17 CFR 230.111), § 240.0-9 (17 CFR 240.0-9), § 250.107 (17 CFR 250.107), § 270-.0-8 (17 CFR 270.0-8), and § 275.203-3(b) (17 CFR 275.203-3(b)), respectively:

"Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter."

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that the foregoing regulation relates solely to agency organization, procedure, or practice and that advance notice and opportunity for comment are not necessary. Accordingly, it is effective (30 days after publication in the Federal Register).

Authority: 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f.(b) and 77f.(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

By the Commission.
Shirley E. Hollis,
*Assistant Secretary.*
June 27, 1984.
[FR Doc. 84-17659 Filed 7-2-84; 8:45 am]
BILLING CODE 8010-01-M

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## 17 CFR Parts 250, 256, 256a, and 257

[Release No. 35-28343; File No. S7-930]

## Revision of Rules Governing the Preservation of Records of Registered Holding Companies and Their Mutual or Subsidiary Service Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") has adopted revised regulations concerning the preservation and destruction of records of registered holding companies and their mutual or subsidiary service companies. The action is directed to modernizing the rules under the Public Utility Holding Company Act of 1935 ("Act" or "1935 Act") in light of technological changes in recordkeeping, and changes in related regulations of the Commission and other regulatory authorities. In general, retention periods are reduced.

**EFFECTIVE DATE:** July 3, 1984.

**FOR FURTHER INFORMATION CONTACT:** Grant G. Guthrie (202-272-7677), Associate Director, Robert P. Wason (202-272-7649), Chief Financial Analyst, or James E. Lurie (202-272-7648), Special Counsel, Office of Public Utility Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** On September 7, 1983, the Commission proposed a revision to its record retention rules under the Act.[1] It proposed (1) replacing the separate regulations for holding companies (Part 257 Appendix) and service companies (Part 256a) with a consolidated regulation (Part 257), (2) adopting current technical specifications, with a simple method for recognition of further advances in technology, and (3) a comprehensive revision of the schedules which classify records and specify retention periods.

The revisions deleted several subjects, such as medical records and other personal data as to employees, of little relevance to cost of service. Substantial simplification of the schedules was also achieved by more effective use of general instructions, functional definitions and more orderly arrangement.

All retention periods were again reviewed, in light of the comments, and compared with the record retention requirements under other acts administered by the Commission.[2] The variety of retention periods in the existing rules, perpetuated in part by the proposal, seemed potentially confusing. To the extent feasible, periods based on objective tests, such as completion of audit or termination of a contract, have been substituted.

The primary need for service company records, the principal subject of this rule, is to justify charges to their associate companies for services, which are claimed as an element of the utility cost of service examined in rate proceedings. This lag before the charge can become an issue in a rate case, and thus subject to audit or proof, is substantial. The comment of the New York Commission confirmed the six year period generally employed in the existing and proposed rules. We have reduced longer periods proposed to this standard, except for the basic corporate records and books of account and records of long term assets and contracts.

Utility service is provided to almost everyone in a defined franchise territory under specialized regulation, from elaborate and long lived facilities. Both market and product are essentially the same, although both adjust to changes within the territory served. Changes in the major utility facilities require long construction periods, so occur slowly, with planning based on forecasts of ten years or longer. Alternating periods of high and low construction are characteristic. Accordingly, the operations of a utility system are comparable over a long period of time, and useful data as to trends and cyclical factors can be obtained therefrom. The annual reports specified in Items 1(e)(1) and 3(b)(1) and the books of account in Items 6 (a) and (c) provide the most concise and useful continuous record of its assets and operations.

Nine comments were received, three from public utility commissions, a joint comment on behalf of eleven registered systems, and five supplemental comments from individual systems. All comments supported the revision. Particular suggestions, many of which

[1] HCAR No. 23049, 48 FR 41779 (Sept. 19, 1983).

[2] 17 CFR (broker-dealers) § 240.17 a-4; (clearing and transfer agents) § 240.17A d-6 and d-7; (Investment Companies) § 270.31; (Investment Advisers) § 275.204-2.

have been adopted, are discussed below.

The bulk of the records of registered systems are those of the operating utility subsidiaries, governed by parallel rules of the Federal Energy Regulatory Commission ("FERC") and state commissions. The rules under the Act apply to the records of the holding company and its service companies.

As suggested by several comments, Instruction (f) has been revised to adopt the textual changes made by FERC in its final rules.[3] The technical media specifications proposed were drawn from a pending proposed revision of the FERC rules, since divergence of equipment and storage requirements for different companies in the same system would create serious problems. We, accordingly, have not accepted suggestions for other revisions in this area. Instruction (f), microfilm and tape certification, refers to the "official responsible for validating or confirming the data contained therein." The validation or confirmation, in this context, refers to the completeness and accuracy of the reproduction, not that of the source data. The responsible officer is defined in Instruction (b). That certification will not necessarily be based on personal proofreading of the product, since Instruction (b) designates a supervisory official. Instruction (f) consistently associates certification with standard procedures and their actual employment. Its first sentence deals with series not generated mechanically, so incorporates the validation into the series itself.

Our Instruction (e)(1), as proposed and adopted, added a statement that the specifications are generic, and provides a simple procedure to resolve any doubts about use of reasonable equivalents. This, rather than multiplication of detail in specifications for a developing technology, is the method chosen here to keep the rule current.[4]

Our final rule, accordingly, deletes the middle column "Media Expected Life" from Figure 1. It fixed the life for magnetic tape at five years, the only such predication contained in the proposal. Whether or not several comments are correct in stating that this expectation is already obsolete, it is likely to become so. The initial sentence in Instruction (e)(1) requiring that media used have a standard life expectancy consistent with the specified retention period is sufficient, and not dependent on changes in media.

The Public Service Commission of the State of New York urges that a six year retention period be required for insurance records, tax records, payroll records and budgets and other forecasts.[5] It states:

> As was noted in the release, historical data has an important role in ratemaking. Due to the sporadic nature of rate filings and investigations, a minimum of six years' data for most items should be available for Commission audit. It is important that our staff be able to analyze various cost trends over a number of years, especially where increased emphasis is being placed on deregulated operations at the holding company level. I would also note that budget data is also important since utilities often offer budget forecasts of various items as evidence to be considered in proceedings before this Commission.

The Public Service Commission's specific identification of its audit needs is persuasive. The existing rules provide periods of six years or longer for the categories of records needed by that commission, except that the holding company rule (Part 257 Appendix, Schedule Item 31) specified a three year period for budgets and forecasts. We have revised Item 3(b)(4), Items 10 (a), (b), and (c),[6] Item 12(c), Items 16 (e), (f), and (g), and Item 26 to preserve these records for the period requested.

We have deleted from the schedule as initially proposed Items 1 (d), (e), (f), (h), and (l), all of which related to records of transfer of securities. The other paragraphs of Item I have been renumbered in sequence. The Commission's rules under the Securities Exchange Act of 1934 (17 CFR 240.17 A d-6 and A d-7) contain parallel rules of general application on this subject, with which transfer agents and other parties in the securities markets are more familiar. The public utility holding companies do not differ from other large public companies in this kind of relationship with their security holders. The regulations under the 1935 Act had been adopted before the Commission was granted authority to regulate transfer and clearing agents, and have become superfluous.[7]

All other comments, except the requests for adopting FERC's media changes, were directed to items in the detailed schedules. We agree with the comments which stated that the various forms of communications to security holders combined in Item 1(i)(1) (now 1(e)(1)) were heterogeneous, and have revised Item 1(e) to specify four rather than two categories. Solicitations of consents and waivers have been assigned a destroy at option after audit retention period after the consent or waiver expires, as have notices of redemption or invitations for tender. Notices of annual or special meetings are no longer separately specified.

The contents of a notice of a meeting solely for election of directors would seem to have little significance after their term expires. If the agenda is broader, the notice becomes relevant to whatever action is taken. Notice of a meeting to vote on a consent or waiver, for example, is part of that solicitation. But these are considerations for which the company's officers and counsel are responsible, too remote from the regulatory concerns of the Act to require resolution by this rule. Meeting notices which are communications of only current significance would be in the fourth category. The retention period for this category has been reduced to destroy at option after audit.

Two comments by registered systems on Item 2(a), proxies and voting lists, observed that the authorization in the existing rule allowing substitution of certified voting lists for the executed proxies had been omitted from the proposed revision. This omission was unintentional and would create a new and significant storage requirement. Item 2 has been rewritten to permit the certified list as an alternative to retention of the original executed proxies.

The periodic and special reports to commissions (Item 3(b)) are identified specifically. They are limited to the documents filed with regulatory commissions. The omission of the existing requirement for retention of supporting work papers was intentional. It was also intended that applications and reports of a particular company to its own regulatory commission be included. The requirement is designed to ensure the availability for relevant examination periods, of a complete file

[3] The changes are in (f)(1) (i) and (ii) corresponding to those of FERC's Instructions (e)(1) (i) and (ii). Federal Energy Regulatory Commission, *Revisions to Regulations on Retention of Records*, 48 FR 44477, 44483 (Sept. 29, 1983).

[4] One comment noted an apparent inconsistency in FERC's amendment of Instruction (f)(1)(ii) to include "aperture cards" without amendment of the prohibition in (f)(2)(ii) against cutting rolls of microfilm "except to produce jacketed microfiche." An aperture card, used for the Commission's microfiche, is a form of jacket and its creation is not prohibited. But our regulation will rely on functional rather than verbal interpretation to deal with new techniques.

[5] Each of the three registered gas holding company systems have substantial operations in that state.

[6] Item 10(d) was proposed with a six year retention period.

[7] Instruction (a)(5), which precludes preemption by these rules of other applicable regulations, would, in any event, nullify the retention periods initially proposed.

of official filings with and actions by regulatory commissions. We have revised Item 3(a)(2), acquisition or disposition of assets or investments by substituting the retention periods specified for that subject in Item 18. To permit this revision, the reference to mergers has been shifted to Item 3(a)(4), which deals with changes in the organization of the company, a more appropriate category.

One comment perceived a latent conflict between Item 4(a)(2) dealing with deeds, leases and other evidence of ownership of property, and Item 18, dealing with property records. Item 18 has been revised to exclude the documents specified in Item 4(a)(2). In response to another comment, the last word of Item 18 has been changed to "18(g)" from "18(i)." Neither construction work in progress nor depreciation accounts are subject to depreciation or amortization.

A similar comment with respect to Item 7(a)(1), covering vouchers supporting accounting entries with respect to fixed assets and investments, among other things, requires the same exclusion of records covered by Item 4(a)(2) or Items 8, 18 or 19. The fixed assets and investments in subsidiaries are the principal assets of a registered system, the primary base for rate regulation and are effectively permanent, relative to a normal active life span, so appear in many contexts. The retention period specified in Item 7(a)(1) for the source of entries placing them in the asset accounts is needed, but supporting documents related to a particular asset or investment lose their significance on its disposition.

Item 12, Tax Records, assigned different retention periods to (a)(2) state or local income or property taxes and (a)(3) other taxes. We have accepted a suggestion that the two categories should be combined.

We also agree that the necessarily incomplete enumeration of payroll periods in Item 16(b) serves no purpose and have stricken "monthly, semi-monthly or weekly." The suggestion that Item 16(g), comparative or analytical statements of payroll, be deleted is not well founded. The service company costs consist largely of wages and related taxes and overhead. The proper allocation of such costs among system companies is the focus of regulation under the Act in this area. These rules do not require the creation of any records. Analytical studies, undertaken because believed useful or needed by the company are nevertheless valuable in facilitating audit. The statement that they can be recreated from the basic data is not a reason for requiring a regulatory commission auditor to devote limited resources to duplicating the work, or even for increasing the cost of service by having the service company staff do so.

We have revised Item 17(a) which seems to have created confusion, although taken from the existing rule. The inclusion of "other essential data," an undefined and perhaps undefinable term, was undesirable and "service" and "attendance" are almost synonymous. Item 17 deals with personnel records, a useful source to check time charged to work orders under Item 16(c) and the applicable compensation rates. The revised Item 17(a) reads "Records of employees' service and rates of compensation." It refers to the personnel records of the employee, which show the period of employment, the periods of absence and compensation rate, as it may change from period to period.

Southern Company Services requested a clarification of Items 21, 22 and 23 dealing with documents supporting work orders and job orders performed by the service company, focusing on construction of facilities for other system companies. Instruction (a)(3) deals specifically with records held by a service company relating to the facilities of a utility company and adopts the requirements of the commission having jurisdiction over the utility for such records. It was drawn to distinguish between the company's own facilities and those of associates. In no case do these rules require creation of multiple records (Instruction (a)(4)). Ordinarily, such a work order would be charged as direct costs, under Instruction 01-4 and 01-8(e) of the Uniform System of Accounts for Service Companies, to the company, or group of companies in the case of a jointly owned facility, owning the facility, so there will be no ambiguity as to the status of the documents referred to.

The system of accounts, Instruction 01-4, noted that the nature of the undertakings embraced in construction contracts precluded prescribing accounts applicable in all cases. This is equally true under these rules. Assignment of primary responsibility for a major aspect of a construction project to a service company's engineering staff will have practical effects quite different from mere peripheral or incidental involvement, in terms of the actual custody of the kind of documents which concerned the commentator. Instruction (a)(3) is designed to make physical custody irrelevant in such cases. The relationship of associate company should be sufficient to assure that the documents will be available to both parties as needed, since the justification of the cost charged by the service company, and its inclusion in the cost of the facility by the owner are the two sides of the same coin.

Its comment on Item 25(c), annual reports prepared for internal administrative or operating purposes, suggests that a distinction should be made between a company-wide report and one directed to an isolated segment. The item is already limited to annual reports regularly prepared. If the company has determined that a part of its activities are sufficiently different to require separate attention, those reports are part of its own company-wide reporting system and properly included in the rules.

Paperwork Reduction Act

The information collection required by these amendments has been cleared through November 30, 1986, by the Office of Management and Budget and given clearance number 3235-0306.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the chairman of the Commission has certified that the amendment proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on that certification.

List of Subjects in 17 CFR Parts 250, 256, 256a, and 257

Accounting, Reporting and recordkeeping requirements, securities, Utilities.

Text of Proposed Amendments

In consideration of the foregoing, the Commission hereby amends Parts 250, 256, 256a, and 257 of Chapter II, Title 17, Code of Federal Regulations, as follows:

## PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. Paragraph (d) of § 250.26 is revised to read as follows:

**§ 250.26 Financial statement and recordkeeping requirements for registered holding companies and subsidiaries.**

* * * *

(d) No registered holding company which is not a public utility company shall dispose, without authorization from the Commission, of any accounts, books, or other records, except pursuant to 17 CFR Part 257

* * * * *

2. Section 250.93 is revised to read as follows:

**§ 250.93 Accounts and records of mutual and subsidiary service companies.**

Every mutual service company and every company whose organization and conduct of business the Commission has found, pursuant to § 250.88, to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m) shall keep such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records in such manner and preserve them for such periods, as are prescribed in 17 CFR Part 257 and shall keep no other records with respect to the same subject matter except (a) records other than accounts, (b) records required by state law, (c) subaccounts or supporting accounts which are not inconsistent with the accounts required by the Uniform System of Accounts (17 CFR Part 256), and (d) such other accounts as may be authorized by the Commission.

## PART 256—UNIFORM SYSTEM OF ACCOUNTS FOR MUTUAL SERVICE COMPANIES AND SUBSIDIARY SERVICE COMPANIES, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

3. Paragraph (c) of § 256.01-7 is revised to read as follows:

**§ 256.01-7 Records.**

* * * * *

(c) No company shall destroy any records except as authorized by the provisions of Part 257 of this chapter.

* * * * *

## PART 256a—REGULATION TO GOVERN PRESERVATION AND DESTRUCTION OF RECORDS OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES [Removed]

4. Part 256a is removed in its entirety.

5. Part 257 is revised as follows:

## PART 257—PRESERVATION AND DESTRUCTION OF RECORDS OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES

Sec.
257.1 General instructions.
257.2 Schedule.

Authority: Sections 15 and 20(a) of the Public Utility Holding Company Act of 1935, and § 250.26(d) and § 250.93 of Title 17 CFR, thereunder. [OMB Approval 3235-0306 Expires 11/30/86]

**§ 257.1 General instructions.**

(a) *Scope of regulations.* The General Instructions and Schedule apply to any holding company, except an electric or gas utility company, registered as a holding company under the Public Utility Holding Company Act of 1935, and to companies found by the Commission, pursuant to § 250.88 to meet the requirements of Section 13 of the Act as mutual or subsidiary service companies.

(1) Company means a service company subject to § 250.93, or a holding company subject to § 250.26, which is not an electric utility company or a gas utility company, and any predecessor or inactive or dissolved associate company, the records of which are in the possession or control of such company.

(2) Records include any records prepared, maintained or held by any agent or employee of a company, including any such records of a stock transfer agent, registrar, paying agent, indenture trustee or other person employed by a company to perform services with respect to the securities of the company, insofar as such person is accountable to the company or to its security holders for such records. The specification in the schedule of a record related to a type of transaction includes all documents and correspondence, not redundant or duplicative of other records retained, needed to explain or verify such transaction. Supporting documents such as checks or vouchers, which are separately scheduled may, nevertheless, be destroyed in accordance with the schedule for their respective class, when the company determines that the lapse of time has made it unlikely that it will need to prove the details evidenced thereby.

(3) Any company subject to this regulation, which, as agent, operator, lessor or otherwise, maintains or has possession of any records relating to the operation, property or obligations of an electric or gas utility company or natural gas company or a nuclear licensee, as defined in the Federal Power Act, the Natural Gas Act, the atomic Energy Act or the laws of any state within which such utility company operates, shall comply with the laws or regulations as to record retention and destruction which would apply to such records if they were records of such utility company or licensee.

(4) Except for the certifications, indices and cross references specified herein, the regulation shall not be construed as requiring the preparation or maintenance of records not required to be prepared or maintained by other rules or regulations of the Commission.

(5) The regulation shall not excuse compliance with any other lawful requirement for the preservation of records for periods longer than those prescribed in the regulation.

(6) Duplicate copies of records which contain no significant information not shown on the copy preserved may be destroyed at any time. If the same document would be required under more than one scheduled item, such as an indenture also included as an exhibit in a filing required to be retained, only one copy need be preserved if cross references are substituted for the additional copies.

(7) Notwithstanding the provisions of the regulation, the Commission may, upon the request of any company, authorize the destruction of any specified records of such company and the Commission, on its own motion or on the motion of any regulatory agency, may direct that records which would be useful in developing facts relevant to any transaction recorded by the company be preserved for such period as the Commission may specify.

(b) *Designation of supervisory official.* Each company subject to the regulation shall designate one or more officials to supervise the preservation or authorized destruction of its records. Insofar as its records include those in the possession of a transfer agent, indenture trustee or other independent custodian, the terms of the agreement with the custodian may include provisions, not inconsistent with this regulation, for the preservation and destruction of such records by the custodian and the responsibility of the company's designated official shall be to make reasonable inquiry as to the due performance of the custodian's obligation.

(c) *Protection and storage of records.* The company shall provide reasonable protection from damage by fire, flood, and other hazards for records required by the regulation to be preserved and, in the selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Index of records.* At each office of the company where records are kept or stored, such records as are required by the regulation to be preserved shall be so arranged, filed, and currently indexed that such records shall be readily available for inspection by authorized

representatives of regulatory agencies concerned.

(e) *Definition of record media.* (1) The data constituting the records listed in the schedules may be retained in any of th media forms in Figure 1 of this section, if the media selected has a standard life expectancy equal to or in excess of the specified retention period. In cases where media regeneration to achieve full length of period retention becomes necessary, the company shall take such action as prudence calls for and notify the Commission immediately thereafter. The specifications in Figure 1 are generic. At the request of a company, the Commission may authorize alternative media reasonably equivalent to those specified.

(2) If the media form of the record retained is other than a readable paper copy, then reader and/or printer equipment and related printout programs, if required, shall be provided by the company for data reference.

(3) The media form initially selected for the record becomes the "original" for that particular record. If subsequent conditions (e.g., improved media life expectancy, increased company resources, increased securities sales) require and the remaining retention period permits a change in the media forms, the company may convert to another media and dispose of its old equipment, provided the certification processes described in paragraph (f) of this section are observed and data referencing capability is maintained.

FIGURE 1.—RECORD MEDIA

| Record media/form | Comments and standards |
|---|---|
| 1. Paper and card stock (hardcopy). | For each document, paper stock should be selected with a life expectancy equal to or greater than the retention period specified for that document. |
| 2. Tape: | |
| a. Magnetic (including video tape). | Assumes storage in a controlled environment with a temperature and humidity range of 60°-80° F. and 40-60%, respectively. |
| b. Punched | For each record, tape media (paper, mylar, metallic base) should be selected with a life expectancy equal to or greater than the retention period for that record. |
| 3. Microforms: | |
| a. Microfilm (including Computer Output Microfilm ("COM"), Microfiche jackets and aperture cards). | Assumes processing to standards and storage in a controlled environment with a temperature and humidity range of 60°-80° F. and 40-50%, respectively. (Ref. American National Standards Institute ("ANSI") standards PH 5.4-1970, PH 1.41-1976, PH 1.28-1979, PH 1.43-1981, or most current standards as accepted by the National Archives for use by federal agencies. (See 41 CFR § 101-11.5). |
| b. Metallic recording data strips. | Same storage conditions as for microfilm. |

(f) *Microform, tape and computer output certification.*—(1) *As the initial recording media*—

(i) Each microform record series shall contain, at the beginning, a microform introduction stating the title of the record series, the date prepared, the name of the official responsible for validating or confirming the data contained therein. Each microform record series shall be closed with a clear and standard microform notation indicating the completion of the series and the date. If the microform record series is a product of Computer Output Microfilm ("COM"), the certification required of this section is not required if the series is prepared in accordance with written standard procedures developed by the company that ensure the integrity of record series which are the product of COM. Such procedures must include the name of the official responsible for validating or confirming the data contained in the record series and confirming that a particular COM record was produced in accordance with the standard procedures. (ii) If a record series is a computer output product (i.e., output paper or microfiche, or aperture cards), any certification that may otherwise be required under paragraph (f)(l)(i) of this section is not required if:

(A) The series is prepared in accordance with written standard procedures developed, or accepted general business practices followed, by the company that ensure the integrity of record series that are the product of computer output; and

(B) Such procedures include the name or title of the official responsible for validating or confirming the data contained in the record series and confirming that a particular computer output record series was produced in accordance with the standard procedures or practices.

(iii) Each tape record series shall be externally labeled and there shall be prepared for that series an introduction stating the record series title, date prepared, the name of the official responsible for validating or confirming the data contained therein and an index where appropriate. Each record series shall be closed with a clear and standard notation indicating the completion of that series and the date.

(2) *Conversion from other media*—

(i) Each microform record series shall include, as an integral part, a certificate(s) stating that the microforms are direct and facsimile reproductions of the original records and that they have been made in accordance with prescribed instructions. Such certificate(s) shall be executed by a person(s) having personal knowledge of the facts covered thereby.

(ii) Each microform record series shall commence and end with a statement as to the nature and arrangement of the records reproduced, and the date. Rolls of film shall not be cut except to produce jacketed microfiche. Supplemental or retaken film, whether of misplaced of omitted documents or of portions of microform found to be defective, shall be attached to the beginning of the microform record series. If supplemental or retaken film of misplaced or omitted documents, or of portions of microfilm found to be defective, are attached to the microfilm record series, the certificate described in paragraph (f)(l)(i) shall cover the supplemental or retaken film and shall state the reasons for the attachment.

When a retrieval system (*e.g.*, image count indexing ("blipping")) is used, the supplemental or retaken film may be attached at the end of the series, if the provisions at the beginning of the series advise the viewer of the location of the problem frames and the supplemental or retaken images.

(iii) If, in accordance with the provisions of paragraph (g) of this section, the company elects to convert records to the tape media, the same certification provisions specified in paragraph (f)(l)(iii) of this section must be provided in the conversion program.

(g) *Change of media for existing records.* Those records prepared and maintained under previous regulations in a paper media and whose remaining retention period falls within the life expectancy range of any of the media detailed in Figure 1, may be converted to that media at the company's option, provided the applicable certification processes described in paragraph (f) of this section are observed and an audit referencing capability maintained.

(h) *Media.* (1) All records created or maintained in a media shall—

(i) Be prepared, arranged, classified, identified, and indexed as to permit the subsequent location, examination, and reproduction of the record to a readable media;

(ii) Be stored in such a manner as to provide reasonable protection from hazards such as fire, flood, theft, etc., and be maintained in a controlled environment; and

(iii) Be regenerated, including proper certification, when damaged.

(2) The company shall be prepared to furnish, at its own expense, standard facilities for reading media and shall additionally provide, if the Commission so directs, copies of records in a readable form.

(3) All film stock shall be of approved operationally-permanent-record microcopying type, which meets the current specifications of the American National Standards Institute.

(4) Punched cards, tape or similar media used as intermediate records or steps in data processing for assembling data to be posted to the records of the company or used in a report or study can be destroyed at the option of the company.

(i) *Destruction of Records.* The destruction of the records permitted to be destroyed under the provisions of the regulations in this part may be performed in any manner elected by the company. Precautions should be taken, however, to macerate or otherwise destroy the legibility of records, the content of which is forbidden by law to be divulged to unauthorized persons.

(j) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss shall be filed with the Commission within ninety (90) days from the date of discovery of such destruction or loss.

(k) *Schedule of records and periods of retention.* The schedules of records retention periods constitute a part of this regulation. The schedules prescribe the periods of time that designated records shall be preserved.

(l) *Retention periods designated "Destroy at Option."* Use of the retention period, "Destroy at option," in the regulation constitutes authorization for such destruction under the conditions specified for the particular types of records only if such optional destruction is based on a reasonable judgment that the records are unlikely to be needed and if such optional destruction is not in conflict with other legal retention requirements. Optional destruction of records relevant to pending or expected regulatory or legal actions is not authorized. "Destroy at option after audit" requires retention until the company has received an opinion of its independent accountants with respect to the financial statements including the transactions to which such records relate.

(m) *Use of technical accounting terms.* For purposes of the schedules, traditional accounting terms such as ledgers, journals, registers and vouchers refer to the function rather than the form of the record. All refer to quasi-permanent records, designed to collect, classify and in some aspects summarize, various types of the company's transactions. They are interrelated and, in another traditional term, are the principal constituents of the books of account, including subsidiary ledgers and registers. The retention periods apply to records serving this function, regardless of form. A multiple purpose record, such as a service company stock stub which also serves as the shareholder's ledger, or a voucher file which also serves as the journal, referred to more than once in the schedule, is governed by the longest retention period applying to any of its functions. For brevity, the term "note" is used in the schedule to refer to an evidence of debt maturing within one year of its creation, which was not the subject of an offering registered under the Securities Act of 1933. The term "debenture" refers to a document evidencing any other unsecured debt. The term "mortgage" refers to any form of secured obligation, "bond" refers to a document evidencing a secured debt in whole or part, and "mortgagee" refers to the holder of a mortgage or bond and includes any person, such as an indenture trustee, authorized to act for a mortgagee.

## § 257.2 Schedule.

SCHEDULE OF RECORDS RETENTION PERIODS

| Description of records | Retention period |
|---|---|
| **CORPORATE AND GENERAL** | |
| 1. Records of Securities: | |
| (a) Capital stock and debt ledgers | 3 years after the holder's account is closed. |
| (b) Subscription accounts, warrants, requests for allotments, and other essential papers related thereto. | Destroy at option after settlement and audit. |
| (c) Stubs or similar records of the issuance of securities | 3 years after cancellation of certificate. |
| (d) Paid or cancelled notes | Destroy at option after changes are recorded. |
| (e) Letters, notices reports, statements and other communications distributed to all holders of a particular class: | |
| (1) Annual reports | 50 years. |
| (2) Solicitations of consents or waivers | Destroy at option after expiration of consent or waiver and audit. |
| (3) Notices of redemption or invitations for tender | Destroy at option after consummation and audit. |
| (4) Interim reports, dividend notices, notices of change of corporate address, and similar communications of information of only current significance. | Destroy at option after audit. |
| (f) Dividend interest and coupon registers, lists or similar records | 3 years after payment. |
| (g) Paid dividend or interest checks | 3 years after issuance. |
| (h) Trust indentures, loan agreements or other contracts or agreements securing debt securities issued. | 3 years after redemption. |
| (i) Copies of reports, statements, letters or memoranda filed with Trustee(s) pursuant to provisions of trust indenture or other security instrument or agreement securing debt securities issued. | 3 years after redemption. |
| (j) Leases pertaining to rentals of property to or from others | 3 years after expiration. |
| (k) Contracts, agreements, and other records needed to administer or audit a dividend reinvestment plan or an employee benefit plan involving the purchase or issuance of securities. | 6 years after expiration or cancellation. |
| 2. Lists of holders of voting securities represented at meeting and executed proxies or lists certified by a person or persons qualified to do so under the applicable corporation law, showing the attendance and votes by each holder for or against each issue voted on. | 3 years after date of meeting. Executed proxies may be destroyed at option; if replaced by certified lists, unless a contest of the vote is expected or pending. |
| 3. Filings with and authorizations by regulatory agencies: | |
| (a) Applications, registrations or other documents filed by the company with any Federal or state regulatory agency for authorization or validation of transactions; the opinion, order or other document evidencing the agency's action thereon; and any report of consummation or compliance, with respect to: | |
| (1) The issue, pledge or sale of securities | Until all securities covered thereby are retired. |
| (2) The acquisition or disposition of assets or investments | Period specified by Item 18 or 19 for the asset or investment. |
| (3) Contracts with affiliates | 3 years after expiration. |
| (4) Organization or conduct or business of the company and changes therein, including mergers. | Life of corporation. |
| (b) Periodic or special reports filed by the company on its own behalf with the Securities and Exchange Commission or with any other Federal or state rate-regulatory agency, including exhibits or amendments to such reports: | |
| (1) Annual financial, operating and statistical reports | 10 years after date of report. |
| (2) Monthly and quarterly reports of operating revenues, expenses, and statistics. | Destroy at option after audit.. |
| (3) Transaction with associated companies | 6 years. |
| (4) Budgets of expenditures | 6 years. |
| (5) Accidents | 6 years. |
| (6) Employees and wages | 5 years. |
| (7) Loans to officers and employees | 3 years after fully paid. |
| (8) Purchases and sales of property | For period specific refer to property records (See Item 18). |
| 4. Organization Documents: | |
| (a) Title, franchises, and licenses: | |
| (1) Certificates of incorporation, or equivalent agreements and amendments thereto. | Life of corporation. |
| (2) Deeds leases and other title papers (including abstracts of title and supporting data), and contracts and agreements related to the acquisition or disposition of property or investments. | 6 years after property or investment is disposed of unless delivered to transferee. |

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

| Description of records | Retention period |
|---|---|
| (b) Minute books of stockholders, directors' and directors' committee meetings. | 50 years. |
| (c) Minutes of meetings of system committees | 6 years after close of fiscal year. |
| (d) Organization diagrams and charts | Destroy at option after expiration or supersession. |
| (e) Permits or Licenses: | |
| (1) Permits or licenses to conduct any part of the company's business. | 6 years after expiration. |
| (2) Permits or licenses for vehicles or equipment, or for other activities in the ordinary course of business. | Destroy at option after expiration and audit. |
| 5. Contracts and Agreements: | |
| (a) Contracts and agreements entered into by the company for the procurement of services, such as management, consulting, accounting, legal, financial or engineering services. | 6 years after cancellation or expiration. |
| (b) Contracts or agreements with individual employees, labor unions and other employee organizations relative to wage rates, hours, and similar matters. | 6 years after expiration of contract. |
| (c) Memoranda essential to clarify or explain provisions of contracts and agreements. | For same period as contract to which they relate. |
| (d) Card or book records of contracts or agreements showing renewal or expiration of same and records of performance. | For same peirod as contract to which they relate. |
| **ACCOUNTING** | |
| 6. Books of Account: | |
| (a) General and subsidiary ledgers | 50 years. |
| (b) Trial balance sheets of general and subsidiary ledgers or equivalent records. | Destroy at option after audit. |
| (c) Journals: General and subsidiary journals or ledgers of original entry | 50 yerars. |
| (d) Cash books: General and subsidiary or auxillary books | 6 years. |
| (e) Voucher registers: Voucher registers or similar records | 6 years. |
| 7. Journal Vouchers and Other Papers Supporting Entries: | |
| (a) Vouchers supporting general and subsidiary journal entries and papers forming part of or necessary to support and explain vouchers relating to: | |
| (1) Organization, fixed assets, investments, issuance of capital stock, funded debt, and related accounts. | 50 years, except for supporting documents included in Item 4(a)(2), or Items 8, 18 or 19. |
| (2) All other accounts | 6 years after settlement. |
| (b) Schedules for recurring journal entries | 6 years after settlement. Destroy when superseded if not a part of a journal entry in which event Item 6(c) applies. |
| (c) Lists of standard journal entry numbers | Destroy when superseded. |
| (d) Material and supplies disbursement and labor distribution records | 6 years. |
| 8. Vouchers Evidencing Disbursements: | |
| (a) Paid and cancelled vouchers, including analysis sheets showing detailed distribution of charges on individual vouichers and other supporting papers. | 6 years. |
| (b) Original bills and invoices for materials, services, etc., paid by vouchers. | 6 years. |
| (c) Authorization for the payment of specific vouchers | 6 years. |
| (d) Lists of unaudited bills (accounts payable), lists of vouchers transmitted and memoranda recording changes in unaudited bills. | 6 years. |
| (e) Voucher indices | Destroy at option. |
| (f) Paid checks other than interest dividend and payroll checks. (See Item 1(k) for interest and dividend checks and Item 16(d) for payroll checks. | 6 years. |
| (g) Purchases and stores records related to disbursement vouchers | 6 years. |
| 9. Accounts Receivable: | |
| (a) Records of all accounts receivable, indices to accounts receivable and summaries of distribution of such accounts. | 3 years after settlement. |
| (b) Accounting department copies of invoices issued and supporting papers which do not accompany the original invoices and authorizations for charges including supporting papers. | 3 years after settlement. |
| **INSURANCE AND TAXES** | |
| 10. Insurance Records: | |
| (a) Records of insurance policies in force showing coverage, premiums paid and expiration dates. | Destroy at option after expiration of such policies but not less than 6 years. |
| (b) Insurance policies | Destroy at option after expiration of such policies but not less than 6 years. |
| (c) Records of self-insurance against (1) losses from fire and casualty, (2) damage to property of others, and (3) personal injuries. | 6 years after date of last accounting entry with respect thereto. |
| (d) Records of amounts recovered from insurance companies in connection with losses and records of claims against insurance companies including reports of losses and supporting papers. | 6 years after settlement. |
| (e) Inspectors' reports and reports of condition of property | Destroy when superseded. |
| (f) Reports of losses not covered by insurance | Destroy at option after audit. |
| (g) Insurance maps of property and structures erected thereon | Destroy when superseded. |
| (h) Records and statements relating to insurance requirements | Destroy at option. |
| 11. Injuries and Damages: | |
| (a) Claim registers, card or book indices and similar records in connection with accidents resulting in damage to the property of others or personal injuries. | Destroy at option after settlement and audit. |
| (b) Detailed schedules or spread sheets of payments to others for personal injuries or for property damage. | Destroy at option after settlement and audit. |
| 12. Tax Records: | |
| (a) Copies of schedules, returns and supporting working papers to taxing authorities and records of appeals: | |
| (1) Federal income taxes | 6 years after settlement. |
| (2) Agreements between and schedule of allocation by associate companies of consolidated federal income taxes. | 6 years after settlement. |

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

| Description of records | Retention period |
|---|---|
| (3) Other taxes, including state or local property or income taxes | Destroy at option after settlement and audit. |
| (b) Tax bills from taxing authorities and receipts for payment | 3 years after settlement. |
| (c) Summaries of taxes paid by classes of taxes, location, or taxing authority. | 6 years. |
| **TREASURY** | |
| 13. Statements of Funds and Deposits: | |
| (a) Summaries and periodic statements of cash balances on hand and with depositories for company or associate. | Destroy at option. |
| (b) Requisitions and receipts for funds furnished associates and others | Destroy at option after funds have been returned or accounted for. |
| (c) Records of fidelity bonds of employees and others responsible for funds of the company. | Destroy at option after liability of bonding company has expired. |
| 14. Records of Deposits with Banks and Others: | |
| (a) Bank deposit slips or similar records, including authorizations for and statements of transfers of funds from one depository to another. | Destroy at option after audit. |
| (b) Statements from depositories showing the details of funds received, disbursed, and transferred and balances on deposit. | Destroy at option after audit. |
| (c) Bank reconcilement papers | Destroy at option after audit. |
| (d) Statements from banks of interest credits | Destroy at option after audit. |
| (e) Check registers or other records of checks issued, including correspondence. | 6 years. |
| 15. Records of Receipts and Disbursements: | |
| (a) Daily or other periodic statement or receipts or disbursements of funds. | Destroy at option after audit. |
| (b) Records of periodic statements of outstanding vouchers, checks, drafts, etc., issued and not presented. | Destroy at option after audit. |
| (c) Reports of associates showing working fund transactions and summaries thereof. | Destroy at option after audit. |
| **PAYROLL AND PERSONNEL RECORDS** | |
| 16. Payroll Records: | |
| (a) Payroll sheets or registers of payments of salaries and wages, pensions and annuities paid by company or by contractors of its account. | 6 years. |
| (b) Records showing the distribution of salaries and wages paid for each payroll period and summaries or recapitulations of such distribution. | 6 years. |
| (c) Time tickets, timesheets, timecards, workmen's reports, and other records showing hours worked, description of work, and accounts to be changed. | Destroyed at option if the basic information contained thereon is transferred to work orders or other records. |
| (d) Paid checks, receipts for wages paid in cash and other evidences of payment. | 3 years. |
| (e) Authorizations for changes in wage and salary rates, summaries and reports of changes in payrolls and similar records. | 6 years. |
| (f) Payroll authorizations, records of authorized positions, and terminations. | 6 years. |
| (g) Comparative or analytical statements of payroll | 6 years. |
| 17. Personnel and Employee Benefit Records: | |
| (a) Records of employees' service, and rates of compensation | 3 years after termination of employment. |
| (b) Detailed records of company's computation for its contribution, plus a copy of plan. | 6 years after termination of pension or annuity plan. |
| (c) Records pertaining to employees' benefit programs, including pension and profit sharing plans. | 6 years after termination of program. |
| (d) Bulletins or memoranda of general instructions issued by the company to employees pertaining to accounting, engineering, maintenance and construction methods and policies. | 3 years after expiration or supersession. |
| **PROPERTY, DEPRECIATION AND INVESTMENTS** | |
| 18. Property Records, excluding documents included in Item 4(a)(2): | |
| (a) Land and land rights records | 6 years after disposition. |
| (b) Building, permanent facilities and leasehold investment records | 3 years after disposition, termination of lease, or write-off of property or investment. |
| (c) Operating equipment records | 3 years after disposition, termination of lease or write-off of property or investment. |
| (d) Office furniture and equipment records | 3 years after disposition, termination of lease or write-off of property or investment. |
| (e) Automobiles, other vehicles and related garage equipment records | 3 years after disposition, termination of lease or write-off of property or investment. |
| (f) Aircraft and airport equipment records | 3 years after disposition, termination of lease or write-off of property or investment. |
| (g) Other property records not defined elsewhere | 3 years after disposition, termination of lease or write-off of property or investment. |
| (h) Construction work in progress records, income ledgers, work order sheets, authorizations for expenditures, requisitions, performance reports and analysis or cost reports. | 10 years after clearance to property accounts. |
| (i) Depreciation and amortization of property records | Destroy at option after expiration of retention period as described for respective type of property records in 18(a) through 18(g). |
| 19. Investment Records: | |
| (a) Records of investment in associate companies | 3 years after disposition of investment. |
| (b) Records of other investments, including temporary investments of cash. | 3 years after disposition of investment. |
| 20. Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. | 3 years after disposition, termination of lease or write-off of property or investment. |

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

| Description of records | Retention period |
|---|---|
| **WORK ORDER AND JOB ORDER RECORDS** | |
| 21. Work order and job order records including authorization documents, estimated cost memoranda, work order sheets for posting labor, material and other services, and summaries of expenditures for clearance to other accounts. | 6 years after completion of work order |
| 22. Production maps, geological maps, reproductions, including aerial photographs, showing the location of all facilities the subject matter of which falls within the work orders of the company. | 6 years after completion of work order |
| 23. Engineering records, drawings, supporting data to include diagrams, profiles, photographs, field-survey notes, plot plans, detail drawings, and records of engineering studies that are part of or performed by the company within the work order system. | 6 years after completion of work order |
| 24. Records of building space occupied by various departments of the company. | 6 years. |
| **AUDIT, BUDGET AND STATISTICAL REPORTS** | |
| 25. Financial, Operating, and Statistical Reports not subject to Item 3(b)(1): | |
| (a) Reports of examinations and audits by accountants and auditors not in the regular employ of the Company. (Including reports of public accounting firms and regulatory commission accountants.) | 6 years after date of report. |
| (b) Internal audit reports and working papers | 6 years after date of report. |
| (c) Annual reports regularly prepared in the course of business for internal administrative or operating purposes. | 6 years after date of report. |
| (d) Quarterly, monthly or other periodic reports | Destroy at option after audit. |
| 26. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations and acquisitions or disposals of properties or investments by the company and its associated companies, including revisions of such estimates and memoranda showing reasons for revisions; also records showing comparison of actual income and receipts and expenditures with estimates. | 6 years. |
| 27. Other Miscellaneous Records: | |
| (a) Copies of advertisements by the company on behalf of itself or any associate company in newspapers, magazines and other publications including records thereof. (Excluding advertising of product, appliances, employment opportunities, services, territory, routine notices and invitations for bids for securities, all of which may be destroyed at option.) | 6 years after date of publication. |
| (b) Indices of forms used by the company | Destroy at option when superseded. |

## Statutory Basis

The Commission amends 17 CFR Parts 250, 256, 256a, and 257 pursuant to the authority contained in sections 15(a) and 20(a) of the Act, 15 U.S.C. 79o and 79t.

Dated: June 27, 1984.

By the Commission.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 84-17663 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 5

## Delegations of Authority and Organization; Official Master and Working Standards for Antibiotic Drugs

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to add additional officials to the delegation of authority for designation of official master and working standards for antibiotic drugs. This function was assigned to the Division of Drug Biology when the National Center for Antibiotics Analysis was abolished.

**EFFECTIVE DATE:** July 3, 1984.

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

**SUPPLEMENTARY INFORMATION:** FDA is amending § 5.75 (21 CFR 5.75) to redelegate to the Director and Deputy Director, Division of Drug Biology, Office of Drug Research and Review, Center for Drugs and Biologics, the authority to designate official master and working standards for antibiotic drugs. This function was assigned to that Division when the National Center for Antibiotics Analysis was abolished on August 15, 1983 (48 FR 36898).

Further redelegation of the authority delegated is not authorized. 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), Organizations and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended by revising § 5.75 to read as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

**§ 5.75 Designation of official master and working standards for antibiotic drugs.**

The following officials are authorized to designate official Food and Drug Administration master and working standards for antibiotic drugs under § 430.5 of this chapter:

(a) The Director and Deputy Director, Center for Drugs and Biologics (CDB).

(b) The Director and Deputy Director, Office of Drug Research and Review, CDB.

(c) The Director and Deputy Director, Division of Drug Biology, Office of Drug Research and Review, CDB.

*Effective date.* This regulation shall become effective July 3, 1984.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: June 28, 1984

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-17663 Filed 7-2-84; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Parts 556 and 558

## Tolerances for Residues of New Animal Drugs in Food; New Animal Drugs for Use in Animal Feeds; Lasalocid

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplement to a new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for use of lasalocid in feeds for sheep. The regulations are also amended to establish the safe concentrations for lasalocid sodium residues in edible sheep tissues.

**EFFECTIVE DATE:** July 3, 1984.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857 301-443-4913.

**SUPPLEMENTARY INFORMATION:** Hoffmann/La-Roche, Inc., Nutley, NJ 07110, has submitted a supplement to their approved NADA 96-298 for lasalocid sodium premix. The supplement is for Bovatec® (lasalocid) premixes for use in feeds for sheep maintained in confinement. The lasalocid premix was previously approved for use in cattle and poultry. The supplement provides for use of lasalocid premixes at levels of 15, 20, 33.1, or 50 percent lasalocid sodium activity for use in making feeds containing lasalocid at 20 to 30 grams per ton. The medicated feeds are to be used for the prevention of coccidiosis caused by *Eimeria ovina, E. crandallis, E. ovinoidalis* (*E. ninakohlyakimovae*), *E. parva*, and *E. intricata* in sheep maintained in confinement. The application is approved, and the regulations are amended accordingly. The regulations are also amended to make clear that certain labeling statements pertain to all premixes and supplements for use in cattle and sheep and not just to liquid feed supplements for cattle use. Additionally, the regulations are amended to establish the safe concentrations for lasalocid sodium residues in edible tissues of sheep. The basis for approval is discussed in the freedom of information summary.

Also, the title of the tolerance section in Part 556 is revised to read "Lasalocid" rather than "Lasalocid sodium" consistent with the section heading in Part 558.

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)) may be seen in the Dockets Management Branch (address above).

List of Subjects

*21 CFR Part 556*

Animal drugs, Foods, Residues.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 556 and 558 are amended as follows:

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. Part 556 is amended by revising § 556.347 to read as follows:

### § 556.347 Lasalocid.

As used in this section "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refers to the concentrations of total residues considered safe in edible tissues.

(a) *Chickens.* The marker residue selected to monitor for total residues of lasalocid sodium in chickens is parent lasalocid and the target tissue selected is skin with adhering fat. A tolerance is established in chickens of 0.025 part per million for parent lasalocid is skin with adhering fat. A marker residue concentration of 0.025 part per million in skin with adhering fat corresponds to a concentration for total residues of lasalocid of 0.05 part per million in skin with adhering fat. The safe concentration for total residues of lasalocid in the uncooked edible tissues of chickens is 0.05 part per million.

(b) *Cattle.* The marker residue selected to monitor for total residues of lasalocid sodium in cattle is parent lasalocid and the target tissue selected is the liver. A tolerance is established in cattle of 0.7 part per million for parent lasalocid in liver. A marker residue concentration of 0.7 part per million in liver corresponds to a concentration for total residues of lasalocid of 4.8 parts per million in liver. The safe concentrations for total residues of lasalocid in the uncooked edible tissues of cattle are 1.2 parts per million in muscle, 4.8 parts per million in liver and in fat, and 3.6 parts per million in kidney.

(c) *Sheep.* A tolerance for marker residues of lasalocid sodium in sheep is not needed. The safe concentrations for total residues of lasalocid in the uncooked edible tissues of sheep are 1.2 parts per million in muscle and 6 parts per million in liver, fat, and kidney.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. Part 558 is amended in § 558.311 by revising paragraph (b)(3); the introductory text of paragraph (c)(2), and the introductory text of paragraph (e)(1); by removing and designating paragraph (e)(1)(iii) "[Reserved]"; by revising paragraph (e)(4), by adding paragraph (e)(6); and by adding item (8) in the table in paragraph (f) to read as follows:

### § 558.311 Lasalocid.

* * * * *

(b) * * *

(3) Premix levels of 15, 20, 33.1 and 50 percent lasalocid sodium activity granted to 000004 in § 510.600(c) of this chapter for use in feed for cattle as provided in paragraph (f) (6) and (7) of this section and for use in sheep feed as provided in paragraph (f)(8) of this section. Premixes containing lasalocid dried fermentation residue are for use in cattle and sheep feed only.

(c) * * *

(2) For cattle and sheep:

* * * * *

(e) *Special considerations.* (1) Finished cattle feeds may be manufactured from lasalocid liquid feed supplements which have a pH of 4.0 to 8.0 and bear appropriate mixing directions as follows:

* * * * *

(iii) [Reserved]

* * * * *

(4) Complete cattle and sheep feeds manufactured from feed supplements that contain not more than 1,440 grams of lasalocid activity per ton and that comply with the provisions of paragraph (f) (6), (7), or (8) of this section are not required to comply with the requirements of section 512(m) of the act.

* * * * *

(6) Required label statements:

(i) For liquid feed supplements (cattle only): Mix the liquid supplement thoroughly with grain and/or roughage prior to feeding. Feeding undiluted, mixing errors, or inadequate mixing (recirculation or agitation) of liquid supplements may result in an excess lasalocid concentration which could be fatal to cattle. Do not allow horses or other equines access to premixes or supplements containing lasalocid as ingestion may be fatal. Safety of lasalocid for use in unapproved species

or breeding animals has not been established.

(ii) For premixes and supplements (cattle and sheep): Feeding undiluted or mixing errors may result in an excess lasalocid concentration which could be fatal to cattle and sheep. Do not allow horses or other equines access to premixes or supplements containing lasalocid as ingestion may be fatal. Safety of lasalocid for use in unapproved species or breeding animals has not been established.

(f) * * *

| Lasalocid sodium activity in grams per ton | Combination in grams per ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (8) 20(0.0022 pct) to 30(0.0033 pct). | ——— | Sheep; for the prevention of coccidiosis caused by *Eimeria ovina*, *E. crandallis*, *E. ovinoidalis* (*E. ninakohlyakimovae*), *E. parva*, and *E. intricata*. | In complete feeds; for sheep maintained in confinement; feed continuously in complete feed to provide not less than 15 mg nor more than 70 mg of lasalocid sodium activity per head per day depending on body weight. | 000224 |

Effective date: July 3, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 26, 1984.

Lester M. Crawford,

*Director, Center for Veterinary Medicine.*

[FR Doc. 84-17533 Filed 7-2-84; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[T. D. 7982]

## Income Tax; Taxable Years Beginning After December 31, 1953; Charitable Contributions of Inventory Qualifying Under Section 170(e)(3)

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to charitable contributions of inventory qualifying under section 170(e)(3) of the Internal Revenue Code of 1954. The regulations provide that the donor's cost of goods sold is reduced by the lesser of the fair market value or the amount of the basis of the contributed property.

**DATE:** The regulations are effective with respect to charitable contributions of property qualifying under section 170(e)(3) made after October 4, 1976, in taxable years ending after such date.

**FOR FURTHER INFORMATION CONTACT:** David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

**SUPPLEMENTARY INFORMATION:** Section 170(e)(3) of the Internal Revenue Code of 1954 was designed to encourage charitable contributions of inventory and other property for the care of the ill, the needy, or infants. It generally provides for an enhanced deduction for contributions of property that satisfy the requirements of the section.

Section 1.170A-1(c)(1) of the Income Tax Regulation (26 CFR Part 1) provides, in general, that the amount of the charitable contribution of property is equal to the property's fair market value. Section 1.170A-4A(c)(3) requires the donor of inventory qualifying under section 170(e)(3) to decrease the cost of goods sold by the amount of basis of the inventory property.

Where the basis of the contributed inventory property qualifying under section 170(e)(3) exceeds the property's fair market value, the underlying purpose of the section to encourage contributions of this type of property for the purposes specified in section 170(e)(3) may be frustrated. This is because the entire basis of the contributed property is removed from the cost of goods sold while the charitable contribution is limited to the property's fair market value. It would be more advantageous for the taxpayer to destroy or sell the property than to contribute it for the care of the ill, the needy, or infants. A taxpayer would then be entitled to deduct its entire basis in the property as a loss deduction under section 165 or as part of the cost of goods sold as compared to a charitable contribution amount limited to the property's fair market value.

In order to remove this disincentive, these final regulations provide that the taxpayer's cost of goods sold will be reduced by the lesser of the fair market value or the amount of the basis of the contributed property.

### Regulatory Flexibility Act; and Executive Order 12291

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for final regulations subject to 5 U.S.C. 553(b)(B). Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this final rule is not a major rule within the meaning of Executive Order 12291 and that a regulatory impact analysis is therefore not required.

### Drafting Information

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

### List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph (c)(3) of § 1.170A-4A is revised to read as follows:

**§ 1.170A-4A Special rule for the deduction of certain charitable contributions of inventory and other property.**

* * * *

(c) *Amount of reduction.* * * *

(3) *Adjustment to cost of goods sold.* Notwithstanding the rules of § 1.170A-1(c)(4), the donor of the property which is inventory contributed under this section must make a corresponding adjustment to cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the contributed item or the amount of basis determined under paragraph (c)(2) of this section.

Because this Treasury decision merely liberalizes the provisions of § 1.170A-4A(c)(3), it is found unnecessary to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective

date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917 26 U.S.C. 7805).

Dated: June 28, 1984.

Roscoe L. Egger, Jr.,

*Commissioner of Internal Revenue.*

Approved.

John E. Chapoton,

*Assistant Secretary of the Treasury.*

[FR Doc. 84-17677 Filed 6-28-84; 4:44 pm]

BILLING CODE 4830-01-M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 938

## Approval of Pennsylvania Permanent Regulatory Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This document amends 30 CFR Part 938 by announcing the approval of certain amendments to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and to remove condition (j)(1) of the Secretary's approval on the State's program.

On October 31, 1983, Pennsylvania submitted to OSM amendments to its approved permanent regulatory program containing regulatory revisions which were intended to satisfy conditions (b), (e), (f), (g), (h) and (j)(1) of approval of the Pennsylvania program. OSM announced the receipt of these amendments and solicited public comment in the Federal Register dated December 1, 1983 (48 FR 54351). The conditions pertain to ponds, dams and impoundments; existing non-conforming structures; approximate original contour variances; revegetation for underground mining operations and enforcement. The Secretary has announced his decision in the Federal Register dated May 15, 1984 (49 FR 20488) on the amendments submitted to satisfy conditions (b), (e), (f), (g) and (h). The Secretary's decision on condition (j)(1) was deferred pending consideration of additional material submitted by Pennsylvania and published for public comment in the Federal Register dated April 26, 1984 (49 FR 17974).

After providing opportunity for public comment and conducting a thorough review of the program amendments in accordance with 30 CFR 732.17 the Secretary has decided to approve certain modifications and remove condition (j)(1) on the approval of Pennsylvania's regulatory program. The Federal rules at 30 CFR Part 938 which codify decisions concerning the Pennsylvania permanent regulatory program are being amended to implement these actions.

**EFFECTIVE DATE:** July 3, 1984.

**FOR FURTHER INFORMATION CONTACT:** Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101, telephone: (717) 782-4036.

**SUPPLEMENTARY INFORMATION:**

### I. Background on Conditional Approval of the Pennsylvania State Program

Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval.

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register (47 FR 33050).

At the time of the Secretary's conditional approval, Pennsylvania agreed to meet ten minor conditions, many of which contained several parts. In accepting the conditions of approval, Pennsylvania agreed to correct condition (j)(1) by May 1, 1983. In the Federal Register dated May 25, 1983 (48 FR 23416-23417), the Secretary granted an extension of time to November 1, 1983, for the State to submit material to satisfy the condition.

### II. Submission of Revision and Program Amendments

In a letter dated October 31, 1983, Pennsylvania submitted to OSM pursuant to 30 CFR 732.17 certain revisions to its regulations intended to satisfy condition (j)(1). On April 3, 1984, Pennsylvania submitted additional material consisting of a policy statement intended to satisfy condition (j)(1). Condition (j)(1) pertains to the State's procedure for extending the time abate a violation in excess of 90 days.

### III. Secretary Findings

*Finding 1, Condition (j)(1)*

Condition (j)(1) requires Pennsylvania to amend its program to limit the circumstances when abatement times in excess of ninety days will be permitted to be the same or similar as 30 CFR 843.12 and no less stringent than section 521(a)(3) of SMCRA.

Pennsylvania revised Title 25, Chapter 86 at section 211 to provide procedures in certain circumstances allowing inspectors to extend abatement times in excess of 90 days. Pennsylvania also developed a policy statement clarifying the criteria for and procedures to be used when extending an abatement period pursuant to its revised regulations at PA 86.211.

The Secretary finds that the revised regulations at PA 86.211 accompanied by its implementing policy statement provide standards for extending an abatement time in excess of ninety days for a limited number of circumstances that are the same or similar to Federal standards contained in 30 CFR 843.12 and consistent with section 521 of SMCRA.

### III. Disposition of Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed State permanent program amendments. Of those agencies invited to comment, comments were received from the following Federal agencies: The United States Department of Agriculture, Soil Conservation Services (SCS); United States Department of the Interior, Fish and Wildlife Service (FWS); and the United States Environmental Protection Agency (EPA).

1. The SCS comments in support of Pennsylvania's policy statement because it allows an extension when climatic conditions would cause more environmental harm than it would prevent, and it provides that interim abatement measures be imposed to minimize any potential harm. The

Secretary agrees that these procedures should be beneficial in protecting the environment while allowing discretion in a certain limited number of cases, where, because of the nature of the violation or circumstances beyond the permittee's control, abatement within 90 days can not be accomplished.

2. The FWS comments that the Pennsylvania amendments submitted to satisfy certain conditions adequately address the conditions.

3. The EPA, in its letter dated February 1, 1984, concurs with the modifications proposed by Pennsylvania in its October 31, 1983 amendment. However, the EPA expressed some general concern about the implementation of Pennsylvania's procedures for allowing extended abatement periods. EPA suggests that examples of climatic conditions or other criteria be referenced in the amendment and that extensions be limited to those examples. While OSM agrees that extended abatement periods are a matter of gravity, it can only require that a State adopt procedures that are the same as or similar to Federal standards. Pennsylvania's regulations and policy statement provides such similar procedures and OSM cannot require Pennsylvania to adopt additional procedures. However, as with any State program requirement, OSM will monitor Pennsylvania's implemetation of the amendment and will ensure that extended abatement periods are being approved prudently and in keeping with the intent of SMCRA.

The Pennsylvania Coal Mining Association (PCMA) comments that Pennsylvania's revised regulations are the same or similar to Federal regulations and no less stringent than section 521(a)(3) of SMCRA. The Secretary agrees with that comment.

PCMA also comments that Pennsylvania's revised regulations do not provide as many qualifying circumstances for extensions of abatement time in excess of ninety days as the Federal regulations, and is therefore, more stringent and may create adverse, environmental effects. The circumstances cited by PCMA that may preclude abatement within 90 days that are not included in Pennsylvania's revision are: (1) Valid judicial order, (2) labor disruptions and (3) violations of safety standards under the Mine Safety and Health Act of 1977 In administering SMCRA and its regulations, OSM found that there are certain *very limited* cases where because of the nature of the violation or circumstances beyond a permittee's control, abatement within 90 days was not possible or would have caused greater environmental harm than a later abatement date. OSM, therefore, amended its regulations (46 FR 41702, August 17 1981) to allow an extended abatement time in such limited cases. The Federal regulations identify those limited circumstances in which OSM would permit an extended abatement under certain prescribed conditions and by the use of specific procedures. Pennsylvania has revised its program allowing an extended abatement time for the limited cases which it believes may be encountered with some frequency and has developed procedures that are the same or similar to Federal procedures for granting such extensions. The Secretary believes that Pennsylvania's approach is reasonable. However, if Pennsylvania, in its implementation of its revised regulation, finds that there are other limited cases that it did not envision which are allowed by the Federal regulations, Pennsylvania may revise its program by submitting a program amendment to OSM.

Condition (j)(1) directed Pennsylvania to "limit the circumstances when abatement times in excess of ninety days will be permitted * * *" The Secretary finds that Pennsylvania has satisfied the condition by limiting the circumstances in which such extension may be granted and has provided the same or similar procedures as Federal regulations for granting such extension.

## IV Approval of Amendment

Accordingly, the amendments submitted to OSM by Pennsylvania on November 1, 1983 and on April 3, 1984 to satisfy condition (j)(1) by amending certain regulations (PA 86.211) and the DER Inspection and Enforcement Policy for Mining Operations are approved pursuant to 30 CFR 732.17.

The Federal regulations at 30 CFR Part 938 codifying the Secretary's decision on matters pertaining to Pennsylvania are being amended to indicate approval of the program amendment.

## V Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

## List of Subjects in 30 CFR Part 938

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

Dated: June 27, 1984.

Leona A. Power,

*Acting Assistant Secretary, Land and Minerals Management.*

## PART 938—PENNSYLVANIA

### § 938.11 [Amended]

1. 30 CFR 938.11 is amended by removing and reserving paragraph (j)(1).

2. 30 CFR 938.15 is amended by adding paragraph (e).

### § 938.15 Approval of Amendments to State Regulatory Program.

* * * * *

(e) The following amendments are approved effective on July 3, 1984: Revisions to Title 25, Pennsylvania Code, submitted on October 31, 1983 identified as Chapter 86.211 and an addendum to the DER Inspection and Enforcement Policy for Mining Operations.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84-17610 Filed 7-2-84; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 110

[CGD-83-2R]

### Establishment of Special Anchorage Area; Mattapoisett Harbor, Mattapoisett, Massachusetts

*Correction*

In FR Doc. 84-16588, beginning on page 25444 in the issue of Thursday, June 21, 1984, make the following correction on page 25445, the middle column: In § 110.45a(a), the third line, "128.5° T." should read "138.5° T"

BILLING CODE 1505-01-M

### 33 CFR 165

[CGD3-84-48]

### Safety Zone Regulations; New York, New Jersey, Upper New York Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in New York, New Jersey, Upper New York Bay. This zone is needed to protect vessels from the possible dangers and hazards associated with a marine parade. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

**EFFECTIVE DATES:** This regulation is effective at approximately 1:00 PM EDST July 4, 1984 and terminates at 5:00 PM EDST July 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) M.P O'Malley, (212)-668-7917

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

**Drafting Information:**

The drafters of this regulation are Lieutenant (junior grade) M.P O'Malley, Project Officer for the Captain of the Port, and Ms. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

**Discussion of Regulation:**

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a marine parade in Upper New York Bay.

**List of Subjects in 33 CFR Part 165**

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

**Regulation:**

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.T311 to read as follows:

**§ 165.T311 Safety Zone: New York, New Jersey, Upper New York Bay.**

(a) *Location.* The following area is a Safety Zone: from the southeast corner of the Military Ocean Terminal Pier at Bayonne, New Jersey; thence on southerly course of 180 degrees true to the Fireboat Station Pier on Staten Island, New York; thence along the Staten Island shoreline to the southeast corner of Pier Fourteen; thence on a course of 067 degrees true to Gowanus Flats Lighted Bell Buoy #22 (LL#1595); thence following the western boundary of Bayridge Anchorage to the Gowanus Flats Lighted Bell Buoy #28 (LL#1604); thence on a southwesterly course of 264 degrees true to the starting point at the southeast corner of the Military Ocean Terminal Pier.

(b) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: June 22, 1984.

J. L. McDonald,

*Captain, U.S. Coast Guard, Captain of the Port, New York*

[FR Doc. 84-17638 Filed 7-2-84; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 84-11; RM-4555]

### FM Broadcast Station in Burley, Idaho; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein substitutes Class C FM Channel 260 for Channel 252A at Burley, Idaho, and modifies the Class A license of Station KMVC(FM), in response to a petition filed by Mini-Cassia Broadcasting, Inc. The assignment could provide Burley with its first Class C FM station.

**EFFECTIVE DATE:** August 31, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy V Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Report and Order; Proceeding Terminated**

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Burley, Idaho); MM Docket No. 84-11, RM-4555.

Adopted: June 18, 1984.

Released: June 25, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration its *Notice of Proposed Rule Making*, 49 FR 3215, published January 26, 1984, proposing the substitution of Class C FM Channel 260 for Channel 252A at Burley, Idaho, and modification of the license of Station KMVC(FM), Burley, to specify operation on Channel 260. The *Notice* was issued in response to a petition filed by Mini-Cassia Broadcasting, Inc.[1] ("petitioner"), licensee of Station KMVC(FM), Burley. Supporting comments were filed by petitioner in which it reaffirmed its intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. We believe the public interest would be served by the substitution of Class C Channel 260 for Channel 252A at Burley since it could provide service to a wider coverage area in that region. The assignment can be made in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. We have also authorized, *infra*, a modification of the license for Station KMVC(FM) since there have been no other expressions of interest in the Class C channel. See, *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976).

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as

[1] Petitioner is also the licensee of Station KBAR(AM), Burley.

amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective August 31, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

| City | Channel No. |
|---|---|
| Burley, Idaho | 260 |

4. It is further ordered, That, pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KMVC(FM) is modified to specify operation on Class C Channel 260 in lieu of Channel 252A, subject to the following conditions.

(a) At least 30 days before operating on Channel 260, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

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

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

5. It is further ordered, That the Secretary shall send a copy of this *Order* by certified mail, return receipt requested, to Mini-Cassia Broadcasting, Inc., 1841 West Main Street, Burley, Idaho 83318, and to M. Scott Johnson, Esq., Law Office of Gardner, Carton and Douglas, 1875 Eye Street, NW., Suite 1050, Washington, D.C. 20006–5472.

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

7 For further information concerning the above, contact Nancy V Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

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

[FR Doc. 84–17629 Filed 7–2–84; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

[MM Docket No. 84–33; RM–4603]

## TV Broadcast Station in Grove, Oklahoma; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein, at the request of A.M.O. Broadcasting Company, assigns UHF Television Channel 45 to Grove, Oklahoma, as the community's first local television service.

**EFFECTIVE DATE:** August 31, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554

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

**SUPPLEMENTARY INFORMATION:** Television broadcasting.

### List of Subjects in 47 CFR Part 73

### Report and Order; Proceeding Terminated

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Grove, Oklahoma); MM Docket No. 84–33, RM–4603.

Adopted: June 20, 1984.

Released: June 25, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 4523, published February 7 1984, proposing the assignment of UHF Television Channel 45 to Grove, Oklahoma, as that community's first local television service. The *Notice* was adopted in response to a petition filed by A.M.O. Broadcasting Company ("petitioner"). Petitioner filed comments reaffirming its interest in applying for the channel, if assigned. No oppositions to the proposal were received.

2. Grove (population 3,378),[1] in Delaware County (population 23,946), is located in northeastern Oklahoma, approximately 96 kilometers (60 miles) northeast of Tulsa, Oklahoma.

3. In view of the fact that the proposed assignment could provide a first local commercial television service to Grove, we believe that the public interest would be served by assigning UHF Television Channel 45 to Grove, Oklahoma. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective August 31, 1984, the TV Table of Assignments, § 73.606(B) of the Rules, is amended with regard to the following community:

[1] Population figures are taken from the 1980 U.S. Census.

| City | Channel No. |
|---|---|
| Grove, Oklahoma | 45+ |

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

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

Federal Communications Commission.

Charles Schott,

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

[FR Doc. 84–17630 Filed 7–2–84; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 346 (Sub-14)]

## 49 CFR Part 1039

## Rail General Exemption Authority—Miscellaneous Agricultural Commodities

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule and exemption; correction.

**SUMMARY:** At 48 FR 9276, March 4, 1983, the Commission adopted rules to exempt the transportation by rail of all farm products not previously exempt, with certain exceptions, and other miscellaneous commodities, from the provisions of Subtitle IV of Title 49 U.S.C. The listing of commodities and their STCC codes in the revised § 1039.10 contains an error, which this notice corrects.

**FOR FURTHER INFORMATION CONTACT:**

Leland L. Gardner, 202–275–0311

or

Robert Lundy, 202–275–6953.

**SUPPLEMENTARY INFORMATION:** In the final rule appearing at 48 FR 9276, March 4, 1983, the STCC Code for the commodity "Stemmed or redried tobacco" in the revised § 1039.10 is corrected by placing a hyphen between the "1" and the "4." As corrected the commodity entry reads as follows:

21–4.....Stemmed or redried tobacco.

James H. Bayne,

*Secretary.*

[FR Doc. 84–17623 Filed 7–2–84; 8:45 am]

BILLING CODE 7035–01–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 611, 672, and 675**

**[Docket No. 31230-251]**

## Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area; Correction

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

**ACTION:** Notice of inseason adjustment; correction.

**SUMMARY:** This document corrects a notice of inseason adjustment that appeared at page 23355 in the Federal Register of Wednesday, June 6, 1984 (49 FR 23355). Certain amounts of groundfish that were specified for reapportionment to domestic and foreign fishermen in the text and in Table 2 are corrected.

**FOR FURTHER INFORMATION CONTACT:** Janet Smoker, 907-586-7229.

The following corrections are made in FR Doc. 84-15202 beginning on page 23355 in the issue of June 6, 1984.

1. On page 23356, column 2, last line, "291,990 mt" is corrected to read, "297,990 mt."

2. On page 23357 Table 2, the following numbers are changed:

a. For "Pollock" "Aleutians"—the "RES" under the column "Changes April" is corrected to read "−11,250," and under the column "Revised" is corrected to read "3,750;"

b. For "Other Rockfish"—the "TAC" is corrected from "5,000" to read "5,500;"

c. For "Sablefish," "Aleutians"—the "JVP" under the column "Changes April" is corrected to read "+180," the "JVP" under the column "Revised" is corrected to read "280," the "TALFF" under the column "Revised" is corrected to read "1,210;"

d. For "Total"—the "JVP" under the column "Changes April" is corrected to read "+23,050."

* * * * *

Dated: June 27, 1984.

Carmen J. Blondin,

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 84-17639 Filed 7-2-84; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 49, No. 129
Tuesday, July 3, 1984

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 93

[Docket Nos. 24105 and 24110; Notice Nos. 84-6 and 84-7]

### Slot Transfer Methods Slot Allocation Alternative Methods

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Extension of comment periods. Rescheduling of hearing date.

**SUMMARY:** This notice announces extension of the comment periods for the Slot Transfer Methods notice of proposed rulemaking (NPRM) (Notice No. 84-6 (49 FR 23788; June 7 1984)), and the Slot Allocation Alternative Methods NPRM (Notice No. 84-7 (49 FR 23806; June 7 1984)) and reschedules the Washington hearing for Notice No. 84-6. Notice No. 84-6 proposes a mechanism which would remove Government restrictions on the transfer of slots used by operators at high density airports. Notice No. 84-7 sets forth a procedure to be used if the scheduling committees are unable to allocate newly available slots at the high density airports. This action is in response to requests received from the Regional Airline Association (RAA), the Airport Operators Council International (AOCI), and the Air Transport Association of America (ATA).

**DATE:** Comments must be received on or before August 6, 1984.

Hearing: July 30, 1984.

**ADDRESS:** Send comments on the proposals in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket Nos. 24105 or 24110, as appropriate, 800 Independence Avenue, SW., Washington, D.C. 20591

or deliver comments in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

Hearing: Federal Aviation Administration, 800 Independence Avenue, SW., 3d floor Auditorium, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Edward P Faberman, Acting Chief Counsel, AGC-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426-3773; or

Rick Yates, Special Assistant to the Assistant Secretary for Policy and International Affairs, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, Telephone: (202) 426-4524

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in these regulatory actions by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket numbers and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. 24105 or 24110, as appropriate." The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking further action on this rulemaking. This proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with these rulemakings will be filed in the docket.

In addition to seeking comments on these regulatory actions, public hearings are being held to allow additional public input on Notice No. 84-6. In order to afford more people the opportunity to attend and participate in that rulemaking, hearings have been held in Chicago, Illinois, and San Francisco, California, and a hearing will be held on July 30, 1984, in Washington, D.C.

#### Availability of Documents

Any person may obtain a copy of these NPRMs by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the notice number of the document.

#### Background

On June 1, 1984, the FAA issued Notice Nos. 84-6 and 84-7. Notice 84-6 was issued to solicit comments on all issues which relate to the question of allowing air carriers to transfer slots among themselves for any consideration as free as possible of Government regulations. The proposal, which was originally suggested by certain air carriers, was intended as a permanent market solution to some of the problems associated with administrative solutions to the slot allocation problem. Notice 84-7 was issued in response to the increasing problem faced by scheduling committees at the high density airports in allocating existing and new slots. The notice discusses a two step regulatory alternative to the scheduling committees. The comment period for each notice was 30 days ending on July 9.

By telegram dated June 5, 1984, the Regional Airline Association asked for a 60 day extension of the comment period for Notice 84-6. They stated that since the notice raises a substantial number of questions, they could not respond effectively within the 30-day comment period and, therefore, requested an extension.

By letter, dated June 8, 1984, the Airport Operators Council International (AOCI) requested that the dates for the public hearings be delayed for 30 days and the comment period be extended by 60 days.

By letter dated June 13, 1984, the Air Transport Association of America (ATA) requested that the comment

period be extended by 60 days and the public hearings be delayed by 30 days. ATA also requested that the agency hold one public hearing instead of three.

The agency has reviewed the requests made to extend the comment period of Notice 84-6. Since Notice Nos. 84-6 and 84-7 are related in several aspects and since many parties will comment on both, the agency believes that the comment period for each should close on the same date. By extending both comment periods for a limited time interested individuals and organizations should be able to submit well-reasoned comments on each without being rushed to submit comments on any of the notices. Therefore, the agency will extend both comment periods by approximately 4 weeks until August 6, 1984.

Public hearings not only serve the purpose of allowing individuals to express positions on rulemaking but also allow the agency an opportunity to answer questions and to explain the particular proposals. Comments made at a public hearing can be supplemented or modified by later submissions to the docket. It is for this reason that the agency did not believe it is necessary to delay each of the planned public hearings for 30 days. The agency has, however, rescheduled the Washington, D.C., public hearing for July 30, 1984, to make it closer to the close of the extended comment period. ATA, AOCI and RAA should be able to present their organizational positions at that hearing. Thus, the date for the Notice No. 84-6 public hearing in Washington is modified as follows: July 30, 1984, Federal Aviation Administration, 800 Independence Avenue, S.W., 3d Floor Auditorium, Washington, D.C.

9:00—9:15—Presentation of Meeting Procedures.

9:15—10:00—DOT Presentation.

10:15—12:15—Public Presentation and Discussion.

12:15—1:30—Lunch Break

1:30—5:00—Public Presentation and Discussion.

If you wish to make an oral presentation at the hearing, contact Pamela Trebbe on 426-3775 before July 27 1984.

### Extension of Comment Period

In consideration of the requests to extend the comment period and the need for public participation in determining a future course of action regarding these rulemakings, the FAA concludes that the comment periods should be extended.

Accordingly, the comment periods for Notice Nos. 84-6 and 84-7 are extended to close on August 6, 1984.

### List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

(Secs. 103, 307, 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348, 1354(a) and 1421(a); 49 U.S.C. 106(a) (Revised Pub. L. 97-449, January 12, 1983); and § 11.49 of the Federal Aviation Regulations (14 CFR 1149))

Note.—This document extends the comment period for two notices of proposed rulemaking (NPRM's) to afford the public and industry additional time in which to review and respond to the notices. This document does concern two rulemakings considered to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on June 29, 1984.

Edward P. Feberman,

*Acting Chief Counsel.*

[FR Doc. 84-17734 Filed 6-29-84; 12:17p.m.]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 913

## Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline

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

**ACTION:** Proposed rule.

**SUMMARY:** At the State's request, the Office of Surface Mining (OSM) is considering modifying the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern sediment ponds and covering coal seams with water.

**DATE:** Comments not received on or before 4:00 p.m., August 2, 1984 will not necessarily be considered.

**ADDRESSES:** Written comments must be mailed or hand-delivered to: Office of Surface Mining, Springfield Field Office, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Fulton, Field Office Director, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

**SUPPLEMENTARY INFORMATION:**

### Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 Federal Register.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d) and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d) and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983). On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). On August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt* (Civ. No. 82-2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the Deadline to June 1, 1984 (49 FR 6487).

Condition (b) stipulates that Illinois must amend its program to require a

cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Proposal to Extend Deadline

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois is requesting that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations.

In accordance with the State's request, OSM is proposing that the deadline for the State to meet these conditions be extended until November 30, 1984. OSM requests comments on this proposed extension.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 913

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

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Dated: June 27, 1984.

J. Lisle Reed,

*Director, Office of Surface Mining*

[FR Doc. 84-17[illegible] Filed 7-2-84; [illegible] am]

BILLING CODE 4310-05-M

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## 30 CFR Part 942

## Tennessee Regulatory Program; Withdrawal of Proposed Rulemaking Actions

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

**ACTION:** Withdrawal of proposed rulemaking actions.

**SUMMARY:** OSM is announcing its decision not to finalize rulemaking actions pertaining to amendments to the Tennessee regulatory program under the Surface Mining Control and Reclamation Act of 1977

On May 16, 1984, the Tennessee legislature voted to repeal the Tennessee Coal Surface Mining Law of 1980 effective October 1, 1984, and thereby return full regulatory responsibility to OSM on that date. On May 25, 1984, the Governor signed the House and Senate bills repealing the State Act.

In light of the impending transfer of all authorities from the State to the Federal Government, OSM has decided to discontinue further action on proposed amendments to the Tennessee program submitted by the Tennessee Division of Surface Mining (DSM) to OSM for its approval.

**EFFECTIVE DATE:** July 3, 1984.

**ADDRESS:** Copies of documents referenced in this notice are available for public inspection and copying during regular business hours at:

U.S. Department of the Interior, Office of Surface Mining, Room 5124, 1100 L Street, NW., Washington, D.C. 20240; Telephone: (202) 343-4728.

U.S. Department of the Interior, Office of Surface Mining, Knoxville, Field Office, 530 Gay Street, SW., Suite 400, Knoxville, TN 37902.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 400, Knoxville, Tennessee; Telephone: (615) 523-9523.

**SUPPLEMENTARY INFORMATION:** Because Tennessee was not adequately administering segments of its approved regulatory program under SMCRA, OSM instituted Federal enforcement of portions of the Tennessee program effective April 30, 1984. OSM announced its decision to take this action in the April 18, 1984 issue of the Federal Register (49 FR 15498). Shortly thereafter the Governor of Tennessee requested the State Legislature to return to the Federal Government full responsibility for implementing a regulatory program under SMCRA in the State. In accordance with the Governor's request, the Legislature voted on May 16, 1984, to repeal the Tennessee Coal Surface Mining Law of 1980 effective October 1, 1984, and, thereby, return full regulatory responsibility to OSM on that date. On May 25, 1984, the Governor signed the House and Senate bills repealing the State Act.

In accordance with its April 18 decision OSM has been implementing the inspection and enforcement functions of the Tennessee program since April 30, 1984, and will continue to do so until September 30, 1984. On October 1, 1984, OSM will implement a Federal program in the State and assume responsibility for all aspects of regulating mining in the State in accordance with SMCRA.

In light of the impending transfer of authority from the State to the Federal Government, OSM has decided not to continue two rulemaking actions pertaining to amendments to the Tennessee regulatory program.

A full description of the amendments and the rulemaking actions taken by OSM relative to these amendments is provided below:

(A) On September 30, 1983, Tennessee submitted for OSM's approval: (a) modifications intended to satisfy condition (k) of the Secretary's approval of the Tennessee program concerning procedures for hearings and appeals and

(b) amendments to the State regulations pertaining to blaster training and certification and performance standards for coal tipples, preparation plants and support facilities.

On November 8, 1983, OSM announced receipt of the proposed amendments and scheduled a hearing and comment period on the adequacy of the amendments in satisfying condition "k" of program approval and in meeting the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 (48 FR 51385).

The hearing was not held as no one requested an opportunity to present testimony. The comment period closed December 8, 1983. On December 23, 1983, OSM informed Tennessee in writing of its preliminary findings on the provisions and encouraged the State to submit additional materials to address deficiencies identified by OSM (Administrative Record No. TN-799).

On January 30, 1984, and February 10, 1984, Tennessee submitted additional materials to OSM for consideration in conjunction with the amendments submitted on September 30, 1983.

On April 5, 1984, (49 FR 13546), OSM reopened the comment period on the amendments for 15 days to provide an opportunity for the public to reexamine the provisions submitted by the State on September 30, 1983, together with the additional materials submitted on January 30, 1984 and February 10, 1984.

For the reasons discussed above, OSM will not be continuing its review of these amendments.

(B) On January 5, 1984, DSM submitted proposed program amendments to OSM for the Secretary's approval including:

(1) Regulation changes relating to performance standards for blasting and

(2) Program modifications intended to address condition (i) of the Secretary's approval of the Tennessee program concerning the State's procedures and forms for permitting, inspection and enforcement.

On February 28, 1984 (49 FR 7252) OSM announced receipt of the proposed amendments and scheduled a hearing and comment period on the adequacy of the provisions in satisfying condition "i" of program approval and in meeting the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17

The hearing was not held as no one expressed an interest in presenting testimony. The comment period closed March 29, 1984.

Because of the recent events described above affecting the status of the Tennessee program, OSM will not be making a final decision to approve or disapprove the amendments submitted by DSM on February 28, 1984.

## Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

## List of Subjects in 30 CFR Part 942

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

Authority: Pub. L. 95-87 Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: June 20, 1984.

J. Lisle Reed,

*Acting Director, Office of Surface Mining.*

[FR Doc. 84-17651 Filed 7-2-84; 8:45 am]

[BILLING CODE 4310-05-M]

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## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## 31 CFR Part 10

## Continuing Professional Education for Individuals Enrolled to Practice Before the Internal Revenue Service

**AGENCY:** Treasury Department.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This notice reflects advance notice of an intention to modify the regulations governing practice before the Internal Revenue Service. The modification would require continuing professional education as a condition for the maintenance of good standing for enrollment to practice before the Internal Revenue Service. It is proposed that an individual so enrolled would be required to satisfy continuing professional education requirements and to renew his or her enrollment on a periodic basis. The proposal also contemplates a fee for the renewal of enrollment. The fee would be for the purpose of meeting the costs of administering the program. Before proceeding, it is believed desirable and appropriate to receive comments on the proposal from members of the public. This notice is being published for that purpose.

**DATE:** Comments must be in writing and must be received September 4, 1984.

**ADDRESS:** Mr. Leslie S. Shapiro, Director of Practice, Department of the Treasury, Internal Revenue Service, Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leslie S. Shapiro, Director of Practice, Telephone: (202) 535-6787

**SUPPLEMENTARY INFORMATION:**

## Background

The Secretary of the Treasury, under authority of 31 U.S.C. 330, is authorized to regulate the practice of representatives of persons before the Department of the Treasury (Treasury) and, before admitting a representative to so practice, to require that a representative demonstrate:

(A) Good character;

(B) Good reputation;

(C) Necessary qualifications to enable the representative to provide to persons valuable service; and

(D) Competency to advise and assist persons in presenting their cases.

Consistent with that authority, Treasury has promulgated regulations in 31 CFR Part 10 governing the enrollment of individuals who wish to practice before the Internal Revenue Service. Those regulations have been reprinted as Treasury Department Circular No. 230 (Circular 230). In order to qualify for enrollment, an individual is required to demonstrate competence in Federal tax matters by virtue of either appropriate former employment with the Internal Revenue Service or successful completion of an examination offered by the Internal Revenue Service on an annual basis. Those who are enrolled generally are referred to as "enrolled agents." (Attorneys in good standing and duly qualified certified public

accountants, who also are eligible to practice before the Internal Revenue Service, are entitled to do so without any enrollment requirement under authority of 5 U.S.C. 500. Accordingly, Treasury does not have jurisdiction to govern those individuals' admission to engage in such practice.)

The Internal Revenue Service relies on tax practitioners to perform their duties with skill and competence, to uphold the integrity of our tax system, and to foster their clients' confidence in it. In order to perform their functions in an appropriate manner, it is vital that tax practitioners maintain at least a minimum level of professional competence. This is particularly so in an area as volatile and dynamic as our Federal tax system.

An enrolled agent generally assumes the same privileges and responsibilities as an attorney or certified public accountant in representing taxpayers before the Internal Revenue Service. However, unlike attorneys and certified public accountants who are subject to the requirements of local law, enrolled agents are regulated only by Treasury. It is believed by Treasury that the maintenance of minimum competence in tax matters can be effected at least in part through continuing professional education. Therefore, Treasury has under active consideration a proposal to mandate continuing professional education for enrolled agents in order to maintain their good standing as such.

To help assure that enrolled agents receive quality continuing education, appropriate standards are needed. With appropriate standards, programs are less likely to vary in quality of development, presentation, measurement, and reporting of credits. Moreover, the large number of programs available throughout the United States, the varying backgrounds and credentials of sponsoring organizations, and the mobility of participants in these programs create measuring and reporting problems that suggest the need for nationally uniform standards. Accordingly, the following continuing professional education program currently is being studied.

Program Requirements

Mandatory continuing education would be required of all enrolled agents in order to maintain good standing and authority to engage in practice before the Internal Revenue Service. This would be a condition for continued active enrollment beginning in the year 1987

An individual must complete and report continuing education hours in accordance with the following schedule:

(1) *1987 Enrollment*—A minimum of 30 hours of continuing education credit, of which 20 hours must be in Federal taxation or courses directly related to Federal taxation, taken during the period of October 1, 1985–September 30, 1986. An exception would be made for an individual who receives initial enrollment during this time period. Such an individual would be required to complete 2.5 continuing education credit hours per month (1.66 hours in Federal taxation or courses of a related nature) for each month enrolled.

(2) *Maintenance of Enrollment for 1990 and Every Third Year Thereafter*—After the year 1987, the continuing education requirement would be met on a three year cycle. Specifically, an enrolled agent, in order to maintain active enrollment status for 1990 and every third year thereafter, would be required to complete at least 90 continuing education credit hours, of which 60 hours must be comprised of Federal taxation courses or courses directly related to Federal taxation. In so doing, an individual must complete on an annual basis (October 1–September 30) a minimum of at least 15 continuing education credit hours, of which 10 hours must be in Federal taxation courses or courses directly related to Federal taxation. An enrolled agent would be required to report this on an annual basis. An individual enrolled during a reporting cycle would be required to complete 205 continuing education credit hours per month (1.66 hours in Federal taxation) for the months enrolled during that cycle.

Measurement

All programs would be measured in terms of 50-minute contact hours. The shortest recognized program would be one contact hour. The purpose of this standard is to develop uniformity in the measurement of continuing education activity. A contact hour in 50 minutes of continuous participation in a program. Under this standard, credit is granted only for full contact hours, i.e., 50 minutes. A program lasting more than 50 minutes but less than 100 minutes would count only for one hour.

When individual segments are fewer than 50 minutes at continuous conferences, conventions and the like, the sum of the segments would be considered one total program. For example, five 30-minute presentations would equal 150 minutes and would be counted as three contact hours.

For university or college courses, each semester hour credit would equal 15 hours. A quarter hour credit would equal 10 hours.

Qualifying Programs

The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of an enrolled agent. Repeated taking of a particular course would not qualify unless it can be demonstrated that the subject matter of the course has changed sufficiently to provide additional information which would improve professional competence. (The Director of Practice would review particular courses for this purpose.) A provider of continuing education programs would qualify as such upon demonstrating that the qualifying criteria are met. Because it is estimated that a large number of individual courses might be acceptable within appropriate subject matter areas, the Director of Practice does not contemplate publishing any list of specific courses which are acceptable. In order to qualify, a program must:

(1) Be comprised of subject matter in an area that contributes to the professional competence of an enrolled agent,

(2) Require attendance by the enrolled agent,

(3) Be at least one class hour (50-minute period) in length,

(4) Be conducted by a qualified instructor or discussion leader,

(5) Require a maintained record of attendance, and

(6) Require a written outline to be retained.

Correspondence or individual study programs that contribute to the professional competence of an enrolled agent and which provide evidence of satisfactory completion by the enrolled agent would qualify, with the amount of credit to be determined by the Director of Practice. The Director of Practice would not accept any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The objective in determining the amount of credit to be allowed for specific correspondence and individual study programs (including taped study programs) would be to determine the equivalency of each such program to a comparable seminar or a comparable course for credit in an accredited educational institution. Credit would be allowed in the renewal period in which the course is completed.

Renewal

The continuing professional education program contemplates renewal of enrollment contemporaneous with the

three year education cycle. Accordingly, the enrolled agent would be required to apply for renewal by December 31, 1986 and every third year thereafter. The application for renewal would be the vehicle to provide evidence that the continuing education requirements have been met.

Extensions and Waivers

Individuals who do not complete and report the required continuing education hours in a timely manner would be permitted to request a 90-day grace period. The request must be accompanied by an affidavit (a sworn statement) describing the reason(s) for the request. If the Director of Practice determines there is good cause, the enrolled agent would be permitted to make up the deficiency during the grace period. (Hours accrued for the purpose of making up a deficiency would not be credited toward the next period's continuing education requirement.) If the Director of Practice determines there is not good cause for requesting the grace period, the affected enrolled agent would be so notified.

Exemptions from the mandatory continuing education requirements for a given period would be granted for the following reasons:

(1) Health, which prevented compliance with the continuing education requirements;

(2) Extended active military duty;

(3) Absence from the United States for an extended period of time due to employment or other reasons, provided the enrolled agent does not practice before the Internal Revenue Service during such absence; or

(4) Other compelling reasons, which would be considered on a case-by-case basis.

In all instances, a request for waiver would be required to be accompanied by appropriate documentation and the enrolled agent must be prepared to furnish any additional documentation or explanation the Director of Practice would deem necessary. Examples of appropriate documentation could be a medical certificate, military orders, etc.

Fees

A renewal fee would be charged each enrolled agent who submits a renewal application. The amount of the fee would be established by the Director of Practice and would be non-refundable.

Failure to Renew and/or Satisfy Continuing Professional Education Requirements

An enrolled agent who fails to make application for renewal or to meet the continuing professional education requirements may have his or her enrollment inactivated under procedures to be established by the Director of Practice. An enrolled agent whose enrollment is inactive would be required, before reinstatement, to satisfy all delinquent continuing professional education hours and to comply with other requirements which may be established.

Dated: June 28, 1984.

Leslie S. Shapiro,

*Director of Practice, Department of the Treasury.*

[FR Doc. 84-17625 Filed 7-2-84; 8:45 am]

BILLING CODE 4810-25-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 84-627; RM-4715]

### FM Broadcast Station in Goodland, Kansas; Proposed Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein, at the request of Jerrell E. Kautz, proposes the assignment of Channel 299 to Goodland, Kansas. The assignment could provide that community with its second commercial FM service.

**DATES:** Comments must be filed on or before August 17 1984, and reply comments on or before September 4, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Goodland, Kansas); MM Docket No. 84-627 RM-4715.

Adopted: June 20, 1984.

Released: June 26, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed December 9, 1983 by Jerrell E. Kautz ("petitioner") which proposes the assignment of Class C FM Channel 299 to Goodland, Kansas, as the community's second commercial FM assignment. Petitioner has expressed an intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the fact that the proposed assignment could provide a second copmmercial FM service to Goodland, Kansas, the Commission proposes to amend the FM Table Assignment, § 73.202(b), of the Commission's Rules, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Goodland, Kansas | 273 | 273, 299 |

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 17, 1984 and reply comments on or before September 4, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Jerrell E. Kautz, 4521 25th Street, Columbus, NE 68601 (Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment

which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

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

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission s Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advance in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 84-17635 Filed 7-2-84; 8:45 am]

BILLING CODE 6712-01-M

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## 47 CFR Part 73

[MM Docket No. 84-628; RM-4716]

## FM Broadcast Station in Ely, Nevada; Proposed Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein proposes the assignment of FM Channel 269A to Ely, Nevada, as that community's second local FM assignment, at the request of the Hansen Corporation.

**DATES:** Comments must be filed on or before August 17 1984, and reply comments on or before September 4, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

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

**SUPPLEMENTARY INFORMATION:** Radio broadcasting.

### Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Ely, Nevada); MM Docket No. 84-628, RM-4716.

Adopted: June 20, 1984.

Released: June 28, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by the Hansen Corporation ("petitioner") requesting the assignment of FM Channel 269A to Ely, Nevada, as that community's second local FM assignment. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. The petitioner has indicated its intention to apply for the channel, if assigned.

2. We believe the public interest would be served by seeking comments on the requested assignment. Accordingly, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as concerns the community listed below, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Ely, Nevada | 224A | 224A, 269A |

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before August 17, 1984, and reply comments on or before September 4, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Robert B. McKenna, Jr., Esq., Luisa L. Lancett, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue NW., Washington, D.C. 20006 (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules.* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K.

Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channnel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considereed in the proceeding.

Federal Communications Commission.

**Charles Schott,**

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

## Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproppsals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-17636 Filed 7-2-84; 8:45 am]
BILLING CODE 6712-01-M

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## 47 CFR Part 73

**[MM Docket No. 84-626; RM-4723]**

## FM Broadcast Station in Lisbon, North Dakota; Proposed Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** proposed rule.

**SUMMARY:** Action taken herein, at the request of Charles Thompson, Terry Loomis, and Bob Hein, proposes the assignment of Channel 292A to Lisbon, North Dakota, as the community's first FM service.

**DATES:** Comments must be filed on or before August 17 1984 and reply comments on or before September 4, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634 6530.

**SUPPLEMENTARY INFORMATION:** List of Subjects in 47 CFR Part 73.

Radio broadcasting.

## Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Lisbon, North Dakota); MM Docket No. 84-626, RM-4723.

Adopted: June 20, 1984.
Released: June 26, 1984.
By the Chief, Policy and Rules Division.

1. A petition for rule making was filed December 15, 1983, by Charles Thompson, Terry Loomis and Bob Hein ("petitioners") which proposes the assignment of Channel 292A to Lisbon, North Dakota, as the community's first FM assignment. Petitioners have expressed an intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Since Lisbon, North Dakota is located within 320 kilometers (200 miles) of the U.S.-Canadian border the proposed assignment requires concurrence by the Canadian government.

3. In view of the fact that the proposed assignment could provide a first FM service to Lisbon, North Dakota, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, for the following community:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Lisbon, North Dakota | | 292A |

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the

Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 17 1984 and reply comments on or before September 4, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Charles Thompson, Terry Loomis, Bob Hein, 521 Sims Dickinson, North Dakota Petitioners.

Edward M. Johnson; One Regency Square, Suite 450, Knoxville, Tennessee 37915 (Consultant to Petitioners).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7 For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

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

## Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advance in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advance in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriated pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-17032 Filed 7-2-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–625; RM–4739]

## TV Broadcast Stations in North Las Vegas, Las Vegas, and Goldfield, Nevada and Cedar City, Utah; Proposed Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein, at the request of James D. Merkel, proposes assignment of VHF TV Channel 4 to North Las Vegas, Nevada, as the community's first television facility. In addition the substitution of VHF Television Channel 2 for Channel 3 in Las Vegas, Nevada; deletion of VHF Television Channel 2 from Goldfield, Nevada; and substitution of VHF Television Channel 7 for Channel 4 in Cedar City, Utah.

**DATES:** Comments must be filed on or before August 17, 1984, and reply comments on or before September 4, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:**

List of Subjects in 47 CFR Part 73

Television broadcasting.

## Proposed Rule Making and Order To Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (North Las Vegas, Las Vegas, and Goldfield, Nevada and Cedar City, Utah); MM Docket No. 84–625, RM–4739.

Adopted: June 20, 1984.

Released: June 27, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed on January 4, 1984, by James D. Merkel, ("petitioner") requesting the assignment of VHF Television Channel 4 to North Las Vegas, Nevada, as the community's first commerical television facility. This can be accomplish by substituting VHF Television Channel 2 for Channel 3 in Las Vegas, Nevada; deleting VHF Television Channel 2 from Goldfield, Nevada; and substituting VHF Television Channel 7 for Channel 4 in Cedar City, Utah.

2. North Las Vegas (population 42;739)[1] in Clark County (population 463,087) is located in southern Nevada approximately 390 kilometers (240 miles) northeast of Los Angeles. Goldfield (population 200),[2] seat of Esmeralda County (population 777) is located approximately 260 kilometers (160 miles) northwest of North Las Vegas. Channel 3 in Las Vegas is occupied by Station KVBC; Channel 4 in Cedar City has two applications pending for its use; [3] and Channel 2 at Goldfield is unoccupied and unapplied for. We are herein issuing an *Order to Show Cause* to Valley Broadcasting Company ("Valley"), licensee of Station KVBC at Las Vegas. CMM, Inc. ("CMM") and Michael Glenn Golden ("Golden"), the applicants for Channel 4 at Cedar City, Utah are being served with this *Notice* in order to elicit their comments. Should Channel 7 be substituted at Cedar City, CMM and Golden would be required to amend their applications to specify the new frequency.

3. Petitioner submitted information in support of the proposal and expressed an interest in applying for the channel, if assigned. As required by Commission policy, the successful applicant for Channel 4 at North Las Vegas will be required to reimburse Station KVBC–TV for the reasonable cost of changing channels. Petitioner failed to state its willingness to reimburse Station KVBC–TV and is therefore requested to do so in his comments herein.

4. The assignment of VHF Television Channel 4, and the substitutions can be made in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

5. Since North Las Vegas and Las Vegas are located within 320 kilometers (199 miles) of the U.S.-Mexican border the proposed assignments require concurrence by the Mexican government.

6. In view of the fact that North Las Vegas could receive a first local television broadcast service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (Section 73.606(b) of the Commission's Rules) for the following communities:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Goldfield, Nevada | 2– | |
| Las Vegas, Nevada | 3, 8–, * 10+, | 2+ 8–, * 10+, 13–, 15+ and 21+. |
| North Las Vegas, Nevada. | | 4–. |
| Cedar City, Utah | 4, * 16+ | 7+ 16+. |

7 It is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Valley Broadcasting Company, shall show cause why its license should not be modified to specify operation on Channel 2 at Las Vegas, Nevada as proposed herein instead of its present Channel 3.

8. Pursuant to § 1.87 of the Commission's Rules, Valley, may, not later than August 17 1984 request that a hearing be held on the proposed modifications. If the right to request a hearing is waived, it may not later than August 17 1984, file a written statement showing with particularity why its license or application should not be modified as proposed in the *Order to Show Cause.* In this case, the Commission may call on Valley to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license or application as provided in the *Order to Show Cause.* If the right to request a hearing is waived and no written statement is filed by the date referred to above, Valley will be deemed to have consented to the modifications as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

9. It is further ordered, That the Secretary shall sent a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by certified mail, return receipt requested, to the following:

Valley Broadcasting Company, c/o Dow, Lohnes & Albertson, 1225 Connecticut Avenue, NW., Washington, D.C. 20036

Valley Broadcasting Company, Station KVBC–TV P.O. Box 44169, Las Vegas, Nevada 89104

CMM, Inc., 215 Lantana Road, Crossville, Tennessee 38555, Attention: Mike Miller

Michael Glenn Golden, One Chalet Drive, P.O. Box 188, Brian Head, Utah 84719

Edward M. Johnson & Associates, Inc., Suite 450, One Regency Square, Knoxville, Tennessee 37915

J. Geoffrey Bentley, Liberman, Sanchez & Bentley, 2000 L Street, NW., Suite 200, Washington, D.C. 20036

10. Interested parties may file comments on or before August 17, 1984 and reply comments on or before September 4, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: James D. Merkel, 328 Rochester Road, Zelienople, PA 16063 (Petitioner).

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6350. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or writen) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Population figures are from 1980 U.S. Census, unless otherwise indicated.

[2] The population of Goldfield was provided by the petitioner.

[3] Applications are on file for Channel 4 at Cedar City, Utah, from CMM, Inc. (BPCT–830902KI) and Michael Glenn Golden (BPCT–831110KJ). The applications have been designed for hearing, MM Docket Nos. 84–169 and 84–170.

Federal Communications Commission.

Charles Schott,

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

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comment and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-17631 Filed 7-[illegible]-84; 8:45 am]
BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1039

[Ex Parte No. 346; Sub-19]

### Boxcar Car Hire And Car Service Advance Notice of Proposed Rulemaking

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** Several petitioners in Ex Parte No. 346 (Sub-No. 8), *Exemption From Regulation—Boxcar Trafffic* (48 FR 20412, May 6, 1983), have requested an opportunity of offer alternatives to our decision in that case, as it pertains to car hire and car services rules for boxcars. This proceeding is instituted for that purpose. It is our conviction that our decision in Ex Parte No. 346 (Sub-No. 8) offers a vast improvement over the prior situation, and that it seems to be working well. Although we reject the idea of returning to the situation that existed before our boxcar decision, those who would offer alternatives to our boxcar decision as it pertains to car hire and car service rules for boxcars, should offer specific, well-developed, constructive proposals containing elements which encourage efficiencies in joint movements.

**DATE:** Comments are due on or before October 31, 1984. Replies are due within 60 days of the close of the initial comment period.

**ADDRESS:** An original and 15 copies of any submission should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments should refer to Ex Parte No. 346 (Sub-No. 19).

**FOR FURTHER INFORMATION CONTACT:** Louis Gitomer (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** The purpose of this proceeding is to offer a vehicle for the public to submit proposals as alternatives to our recent decision in Ex Parte No. 346 (Sub-No. 8), *Exemption From Regulation-Boxcar Traffic,* 367 I.C.C. 424 (1933), reconsideration denied 367 I.C.C. 746 (1983), appeal pending *sub nom. Brae Corporation, et al.* v. *United States,* U.S.C.A. D.C. Circ., No. 83-1462 and consolidated cases.

By separate decision served June 27 1984, petitions seeking further stay of the boxcar exemption proceeding as it pertains to car hire rules for boxcars owned or leased by Class III rail carriers. Several petitioners in that proceeding also sought the institution of a separate proceeding to explore alternatives to the car hire aspect of our boxcar decision. We stated our willingness to consider any thoughtful proposal, ranging from stringent regulation to total exemption or deprescription. We also stated our belief that the regulatory scheme which existed prior to our boxcar decision was totally unsatisfactory. It reflected no awareness of supply and demand considerations and, consequently, produced extreme inefficiencies. Specifically, in recent years it has produced excess capacity, idle equipment, and wasteful empty movements. We also stated our conviction that our decision in Ex Parte No. 346 (Sub-No. 8) offers a vast improvement over the prior situation, and that it seems to be working well. For those reasons, we reject the idea of returning to the situation that existed before our boxcar decision. In sum, those who would offer alternatives to our boxcar decision, as it pertains to car hire and car service rules for boxcars, should offer specific, well-developed, constructive proposals containing elements which encourage efficiencies in joint movements.

Authority: 49 U.S.C. 10321(a) and 10505

Decided: June 26, 1984.

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

James H. Bayne,

*Secretary.*

[FR Doc. 84-17628 Filed 7-2-84; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 32

## Refuge Specific Hunting Regulations

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to revise 50 CFR Part 32 to delete the provision that requires the issuance of special hunting regulations on an annual basis. Also, the term "special regulations" will be replaced by a more appropriate term "refuge specific regulations." General provisions concerning baiting and the use of tree stands for hunting on national wildlife refuges will be added to § 32.2. In addition, refuge specific hunting regulations governing hunting on refuges are proposed to replace the interim hunting regulations that were issued in 1982. This rule proposes to delete § 32.5 which is duplicative of § 32.12 and was erroneously inserted into Part 32.

Notice is also given of the withdrawal of the proposed rule regarding hunting regulations for Washita National Wildlife Refuge (NWR), Oklahoma, published May 4, 1983 (48 FR 20100), because they are contained herein.

**DATE:** Comments on this proposed rule must be submitted on or before August 2, 1984.

**ADDRESS:** Send comments to Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, 18th and C Streets NW, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** James F Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (telephone 202-343-4311).

**SUPPLEMENTARY INFORMATION:** 50 CFR Part 32 contains the provisions that govern hunting on national wildlife refuges. Hunting is regulated on refuges for three basic reasons: (1) To properly manage the wildlife resource, (2) to protect other refuge values, and (3) to ensure refuge user safety. On many refuges, the Service policy of adopting the State hunting regulations is often an adequate way of meeting these objectives, but on other refuges it is necessary for the Service to issue hunting regulations in addition to State regulations to ensure that the Service meets its management responsibilities.

Section 32.3 contains the provision that requires the publication of hunting regulations for a given refuge on an annual basis. These regulations are generally limited to one season and historically have not been permanently codified in Title 50 of the *Code of Federal Regulations.* The Service implemented this provision in 1960 when the Department of the Interior revised and reorganized Title 50 of the *Code of Federal Regulations.* Since then, the Service has added more than 100 refuges to the lists of areas open to hunting in Part 32. Also, the authority to issue these regulations has been centralized in the Office of the Assistant Secretary for Fish and Wildlife and Parks which ensures the standardization of these refuge hunting regulations throughout the National Wildlife Refuge System. For these reasons, the provision in § 32.3 that requires annual publication of refuge hunting regulations has become a costly administrative burden and has adversely affected their timely issuance. Therefore, the Service proposes to delete this provision and to issue the refuge specific hunting regulations listed in this rule. Once these regulations are codifed, they would remain in place and control hunting activities on a given refuge, unless and until they are amended by subsequent regulations published in the **Federal Register.**

The hunting regulations that have been developed for individual refuges are referred to as "special regulations" in Part 32. These "special regulations" are similar in effect to any other regulation used to govern an activity or use on national wildlife refuges, and they have no "special" value as the term implies. Therefore, the Service proposes a technical amendment to change the term "special regulations" in Part 32 to "refuge specific regulations" to clarify the fact that these hunting regulations govern individual hunt programs on particular refuges.

This rulemaking proposes refuge specific hunting regulations only for refuges that have been opened in previous rulemakings and does not add any refuges to the list of those open to hunting. This rulemaking represents an administrative technical amendment that is designed to place the regulations governing hunting on refuges in the **Code of Federal Regulations.** In the absence of such refuge specific hunting regulations, hunting on national wildlife refuges is permitted subject to State law and regulations and the provisions of 50 CFR Part 32.

Section 32.2 contains the general provisions that govern hunting on national wildlife refuge areas. This rulemaking will add two new provisions that will govern baiting for purposes of upland and big game hunting and the use of tree stands. While baiting for purposes of migratory game bird hunting is prohibited (50 CFR 20.21), the baiting of resident game for hunting purposes is practiced in some States. Even though baiting may be an acceptable practice on a Statewide basis, the effects of baiting on a relatively small area such as a refuge can detract from a refuge's wildlife management program. For example, baiting can attract wildlife from adjacent nonrefuge lands, thereby altering normal concentrations of both refuge and nonrefuge wildlife populations and restricting legitimate harvest of wildlife outside of the refuge. By providing an artificial food supply, baiting can also alter behavioral patterns of target wildlife species or attract nontarget species in undesirable numbers both of which could conflict with refuge management objectives. Therefore, the Service proposes to add a general provision to § 32.2 for big game and upland game hunting that prohibits the unauthorized distribution of bait and the hunting over bait on all wildlife refuge areas.

Hunting programs on refuges are managed so that minimal disturbances to refuge habitat occur. Hunting from trees is a common practice, and injury to trees can be avoided if the equipment used to support a hunter does not penetrate through the bark of the tree. Therefore, the Service proposes to add to § 32.2 a general provision that prohibits the use of nails, wire, screws or bolts to attach stands to trees and prohibit the hunting from a tree into which a metal object has been driven to support the hunter.

The Service last published hunting regulations on September 13, 1982 (47 FR 40298). Those hunting regulations have been standardized and simplified and are presented in this rule. The Service's proposal to delete the annual publication provision would permit the codification of these standardized regulations in § 32.12, 32.22 and 32.32. Therefore, this rulemaking would supersede the interim refuge hunting regulations issued on September 13, 1982 (47 FR 40298). This rulemaking also withdraws the proposed rule regarding hunting regulations for Washita NWR, Oklahoma (48 FR 20100), because they are contained herein.

This rulemaking would also delete § 32.5 which was added to Part 32 when migratory game bird hunting regulations

for Ravalli NWR were incorrectly designated as § 32.5 in a rule published on July 10, 1973 (38 FR 18379).

Section-by-Section Analysis

*Section 32.2 General Provisions.*

Paragraph (e) requires hunters to comply with the terms and conditions authorizing access or use of the national wildlife refuge area. This paragraph will be revised to expressly require compliance with the terms and conditions of permit issued by the Service to authorize an individual's participation in a refuge hunt program.

The term "special regulations" will be replaced by "refuge specific regulations" in paragraph (f) for the purposes of clarity. Also, the last sentence in paragraph (f) which states that special regulations are not codified will be replaced by one that states that refuge specific hunting regulations are codified in § 32.12, 32.22, and 32.32.

A new paragraph (h) will be added to prohibit the unauthorized baiting and hunting over bait on wildlife refuge areas, and a new paragraph (i) will be added to prohibit the use of nails, wire, screws or bolts to attach stands to trees and to prohibit the hunting from a tree into which a metal object has been driven to support a hunter.

*Section 32.3 Procedure for publication of special regulations.*

The terms "special regulations" and "special hunting regulations" will be replaced wherever they are used in this section by the term "refuge specific hunting regulations."

Paragraph (a) of this section will be revised to permit the issuance of refuge specific hunting regulations for a refuge at the time of publication of the opening of that refuge to migratory game bird, upland game and/or big game hunting.

Paragraphs (b) and (e) will be deleted because these provisions contain requirements relating to the annual publication of refuge specific hunting regulations. also, the statement that special regulations are not codified will be deleted from paragraph (g).

Paragraph (h) will be revised to clarify the provision that enables the Service to properly manage refuges under unforeseen circumstances. When unanticipated changes occur in wildlife populations, habitat conditions or other factors affecting a refuge's wildlife resources, the regional director will be authorized to make changes in the existing refuge specific regulations or impose new regulations during the hunting season. These changes will be made only under the conditions noted above and will be in force only for the one hunting season to which they are applied.

*Section 32.5 Special regulations; migratory game birds.*

This section will be deleted. It was added to Part 32 in 1973 by the publication of special regulations for migratory game bird hunting at Ravalli National Wildlife Refuge (NWR), Montana (38 FR 18379). This document incorrectly designated § 32.5 as the section for special regulations for migratory game bird hunting. The current section reference for such regulations is 32.12.

Request for Comments

It is policy of the Fish and Wildlife Service, whenever practicable, to afford the public an opportunity to participate in the Service's rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections concerning this proposed rule to the Associate Director—Wildlife Resources (address above), by the end of the comment period. All substantive comments will be considered in the preparation of the final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental of secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were establish. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the affected national wildlife refuges were established. Compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of the refuge to the lists of areas open to hunting in 50 CFR.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Service proposes to delete its requirement for annual publication of refuge specific hunting regulations and to codify these regulations in 50 CFR. As described above, the elimination of this administrative burden will benefit the Federal Government and affected individuals. In addition, the Service proposes to revise and replace the refuge specific hunting regulations that were issued in September 1982. These proposed actions will not significantly alter existing refuge hunting programs and, therefore, are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

These requirements are presently approved by OMB as cited below:

| Type of information collection | OMB Approval No. |
|---|---|
| Hunter surveys | 1018-0044. |
| Special use permits | 1018-0046 |
| Hunter reservation/application/blind assignment | 1018-0047 |
| Weapon qualification | 1018-0050 |

The regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1977 (41 FR 51131). Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(c)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of the refuge to the lists of areas open to hunting in 50 CFR. Also, refuge specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of the refuge. The changes in the general provisions governing hunting on national wildlife refuges and the refuge specific hunting regulations that are proposed in this rulemaking do not significantly alter the existing use of national wildlife refuges.

Richard Frietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C., is the primary author of this proposed rulemaking document.

Information regarding the conditions that apply to individual refuge hunts and a map of the hunt area are available at refuge headquarters. This information can also be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; telephone (503) 231-6214

Region 2—Arizona, New Mexico, Oklahoma and Texas
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; telephone (505) 766-2324

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; telephone (612) 725-3507

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico and Tennessee
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303; telephone (404) 221-3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; telephone (617) 965-5100

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80255; telephone (303) 234-4608

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State hunting regulations. There are no refuge specific hunting regulations for these refuges)
Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; telephone (907) 786-3542.

List of Subjects 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

## PART 32—[AMENDED]

For the reasons set forth in the preamble, Part 32, Subchapter C, Chapter I of Title 50 *Code of Federal Regulations*, is proposed to be amended as set forth below:

1. Section 32.3 is amended by revising paragraphs (e) and (f) and add new paragraphs (h) and (i) to read as follows:

**§ 32.3 General provisions.**

* * * * *

(e) Each person shall comply with the terms and conditions authorizing access or use of wildlife refuges, including the terms and conditions under which hunting permits are issued.

(f) Each person shall comply with the provisions of any refuge specific regulations governing hunting on the wildlife refuge area. Regulations for a particular wildlife refuge are available at that area's headquarters. In addition, refuge specific hunting regulations for migratory game bird, upland game and big game hunting are codified in §§ 32.12, 32.22, and 32.32, respectively.

* * * * *

(h) The unauthorized distribution of bait and the hunting over bait is prohibited on wildlife refuge areas.

(i) The use of nails, wire, screws or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter is prohibited on wildlife refuge areas.

2. Section 32.3 is revised to read as follows:

**§ 32.3 Procedures for publication of refuge specific hunting regulations.**

(a) Refuge specific hunting regulations are issued only at the time of or after the determination and publication of the opening of a wildlife refuge area to migratory game bird, upland game or big game hunting.

(b) Refuge specific hunting regulations may contain the following items:

(1) Wildlife species that may be hunted,

(2) Seasons,

(3) Bag limits,

(4) Methods of hunting,

(5) Description of areas open to hunting, or

(6) Other provisions as required.

(c) Refuge specific hunting regulations will not liberalize existing State laws or regulations.

(d) Refuge specific hunting regulations are subject to change and the public is invited to submit suggestions and comments for consideration at any time.

(e) Refuge specific hunting regulations are initially published in the daily issue of the Federal Register and are subsequently codified in 50 CFR 32.12, 32.22 or 32.32.

(f) Refuge specific hunting regulations may be amended when unpredictable changes occur in wildlife populations, habitat conditions or in other factors affecting a refuge's wildlife resources. The regional director is authorized, in accordance with the provisions of the

Administrative Procedure Act (5 U.S.C. 551 *et seq.*), to make changes in existing refuge specific hunting regulations or impose new regulations during the hunting season. Changes in refuge specific hunting regulations made under the conditions noted above can be in force only for the one season to which the changes apply.

**§ 32.5 [Removed]**

3. Remove § 32.5 from text and table of sections in Part 32.

4. Sections 32.12, 32.22 and 32.32 are revised to read as follows:

**§ 32.12 Refuge specific regulations; migratory game birds.**

(a) *Alabama—Wheeler National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(b) *Alabama and Georgia—Eufaula National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting of ducks and coots is permitted only on Mondays, Wednesdays and Saturdays until noon.

(3) Dove hunting is permitted only in the Alabama portion of the refuge. Dove hunting is permitted from noon until sunset.

(4) Hunting is not permitted outside the area assigned to the hunting parties.

(5) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(6) Hunters are required to check in and out of the refuge.

(7) Checking bagged game is required.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules and geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Special Use Permits are required for all hunting guides.

(ii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.

(iii) Neither hunters nor dogs may enter closed areas of retrieve game.

(iv) Pits or permanent blinds are not permitted.

(v) The following additional restrictions apply to Zone II A:

(A) During the waterfowl season, Farm Unit II is closed to dove hunting until noon each day.

(B) In Farm Unit II, waterfowl hunters must remain within 50 feet of designated stations while hunting except when actively retrieving downed birds.

(C) During the goose season, waterfowl hunters may use or possess no more than 10 shells per day except that the shell limit ends at noon daily in the Hart Mine Marsh Area.

(2) *Havasu National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Neither hunters nor dogs may enter closed areas to retrieve game.

(ii) Pits and permanent blinds are not permitted.

(iii) The following regulations apply only to Pintail Slough (all refuge lands north of the north dike):

(A) Permits are required for waterfowl hunting.

(B) Dove hunting is permitted only during the September season.

(3) *Imperial National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following condition: Pits and permanent blinds are not permitted.

(d) *Arkansas*—(1) *Felsenthal National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during the special teal season.

(iii) Hunting of ducks and coots is permitted until noon each day.

(iv) Only portable blinds are permitted.

(v) Blinds, boats and decoys must be removed from the refuge following each day's hunt.

(2) *Holla Bend National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Overflow National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during the special teal season.

(iii) Hunting of ducks and coots is permitted until noon each day.

(iv) Only protable blinds are permitted.

(v) Blinds, boats and decoy's must be removed from the refuge following each day's hunt.

(4) *White River National Wildlife Refuge.* Hunting of doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon.

(iii) Hunting is not permitted during the special teal season.

(iv) Snipe, woodcock and dove may be taken when their seasons coincide with the refuge waterfowl hunting season.

(v) Only portable blinds are permitted

(vi) Blinds and decoys must be removed from the refuge following each day's hunt.

(e) *California*—(1) *Clear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following condition: Air-thrust and inboard water-thrust boats are not permitted.

(2) *Colusa National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(3) *Delevan National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(4) *Kern National Wildlife Refuge.* Hunting of geese, ducks, coots and gallinules is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters assigned to the spaced blind unit must travel to and from parking areas and blind sites with firearms unloaded.

(ii) Hunters assigned to the spaced blind unit must remain within 100 feet of the numbered steel post (blind site) except when pursuing cripples, placing decoys or traveling to and from the parking area.

(5) *Kesterson National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(ii) Portable blinds must be removed from the refuge following each day's hunt.

(iii) The construction and use of permanent blinds are not permitted.

(6) *Lower Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the

refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16, hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Waterfowl, coot, gallinule and snipe shooting hours end at 1:00 p.m. daily on all California portions of the refuge.

(iii) Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to or from the hunting areas.

(iv) Decoys may not be set in retrieving zones.

(v) Air-thrust and inboard water-thrust boats are not permitted.

(7) *Modoc National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions;

(i) Permits are required.

(ii) After the first weekend of the open season, hunting is permitted only on Tuesdays, Thursdays and Saturdays.

(iii) In the designated spaced blind area, hunters must remain within 50 feet of the established blind stake for the blind assigned to them.

(8) *Sacramento National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Firearms must be unloaded while being transported between parking areas and blind sites.

(ii) Snipe hunting is not permitted in the spaced blind unit.

(iii) Hunters assigned to the spaced blind unit are restricted to their assigned blind except for retrieving downed birds, placing decoys or traveling to and from the parking area.

(iv) Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

(9) *Salton Sea National Wildlife Refuge.* Hunting of geese, ducks, coots and gallinules is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters using the Union Tract must use goose decoys.

(ii) Hunters must hunt from assigned blinds or stakes except when shooting to retrieve crippled birds.

(10) *San Francisco Bay National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters may retrieve birds that fall into an area that is closed to hunting, provided that all weapons are left within a legal hunting area.

(ii) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(iii) The construction and use of permanent blinds are not permitted.

(iv) Digging into levees is not permitted.

(v) Nonmotorized boats may be used on all 9 ponds for setting out and retrieving decoys or for retrieving downed waterfowl. Nonmotorized boats may also be used for hunting on Ponds, 1, 2, 3, 4, 5 and 6 of the Mowry Slough Unit.

(vi) All decoys, boats and other personal property must be removed from the refuge following each day's hunt.

(11) *San Luis National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(ii) The construction and use of permanent blinds are not permitted.

(iii) Portable blinds must be removed from the refuge following each day's hunt.

(12) *Sutter National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(13) *Tule Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Hunting of waterfowl, coot, gallinule and snipe is permitted until 1:00 p.m. each day.

(iii) In designated spaced blind areas, possession of any loaded firearms more than 100 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

(iv) Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to and from the hunting areas.

(v) Decoys may not be set in retrieving zones.

(vi) Air-thrust and inboard water-thrust boats are not permitted.

(f) *Colorado*—(1) *Alamosa National Wildlife Refuge.* Hunting of morning doves, geese, ducks, coots, mergansers and common snipe is permitted on designated areas of the refuge subject to the following condition: Common snipe and morning dove hunting are permitted only during the waterfowl hunting season.

(2) *Browns Park National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge.

(3) *Monte Vista National Wildlife Refuge.* Hunting of morning doves, geese, ducks, coots, mergansers and common snipe is permitted on designated areas of the refuge subject to the following condition: Common snipe and morning dove hunting are permitted only during the waterfowl hunting season.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Hunting of morning doves, rails, gallinules, woodcock, crows, and common snipe is permitted only on the South Upland Hunting Area.

(2) *Prime Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required for waterfowl hunting.

(h) *Florida*—(1) *Chassahowitzka National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(iii) Only temporary blinds are permitted.

(iv) Decoys must be removed from the refuge following each day's hunt.

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of ducks, gallinules, woodcock, rails, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during quota deer hunts.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iv) Only temporary blinds are permitted.

(v) Decoys must be removed from the refuge following each day's hunt.

(3) *Loxahatchee National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted Wednesday through Sunday except the refuge is closed to hunting on Christmas Day.

(iii) Hunting is not permitted during the special teal season.

(iv) Hunters must use and be in possession only of shells containing steel shoot.

(v) Guns must be unloaded and cased or dismantled when outside the hunt area and when the boat is enroute to or from the hunting area.

(vi) Only temporary blinds are permitted.

(4) *Merritt Island National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Wednesdays, Thursdays, Fridays and Saturdays until 1:00 p.m. Hunting is permitted until sunset on Sundays and the last days of the State waterfowl seasons.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Decoys, boats and other personal property must be removed from the refuge following each day's hunt.

(v) Only temporary blinds built of native vegetation are permitted.

(i) *Georgia and South Carolina—Savannah National Wildlife Refuge.* Hunting of ducks, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted only on Tuesdays, Thursdays and Saturdays until noon.

(3) Hunters must use and be in possession only of shells containing steel shot.

(4) Decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(j) *Idaho*—(1) *Bear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, and common snipe is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats are not permitted.

(2) *Camas National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge.

(3) *Deer Flat National Wildlife Refuge.* Hunting of geese, ducks, coots, common snipe and doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Only ducks and coots may be hunted on the Lake Lowell sector.

(ii) Only portable and temporary blinds constructed of natural materials are permitted.

(iii) The construction and use of permanent hunting blinds are not permitted.

(4) *Grays Lake National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

(5) *Kootenai National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Tuesdays, Thursdays, Saturdays and Sundays.

(ii) Hunters are limited to the use and/or possession of no more than 25 shells per day.

(iii) All firearms must be unloaded when in the posted retrieving zone for purposes of retrieving downed birds or traveling to or from the hunting area.

(6) *Minidoka National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

(k) *Illinois*—(1) *Chautauqua National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only in the area outside the main dike in the Liverpool Lake section and north of the entrance to the north ditch known as Goofy Ridge Ditch.

(ii) The retrieval zone is limited to the river side of the main dike.

(iii) Only temporary structures of blinds constructed of native materials are permitted.

(2) *Crab Orchard National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville Public, and Greenbriar Road areas from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge established blinds.

(ii) During the goose season, on Grassy, Orchard, Sawmill and Turkey Islands, hunters may hunt only from blinds provided by the refuge. Only hunters occupying these blinds are allowed on the islands during the goose hunting season.

(iii) Hunters must use and be in possession of only shells containing steel shot.

(iv) Only portable or temporary blinds are permitted, and they can only be located on the shoreline of refuge waters.

(v) Blinds must be removed or dismantled at the end of each day's hunt.

(l) *Iowa—De Soto National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted until noon each day from November 1 through the end of the hunting season.

(3) Hunters must use and be in possession only of shells containing steel shot.

(4) Hunters may not use or possess more than 25 shells per day.

(m) *Iowa, Illinois, Missouri—Mark Twain National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the Big Timber Division and Turkey and Otter Islands subject to the following conditions:

(1) Only temporary wood or brush blinds are permitted.

(2) Blinds cannot be locked or otherwise sealed against public entry.

(3) Blinds are open to the public on a first-come first-serve basis if not occupied 30 minutes after the start of the legal shooting hours.

(n) *Iowa, Illinois, Minnesota, Wisconsin—Upper Mississippi River Wild Life and Fish Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions: Permits are required for Potter's March in Pool 13 except during the early teal season.

(o) *Kansas—(1) Kirwin National Wildlife Refuge.* Hunting of mourning doves, ducks, geese, coots and common snipe is permitted on designated areas of the refuge.

(2) *Quivira National Wildlife Refuge.* Hunting of mourning dove, geese, ducks, coot, rails, common snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters must use and be in

possession of only shells containing steel shot.

(p) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge. Hunting of ducks and woodcock is permitted on designated areas of the refuge subject to the following conditions:*

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

(2) *D'Arbonne National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted until noon each day.

(ii) Boats, decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(3) *Delta National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays and Sundays until noon during the State duck season.

(ii) Waterfowl hunting is not permitted during the special teal season.

(iii) Only temporary blinds are permitted.

(iv) Blinds and decoys must be removed from the refuge following each day's hunt.

(4) *Lacassine National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted Wednesday through Sunday except that hunting is permitted daily during teal season.

(ii) Hunting ends at noon each day.

(iii) Hunters may not enter the hunt area before 4:00 a.m.

(iv) Hunting is not permitted within 50 yards of a canal or waterway.

(v) Hunters must use and be in the possession only of shells containing steel shot.

(vi) Hunting parties must be spaced 150 yards apart. The first hunter(s) to arrive at a pond or blind site holds the site until the hunt is completed.

(vii) Decoys and portable blinds must be removed from the refuge following each day's hunt.

(viii) Only portable blinds and blinds constructed from native vegetation are permitted.

(5) *Sabine National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays and Sundays except that hunting is permitted daily during the entire western zone teal season.

(ii) Hunting is permitted until noon each day.

(iii) Hunting is not permitted during the goose-only season and on Christmas Day.

(iv) Hunters must use and be in possession only of shells containing steel shot.

(v) Hunters are required to check in and out of the refuge.

(vi) Checking bagged game is required.

(vii) Only portable blinds and blinds constructed of native vegetation are permitted.

(viii) Decoys and portable blinds must be removed from the refuge following each day's hunt.

(6) *Tensas River National Wildlife Refuge.* Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of ducks and coots is permitted only on Tuesdays, Thursdays, Saturdays and Sundays until noon each day.

(iii) Hunting is not permitted during the special teal season and the refuge deer hunts.

(7) *Upper Ouachita National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of ducks and coots is permitted until noon each day.

(ii) Boats, decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(q) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of waterfowl and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunting is permitted on the Brave Boat Harbor Hunting Area, Lower Wells Hunting Area and Upper Wells Hunting Area.

(iii) Woodcock hunting is permitted on the Lower Wells Hunting Area.

(iv) Hunting of sea ducks is permitted when their open season coincides with the regular waterfowl season.

(v) Hunters may not fire or possess more than 25 shells per day.

(r) *Massachusetts*—(1) *Oxbow National Wildlife Refuge.* Hunting of woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is not permitted.

(2) *Parker River National Wildlife Refuge.* Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The areas open to hunting are the Pine Island Hunting Area (Area A), Parker River Hunting Area (Area B), Nelson's Island Hunting Area (Area C) and the Youth Hunting Area (Area D).

(iii) Hunters must use and be in possession of only shells containing steel shot.

(iv) Hunters using Area B must set out waterfowl decoys and hunt within 50 yards of these decoys.

(v) Boat access is not permitted on Area C but is required on Area A. Boats may be launched or landed during the open season on waterfowl by persons authorized to participate in refuge hunting programs. Access to Area B is permitted by foot from the refuge parking lot off Marsh Avenue or via boat.

(s) *Michigan*—(1) *Seney National Wildlife Refuge.* Hunting of woodcock and Wilson's snipe is permitted on designated areas of the refuge.

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(t) *Minnesota*—(1) *Sherburne National Wildlife Refuge.* Hunting of ducks, coots, rails, woodcock and Wilson's snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Field possession of migratory game birds is not permitted on refuge areas closed to migratory game bird hunting.

(ii) Only nonmotorized boats are permitted, and they must be launched at designated access sites.

(iii) Boats, decoys and blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.

(2) *Tamarac National Wildlife Refuge*—Hunting of geese, ducks, coots, rails, woodcock and Wilson's snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

(ii) Blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.

(u) *Mississippi*—(1) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for dove hunting.

(ii) Duck and coot hunting is permitted until noon each day.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Duck and coot hunting is permitted until noon each day.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted until noon each day.

(4) *Noxubee National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Mondays, Wednesdays and Saturdays until noon.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters are required to check in and out of the refuge.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions: Duck and coot hunting is permitted until noon each day.

(6) *Yazoo National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following conditions: Doves may be taken when the dove hunting seasons coincides with the refuge squirrel and rabbit hunting seasons.

(v) *Missouri*—(1) *Mingo National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Swan Lake National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(w) *Montana*—(1) *Benton Lake National Wildlife Refuge.* Hunting of geese, ducks and coot is permitted on designated areas of the refuge subject to the following special conditions:

(i) Only nonmotorized boats are permitted.

(ii) Waterfowl hunting is not permitted after November 30.

(2) *Black Coulee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(3) *Bowdoin National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(4) *Creedman Coulee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower motors are not permitted.

(5) *Hewitt Lake National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air thrust boats and boats with motors greater than 10 horsepower motors are not permitted.

(6) *Lake Mason National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: The use of motorized boats is not permitted.

(7) *Lake Thibadeau National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(8) *Lee Metcalf National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters may not use or possess more than 25 shells per day.

(ii) Shooting is permitted only from or within 10 feet of designated blinds.

(9) *Red Rocks Lake National Wildlife Refuge.* Hunting of geese, ducks, coots and mergansers is permitted on designated areas of the refuge.

(x) *Nebraska*—*Valentine National Wildlife Refuge.* Hunting of mourning doves, geese, ducks and coots is permitted on designated areas of the refuge.

(y) *Nevada* —(1) *Pahranagat National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) A permit is required for all dove hunters, 14 years of age or older, for hunting from opening day through the following Monday.

(ii) Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

(2) *Ruby Lake National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, gullinules and common snipe is permitted on designated areas of the refuge.

(z) *New Jersey*—(1) *Barnegat National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) In Hunting Area A, hunting is restricted to designated units and each unit is limited to a maximum of 4 hunters.

(ii) In Hunting Area B, hunting is restricted to designated sites with each site limited to a maximum of 4 hunters.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters are limited to 25 shells per day.

(v) Permanent blinds and pit blinds are not permitted.

(2) *Brigantine National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl and coots is permitted on designated areas of the refuge subject to the following condition: Hunters must use and be in possession of only shells containing steel shot.

(aa) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge* Hunting of mourning doves, geese, ducks, coots and lesser sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunters must use and be in possession only of shells containing steel shot while hunting on the South Refuge Unit (Area C).

(ii) Permanent blinds and pit blinds are not permitted.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of mourning and white-winged doves and snow, blue and Ross' geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for goose hunting.

(ii) Goose hunters are required to successfully complete a U.S. Fish and Wildlife Service migratory bird identification and hunter training program prior to the hunt.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(3) *Las Vegas National Wildlife Refuge.* Hunting of mourning doves and Canada geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Sevilleta National Wildlife Refuge.* Hunting of mourning and white-winged doves, geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters or dogs may not enter closed areas to retrieve birds.

(ii) Waterfowl hunters must use and be in possession only of shell containing steel shot.

(iii) Permanent blinds and pit blinds are not permitted.

(bb) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of migratory game birds is permitted in designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Hunting of woodcock and crow is permitted during the regular seasons except that crow hunting is not permitted from March 1 through September 30.

(2) *Montezuma National Wildlife Refuge.* Hunting of migratory waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted on Tuesdays, Thursdays and Saturdays by reservation only.

(ii) The first Sunday of the season is reserved for the Young Waterfowlers Training Program Hunt.

(cc) *North Carolina*—(1) *Cedar Island National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters must use and be in possession only of shells containing steel shot.

(ii) Only portable blinds are permitted.

(iii) Blinds must be removed from the refuge following each day's hunt.

(2) *Mattamuskeet National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is only permitted during the eight 2-day hunt that occur during the last state waterfowl season and during the youth hunt that is held on the Friday and Saturday following Thanksgiving.

(iii) Shooting hours for the first day of the youth hunt begin at 1:00 p.m. Shooting hours for the other hunts end at noon each day.

(iv) Hunters are required to check in and out of the refuge.

(v) Hunters must use and be in the possession only of shells containing steel shot.

(vi) A recreation user fee is required prior to hunting.

(3) *Pee Dee National Wildlife Refuge.* Hunting of doves is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from opening day of the State season through the last Saturday in September.

(4) *Swanquarter National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters must use and be in possession only of shells containing steel shot.

(ii) Only portable blinds are permitted.

(iii) Blinds must be removed from the refuge following each day's hunt.

(dd) *North Dakota*—(1) *J. Clark Salyer National Wildlife Refuge.* Hunting of waterfowl and coots is permitted on designated areas of the refuge.

(2) *Lake Alice National Wildlife Refuge.* Hunting of waterfowl and doves is permitted on designated areas of the refuge subject to the following condition: Possession of firearms in retrieving zones is not permitted.

(ee) *Ohio—Ottawa National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(ff) *Oklahoma*—(1) *Sequoyah National Wildlife Refuge.* Hunting of doves and waterfowl is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters must use and be in possession only of shells containing steel shot.

(2) *Tishomingo National Wildlife Refuge.* Hunting of mourning doves and waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) The Tishomingo Wildlife Management Unit is open as posted by signs and/or indicated on refuge leaflets, permits and maps.

(ii) In Zone 1, only duck and coot hunting is permitted.

(iii) Duck or coot hunters may not use or possess more than 25 shells per day.

(iv) Goose hunting is only permitted in Zone 2 and only from the goose blinds provided.

(v) Goose hunters may not use or possess more than 6 shells per day.

(vi) Hunters are required to check in and out of the refuge.

(3) *Washita National Wildlife Refuge.* Hunting of geese and sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(gg) *Oregon*—(1) *Ankeny National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

(iii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iv) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(v) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(2) *Baskett Slough National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iv) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(3) *Cold Springs National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(ii) Only shoreline hunting is permitted.

(iii) Waterfowl hunters are required to space themselves a minimum of 200 yards apart.

(iv) The use of boats is not permitted.

(4) *Deer Flat National Wildlife Refuge.* Hunting of doves, geese, ducks,

coots and common snipe is permitted on the Snake River sector subject to the following conditions:

(i) The construction and use of permanent hunting blinds are not permitted.

(ii) Hunters may use portable blinds and temporary blinds constructed of natural materials.

(5) *Klamath Forest National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: The use of air-thrust and inboard water-thrust boats is not permitted.

(6) *Lewis and Clark National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge.

(7) *Lower Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to or from the hunting areas.

(ii) Decoys may not be set in retrieving zones.

(iii) The use of air-thrust and inboard water-thrust boats is not permitted.

(8) *Malheur National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

(9) *McKay Creek National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the opening weekend of the season.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(iii) Waterfowl hunters are required to space themselves a minimum of 200 yards apart.

(iv) The use of boats is not permitted.

(10) *Umatilla National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting on the McCormack Unit.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays on the McCormack Unit.

(iii) Waterfowl hunting parties in the Boardman Unit are required to space themselves a minimum of 200 yards apart.

(iv) Hunting on the McCormack Unit is permitted only from designated blinds or within 50 feet of numbered posts.

(v) Hunters may not possess or use more than 25 shells per day on the McCormack Unit.

(11) *Upper Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: The use of air-thrust and inboard water-thrust boats is not permitted.

(12) *William L. Finley National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

(iii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iv) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(v) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(hh) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of migratory game birds and crows is permitted on designated areas of the refuge subject to the following condition:

(1) Field possession of migratory game birds is not permitted in areas of the refuge closed to migratory game bird hunting.

(2) Hunting of crows is not permitted from March 1 through August 31.

(ii) *South Carolina—*

(1) *Cape Romain National Wildlife Refuge.* Hunting of rails is permitted on designated areas of the refuge.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of mourning doves and woodcock is permitted in designated areas of the refuge subject to the following conditions:

(i) Dove hunting is permitted during that portion of the state season that follows Thanksgiving Day.

(ii) Hunting is permitted Monday through Saturday only.

(3) *Santee National Wildlife Refuge.* Hunting of mourning doves and waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunting is permitted only in October during the State season.

(iii) Waterfowl hunting is permitted until noon each day.

(iv) The refuge dove season opens with the state season and ends September 30.

(v) Permanent blinds are not permitted.

(vi) Decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(jj) *South Dakota—Sand Lake National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge.

(kk) *Tennessee—Lower Hatchie National Wildlife Refuge.* Hunting of migratory birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting for migratory waterfowl is permitted until noon each day.

(2) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(3) Only portable blinds and blinds made of native vegetation are permitted.

(4) Portable blinds and decoys must be removed from the refuge following each day's hunt.

(ll) *Texas—Anahuac National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required to hunt on Saturdays and Sundays.

(ii) The refuge unit located north of Onion Bayou, formerly known as the Barrow Ranch, is open to hunting only on Tuesdays, Thursdays, Saturdays and Sundays except for Thanksgiving and Christmas Days.

(iii) Hunting is permitted until noon except early teal season hunting hours are sunrise until 12:00 noon.

(iv) Access to the hunting area is only by foot or boat. Airboats and marsh buggies are not permitted on the refuge.

(v) Hunters must use and be in possession only of shells containing steel shot.

(vi) Pits and permanent blinds are not permitted.

(2) *Big Boggy National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(ii) Pits and permanent blinds are not permitted.

(3) *Brazoria National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(ii) Pits and permanent blinds are not permitted.

(4) *Hagerman National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the refuge.

(5) *McFaddin National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Tuesdays, Thursdays, Saturdays and Sundays except for Thanksgiving and Christmas Days.

(ii) Hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Pits and permanent blinds are not permitted.

(v) Airboats must be direct propeller drive with propeller 48 inches or less in length. Engines may not exceed two cylinders and 484 cc displacement.

(6) *San Bernard National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting in the Special Waterfowl Hunting Area (SPWH).

(ii) Hunting is permitted only on Mondays, Wednesdays and Saturdays in the SPWH area except for Christmas Day.

(iii) Hunters must use and be in possessiononly of shells containing steel shot.

(iv) Pits and permanent blinds are not permitted.

(7) *Texas Point National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Mondays, Wednesdays and Saturdays. Hunting is not permitted on Christmas Day.

(ii) Hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Pits and permanent blinds are not permitted.

(v) Airboats must be direct propeller drive with propeller 48 inches or less in length. Engines may not exceed two cylinders and 484 cc displacement.

(mm) *Utah*—(1) *Bear River Migratory Bird Refuge.* Hunting of ducks, geese, coots and tundra swans is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(2) *Fish Springs National Wildlife Refuge.* Hunting of ducks, coots and mergansers is permitted on designated areas of the refuge.

(3) *Ouray National Wildlife Refuge.* Hunting of ducks, coots and mergansers is permitted on designated areas of the refuge.

(nn) *Vermont—Missisquoi National Wildflife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required to hunt in the portion of the refuge known as Patrick Marsh-Charcoal Creek (southwest of Route 78).

(2) On those areas of the refuge where a permit is not required, stake blinds may be constructed in accordance with state regulations.

(3) Blinds must be removed from the refuge by May 15.

(4) The portion of the refuge known as Webb Marsh, which includes Long Marsh Bay and Channel, Brush Creek and Metcalfe Island, is reserved for the Young Waterfowlers Training Program.

(5) Hunting in Webb Marsh is permitted from designated blinds on Saturdays and Sundays until 11 a.m. from the beginning of the state waterfowl hunting season through the first five weekends of the season.

(6) Young waterfowl hunters are limited to the use and possession of 25 shells each.

(oo) *Washington*—(1) *Columbia National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condtions:

(i) Permits are required except that permits are not required for Marsh Unit I after 12:00 p.m.

(ii) In Marsh Unit I and Farm Unit 226–227 hunting is permitted only on Wednesdays, Saturdays and Sundays.

(2) *Columbian White-Tailed Deer National Wildlife Refuge.* Hunting of doves, geese, ducks, coots and common snipe and pigeons is permitted on designated areas of the refuge.

(3) *Conboy Lake National Wildlife Refuge.* Hunting of doves, geese, ducks, coots and common snipe and pigeons is permitted on designated areas of the refuge.

(4) *McNary National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Advance reservations are required for hunting refuge farm circles in the McNary Division.

(ii) In the NcNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays and state holidays.

(iii) Only the five most upstream islands on the Hanford Islands Unit are open to hunting.

(5) *Ridgefield National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance permit is required to hunt before 10 a.m.

(ii) Hunting is permitted every other day as prescribed by the refuge hunt schedule.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters may not use or possess more than 25 shells per day.

(v) A recreation user fee is required prior to hunting.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas subject to the following condition: Hunting is permitted only within 50 feet of the numbered posts assigned to each hunter.

(7) *Umatilla National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) In the Patterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(ii) Waterfowl hunter must space themselves a minimum of 200 yards apart.

(iii) Hunters in the Ridge Unit must hunt within 50 feet of numbered posts.

(iv) Hunters may not use or possess more than 25 shells per day in the Patterson Slough Unit.

(8) *Willapa National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunting in the Riekkola Unit is permitted only on Wednesdays and Saturdays.

(iii) A recreation user fee is required prior to entrance into the Riekkola Unit hunting area.

(pp) *Wyoming*—(1) *Pathfinder National Wildlife Refuge.* Hunting of geese, ducks, mergansers and coots is permitted on designated areas of the refuge.

(2) *Seedskadee National Wildlife Refuge.* Hunting of mourning doves, geese, ducks, coots and mergansers is permitted on designated areas of the refuge.

**§ 32.22 Refuge specific regulations; upland game**

(a) *Alabama*—(1) *Blowing Wind Cave National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: The refuge is cooperatively managed as part of the Sauty Creek Wildlife Management Area and State regulations apply entirely to this area.

(2) *Choctaw National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted during the State season only through the Saturday preceding Christmas Day.

(iii) Hunting of raccoon and opossum is permitted only during February.

(3) *Eufaula National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject ot the following conditions:

(i) Permits are required.

(ii) Hunting is permitted from the first day following the close of the State waterfowl season through the end of the respective seasons.

(4) *Wheeler National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following special conditions:

(i) Permits are required.

(ii) Hunting of rabbit and squirrel is permitted during October when State seasons are open.

(iii) Hunting of raccoon, opossum and rabbit is permitted only during February.

(b) *Arizona.—Kofa National Wildlife Refuge.*Hunting of quail, cottontail rabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of cottontail rabbit, coyote, fox and bobcat is permitted from the opening day of the State quail season through February 28 except as provided in item b.

(ii) Hunting of coyote, fox and bobcat is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B and 45C deer permits may take these predators until a deer is taken.

(iii) Hunting is not permitted in the area known as Crystal Hill Campground.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunting of quail and rabbit is not permitted before noon.

(ii) Hunting of cottontail rabbit is permitted from September 1 through the last day of the State quail season.

(iii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farmworker.

(2) *Havasu National Wildlife Refuge.* Hunting of quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of quail is not permitted on Pintail Slough which includes all refuge lands north of the north dike and west of Highway 95.

(ii) Hunting of cottontail rabbit and jackrabbit in Pintail Slough is permitted only during September.

(iii) Only shotguns and bows and arrows are permitted.

(3) *Imperial National Wildlife Refuge.* Hunting of quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(d) *Arkansas*— (1) *Big Lake National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, beaver and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and beaver is permitted from the opening day of the State fall squirrel season through October 31. Rabbit may also be taken when the State rabbit season coincides with the dates above.

(2) *Felsenthal National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of quail, squirrel and rabbit is permitted during the State fall seasons except during the refuge deer gun and muzzleloader hunts.

(iii) Hunting of raccoon and opossum is permitted the first four days and last six days of the State season.

(iv) Beaver and nutria may be taken during the daylight hours of any refuge hunt.

(3) *Holla Bend National Wildlife Refuge.* Hunting of raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters are required to check in and out of the refuge.

(4) *Overflow National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of quail, squirrel and rabbit is permitted during the state fall seasons except during the refuge deer gun and muzzleloader seasons.

(iii) Hunting of raccoon and opossum is permitted the first four days and last six days of the State season.

(iv) Beaver and nutria may be taken during the daylight hours of any refuge hunt.

(5) *Wapanocca National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the raccoon hunt.

(ii) Hunting of squirrel is permitted from October 1 through November 15.

(iii) Hunting of raccoon is permitted from October 15 through October 31.

(6) *White River National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted from the beginning of the State fall seasons through October 31. Squirrel and rabbit may also be taken when their respective State season coincides with refuge archery and waterfowl hunts, but they must be taken with weapons legal for those hunts.

(iii) Hunting of raccoon and opossum is permitted during the first six days of the State season.

(iv) Beaver may be taken during any refuge hunt with weapons legal for those hunts.

(e) *California*—(1) *Colusa National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(2) *Delevan National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(3) *Kern National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to

the following condition: Pheasant hunting is not permitted in the spaced blind unit.

(4) *Lower Klamath National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled hunting area, entry permits are required throughout the pheasant season for all hunters 16 years of age or older. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(5) *Merced National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(6) *Sacramento National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: A special one-day only pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

(7) *San Luis National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(8) *Sutter National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(9) *Tule Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled pheasant hunting area, entry permits are required throughout the pheasant season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(f) *Colorado*—(1) *Alamosa National Wildlife Refuge.* Hunting of pheasant, cottontail rabbit, black-tailed and white-tailed jack-rabbit is permitted on designated areas of the refuge subject to the following conditions: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

(2) *Arapaho National Wildlife Refuge.* Hunting of sage grouse and sharp-tailed grouse is permitted on designated areas of the refuge.

(3) *Browns Park National Wildlife Refuge.* Hunting of cottontail rabbit is permitted on designated areas of the refuge.

(4) *Monte Vista National Wildlife Refuge.* Hunting of pheasant, cottontail rabbit, black-tailed jackrabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the south Upland Hunting Area.

(2) *Prime Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the North Hunting Area.

(ii) Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

(h) *Florida*— *(1) Chassahowitzka National Wildlife Refuge.* Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted during the State deer archery, muzzleloading and general gun seasons.

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted from the day after the State general deer gun season through the last day of the State squirrel season except that upland game may be taken by archery and big game quota hunters while hunting big game.

(iii) After the State deer season closes, dogs are permitted for quail hunting.

(3) *St. Marks National Wildlife Refuge.* Hunting of squirrel, rabbit and raccoon is permitted in designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted Friday through Sunday from the first Friday in November through the last Sunday in February except during refuge big game hunts and Federal holidays.

(iii) A portion of the refuge is cooperatively administered as part of the Aucilla Wildlife Management Area. State regulations apply entirely to this area.

(i) *Georgia*—*Piedmont National Wildlife Refuge.* Hunting of quail, squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is not permitted during refuge deer hunts.

(j) *Idaho*—(1) *Bear Lake National Wildlife Refuge.* Hunting of partridge, grouse and cottontail rabbits, including pygmy rabbits, is permitted on designated areas of the refuge.

(2) *Camas National Wildlife Refuge.* Hunting of pheasant and grouse is permitted on designated areas of the refuge.

(3) *Deer Flat National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of pheasant, quail and partridge is permitted on the Lake Lowell sector only during the waterfowl hunting season.

(ii) Shooting hours on the Lake Lowell sector are the same as those for waterfowl hunting.

(iii) Hunting is not permitted on the Snake River sector from February 1 through May 31.

(4) *Kootenai National Wildlife Refuge.* Hunting of ruffed, spruce and blue grouse is permitted subject to the following conditions: Hunting is permitted only on that portion of the refuge west of the West Side Road.

(5) *Minidoka National Wildlife Refuge.* Hunting of pheasant, partridge and cottontail rabbits, including pygmy rabbit, is permitted on designated areas of the refuge subject to the following conditions: Hunting is permitted only during the migratory waterfowl season.

(k) *Illionis*— *Crab Orchard National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions: Hunting is not permitted from sunrise to noon on the refuge controlled goose hunting areas during the goose hunting season.

(l) *Illionis, Iowa, Missouri*— *Mark Twain National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is permitted on the Big Timber Division, including Turkey and Otter Islands.

(2) Hunting of squirrel only is permitted on the Gardner and Keithsburg Divisions from the opening of the State season through September 30.

(3) Dogs may not be used to hunt, pursue or retrieve squirrels.

(m) *Illinois, Iowa, Minnesota, Wisconsin— Upper Mississippi River Wild Life and Fish Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is not permitted between March 1 and the opening of the State fall hunting seasons except that hunting of wild turkey is permitted during the State spring turkey season.

(2) Hunting is not permitted on the Goose Island Closed Area in Pool 8.

(3) Hunting is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

(n) *Indiana—Muscatatuck National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only from sunrise to sunset.

(o) *Kansas*—(1) *Flint Hills National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Dogs may not be used for hunting furbearing animals or nongame animals.

(2) *Kirwin National Wildlife Refuge.* Hunting of pheasant, quail, praire chicken, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of rabbits and squirrels is permitted only during that portion of the State "small games season" that occurs during the State "upland game season."

(3) *Quivira National Wildlife Refuge.* Hunting of pheasant, bobwhite, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of squirrel and rabbit is permitted from September 1 through the close of either the State waterfowl season or upland game bird season whichever is later.

(p) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting of squirrel is permitted from the fourth Saturday in August through October 15.

(2) Hunting of raccoon is permitted on four consecutive nights beginning on the last Wednesday in September and the first Wednesday in October.

(3) Hunting of raccoon is permitted from 7:30 pm to midnight.

(4) There is no bag limit for raccoons.

(5) Checking of bagged raccoon is required.

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Dogs are permitted for rabbit hunting after the close of the last deer season.

(ii) Hunting of raccoon and opossum is permitted only during October.

(2) *Catahoula National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted through October 31.

(3) *D'Arbonne National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of raccoon and opossum is permitted only during January.

(ii) Unmarked feral hogs may be taken during all refuge hunts.

(4) *Delta National Wildlife Refuge.* Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the waterfowl season closes through the remainder of the State season.

(5) *Tensas River National Wildlife Refuge.* Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during the refuge deer gun hunts.

(iii) Hunting of squirrel and rabbit is permitted from the first Saturday in October through the Wednesday preceding Thanksgiving Day. Hunting of rabbit is also permitted from January 21 through the first Sunday in February.

(iv) Hunting of raccoon is permitted for nine days beginning the day after the last refuge rabbit season ends.

(6) *Upper Ouachita National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of raccoon and opossum is permitted from January 15 through January 31.

(ii) Unmarked feral hogs may be taken during all refuge hunts.

(r) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of ring-necked pheasant and ruffed grouse is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted only on the Lower Wells Hunting Area.

(s) *Massachusetts—Oxbow National Wildlife Refuge.* Hunting of upland game birds and small game is permitted on designated areas of the refuge subject to the following conditions:

(1) Shotguns only are permitted.

(2) Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is not permitted.

(t) *Michigan—Seney National Wildlife Refuge.* Hunting of grouse and snowshoe hare is permitted on designated areas of the refuge subject to the following condition: Snowshoe hare hunting is permitted from December 1 through the end of February.

(u) *Minnesota*—(1) *Big Stone National Wildlife Refuge.* Hunting of gray partridge, ring-necked pheasant, gray and fox squirrel, cottontail rabbit and jackrabbit is permitted on designed areas of the refuge.

(2) *Rice Lake National Wildlife Refuge.* Hunting of ruffed grouse, spruce grouse, gray and fox squirrel, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

(3) *Sherburne National Wildlife Refuge.* Hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge.

(4) *Tamarac National Wildlife Refuge.* Hunting of ruffed grouse, gray and fox squirrel, cottontail rabbit, jackrabbit and snowshoe hare is permitted on designated areas of the refuge subject to the following condition: Hunting is in accordance with White Earth Indian Reservation regulations on those parts of the Reservation that are a part of the refuge.

(v) *Mississippi*—(1) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is permitted from sunset to one hour before sunrise.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of quail, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is permitted from sunset to one hour before sunrise.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is

permitted from sunset to one hour before sunrise.

(4) *Noxubee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: The bag limit for racoon is one per day and the possession limit is two.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge.

(6) *Yazoo National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, opossum and furbearers is permitted on designated areas of the refuge subject to the following special conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted through the third Friday in November.

(iii) Hunting of rabbit is permitted again beginning the second Saturday in February.

(iv) Hunting of raccoon and opossum is permitted the last four days of the February State season.

(v) Furbearers may be taken in season during any refuge hunt.

(w) *Missouri—Mingo National Wildlife Refuge.* Hunting of squirrel and turkey is permitted on designated areas of the refuge subject to the following conditions:

(1) Turkey hunting is permitted only during the State spring firearm and fall archery seasons.

(2) Hunting of squirrel is permitted from the opening of the State season through September 30.

(3) Hunters are required to check in and out of the refuge.

(x) *Montana* (1) *Benton Lake National Wildlife Refuge.* Hunting of pheasant and partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through November 30.

(ii) Hunting is permitted from one-half hour before sunrise to sunset.

(2) *Bowdoin National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox and coyote is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of fox and coyote is permitted from December 1 to March 1.

(ii) Hunters are required to check in and out of the refuge.

(3) *Charles M. Russell National Wildlife Refuge.* Hunting of upland game birds, turkey and coyote is permitted on designated areas of the refuge.

(4) *Hailstone National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(5) *Lake Mason National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(6) *Medicine Lake National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse an Hungarian partridge is permitted on designated areas of the refuge.

(7) *War Horse National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

(2) *Valentine National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse and prairie chicken is permitted on designated areas of the refuge.

(z) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* Hunting of pheasant, quail, grouse, partridge and rabbit is permitted on designated areas of the refuge subject to the following conditions: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

(2) *Sheldon National Wildlife Refuge.* Hunting of quail, grouse and partridge is permitted on designated areas of the refuge.

(aa) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge.* Hunting of quail, ring-necked and white-winged pheasant, quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions;

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the State quail season.

(ii) Hunters must use and be in possession of only shells containing steel shot in the South Unit (Area C) during waterfowl seasons.

(iii) Only shotguns and bows and arrows are permitted.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the State quail season.

(ii) Only shotguns and bows and arrows are permitted.

(bb) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of upland game birds, small game mammals, legally hunted furbearers and unprotected wildlife is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoon.

(ii) Hunting is not permitted from March 1 through September 30.

(2) *Montezuma National Wildlife Refuge.* Hunting of gray squirrel, cottontail rabbit, racoon and fox is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoon.

(ii) Hunting is permitted from the third Sunday in December through the close of the respective State seasons.

(cc) *North Carolina—Pee Dee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting of squirrel, raccoon and opossum is permitted through the third Friday in November.

(2) Hunting of quail is permitted from February 1 through February 14.

(3) Hunting of rabbit is permitted from February 15 through the end of the State season.

(dd) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of pheasant, grouse, Hungarian partridge and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the State deer gun season through the regular State late upland game season.

(2) *J. Clark Salyer National Wildlife Refuge.* Hunting of pheasant, partridge, grouse and turkey is permitted on designated areas of the refuge.

(3) *Lake Alice National Wildlife Refuge.* Hunting of upland game and fox is permitted on designated areas of the refuge.

(4) *Lostwood National Wildlife Refuge.* Hunting of sharp-tailed grouse and Hungarian partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is not permitted on the portion of the refuge south of Highway 50 during the State deer gun season.

(ii) Hunting is permitted on the portion of the refuge north of Highway 50 only after the close of the State deer gun season.

(5) *Tewaukon National Wildlife Refuge.* Hunting of ring-necked pheasant is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted beginning the third

day after the start of either the State late archery deer season or the normal State late pheasant season whichever is later.

(6) *Upper Souris National Wildlife Refuge.* Hunting of sharp-tailed grouse and Hungarian partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Designated areas are closed during the waterfowl and deer gun season.

(ii) Blaze orange vest and cap are required during the deer gun season.

(ee) *Oklahoma*—(1) *Sequoyah National Wildlife Refuge.* Hunting of squirrel, quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(2) *Tishomingo National Wildlife Refuge.* Hunting of quail, squirrel and rabbit is permitted on the Tishomingo Wildlife Management Unit of the refuge subject to the following conditions:

(i) Hunting of upland game is not permitted in the goose hunting zone during the goose hunting season.

(ii) Hunters are required to check in and out of the refuge.

(iii) Only shotguns and bows and arrows are permitted.

(3) *Washita National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(ff) *Oregon*—(1) *Ankeny National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(2) *Baskett Slough National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(3) *Cold Springs National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(iii) Hunting is permitted only by shotgun and bow and flu-flu arrow.

(4) *Deer Flat National Wildlife Refuge.* Hunting of upland game is permitted on the Snake River Sector subject to the following condition: Hunting is not permitted from February 1 through May 31.

(5) *Hart Mountain National Antelope Refuge.* Hunting of partridge and quail is permitted on designated areas of the refuge.

(6) *Lower Klamath National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(7) *Malheur National Wildlife Refuge.* Hunting of pheasant, quail, partridge, coyote and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of pheasant, quail, partridge and rabbit is permitted during the last nine days in the State pheasant season in designated zones of Blitzen Valley east of Highway 205. Hunting is also permitted on Malheur Lake during the waterfowl hunting season.

(ii) Hunting of coyote and rabbit is permitted from September 1 to January 31 on the refuge area west of Highway 205.

(8) *McKay Creek National Wildlife Refuge.* Hunting of upland games birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for both days on opening weekend.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays beginning at noon each day.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow only.

(9) *Umatilla National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for both days on opening weekend.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays, in the McCormick Unit.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

(10) *William L. Finley National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(gg) *Pennsylvania*—*Erie National Wildlife Refuge.* Hunting of grouse, pheasant, quail, squirrel, rabbit, woodchuck, raccoon, skunk, fox and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting fox and raccon.

(ii) Hunting is not permitted from March 1 through August 31.

(hh) *South Carolina*—*Cape Romain National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and raccon is permitted only during the refuge deer season.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of quail, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for raccoon and opossum hunting.

(ii) Hunting of raccon and opossum is permitted from March 1 through March 10.

(ii) *South Dakota*—(1) *Lacreek National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions. Permits are required.

(2) *Sand Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(3) *Pocasse National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(jj) *Tennessee*—(1) *Hatchie National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions: The State fluorescent orange requirements for the deer season applies to small game hunters on the refuge during the refuge firearms deer hunts.

(2) *Lake Isom National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of squirrel is permitted from the fourth Saturday in August through October 15.

(ii) Hunting of raccoon is permitted on four consecutive nights beginning on the last Wednesday in September and again

on four consecutive nigths beginning on the first Wednesday in October.

(iii) Hunting of raccoon is permitted from 7:30 p.m. to midnight.

(iv) Checking of bagged raccoon is required.

(3) *Tennessee National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge.

(kk) *Texas—Hagerman National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters are required to check in and out of the hunt area.

(2) Only shotguns and bows and arrows are permitted.

(ll) *Utah*—(1) *Bear River Migratory Bird Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunters must use and be in the possession of only shells containing shell shot.

(2) *Ouray National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(mm) *Vermont—Missiquoi National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following special condition: The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

(nn) *Washington*—(1) *Columbia National Wildlife Refuge.* Hunting of pheasant, quail, partridge and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of upland game birds and rabbit is permitted only during State seasons that run concurrently with the State waterfowl season.

(ii) Only shotguns and bows and arrows are permitted.

(2) *Conboy Lake National Wildlife Refuge.* Hunting of grouse, pheasant, quail and partridge is permitted on designated areas of the refuge.

(3) *McNary National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun or bow and flu-flu arrow only Wednesdays, Saturdays, Sundays and State holidays beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(4) *Toppenish National Wildlife Refuge.* Hunting of game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(5) *Umatilla National Wildlife Refuge.* Hunting of game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays in the Patterson Slough Unit.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(6) *Wilapa National Wildlife Refuge.* Hunting of blue and ruffed grouse is permitted on the Long Island unit subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(oo) *Wisconsin*—(1) *Horicon National Wildlife Refuge.* Hunting of ring-necked pheasant, gray partridge, squirrel and cottontail rabbit is permitted subject to the following condition: Hunting is permitted from the opening of the respective State season through the State deer firearms season.

(2) *Necedah National Wildlife Refuge.* Hunting of turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(pp) *Wyoming*—(1) *Pathfinder National Wildlife Refuge.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

(2) *Seedskadee National Wildlife Refuge.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

**§ 32.32 Refuge specific regulations; big game.**

(a) *Alabama*—(1) *Choctaw National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted through the Saturday before Christmas Day.

(2) *Eufaula National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Hunting is permitted through the last day of the State gun season.

(iii) Checking of bagged game is required.

(3) *Wheeler National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Bow hunting is permitted during the first four weeks of the State season.

(iii) Hunting with bows and arrows and flintlock firearms is permitted during the last two weeks of the State season.

(iv) All hunters are required to wear an outergarment containing a minimum of 144 square inches of daylight fluorescent orange material visible from any angle during any refuge deer gun hunt.

(b) *Arizona*—(1) *Cabeza Prieta National Wildlife Refuge.* Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following conditions: Entry permits are required.

(2) *Havasu National Wildlife Refuge.* Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following conditions: Hunting is only permitted on the part of the Bill Williams Unit south of the Planet Ranch Road in Unit 44A.

(3) *Kofa National Wildlife Refuge.* Hunting of mule deer and desert bighorn sheep is permitted on designated areas of the refuge.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunting of deer is not permitted on Farm Unit II before 12:00 p.m. each day.

(ii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farmworker.

(iii) Only antlered deer may be taken.

(2) *Imperial National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(d) *Arkansas*—(1) *Big Lake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted from November 1 through December 31.

(2) *Felsenthal National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted through January 31.

(iii) Muzzleloader hunting is permitted on the fourth Friday and Saturday in October.

(v) Hunting of antlerless deer is permitted during the Thanksgiving Day Holiday deer gun hunt.

(3) *Holla Bend National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunters are required to check in and out of the refuge.

(4) *Overflow National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted through January 31.

(iii) Muzzleloader hunting is permitted on the fourth Friday and Saturday in October.

(5) *White River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The youth/adult hunt is permitted on the Friday and Saturday after Thanksgiving Day.

(iii) During the youth/adult deer hunt, all hunters over 15 years of age must be accompanied by at least one and not more than two youths, ages 15 and under.

(iv) Archery hunting is permitted through October 31 and from the first Saturday in January through January 31.

(v) Muzzleloader hunting is permitted the last two days of the State's first muzzleloader deer season.

(vi) Hunting of deer with modern guns is permitted on the first Friday and the following Saturday of the first State deer gun season.

(vii) The bag limit for all deer gun hunts is one deer of either sex per hunt.

(viii) Hunting of turkey is permitted Wednesday through Saturday of the State spring season.

(ix) Checking of bagged game is required.

(e) *California*—(1) *Clear Lake National Wildlife Refuge.* Hunting of pronghorn antelope is permitted on the controlled "U" Unit of the refuge subject to the following conditions:

(i) The unit is open to hunting only during the first 2 weekends of the State season.

(ii) Access to the unit is permitted only through the gate located on Clear Lake Road.

(f) *Colorado*—(1) *Arapaho National Wildlife Refuge.* Hunting of pronghorn antelope is permitted on designated areas of the refuge.

(2) *Browns Park National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Prime Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(h) *Florida*—(1) *Chassahowitzka National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Lake Woodruff National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on the first sixteen days of the State archery season.

(iii) Two four-day blackpowder hunts are permitted beginning on the Thursdays immediately before and after the State blackpowder hunt.

(iv) During all hunts, hunters are required to remain on their stand from one-half hour before sunrise until 9:00 a.m.

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting during the general gun season is restricted to the first 10 consecutive days of the State season and to 10 consecutive days beginning the second Saturday in December.

(4) *Loxahatchee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for six consecutive days beginning on the opening day of the State season.

(iii) One deer of either sex may be taken.

(iv) Buckshot, crossbows and handguns are not permitted.

(v) Guns must be unloaded and cased or dismantled when outside the hunting area and when the boat is enroute to or from the hunting area.

(5) *St. Marks National Wildlife Refuge.* Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted for 10 consecutive days beginning the first Friday in November.

(iii) A hogs only hunt is permitted for two consecutive days beginning the third Friday in November.

(iv) A bucks only hunt using bows and muzzleloaders is permitted for two (2) consecutive days beginning the third Friday after Thanksgiving.

(v) Two 2-day buck only hunts are permitted beginning on the second and fourth Saturdays in January.

(vi) Turkey hunting is permitted for nine consecutive days beginning the fourth Friday in March.

(vii) A portion of the refuge is cooperatively administered as part of the Aucilla Wildlife Management Area, and State regulations apply entirely to this area.

(6) *St. Vincent National Wildlife Refuge.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The bag limit for white-tailed deer and turkey is one of either sex during the archery and primitive weapons hunts.

(iii) Hunters are required to check in and out of the refuge.

(iv) During the archery and primitive weapons hunts, hunters must remain on their stands from one-half hour before sunrise to 9:00 a.m. unless a deer is taken.

(i) *Georgia*—(1) *Blackbeard Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted for three consecutive days beginning the fourth Monday in October and for three consecutive days beginning the fourth Friday in November.

(iii) Deer of either sex may be taken.

(iv) Hunters are required to check in and out of the refuge.

(v) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(2) *Harris Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on the fourth Saturday in September.

(iii) Shotgun hunting is permitted on the third Saturday in December.

(iv) Deer of either sex may be taken.

(v) Only shutguns are permitted during the gun hunt.

(vi) Hunters are required to check in and out of the refuge.

(vii) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(3) *Okefenokee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on Thursday, Friday and Saturday during the State archery season.

(iii) Shotgun hunting is permitted on the Cowhouse Island Unit on the first Saturday of the State firearm season and on alternate Saturdays thereafter through December 31.

(iv) Shotgun hunting is permitted on the Pocket Unit on the first Saturday of November and December.

(v) Shotgun hunting is permitted on the Suwannee Canal Recreation Area on the first and second Thursdays and Fridays of the State firearms season.

(vi) Deer of either sex may be taken.

(vii) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(4) *Piedmont National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permtis are required.

(ii) A bucks only hunt is permitted for three consecutive days beginning on the first Thursday in November.

(iii) A primitive weapons hunt of deer is permitted for three consecutive days beginning on the third Thursday in October. Bucks taken during this hunt must have 3 or more points on one side or must be antlerless.

(iv) A general gun hunt of deer is permitted on the second and third Saturday in November and the first Saturday in December.

(v) Three 3-day turkey hunts are permitted beginning on the first, second and third Thursdays in April.

(vi) Only still hunting is permitted.

(5) *Wassaw National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on three consecutive days beginning the second Friday in November. Primitive weapons are also permitted on the third day of this hunt.

(iii) Gun hunting is permitted on two consecutive days beginning the second Friday in December.

(iv) Deer of either sex may be taken.

(v) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(vi) Hunters are required to check in and out of the refuge.

(j) *Georgia and South Carolina*—(1) *Savannah National Wildlife Refuge.* Hunting of white-tailed deer and feral hose is permitted on designated areas of the refuge subject ot the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

(iii) Only shotguns and bows and arrows are permitted.

(iv) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(k) *Idaho*—(1) *Deer Flat National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

(2) *Kootenai National Wildlife Refuge.* Hunting of deer, elk, black bear, moose and mountain lion is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge that lies west of the West Side Road.

(l) *Illinois*—(1) *Crab Orchard National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A special permit issued by the Illinios Department of Conservations is required.

(ii) Hunting is permitted only during the State shotgun and bow and arrow seasons.

(iii) Hunters using Area II are required to check in at the refuge fire station prior to hunting.

(iv) Hunting is permitted only from ground level.

(m) *Illinois, Iowa, Minnesota, Wisconsin*—(1) *Upper Mississippi River Wild Life and Fish Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is not permitted on the Goose Island Area in Pool 8.

(ii) Hunting of deer is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

(ii) Construction or use of permanent blinds, platforms or ladders is not permitted.

(iv) All stands must be removed from the refuge at the end of each day's hunt.

(n) *Illinois, Iowa, Missouri*—(1) *Mark Twain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject ot the following conditions:

(i) Hunting with shotgun only is permitted on portions of the Gardner Division. A vaild State-issued shotgun deer permit with Mark Twain National Wildlife Refuge designated on it is required. Hunting is permitted during the November portion of the Illinois shotgun season. Hunting is permitted from 6:30 a.m. to 3:00 p.m.

(ii) Hunting of white-tailed deer is permitted on designated areas on the Timber Division and Turkey and Otter Islands during the State season.

(iii) Archery hunting of white-tailed deer on the Gardner Division is permitted during a portion of the Illinois archery deer season. A valid State-issued archery deer permit with Mark Twain National Wildlife Refuge designated on it is required.

(o) *Iowa*—(1) *DeSoto National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iv) All stands must be removed from the refuge by the close of the season.

(p) *Kansas*—(1) *Flint Hills National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following condition: The use of rifled firearms is not permitted.

(2) *Kirwin National Wildlife Refuge.* Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions: Only archery hunting of deer is permitted.

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer, turkey and unmarked feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Only still hunting is permitted.

(ii) Unmarked feral hogs may be taken only during the refuge deer seasons.

(2) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and unmarked feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permit are require for the youth gun hunt.

(ii) The youth gun hunt for persons age 15 and under is permitted on the first and second Saturdays of November.

(iii) Deer (bucks only) and unmarked feral hogs may be taken during the youth gun hunt.

(iv) Muzzleloader hunting for deer (bucks only) and unmarked feral hogs is permitted for 5 consecutive days beginning the Saturday after Thanksgiving Day.

(v) Only still hunting is permitted.

(vi) Checking of bagged game is required.

(3) *D'Arbonne National Wildlife Refuge.* Hunting of white-tailed deer and unmarked feral hogs is permitted on designated areas of the refuge subject to the following condition: Hunting of deer with guns is permitted through the Saturday after Thanksgiving Day.

(4) *Tensas River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Either-sex deer hunting is permitted within the framework of State regulations.

(iii) The bag limit for all gun hunts is one deer of either sex per day.

(iv) Hunters are required to check in and out of the refuge.

(v) Checking of bagged game is required.

(5) *Upper Ouachita National Wildlife Refuge.* Hunting of white-tailed deer and unmarked feral hogs is permitted on designated areas of the refuge subject to the following condition: The refuge gun season for deer closes the Saturday after Thanksgiving Day.

(r) *Maine*—(1) *Moosehorn National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Rachel Carson National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the Brave Boat Harbor, Lower Wells and Upper Wells Hunting areas.

(ii) Only shotguns, muzzleloading rifles, compound and long bows and arrows are permitted for hunting on the Brave Boat Harbor and Upper Wells Hunting areas.

(iii) Only archery hunting is permitted on the Lower Wells Hunting area.

(iv) The possession of rifles and handguns is not permitted.

(s) *Maryland*—(1) *Eastern Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Blackwater National Wildlife Refuge.* Hunting of sika and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(t) *Michigan*—(1) *Seney National Wildlife Refuge.* Hunting of deer and bear is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of deer with bow and arrow only is permitted from the opening of the State season through November 12 and from December 1 through the end of the State deer archery season.

(ii) Hunting of bear is permitted with gun or bow and arrow only.

(iii) The use of dogs while hunting bear is not permitted.

(2) *Shiawassee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(u) *Minnesota*—(1) *Agassiz National Wildlife Refuge.* Hunting of white-tailed deer and moose is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(2) *Big Stone National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(3) *Rice Lake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(4) *Sherburne National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(5) *Tamarac National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

(ii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iii) All stands must be removed from the refuge at the end of each day's hunt.

(v) *Mississippi*—(1) *Hillside National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting with guns.

(ii) The youth deer hunt for persons age 15 and under is permitted for two consecutive days beginning on the third Saturday in November. Only such youths may carry, handle or discharge firearms during this hunt.

(iii) General gun hunt is permitted for two consecutive days beginning on the third Saturday in December.

(iv) Only still hunting is permitted.

(2) *National Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Only archery hunting is permitted.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery and primitive weapons hunting are permitted except for the antlerless deer hunt with modern guns.

(ii) Permits are required for hunting antlerless deer with modern guns.

(iii) Only still hunting is permitted.

(4) *Noxubee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotguns are permitted for turkey hunting.

(iii) Checking of bagged game is required.

(iv) Only portable stands are permitted.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting antlerless deer with modern guns.

(ii) the youth deer hunt for persons age 15 and under is permitted for two consecutive days beginning on the day following Thanksgiving Day. Only the youth may carry, handle or discharge firearms during this hunt.

(iii) Only still hunting is permitted.

(6) *Yazoo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The youth deer hunt for persons age 15 and under is permitted for three consecutive days beginning with Thanksgiving Day.

(iii) During the youth deer hunt only the youth may carry, handle and/or discharge the firearm.

(iv) Muzzleloader deer hunting is permitted the first six days of the state season excluding Sunday.

(v) General gun deer hunting is permitted the first Saturday of the state season following the muzzleloader hunt.

(vi) Hunting of turkey is permitted each Friday and Saturday during the state April season.

(vii) The bag limit for turkey is one bearded turkey, and the bag limit for all deer hunts is one deer.

(viii) Only still hunting is permitted.

(ix) Hunters are required to check in and out of the refuge.

(x) Checking of bagged game is required.

(w) *Missouri*—(1) *Mingo National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Hunters are required to check in and out of the refuge.

(iii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iv) All stands must be removed from the refuge by the close of the season.

(2) *Swan Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only primitive weapons are permitted for hunting on designated areas of the refuge.

(x) *Montana*—(1) *Charles M. Russell National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following special conditions:

(i) Hunting of coyotes is permitted from the first day of the general Statewide antelope season through February 5.

(ii) Off-road retrieval of downed game by motor vehicle is not permitted.

(2) *Lee Metcalf National Wildlife Refuge.* Hunting of white-tailed and mule deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Firearms are not permitted.

(iii) Hunters are required to check in and out of the refuge.

(3) *Medicine Lake National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.

(4) *Red Rocks Lake National Wildlife Refuge.* Hunting of deer, elk, moose and pronghorn antelope is permitted on designated areas of the refuge.

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of white-tailed deer, mule deer and pronghorn antelope is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Checking of bagged game is required.

(2) *DeSoto National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted on the area located west of the Missouri River. Firearms are not permitted on this area.

(iii) Muzzleloader hunting of deer is permitted on the area located in the central portion of the refuge. Entry to this hunting area is permitted one hour before shooting hours. All permit holders and their vehicles must be out of the designated shooting hunting area no later than one hour after sunset.

(iv) The construction or use of permanent blinds, platforms or ladders is not permitted.

(v) All stands must be removed from the refuge by the close of the season.

(3) *Valentine National Wildlife Refuge.* Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge.

(z) *Nevada*—(1) *Desert National Wildlife Range.* Hunting of of bighorn sheep is permitted on designated areas of the range subject to the following conditions:

(i) Bighorn sheep guides are rquired to obtain a Special Use Permit prior to taking clients on the range.

(ii) Only bighorn sheep tag holders may possess or carry a firearm or bow that must be a legal weapon as defined by State regulations.

(iii) Natural mortalities or "pickup heads" found on the range are government property and possession or removal of them from the range is not permitted.

(2) *Sheldon National Wildlife Refuge.* Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

(aa) *New Jersey*—(1) *Great Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(bb) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required for hunting in the Bottomlands Management Hunt Unit.

(cc) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

(dd) *North Carolina*—(1) *MacKay Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Pee Dee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the gun hunts.

(ii) Muzzleloader hunting is permitted the first Tuesday after Veterans Day, the first Monday, Tuesday, Friday and Saturday of the State November regular gun season and Thanksgiving Day which is a youth hunt day.

(iii) One deer of either sex may be taken during each gun hunt.

(3) *Pungo National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Gun hunting is permitted on four consecutive Fridays and Saturdays beginning with the second Friday of October.

(iii) Only shotguns and primitive weapons are permitted during the gun hunts.

(ee) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of deer is permitted on designated areas subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(2) *Audubon National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and a half days of the State gun season.

(ii) Hunting with bow and arrow is permitted only from noon of the day following the close of the State deer firearms season through the close of the State archery season.

(3) *Chase Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(4) *Des Lacs National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and a half days of the State gun season.

(ii) Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.

(iii) Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following deer gun season.

(5) *J. Clark Salyer National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Lake Alice National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted on the refuge's Special Archery Unit.

(ii) Only portable devices or natural materials for temporary blinds and tree stands are permitted.

(7) *Lake Nettie National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted only from noon of the day following the close of the State deer firearms season until the close of the State archery season.

(8) *Lake Zahl National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Hunting is not permitted from the opening day of the State waterfowl season through the close of the State deer gun season.

(9) *Long Lake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season and it is permitted following the deer gun season.

(10) *Lostwood National Wildlife Refuge.* Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and one half days of the State gun season.

(ii) Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.

(iii) Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(11) *Slade National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(12) *Tewaukon National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the State late archery deer season.

(ii) In those years when a pheasant hunt is permitted, the refuge deer season closes the day before the pheasant season begins. If the State's late pheasant and deer seasons begin on the same day, deer hunting only is permitted for the first two days after which the refuge pheasant season begins.

(13) *Upper Souris National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

(ff) *Oklahoma*—(1) *Salt Plains National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Tishomingo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the hunt area.

(3) *Wichita Mountains Wildlife Refuge.* Hunting of elk is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(gg) *Oregon*—(1) *Deer Flat National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

(2) *Hart Mountain National Antelope Refuge.* Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

(3) *Malheur National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.

(4) *William L. Finley National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only shotgun and archery hunting are permitted.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(hh) *Pennsylvania*—(1) *Erie National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Target practice or random shooting is not permitted.

(ii) The construction or use of permanent blinds, platforms and scaffolds is not permitted.

(ii) *South Carolina*—(1) *Cape Romain National Wildlife Refuge.*—Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Two six-day hunts are permitted beginning on the first Mondays in November and December.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted from the third Monday in October through the following Saturday.

(ii) Hunting with bows and arrows and muzzleloading firearms is permitted from the last Monday in October through the following Friday.

(iii) Hunting with modern rifles and shotguns is permitted for three consecutive days beginning on the Wednesday of the week preceding Thanksgiving Day.

(iv) Checking of bagged deer is required.

(v) In addition to the State bag limits, one antlerless deer may be taken during each of the three hunt seasons.

(vi) Only still hunting is permitted.

(vii) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(3) *Pinckney Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted on the second Saturday in October and the third Saturday in November.

(iii) Only shotguns are permitted.

(iv) Deer of either sex may be taken.

(v) Hunters are required to check in and out of the refuge.

(vi) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(vii) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(4) *Santee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting on the Cuddo Unit is permitted from the third Monday in October through the following Saturday.

(iii) Primitive weapons hunting on the Cuddo Unit is permitted from the fourth Monday in October through the following Saturday.

(iv) Primitive weapons hunting on the Pine Islands Unit is permitted from the second Monday in October through the following Saturday.

(v) Hunters are required to check in and out of the refuge.

(vi) All hunters are required to wear a visible outergarment made of daylight fluorescent orange material during the gun hunts.

(jj) *South Dakota*—(1) *Lacreek National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

(2) *Sand Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(3) *Pocasse National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(4) *Waubay National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(kk) *Tennessee*—(1) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the firearms deer hunt.

(ii) Checking of bagged deer taken during the firearms hunt is required.

(2) *Lower Hatchie National Wildlife Refuge.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge.

(3) *Tennessee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required for the turkey, primitive weapons and conventional gun deer hunts.

(ll) *Texas*—(1) *Aransas National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The entire refuge or any portion thereof may be immediately closed to hunting in the event of the appearance of whooping crane in the hunt area.

(ii) Permits are required for the firearms hunt.

(ii) Firearms hunting is permitted the first five days of the State season.

(iv) The bag limit for the firearms hunt is two deer per hunter. Sex and age limits for deer are set annually by the refuge manager.

(v) Hunters are required to wear international orange caps and vests.

(vi) Archery hunting is permitted the first Saturday of the State season through the second Sunday of the State season.

(vii) Deer may not be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer.

(viii) Hunters shall be at least 12 years of age. Hunters between the ages of, and including, 12 and 17 must hunt under the supervision of an adult 21 years of age or older.

(2) *Hagerman National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

(3) *Laguna Atascosa National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted in mid-October on specified days listed in the refuge hunt brochure.

(iii) Firearms hunting is permitted in early December on specified days listed in the refuge hunt brochure.

(iv) The bag limit for the firearms hunt is two deer. Sex and age limite for deer are set annually by the refuge manager.

(v) Hunters are required to wear international orange caps and vests.

(vi) Deer may not be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer.

(vii) Hunters shall be at least 12 years of age. Hunters between the ages of, and including, 12 and 17 must hunt under the supervision of an adult 21 years of age or older.

(mm) *Utah*—(1) *Ouray National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(nn) *Vermont*—(1) *Missisquio National Wildlife Rufuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotguns may be used on that part of the refuge east of the Missisquio River.

(oo) *Virginia*—(1) *Chincoteague National Wildlife Refuge.* Hunting of sitka and wihte-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Presquile National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(pp) *Washington*—*(1) Columbia National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotgun and archery hunting are permitted.

(2) *Conboy Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(3) *Umatilla National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun only beginning at noon each hunt day.

(ii) Hunting is permitted on the Patterson Slough Unit on Wednesdays, Saturdays, Sundays and State holidays.

(4) *Willapa National Wildlife Refuge.* Hunting of deer, elk and bear is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted only on the Long Island Unit.

(qq) *Wisconsin*—(1) *Horizon National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the early archery and State firearms seasons.

(ii) The construction and use of permanent blinds, platforms or ladders is not permitted.

(iii) All stands must be removed from the refuge following each day's hunt.

(2) *Necedah National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Deer hunters are required to have an unused carcass tag in their possession to enter the refuge with a firearm or bow and arrow.

(ii) Discharging a firearm from across, down or alongside roads and trails is not permitted.

(iii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iv) All stands must be removed from the refuge following each day's hunt.

(rr) *Wyoming*—(1) *National Elk Refuge.* Hunting of elk is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters may not be let out of vehicles on refuge roads.

(iii) Shooting from or across refuge roads and parking areas is not permitted.

(iv) The use of citizen band (CB) radios in the hunt area is not permitted.

(2) *Pathfinder National Wildlife Refuge.* Hunting of pronghorn antelope and deer is permitted on designated areas of the refuge.

(3) *Seedskadee National Wildlife Refuge.* Hunting of pronghorn antelope and mule deer is permitted on designated areas of the refuge.

Authority: (16 U.S.C. 460k, 668dd).

Dated: January 7, 1984.

G. Ray Arnett,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-17657 Filed 7-2-84; 8:45 am]

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# Notices

Federal Register
Vol. 49, No. 129
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### State of Nebraska Water Conservation Program Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Agriculture has determined that all state payments under the Nebraska Water Conservation Program are made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. This determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

**FOR FURTHER INFORMATION CONTACT:** Dayle E. Williamson, Executive Secretary, Nebraska Natural Resources Commission, 301 Centennial Mall South, Lincoln, Nebraska 68501, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382-1870.

**SUPPLEMENTARY INFORMATION:** Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Nebraska Water Conservation Program is authorized by the Nebraska Water Conservation Act of 1977 as amended. It is funded through annual state appropriations to provide financial assistance to owners of agricultural land to help them install various conservation practices on their land.

Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources.

(2) Better utilize surface waters.

(3) Encourage ground water recharge to protect the state's dwindling ground water supply.

#### Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Departmental Regulation No. 1511-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Nebraska Water Conservation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the Nebraska Natural Resources Commission, 301 Centennial Mall South, Lincoln, Nebraska 65801.

#### Determination

As required by Section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Nebraska Water Conservation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under the program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Nebraska Water Conservation Program after September 30, 1979.

Signed at Washington, D.C., on June 27 1984.

Richard E. Lyng,
*Acting Secretary.*

[FR Doc. 84-17603 Filed 7-2-84; 8:45 am]
BILLING CODE 3410-01-M

### State of South Dakota Pheasant Restoration Program Payment; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Agriculture has determined that all state payments made under the South Dakota Pheasant Restoration Program are made primarily for the purpose of providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. This determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

**FOR FURTHER INFORMATION CONTACT:** Ken Solomon, Small Game Staff Specialist, Box 915, Huron, South

Dakota 57350, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The South Dakota Pheasant Restoration Program is authorized by the South Dakota Senate Bill 142, March 1977 It is funded through annual state appropriations to provide financial assistance to owners, operators, and occupiers of agricultural land through annual contracts that help them install various conservation practices on their land.

Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources.

(2) Provide secure nesting habitat.

(3) Provide upland game bird winter cover.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause 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.

A South Dakota Pheasant Restoration Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the South Dakota Department of Game, Fish and Parks, Huron, South Dakota 57350.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the South Dakota Pheasant Restoration Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income for federal tax purposes, all or part of such payments made under the South Dakota Pheasant Restoration Program after September 30, 1979.

Signed at Washington, D.C., on June 27, 1984.

Richard E. Lyng,

*Acting Secretary.*

[FR Doc. 84-17027 Filed 7-2-84; 8:45 am]

BILLING CODE 3410-01-M

## CIVIL AERONAUTICS BOARD

### Commuter Fitness Determination

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

*Order, Applicant, and Response Date*

84-6-75, Commuter Airlines, Inc. d/b/a Cal-West Helicopter Service, July 16, 1984

84-6-76, Alpha Air, July 16, 1984

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data with the Special Authorities Division, Room 915, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

For further information contact: Barbara P Dunnigan for Orders 84-6-75 and 84-6-76, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673-5918.

By the Civil Aeronautics Board: June 25, 1984.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 84-17025 Filed 7-2-84; 8:45 am]

BILLING CODE 6320-01-M

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits Filed under Subpart Q of the Board's Procedural Regulations: week ended June 22, 1984.

### Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

| Date filed | Docket No. | Description |
|---|---|---|
| June 18, 1984 | 42291 | Royalcoach Airline, c/o Morton L. Caplan, Caplan and Overlander, 727 West 7th Street, Suite 255, Los Angeles, California 90017<br>Application of Royalcoach Airline, pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in interstate and overseas scheduled air transportation of persons, property, and mail, between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or District of Columbia, or any territory or possession of the United States<br>Conforming Applications, Motions to Modify Scope and Answers may be filed by July 16, 1984. |
| June 22, 1984 | 42300 | Time Air (1982) Ltd., c/o William F. Clark, Hamilton, Torrance, 70 University Avenue, Suite 250, Toronto, Canada M5J 2M4<br>Application of Time Air (1982) Ltd., pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an initial foreign air carrier permit authorizing nonscheduled or charter foreign air transportation between any point or points in Canada and any point or points in the United States using large aircraft.<br>Answers may be filed by July 20, 1984. |
| June 22, 1984 | 42185 | Jetpass Airlines, Inc. (Formerly AirPass Airlines, Inc.), c/o Robert E. Cohn, Butler & Binion, 1747 Pennsylvania Avenue, N.W. Suite 500, Washington, D.C. 20006.<br>Amended Application of JetPass Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity to provide scheduled interstate and overseas air transportation of passengers, property and mail. |

Phyllis T. Kaylor,
*Secretary.*
[FR Doc. 84-17689 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

## Application of Horizon Air Industries, Inc. d.b.a. Horizon Air and Horizon Airlines for Certificate Authority

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of order to show cause (84-6-86).

**SUMMARY:** The Board is proposing to find Horizon Airlines fit, willing, and able and to issue it a certificate of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation of persons, property, and mail.

**DATES:** All interested persons wishing to respond to the Board's tentative fitness determination and proposed certificate award shall file, and serve upon all persons listed below no later than July 16, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

**ADDRESS:** Responses should be filed in Docket 42041, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Appendix A to the order.

**FOR FURTHER INFORMATION CONTACT:** Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5088.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 84-6-86 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-6-86 to that address.

By the Civil Aeronautics Board: June 26, 1984.

Phyllis T. Kaylor,
*Secretary.*
[FR Doc. 84-17687 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 41968]

## Applications of Indian International Air Lines, Inc. (Formerly Virgin Island Air Sevices, Inc.) for a Two-Year Fitness Review and for a Certificate of Public Convenience and Necessity

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of order instituting a fitness investigation of Indian International Air Lines, Inc., 84-6-85, Docket 41968.

**SUMMARY:** The Board is issuing an order instituting a fitness investigation of Indian International Air Lines, Inc.

**DATE:** Persons wishing to file requests for additional evidence or petitions to intervene in the Indian International Air Lines Fitness Investigation shall file their petitions in Docket 41968 by July 23, 1984.

**ADDRESSES:** Requests for additional evidence and petitions to intervene should be filed in Docket 41968, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on: Indian International and the Federal Aviation Administration. Service will also be required on any person filing petitions.

**FOR FURTHER INFORMATION CONTACT:** Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5333.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 84-6-85 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-6-85 to that address.

By the Civil Aeronautics Board: June 20, 1984.

Phyllis T. Kaylor,
*Secretary.*
[FR Doc. 84-17688 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 41961]

## Airwest International Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Further communications should be addressed to him.

Dated Washington, D.C., June 25, 1984

Elias C. Rodriguez,
*Chief Administrative Law Judge.*
[FR Doc. 84-17689 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 42299]

## Air Florida, Inc. Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Further communications should be addressed to him.

Dated Washington, D.C., June 27 1984
Elias C. Rodriguez,
*Chief Administrative Law Judge.*
[FR Doc. 84-17691 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 41988]

## Indian International Air Lines Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated Washington, DC, June 27, 1984.
Elias C. Rodriguez,
*Chief Administrative Law Judge.*
[FR Doc. 84-17690 Filed 7-2-84; 8:45 am]
BILLING CODE 6320-01-M

## COMMISSION ON CIVIL RIGHTS

## New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 7:30 p.m. on July 19, 1984 and will end at 6:00 p.m. on July 20, 1984, at the Rochester Plaza Hotel, 70 State Street, Rochester, New York 14614. The purpose of the meeting is to discuss civil rights issues of concern with three organization representative of the major minority groups in the city.

Persons desiring additional information, or planning an presentation to the Committee, should contact the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of Commission.

Dated at Washington, D.C., June 27, 1984
John I. Brinkley,
*Advisory Committee Management Officer*
[FR Doc. 84-17574 Filed 7-2-84; 8:45 am]
BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

## International Trade Administration

## Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held August 8, 1984 at 10:00 a.m., in the Executive Suite of the Sheraton Russell Hotel, 45 Park Avenue (at 37th Street), New York, New York. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel. AGENDA: Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LeGrande (202/377-3737).

Dated: June 28, 1984
Walter C. Lenahan,
*Deputy Assistant Secretary for Textiles and Apparel.*
[FR Doc. 84-17[illegible] Filed 7-2-84; 8:45 am]
BILLING CODE 3510-DS-M

## Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held July 17 1984, 9:00 a.m., Herbert C Hoover Building, Room 1092, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain lands of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

### Agenda

1. Introduction of members and guests
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Update from DOC on the establishment of the Foreign Availability Division.
5. Survey of suppliers of lost business due to delay or denial of U.S. Export Licenses.
6. Definition of U.S. origin of licensed technology
7. New Business
8. Action items underway
9. Action items due at next meeting

Execution Session:

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Record Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217 For further information or copies of the minutes contact Margaret A. Cornejo, 202-377-2583.

Dated June 28, 1984
Milton M. Baltas,
*Director of Technical Program, Office of Export Administration.*
[FR Doc. 84-17[illegible] Filed 7-2-84; 8:45 am]
BILLING CODE 3510-25-M

## National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 417]

## Permit Applications; Dolphin Biology Research Associates, Inc.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 417 issued to Mr. Randall S. Wells, Dolphin Biology Research Associates Inc., 163 Siesta Drive, Sarasota, Florida 33581, on May 20, 1983 (48 FR 22181), is modified as follows:

Sections A-2, A-3, and A-4 are added as follows:

A-2. Of the 105 Atlantic bottlenose dolphins authorized in Section A-1 of the permit, five (5) dolphins may be radio tagged.

A-3. Suction cup hydrophones may be attached to the 105 dolphins authorized to be captured in Section A-1.

A-4. Two (2) biopsies per animal may be collected from up to 20 of the animals authorized in Section A-1.

This modification becomes effective upon publication in the Federal Register.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C., and

Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 26, 1984.

Richard B. Roe,

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 84-17683 Filed 7-2-84; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1984; Correction of Proposed Addition

In FR Doc. 84-16762, published June 22, 1984 (49 FR 25664) is amended as follows:

SIC 7349

Janitorial Service, Federal Building, 1860 Lincoln Street, Milwaukee, Wisconsin

C. W. Fletcher,

*Executive Director.*

[FR Doc. 84-17604 Filed 7-2-84; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. G-7642-007, et al.]

### Mobil Oil Corp., et al., Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

*Correction*

In FR Doc. 84-16711 beginning on page 25673 in the issue of Friday, June 22, 1984, make the following corrections:

1. On page 25673, third column, the docket number in the heading was inaccurate, and should have appeared as set forth above.

2. On the same page, at the very bottom of the page, the footnote to the heading appeared inaccurately and should have appeared as follows:

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

BILLING CODE 1505-01-M

[P-5765-002]

### Madera-Chowchilla Power Authority; Application

June 28, 1984.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Amendment of Minor License.

b. Project No: 5765-002.

c. Date Filed: April 26, 1984.

d. Applicant: Madera-Chowchilla Power Authority.

e. Name of Project: Madera Canal Mile 24.2.

f. Location: On U.S. Bureau of Reclamation's Madera Canal in Madera County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jonny Deniz, Madera-Chowchilla Power Authority, 12152 Road 28¼, Madera, California 93637

i. Description of Project: This application for amendment of license for project No. 5765-001 is for modifications to the proposed facilities. The proposed project as described in the license included an 11-foot-high intake structure on the existing Madera Canal, a 330-foot-long penstock constructed in parallel with the existing drop/chute structure, a powerhouse with a total installed capacity of 275 kW, and a tailrace.

The modified facilities would consist of a powerhouse, housing a 440-kW horizontal, tubular turbine, installed on a right angle tap into the existing 114-inch-diameter siphon under Dry Creek, a 45-foot-long steel penstock which would run perpendicular to the siphon, and a 10 feet-wide, 180-foot-long tailrace. The modified project would generate 1,355,000 kWh annually.

j. Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before July 23, 1984. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84-17658 Filed 7-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5765-003]

### Madera Irrigation District; Application for Transfer of Minor License

June 28, 1984.

Public notice is hereby given that an application was filed on April 26, 1984, under the Federal Power Act, 16 U.S.C. 791(a)—825(r), by the Madera Irrigation District, Licensee and MaderaChowchilla Power Authority, transferee, for transfer of minor license for the Madera Canal Mile 24.2 Project No. 5765. The project is located in Madera County, California on the United States Bureau of Reclamation's Madera Canal which gets its waters from the San Joaquin River. Correspondence should be directed to: Mr. Johnny Deniz, Madera-Chowchilla Power Authority, 12152 Road 28 ¼, Madera, California 93637

The transferee is a municipality organized under the laws of the State of California. Transferee states that it will comply with all applicable laws of the State of California as required by section 9(b) of the Federal Power Act.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedures, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or

motions to intervene must be received on or before July 23, 1984. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 84-17659 Filed 7-2-84; 8:45 am]

BILLING CODE 6717-01-M

## Office of Energy Research

### Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: July 18-20, 1984 (9:00 a.m.-5:00 p.m.).

Location: Melvin B. Gottlieb Auditorium, Princeton Plasma Physics Laboratory, Princeton, New Jersey 08544.

Contact: Rosalie Weller, Office of Fusion Energy, E-50, U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, telephone (301)-353-3347.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Tentative Agenda Outline

July 18-20, 1984

*Evaluation of the Supporting Concepts*

Review of Charge to Panel—Davidson
Introduction and General Recommendations—Berry
Concept Status and Research Opportunities—Linford
Panel Recommendations—Berry
MFAC Discussion
Formulation of MFAC Findings and Recommendations
Public Input and Discussion (10 minute rule)

*Evaluation of TFCX Process and Options*

Review of Charge to MFAC—Davidson
DOE Evaluation Process—Clarke
TFCX Status and Physics Overview—Furth
Summary of Design Options and Assumptions—Schmidt
Copper Magnet Options—Sheffield
Superconducting Magnet Options—Shannon
Comparison of Options—Montgomery
TFCX R&D Requirements—Saltmarsh
Summary of DOE Technical Review—Ribe
Summary of DOE Cost Review—Johnson
Discussion of Other Ignition Options
MFAC Discussion
Formulation of MFAC Findings and Recommendations
Other Business
Public Input and Discussion (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available approximately 30 days following the meeting.

Issued at Washington, D.C., on June 28, 1984.

Howard R. Raiken,

*Deputy Advisory Committee Management Officer.*

[FR Doc. 84-17612 Filed 7-2-84; 8:45 am]

BILLING CODE 6450-01-M

## FEDERAL LABOR RELATIONS AUTHORITY

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel).

**ACTION:** Public Information Collection Requirement submitted to OMB for review.

**SUMMARY:** The Federal Labor Relations Authority 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). Each entry contains the following: (1) Type of Submissions; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension (no change).

—Petition for Consultation Rights on Government-wide Rules or Regulations
—Petition for National Consultation Rights
—Charge Against Agency
—Request for Assistance

The Federal Labor Relations Authority uses the forms to allow Federal agency or employee Unions to request that the Federal Labor Relations Authority initiate an action in their behalf.

Forward comments to Katie Lewin, OMB Desk Officer, Room 3201, Office of Information and Regulatory Affairs, NEOB, Washington, D.C. 20503, and Sam Besachio, Room 236, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424, (202) 382-0724.

Dated: June 19, 1984.

Jan K. Bohren,

*Executive Director/Administrator, Federal Labor Relations Authority.*

[FR Doc. 84-17177 Filed 7-2-84; 8:45 am]

BILLING CODE 6727-01-M

## FEDERAL RESERVE SYSTEM

### Algemene Bank Nederland N.V. and A.B.N.—Stichting; 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 (49 FR 794) 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 (49 FR 794) to comment 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 July 20, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alegene Bank Nederland N.V and A.B.N.—Stichting,* Amsterdam, The Netherlands; to engage *de novo* through its subsidiaries, A.B.N. Company, Inc. and ABN Credit Corp., both located in New York, New York, in commercial finance activities including providing short, medium and long term direct loans on both a secured and unsecured basis; providing revolving credit, conditional sales financing and the financing of accounts receivable, fixed assets, equipment and general inventory; issuing commercial and standby letters of credit; accepting and discounting drafts drawn in connection with domestic and international transactions, servicing all types of loans for its own account and for the account of others; and buying and selling participations in the kinds of loans and extensions of credit described above. These services would be performed on a national and international basis.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Landmark Financial Group, Inc.,* Fort Worth, Texas; to engage *de novo* through its subsidiary Landmark service Corp., Forth Worth, Texas, in data processing activities.

Board of Governors of the Federal Reserve System, June 26, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-17601 Filed 7-2-84; 8:45 am]

BILLING CODE 6210-01-M

## Bank South 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 (49 FR 794) 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 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 July 23, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia; to acquire Georgia Bancshares, Inc., Macon, Georgia, thereby indirectly acquiring Georgia Bank and Trust Company, Macon, Georgia; The Farmers National Bank of Monticello, Monticello Georgia; and First National Bank of Houston County, Perry, Georgia.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Hometown Bancshares Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of voting shares of Clear Lake National Bank, Houston Texas.

2. *Parkway Bancshares, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 100 percent of voting shares of Parkway Bank & Trust, Dallas, Texas.

Board of Governors of the Federal Reserve System, June 26, 1984.

*James McAfee,*

Associate Secretary of the Board.

[FR Doc. 84-17602 Filed 7-2-98; 8:45am]

BILLING CODE 6210-01-M

## First Fidelity Bancorp. Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) 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 July 25, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 Each Byrd Street, Richmond, Virginia 23261:

1. *First Fidelity Bancorp, Inc.,* Fairmont, West Virginia; to acquire 100 percent of the voting shares of Central National Bank, Morgantown, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commercial Bancshares, Inc.,* Franklin, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank & Trust Company, Franklin, Louisiana.

2. *Greensburg Bancshares, Inc.,* Greensburg, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Greensburg, Greensburg, Louisiana.

C. Federal Reserve Bank of St. Louis (Delmer P Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First National Bancshares of Hempstead County, Inc.,* Hope, Arkansas; to become a bank holding company by acquiring 100 percent of the voting preferred shares and 99.9 percent

of common voting shares of First Blevins Bancshares, Inc., Blevins, Arkansas, thereby indirectly acquiring Bank of Blevins, Blevins, Arkansas, and by acquiring 95.5 percent of the voting shares of First National Bank of Hope, Hope, Arkansas.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First West Concord Bancorporation, Inc.*, West Concord, Minnesota; to become a bank holding company by acquiring 80.82 percent of the voting shares of First National Bank in West Concord, West Concord, Minnesota.

Board of Governors of the Federal Reserve System, June 27, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-17593 Filed 7-2-84; 8:45 am]

BILLING CODE 6210-01-M

## Merchants National Corp. Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than July 17 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire Mortgage Company of Indiana, Inc., Indianapolis, Indiana, thereby engaging in mortgage banking activities.

Board of Governors of the Federal Reserve System, June 27, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-17590 Filed 7-2-84; 8:45 am]

BILLING CODE 6210-01-M

## Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Wednesday, July 18, and Thursday, July 19. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The July 18 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The July 19 session is expected to begin at 9:00 a.m. and to conclude at 3:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets, in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will consider the following topics:

1. *Board's Review of its Equal Credit Opportunity Regulation.* Discussion of the Board's review of Regulation B under its Regulatory Improvement Project.

2. *Branch Closings and the Community Reinvestment Act.* Discussion of: (1) Whether an institution that is considering the closing of a branch office should consult with the community that is served by the branch; (2) how branch closings affect the CRA performance ratings assigned to banks by Federal Reserve examiners; (3) whether placement of an automated teller machine in lieu of a "bricks-and-mortar" branch would satisfy the CRA requirements; and (4) what the Board might do to reduce the adverse effects of some branch closings by the banks that it supervises.

3. *Board's Response to Issuance of the Federal Trade Commission's Credit Practices Rule.* Discussion of the FTC's Credit Practices Rule and the Board's mandate to consider adopting a substantially similar rule for banks.

4. *Implications of the Recommendations of the Vice President's Task Group on Regulation of Financial Services.* Discussion of the potential effects of the Bush Commission's recommendations on consumers and their financial dealings. (Council consideration of this topic is contingent upon release of the task group report in early July.)

5. *Implications of Adjustable Rate Mortgages.* Discussion of potential problems associated with adjustable rate mortgages, particularly those in which the initial rate is discounted in order to qualify the borrower for the loan.

6. *Potential Effects on Consumers Resulting From the Deregulation of the Financial Services Industry.* Discussion of potential effects on consumers of the ongoing deregulation of the financial services industry.

7. *Implications of Service Charges for Consumers.* Discussion of the effect of service charges upon low-income and certain other consumers.

8. *New Technologies for the Provision of Consumer Financial Services.* Presentations on several of the new technologies (including home banking and videotex systems) emerging in the consumer financial services industry.

9. *Regulatory Update.* Status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Brav, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Friday, July 13, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, June 26, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-17596 Filed 7-2-84; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 84N-0108]

### Studies of Effects of Marketed Drugs; Cooperative Agreements; Availability of Funds

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Drugs and Biologics, is announcing the anticipated availability of approximately $1,200,000 for fiscal year 1985 for cooperative agreements to support studies of the effects of marketed drugs. Funds are not presently available for these studies. The government's obligation hereunder is contingent upon the availability of appropriated funds from which funding for the grant(s) will be made. The purpose of these agreements is to provide financial assistance to support research on drug use and possible adverse effects of marketed drugs. FDA anticipates making two or three awards averaging $200,000 to $500,000 to support studies of possible adverse drug reactions in general and may consider making several smaller awards in the range of $20,000 to $50,000 for studies of specialized study populations, patient groups, or of limited numbers of drugs. Support for this program may be for a period of up to 3 years.

**DATES:** Prospective applicants are requested to submit letters of intent by August 17 1984 Applicants must be received by 5 p.m. on October 1, 1984. The earliest date for award is February 1, 1985.

**ADDRESSES:** Letters of intent are to be submitted to Gerald A. Faich (address below). Completed applications should be submitted to, and application kits are available from, Kathryn McKnight, Grants and Assistance Agreements Section (HFA-522), Food and Drug Administration, Rm 12A-27 5600 Fishers Lane, Rockville, MD 20857· 301-443-6170.

**FOR FURTHER INFORMATION CONTACT:** Gerald A. Faich, Center for Drugs and Biologics (HFN-700), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-4227

**SUPPLEMENTARY INFORMATION:** FDA's authority to fund research projects is under section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103.

## I. Background

New drugs are required to undergo pharmaceutical, toxicological, and clinical testing before marketing. With the submission of adequate data on a drug's safety and effectiveness, FDA approves a new drug application (NDA), which permits a manufacturer to market its drug product in the United States. Although the information provided before marketing is sufficient to decide whether to approve the drug, it is not adequate to anticipate all effects of a drug once it comes into general use. To improve the information available of effects of marketed drugs, FDA finds it necessary to provide financial assistance to support research on drug use and possible adverse effects of marketed drugs.

This request for applications (RFA) is intended to encourage the development of research projects in the area of drug-induced illness. Some of such research is intended to test hypotheses from signals originating from spontaneous reports of adverse reactions directly from the practicing physician, from the literature, or from the manufacturer.

## II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research on the effects of marketed drugs and the association between selected drugs and illness. Specifically, these goals are:

1. To investigate unsuspected adverse effects of drug exposures.

2. To investigate and quantitate the occurrence of previously known or suspected drug-associated risk (i.e., adverse reaction rates or relative risks) in defined populations using cost-effective methods (e.g., computer linkage or specially designed medical records). These include:

a. Estimates of adverse reaction rates for drugs used in the outpatient setting.

b. Extimates of the contribution of various risk factors to adverse reaction rates (e.g., age, sex, dose, coexisting disease, concomitant medication, etc.).

c. Determination of individual drug profiles for adverse reactions within classes of drugs (e.g., nonsteroidal anti-inflammatory drugs).

3. Assessments of possible associations between specific drug exposure and specific diagnoses, taking into account alternative explanations for any findings (e.g., nondrug etiology and confounding factors). These assessments include:

a. Tabulation of the more common drugs associated with significant suspected drug-induced events occurring in the acute hospital setting.

b. Tabulation of the more common significant diseases or outcomes associated with suspected drugs in the acute hospital setting.

c. Studies of associations of drugs in chronic use with specific conditions such as cancer or birth defects where drugs may be the cause of the conditions.

4. Estimates in selected cases, if relevant, of drug usage in defined populations.

5. Exploration of new methodologies and data bases in drug epidemiology.

The drugs and events to be studied should reflect concentration on areas of drug-associated disease where some or all of the following criteria may apply:

1. Information is often lacking (e.g., because of laten effects not often detected by other postmarketing methods) in other postmarketing surveillance resources such as spontaneous reports, registries, or totally automated drug-disease linkage systems (e.g., Medicaid).

2. If the drug is associated with adverse reactions, a significant public health problem may exist due to widespread exposure to the drug.

3. The results of such a study can provide a relatively clear basis for corrective action or changes in medical use of a drug, or both.

4. The characteristics of the molecular entity or the setting of the drug's use may suggest the likelihood of a number of anticipated effects.

In addition, FDA is interested in innovative approaches to studying drug-event associations is specific populations or conditions; for example, for newly marketed drugs and drug use in pregnant, pediatric, and geriatric populations.

FDA anticipates that most studies will be nonexperimental studies and of the case-control and/or cohort study design. A case-control study is one in which patients are selected with a particular condition suspected to be associated with the drug (for example, thromboembolism) and one or more control patient groups are obtained. The information studied concerns prior drug exposure and other etiological factors. Of special interest to FDA would be the

ability to conduct case-control studies related to delayed effects, such as cancer and birth defects.

The cohort study, in which patients both exposed and not exposed to a drug of interest are identified, measures the rate of occurence of untoward events (e.g., death from liver disease) in these patient after drug exposure.

Information of drug exposures could relate to either hospital or outpatient exposure, and events of interest could relate to acute or chronic effects. A list of examples of significant conditions often associated with drugs is provided in Appendix I. A list of widely used, established drugs is provided as guidance in Appendix II, and a list of new molecular entities approved by FDA since 1979 is provided in Appendix III.

For both case-control and cohort studies, the size of the study in relation to its ability to detect specific risks is critical and dependent upon such limits as population size and composition, extent of exposure to study drugs, and rate of occurrence of the event in the population. FDA expects any application to recognize these limits with respect to usefulness and validity of data to be obtained and to include information on the quantity of diagnoses and drug explosures in the population and the quality and validity of these data.

## III. Reporting Requirements

Progress reports will be required quarterly. These reports will be due within 30 days from the last day of each quarter. A final progress report will be due 90 days after termination of grant support. Financial status reports will be required on an annual basis, to be submitted within 90 days from the last day of the budget period.

## IV Mechanism of Support

### *A. Award Instrument*

Support for this program will be in the form of cooperative agreement awards. These awards will be subject to all policies and requirements the govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52, 45 CFR Part 74, and requirements for cost sharing.

### *B. Eligibility*

These cooperative agreements are available to any public or private nonprofit organizations (including State and local units of government) and for-profit organizations.

### *C. Length of Support*

The length of support will depend upon the nature of the study and may extend beyond 1 year but not to exceed 3 years. For studies where the expected date of completion is more than 1 year, however, continuation of support beyond the first year will be based upon review of performance during the proceeding year and the availability of funds.

### *D. Funding Plan*

The number of studies funded will depend on the quality of the applications received and the availability of funds.

## V Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of drugs to be investigated.

2. FDA will establish a Postmarketing Surveillance Advisory Group, which will provide guidance and direction to the programs, in particular, with regard to the drugs and events to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. Other FDA scientists (e.g., epidemiologists and statisticians) will collaboration will include data analysis, interpretation of findings, and, where appropriate, coauthor publications.

4. The drug exposures and/or conditions to be focused on will be jointly agreed upon by the investigator and FDA.

## VI. Review Procedure and Criteria

### *A. Review Method*

Applications will undergo initial review by a review committee of experts in the field of drug epidemiology. The committee will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to FDA's mission.

### *B. Review Criteria*

Applications must be responsive to this RFA. Those applications judged not to be responsive will be referred to the Division of Research Grants, National Institutes of Health, for review and consideration as an unsolicited application. Applications that are judged to be unresponsive will not be considered for funding under this RFA. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.

2. Scientific merit of the research proposal. This will include:

a. The size and appropriateness of the study populations to conduct either case-control or cohort studies.

b. The proposed methods of approach to specific problems, including considerations of data validation (e.g., hospital versus community controls) and data accuracy (e.g., completeness of automated data and training of data collectors).

c. The explicit recognition and description of criteria for selection of drugs and events proposed for study and the quality of the rationale used. The evaluation will be facilitated by the applicant's provision if a tabulation of the top 30 diagnoses and drug exposures in the population with definition of these tabulations and groupings (e.g., terminology classification such as ICD-9-CM). Special consideration will be given to methodology which is cost effective (e.g., well-structured medical records and/or record linkage), if otherwise scientifically acceptable.

3. The plans for complying with regulations for protection of human subjects as applicable to the proposed study.

4. The research, experiences, training, and competence of the principal investigator and the support staff. Special consideration will be given investigators with knowledge and previous experience in postmarketing surveillance and drug epidemiology, but applicants with strong acute and chronic disease epidemiologic background are encouraged to apply.

## VII. Method of Application

### *A. Letter of Intent*

Prospective applicants are requested to submit a brief one page letter of intent, which should include a short synopsis of the proposed research plan. This letter should be received no later than August 17, 1984. The letter is to be submitted to Gerald A. Faich (address above).

FDA requests letters of intent only to provide an indication of the number and scope of applications to be received. It is not binding and it will not enter into the review of any proposal subseqently

submitted. A letter of intent is not a necessary requirement for application.

*B. Format for Application*

Applications must be submitted on Form PHS-398, Application for Public Health Service Grant. The face page of the application must reflect the RFA number, RFA-FDA-CDB-84-1. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the regulations of the Food and Drug Administration implementing that act (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

*C. Legend*

Unless disclosure is required by the Freedom of Information Act, as amended, as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

The original and six copies of the completed application should be delivered to, and application kits are available from, Kathryn McKnight (address above).

Prospective applicants should lable the outside of the mailing package and the top of the application face page with "Response to RFA-FDA-CDB-84-1."

Applications must be received by 5 p.m. on October 1, 1984. Applications received after that time will be considered only if they arrive in time to permit orderly processing. Applications received too late for orderly processing will be referred to the Division of Research Grants, National Institutes of Health, for review as unsolicited applications.

Dated: June 27, 1984.

Mark Novitch,

*Acting Commissioner of Food and Drugs.*

**Appendix I.—Some Important Suspected Drug/Induced Diseases/Conditions (a)=acute (< 7 days); (b)=subacute (> 7 days—1 year); (c) =latent (> 1 year) after exposure**

*I. Cardiovascular.*
- (Myocardial infarction (b)
- Arrhythmia (a, b)
- Myocarditis, pericarditis (b,c)
- Cerebrovascular accident (b,?c)
- Hypertension (a,b)

*II. Milgnancies.*
- Carcinoma (c), e.g., breast, colon, pancreas
- Lymphoma/leukemias (c)

*III. Renal Disease*
- Renal failure—acute (a,b,)—chronic (c)
- Nephrits (b)
- Nephrotic syndrome (a,b)
- Calculi (b,c)

*IV. Hepatic Disease*
- Acute hepatocellular/obstructive (b)
- Chronic hepatocellular/obstructing fibrosing (b,c)

*V. Gastrointestinal*
- Upper GI bleeding, ulceration (a,b)
- Lower GI bleeding, irritation (a,b)
- Lower GI chronic, severe (e.g., Crohn's Disease) (c)
- Cholecysititis/cholelithiasis (b,c)
- Pancreatitis (b,?c)

*VI. Hemotological*
- Bone marrow depression (a,b)
- Agranulocytosis (a,b)
- Thrombocytopenia (a,b)
- Thrombosis (b,?c)

*VII. Endocrine*
- Thyroid disease (b,c)
- Diabetes mellitus (b)
- Parathyroid abnormalities (b) and bone disorders (b,c)

*III. Colagen Disorders*
- Lupus erythematosis (b)
- Allergic vasculities (b)

*IX. Neurological Disorders*
- Psychosis (a,b)
- Seizures (a,b)
- Peripheral neuropathies (b,c)
- Degenerative CNS disorders (c)
- Acute/chronic brain syndromes (a,b)
- Behavioral (i.e., accidents, suicide) (a,b)

*X. Special Sense Disorders*
- Eye-retinal, optic nerve, lens, glaucoma (a,b)
- Ear-8th N, vestibular (a,b)

*XI. Fibrosis*
- Retroperitoneal fibrosis (b,c)
- Pulmonary fibrosis (c)

*XII. Maternal-Fetal Problems*
- Birth defects (b)
- Abnormal pregnancy/delivery (a,b)

*XIII. Pediatric Problems*
- Pediatric neonatal disorders (a,b)
- Developmental abnormalities (c)

*XIV. Allergic-Hypersensitivity*
- Anaphylactoid reactions (a,b)
- Severe skin reactions (a,b)

*XV. Miscellaneous*
- Accidents/fractures (b,c)
- Drug abuse/suicide (b)

**Appendix II.—Selected, Widely Used Generic Drugs and Individual Products**

| | Chronic use | Both | Acute |
|---|---|---|---|
| Hydrochlorothiazide | X | | |
| Codeine | | X | |
| Oral Contraceptives | X | | |
| Erythromycin | | | X |
| Propranolol | X | | |
| Triamterene | X | | |
| Patassium | X | | |
| Diazepam | X | | |
| Amoxicillin | | | X |
| Digoxin | X | | |
| Furosemide | X | | |
| Theophyllines | X | | |
| Penicillin VK | | | X |
| Methyldopa | X | | |
| Cimetidine | | X | |
| Phenobarbital | X | | |
| Propoxyphene | | X | |
| Ibuprofen | | X | |
| Tetracycline | | X | |
| Ampicillin | | | X |
| Amitriptyline | X | | |
| Promethazine | | X | |
| Sulfamethoxazole | | | X |
| Trimethoprim | | | X |
| Cephalexin | | | X |
| Flurazepam | | X | |
| Estrogens | X | | |
| Dimetapp[a] | | X | |
| Metoprolol | | X | |
| Thyroid (including synthetics) | X | | |
| Indomethacin | X | | |
| Chlorpropamide | X | | |
| Isosorbide Dinitrate | X | | |
| Naproxen | X | | |
| Phenytoin | X | | |
| Chlorthalidone | X | | |
| Lorazepam | X | | |
| Actifed[a] | | X | |
| Clorazepate | X | | |
| Sulindac | X | | |
| Miconazole | | | X |
| Allopurinol | | X | |
| Timolol | | X | |
| Thioridazine | X | | |
| Prazosin | X | | |
| Percodan[a] | | X | |
| *Common OTC Drugs:* | | | |
| aspirin | | | |
| acetaminophen | | | |
| phenylpropanolamine | | | |
| ephedrine | | | |
| neosynephrine | | | |
| diphenhydramine | | | |
| chlorpheniramine | | | |
| brompheniramine | | | |
| docusate | | | |
| nonoxynol | | | |
| hydrocortisone topical | | | |

**Appendix III.—New Molecular Entities 1-A, 1-B, 1-C NDA's Approved 1979-1983**

| IA | IB | IC |
|---|---|---|
| **1979** | | |
| Metoclopramide | Carboprost | IV fat emulsion |
| Ticrynafen | Cefachlor | Trimipramine. |
| Metyrosine | Nalbuphine | Cyclacillin. |
| Minoxidil | | Amcinonide |
| Isoflurane | | Nadolol. |
| Daunorubicin | | |
| **1980** | | |
| Oxamiquine | Trifluridine | Meclocycline cream. |
| Ritodrine | Zomepirac | Cinoxacin. |
| | | Mecloforamate |
| | | Calcifediol. |
| | | Sisomicin. |
| | | Maprotiline. |
| | | $Ca^{++}$ Heparin. |
| | | Bacampicillin. |
| **1981** | | |
| Ketoconazole | Cefotaxime Na | Temazepam. |
| Alprostadil ($PGE_1$) | Captopril | Bethanidine $SO_4$. |

| IA | IB | IC |
|---|---|---|
| | Sulfadoxine/ Pyrimethamine. | Saralasin Acetate. |
| | Albuterol | Isosulfan Blue. |
| | Secretin | Atenolol. |
| | Verapamil | Mezlocillin Na. |
| | Flurazepam | Halazepam. |
| | Moxalactam Disodium. | Amiloride HCl. |
| | Sucralfate | Alprazolam. |
| | Piperacillin Na | Gemfibrozil. |
| | Nifedipine | Estramustine $PO_4$ Na. |
| | | Trazodone HCL. |
| | | Ceruletide. |
| | | Buprenorphine HCl. |
| 1982 | | |
| Chymopapain | Acyclovir | Alclometasone Dipropionate. |
| Niclosamide | Diflunisal | Azlocillin Na. |
| Praziquantel | Gonadorelin HCl | Benoxaprofen. |
| Na Cellulose $PO_4$ | Technetium Tc 99m Disofenin. | Cefoperazone Na. |
| Isotretinoin | | Ciclopiroxolamine. |
| | | Diltiazem. |
| | | Econazole $NO_3$. |
| | | Etomidate. |
| | | Guanabenz Acetate. |
| | | Guanadrel $SO_4$. |
| | | Human Insulin. |
| | | Malathion. |
| | | Penetate Indium Disodium In 111. |
| | | Pindolol. |
| | | Piroxicam. |
| | | Streptozocin. |
| | | Succimer. |
| | | Triazolam. |
| | | Xenon Xe 127. |
| 1983 | | |
| Chenodiol | | Atracurium Besylate |
| Acetohydroxamic Acid. | | Ceftizoxime Na. |
| Cyclosporine | | Bentiromide. |
| Etoposide | | Indapamide. |
| | | Netilmicin $SO_4$. |
| | | Oxprenolol. |
| | | Tioconazole. |
| | | Ranitidine. |
| | | Cefuroxime Na. |

[FR Doc. 84-17532 Filed 7-2-84; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 84M-0215]

## Advanced Optical, Inc., Premarket Approval of Softics™ (Polymacon) Hydrophilic Contact Lenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Softics™ (polymacon) Hydrophilic Contact Lenses, sponsored by Advanced Optical, Inc., Nashville, TN. The lenses are to be manufactured under an agreement with National patent Development Corp., New Brunswick, NJ, which has authorized Advanced Optical, Inc., to incorporate by reference information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

**DATE:** Petitions for administrative review by August 2, 1984.

**ADDRESS:** Requests for copies of the summary of safety and effectiveness data and petitions for administrative review 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:** Charles H. Kyper, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

**SUPPLEMENTARY INFORMATION:** On May 17 1983, Advanced Optical, Inc., Nashville, TN 27203, submitted to FDA an application for premarket approval of the Softics™ (polymacon) Hydrophilic Contact Lenses. The spherical lenses range in powers from −20.00 diopters to +20.00 diopters and are indicated for daily wear for the correction of visual acuity in persons with nondiseased eyes who are aphakic or not-aphakic and have myopia or hyperopia and refractive astigamtism of 1.50 diopters or less. The application included authorization from the National Patent Development Corp., New Brunswick, NJ, to incorporate by reference the information contained in its approved premarket approval application for the Hydron® (polymacon) Hydrophilic Contact Lens (Docket No. 79M-0244). The application was reviewed on November 18, 1983, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and FDA advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see FR 17446; April 24, 1984).) On May 24, 1984, FDA approved the application by letter to the sponsor from the Director, Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the Amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made from polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made from polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made from polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of Softics™ (polymacon) Hydrophilic Contact Lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lenses solutions that FDA approves for use with contact lenses made with polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for

withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act [21 U.S.C. 360e(g)], for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 27 1984.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-17586 Filed 7-2-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84-0214]

## Metrosoft, Inc., Premarket Approval of the Metro 55™ (Methafilcon A) Hydrophilic Contact Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Metro 55™ (methafilcon A) Hydrophilic Contact Lens, sponsored by Metrosoft, Inc., Austin, TX. The lenses are to be manufactured under an agreement with Hydracon Corp., Huntington Beach, CA, which has authorized Metrosoft, Inc., to incorporate by reference the information contained in its premarket approval application for the HYDRACON® (methafilcon A) Hydrophilic Contact Lens (Docket No. 83M-0072). After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified Metrosoft, Inc., that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

**DATE:** Petitions for administrative review by August 2, 1984.

**ADDRESS:** Requests for copies of the summary of safety and effectiveness data and petitions for admimstative review 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:** Charles H. Kyper, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

**SUPPLEMENTARY INFORMATION:** On November 28, 1983, Metrosoft, Inc., Austin, TX 78758, submitted to FDA an application for premarket approval of the Metro 55™ (methafilcon A) Hydrophilic Contact Lens. the Metro 55™ (methafilcon A) Hydrophilic Contact Lens is intended for daily wear by individuals with eyes that are nondiseased, are not aphakic, are myopic or hyperopic, require spherical correction in the power range of −20.00 to +10.00 diopters (D), and have 1.25 D or less of refractive astigmatism. The Metro 55™ (methafilcon A) Hydrophilic Contact Lens is to be disinfected using a chemical (not heat) disinfection system. The application included authorization from Hydracon Corp., Huntington Beach, CA 92647 to incorporate by reference the information contained in its premarket approval application for the HYDRACON® (methafilcon A) Hydrophilic Contact Lens (Docket No. 83M-0072). The application was reviewed on January 31, 1984, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat, and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dential Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On May 15, 1984, FDA approved the application by letter to Metrosoft, Inc., from the Director, Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are new regulated as class III medical devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated and new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling (which may be a draft of the final labeling) is available for public inspection at the Office of Device Evaluation—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of

the device and the docket number found in brackets in the heading of this document.

The labeling of the Metro 55™ (methafilcon A) Hydrophilic Contact Lens states that the lenses are to be used only with certain solutions for disinfection and other purposes. This restrictive labeling also informs new users that they must avoid using certain products, such as solutions intended for use only with hard contact lenses. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approves for use with approved contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

## Opportunity for Administrative Review

Section 515(d)(3) of thee act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1984, file with the Dockets Managements Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 26, 1984.

William F. Randolph,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-17734 Filed 7-2-84; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 84P-0212]

## Sigma Chemical Co., Oxalate Test System; Panel Recommendation on Petition for Reclassification

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel (the Panel) (formerly the Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel) that FDA reclassify the oxalate test system from class III (premarket approval) into class I (general controls). The Panel made this recommendation after review of a reclassification petition filed by Sigma Chemical Co. FDA also is issuing for public comments its tentative findings on the recommendation. After reviewing any public comments on the recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on this reclassification petition will be announced in the Federal Register.

**DATE:** Comments by September 4, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7234.

**SUPPLEMENTARY INFORMATION:** Classification of any medical device in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c).

On April 19, 1983, Sigma Chemical Co., St. Louis, MO 63168, submitted to FDA under section 513(f)(2) of the act a reclassification petition for a device the manufacturer calls "The Quantitative Determination of Oxalate in Urine at 590 nm." The petitioner later submitted supplements to the petition dated June 30, 1983, and August 25, 1983. The petitioner's device is automatically classified into class III under section 513(f)(1) of the act because it is not substantially equivalent to any preamendments device (i.e., a device that was in commercial distribution before May 28, 1976); nor is the device substantially equivalent to any postamendments device (i.e., a device that has been placed in commercial distribution since that date) which has subsequently been reclassified.

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a class III device may be marketed, it must either be reclassified under section 513(f)(2) of the act or have premarket approval under section 515 of the act. The "Quantitative Determination of Oxalate in Urine at 590 nm" does not have premarket approval.

Section 513(f)(2) of the act requires FDA to refer a reclassification petition to the appropriate advisory panel and to receive a recommendation on whether to approve or deny the petition. Accordingly, FDA referred the petition to the Clinical Chemistry and Hematology Devices Panel [1] which reviewed the petition.

To determine the proper classification of the device, the Panel considered the criteria specified in section 513(a)(1) of the act. Section 513(a) of the act establishes three classes of devices: class I (general controls), class II (performance standards), and class III (premarket approval). Classification of a device is determined by the level of regulatory control needed to provide reasonable assurance of the safety and effectiveness of the device. A class I device is a device for which the "general controls" authorized by or under various sections of the act are sufficient to provide reasonable assurance of the

[1] On April 14, 1984, the Clinical Chemistry and Hematology Devices Panel was terminated and concurrently FDA established the Clinical Chemistry and Clinical Toxicology Devices Panel (see 49 FR 17448; April 24, 1984).

safety and effectiveness of the device. A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which it is therefore necessary to establish a performance standard to provide reasonable assurance of its safety and effectiveness. A class III device is a device that cannot be classified into class I or class II and that it purported or represented to be for use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or that presents a potential unreasonable risk of illness or injury. Premarket approval obtained in accordance with section 515 of the act is required to provide reasonable assurance of the safety and effectiveness of a class III device.

The data on which any reclassification is based are required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7 of the regulations. As specified in 21 CFR 860.123(a)(6), the valid scientific evidence of safety and effectiveness contained in a petition for reclassification must demonstrate (1) that the device should not be classified into its present classification and (2) how the proposed classification will provide reasonable assurance of the safety and effectiveness of the device. For the purposes of reclassification, the valid scientific evidence upon which the agency relies may not be based on trade secret or confidential commercial information obtained by FDA under various sections of the act (see section 520(c) of the act (21 U.S.C. 360j(c), 21 CFR 860.5(e)) or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved premarket approval applications or product development protocols that have been declared completed (see section 520(h)(3) of the act). All data and information contained in a filed petition for reclassification under section 513(f) of the act may be disclosed by the agency and used as the basis for reclassification of a device from class III into class II (21 CFR 860.5(e)).

On December 1, 1983, the Panel recommended that FDA reclassify the generic type of device from class III into class I. The Panel also recommended that FDA assign to this generic type of device the name "oxalate test system" and identify it as a manual or an automated device intended to measure the concentration of oxalate in urine to aid in the diagnosis or treatment of urinary stones or certain other conditions. (See 21 CFR 860.3(i) for a definition of the term "generic type of device".)

## Summary of Reasons for the Recommendation

The Panel gave the following summary of reasons in support of its recommendation on reclassification:

1. The device is not an implant, is neither life sustaining nor life supporting, and does not present a potential unreasonable risk of illness or injury.

2. General controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

## *Background Information on Urinary Oxalate and Its Quantitation*

Oxalate is a normal constituent of urine, but only recently has the significance of calcium oxalate crystals in the urine and its relationship to urinary tract stone formation been fully recognized (Ref. 1a). Formation of the sparingly soluble calcium salt of oxalate in the urinary tract is considered the major factor in urolithiasis (development of kidney stones) (Ref. 1b). Oxalate in urine may arise either as an end-product of intermediary metabolism or from dietary sources. An increased excretion of oxalate can be attributed to increased ingestion of oxalate precursors or oxalate rich food, increased formation of oxalate due to metabolic defects, and increased absorption of oxalate in a number of gastrointestinal disorders (Refs. 1d through 1l).

The assay of oxalate in urine is difficult. Most older methods are not suitable for routine laboratory use because they were too involved and time-consuming. More recent methods have offered some improvements, but these methods also are time consuming. In a recent study, six oxalate methodologies were compared (Ref. 1m). The authors concluded that all of them give results that are clinically reliable. The procedure for assaying urinary oxalate described in this petition is based on the products produced by the catalytic activity of the enzyme oxalate oxidase (Ref. 1n). The assay described in the petition is specific for oxalate, is rapid, does not require special equipment, and easily is adaptable for use on present-day clinical automated analyzers.

## Summary of Data Upon Which the Recommendation Is Based

The Panel based its recommendation for the oxalate test system on data in the petition (Ref. 1) and in the 29 published studies (Refs. 1a through 1cc) cited in the petition (Refs. 1 through 29 in the "Bibliography" section of Sigma Technical Bulletin No. 590) and included in the petition. By conducting the following studies, the petitioner showed the accuracy, precision (reproducibility), specificity, sensitivity, and clinical utility of the oxalate test system.

To use the test system, a resin absorbent, which selectively binds the oxalate, is added to a portion of a patient's urine sample and shaken. The extracted urine is discarded, and the oxalate is eluted from the resin with a dilute alkali solution. A portion of this alkaline extract is reacted with the reagent solution containing enzymes and a chemical, which react with the oxalate in the extract to produce a colored dye. The amount of dye formed is related to the quantity of oxalate present in the urine and is measured with a spectrophotometer (a device that measures the intensity of a colored solution).

## Accuracy

The petitioner assessed the accuracy of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system by conducting separate studies: (1) To compare analytical results from four procedures described in the literature; (2) to determine the recovery of "oxalate" added to 3 aliquots of an assayed urine sample; (3) to determine the recovery of isotopic ($_{14}C$ oxalic added to 11 random urine samples; and (4) to establish linearily ranges of the test on 2 different spectrophotometers. The petitioner also assessed the accuracy of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system using three automated systems: Abbott Laboratories' "Abbott ABS-100" and "Abbott VP" and J.T. Baker Co.'s "Centrifichem 500." The results were as follows: Using patients' urine samples, the petitioner compared the performance of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system manual method to the performance of four procedures described in the literature (Refs. 1bb, 2, 3, and 4). Two of these procedures are based on the actions of enzyme reagents on oxalate (Refs. 1bb and 2), one on the separation of oxalate on a chromatography column of resin (Ref. 3) and one on the precipitation of oxalate

as insoluble calcium oxalate (Ref. 4). Conventional statistical calculations indicated that the respective averages of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system statistically were not different in three of the four comparison methods cited. A average difference of ×12 milligrams per liter (mg/L) was observed between the method of Mahle and Menon (Ref. 3) and the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system. The average results of the other three methods (32 mg/L) agreed quite well with the average results of tests using the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system (31 mg/L). Apparently, for unknown reasons, the Mahle and Menon method gives statistically biased values compared with these existing procedures. However, this average difference of ×12 mg/L of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system would not be important clinically in diagnosing or evaluating hyperoxaluric patients.

The petitioner performed recovery studies by augmenting with oxalate a urine specimen containing a normal level of oxalate (18.4 mg/L), to produce three test samples containing about 25, 50, and 100 percent of the normal level, respectively. Each of the augmented urine samples was extracted and the absorbent eluted by the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" procedure. The eluates so purified were then assayed for oxalate according to the "Abbott ABS-100" Discrete Analyzer Application cited in the petition. Calculated recoveries for the three augmented samples were adequate: 101, 102, and 101 percent, respectively.

The petitioner also provided data on extraction/elution recovery by using isotope dilution technique. Portions of isotopic $^{14}C$ oxalate were added to each of 11 urine specimens ranging in oxalate concentrations from 18 to 86 mg/L. The isotope activity for each of the treated samples was determined. The treated specimens were then analyzed using the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" procedure and the isotope activity was determined once again. Recovery of $^{14}C$ oxalate ranged from 81 to 98 percent, with an average recovery of 90 percent. For this type of experimental protocol, which involved a large number of manipulations where each manipulation contributes additively to the total experimental error of 10 percent, overall recovery is considered adequate.

By quantitating with two typical clinical laboratory spectrophotometers, the petitioner checked the range of accurate color response of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system by determining the linearity of the color responses of oxalate solutions of know concentrations (5 to 200 mg/L). The more sophisticated spectrophotometer, the "Gilford 252," permitted accurate instrument readings to be made at higher concentrations of oxalate (up to 200 mg/L) than the simpler "Coleman Jr. II" spectrophotometer, which allowed accurate readings only to about 160 mg/L.

Such differences in the performance of individual brands of spectrophotometers are well recognized, and these data were presented to illustrate that each laboratory must establish the upper range of urinary oxalate concentrations that can be measured accurately with the particular spectrometer system employed. Urine samples with oxalate concentrations above the range of instrument linearity must be diluted with water before being analyzed by the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system.

The petitioner also assessed the accuracy of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system by assaying 21 urine specimens by using both the manual test method and the Abbott Laboratories' "ABA-100" instrument methods. The manual test method range of results were 19.2 to 206.8 mg/L and the average value result was 96.9 mg/L. The corresponding Abbott Laboratories' "ABA-100" results were 16.7 to 215.7 and 97.3 mg/L, respectively.

Similiarly, 20 of the above urine specimens were assayed by both the manual test method and the Abbott Laboratories' "Abbott VP" instrument. The manual test method range of results and average value result were of 18.2 to 206.6 and 96.9 mg/L, respectively. The corresponding results from using Abbott Laboratories "Abbott VP" were 18.6 to 209.8 and 98.8 mg/L, respectively.

Further, the 20 urine specimens were assayed by both the manual test method and the J.T. Baker Co.'s "Centrifichem 500" instrument. The manual test method range of results and average value result were 18.2 to 206.6 and 96.9 mg/L, respectively. The corresponding range of results and average value result using the J.T. Baker Co.'s "Centrifichem 500" were 14.2 to 219.0 and 93.5 mg/L respectively.

The petitioner concluded from these three experiments that the urinary oxalate test results obtained using the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" on the three automated discrete analyzer noted are as accurate as results obtained manually with the device.

Precision

The petitioner provided data on the precision (reproducibility) of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system on 10 within-run replicate manual assays of 3 urine specimen samples plus between-run manual assays on 4 urine specimen samples. The petitioner also provided data on the precision of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system on 10-within-run replicated assays of a normal and an elevated oxalate urine specimen, and on replicate between-run assays of urine samples, both groups assayed by the Abbott Laboratories' "ABA-100," "Abbott VP," and J.T. Baker Co.'s "Centrifichem 500" automated systems. The results were as follows: The petitioner evaluated within-run manual precision of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" by doing 10 replicate assays of 3 urine specimens, yielding the following results: *specimen 1*, mean 22 mg/L, coefficient of variation (C.V.) of ±2.2 percent; *specimen 2*, mean 54 mg/L, C.V. of ±1.3 percent; *specimen 3*, mean 108 mg/L, C.V. of ±1.85 percent.

The Petitioner evaluated between-run manual precision data by assaying 4 urine specimens on 11 spearate occasions over a 9-day period (6 working days) with these results: *specimen 1*, average 23 mg/L, C.V of ±5.4 percent; *specimen 2*, average 24 mg/L C.V of ±6.0 percent; *specimen3*, average 42 mg/L, C.V of ±5.3 percent; *specimen 4*, average 104 mg/L, C.V of ±8.6 percent.

In addition, the petitioner evaluated within-run precision by assaying 10 replicate assays of a normal and an augmented urine specimen. With the Abbott Laboratories' "Abbott ABA-100" system, the average value obtained for the normal specimen was 21.7 mg/L and the coefficient of variation (C.V.) was ±3.7 percent; for the augmented specimen, the corresponding values were 157.5 mg/L, and ±1.6 percent. Similarily, with the Abbott Laboratories' "Abbott-VP" and the J.T. Baker Co.'s "Centrifichem 500," the respective values obtained were 27.9 mg/L with a C.V of ±0.87 percent and 23.4 mg/L with C.V of ±5.5 percent.

Further, the petitioner assayed 22 other urine specimens (20 to 200 mg/L) on two separate occasions. Using the

Abbott Laboratories' "Abbott VP" the average values obtained were 95.4 and 94.1 mg/L. Likewise, the petitioner assayed 20 other urine samples (20 to 200 mg/L) on two separate occasions. Using the J.T. Baker Co.'s "Centrifichem 500," the average values obtained were 99.5 and 99.4 mg/L.

The petitioner concluded from these three experiments that the urinary oxalate test results obtained using the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" on the three automated discrete analyzers noted have acceptable precision (reproducibility); and that these experiments support further the conclusions noted in the "Accuracy" studies that the differences in the yield values obtained manually were not statistically significant.

### Specificity

The petition stated that the specificity of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system is based on the enzymatic oxidation of oxalate by the enzyme "oxalate oxidase" coupled with an enzyme/dye reaction. Both of these chemical reactions have been extensively evaluated, and are recognizedd as a basis for the specific quantitation of oxalate (Refs. 1 and 1n).

Interference from urine ascorbic acid (vitamin C) is negligible, when intake levels are near requirement levels. However, the labeling included in the petition states that ingestion of ascorbic acid in quantities of grams per day will result in significant increases in urinary oxalate excretion. Consequently, dietary habits should be considered. Patients should refrain from ingesting excessive amounts of ascorbic acid (or other oxalate-rich foods) for at least 48 hours prior to the urine specimen collection period.

The specificity of the enzymatic reactions for oxalate (Ref. 1u) used in the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" test system is further enhanced by pretreating the urine sample with the absorbent, which selectively binds the oxalate, and by elution of the absorbent for subsequent colorimetric determination of the oxalate in the purfied eluate, as described in the petition (Ref. 1).

### Sensitivity

The petitioner determined the theoretical limit of sensitivity of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system by determining the amount of color produced by standard solution of oxalate (5 to 200 mg/L) on two spectrophotometers. The readings of the instruments producte by a standard solution assayed by the Sigma "Quantitative Determination of Oxalate in Urine 590 nm" oxalate test system demonstrated that the lowest practical limit of sensitivity of the method is about 3 to 5 mg/L oxalate in urine, which is below the lower limits of normal excretion of oxalate in urine for adults (Ref. 1).

### Clinical Utility

The petitioner provided data on expected values of the Sigma "Quantitative Determination of Oxalate in Urine at 590 nm" oxalate test system by assaying 24-hour urine specimens from 108 clinically healthy adult males and females and 12 healthy children from 7 to 14 years of age. All were on an unrestricted diet. The mean value of oxalate obtained for the 67 adult males was 26 mg/24 hours and for 41 adult females, 17 mg/24 hours. The mean value of oxalate obtained for the 12 children was 26 mg/24 hours. Normal ranges were calculated as the mean, ±2 standard deviation (Standard deviations equal 9 for males, 7 for females, and 6 for children). The normal range for children under the age of 7 was not determined. Similar ranges have been reported in the literature (Ref. 1).

NORMAL RANGE OF EXCRETION IN 24 HOURS

| | As oxalate (mg) | As oxalic acid dihydrate (mg) |
|---|---|---|
| Adult males | 77–44 | 10–61 |
| Adult females | 4–31 | 6–43 |
| Children | 13–38 | 18–53 |

The petition also provided representative data on oxalate excretion found in certain pathological conditions. The urinary oxalate excretion in nine primary hyperoxaluric "stone formers" ranged from 85 to 233 mg/24 hrs. In another study, two other hyperoxaluric patients had oxalate excretions of 97 and 173 mg/24 hrs. One idiopathic hypercalciuric stone former excreted 35 mg/24 hrs, and a dietary-induced (chocolate addict) stone former excreted 26 mg/24 hrs.

### Risks to Health

The Panel noted that failure of the device to perform its intended use may contribute to the improper diagnosis or treatment of patients with kidney or urinary stones, patients with increased excretion of oxalate in urine due to certain metabolic defects, or patients with increased absorption of oxalate due to a number of gastrointestinal disorders that produce servere fat malabsorption.

### Additional Findings

The petitioner submitted Sigma Technical Bulletin No. 590 titled "The Quantitative Determination of Oxalate in Urine at 590 nm" that is intended to serve as part of the labeling for the device. The Panel recommended that this labeling be revised or supplemented as follows:

1. The "Summary and Explanation" section should be enlarged to denote those various medical conditions other than kidney or urinary stones, which may be associated with increased urinary excretion of oxalate.

2. The section on "Speciman Collection and Preparation" should be supplemented to include more detailed discussion and instructions about which drugs, foods, and dietary supplements (vitamin C, etc.) the patient should avoid before and during the collection period for samples of urine to be tested.

3. Step 1 of the "Extraction" directions should state more specifically that as much of the fluid as possible should be aspirated from the settled absorbent. The step should be "standardized" so that 0.15 milliliter of fluid is left in the container, or as close to the amount as possible.

4. In addition to the references already cited in the labeling of the device, labeling should include the reference to the study performed by Zerwekh, et al., identified below (Ref. 1m).

5. The labeling should recommend that duplicate samples be assayed until sufficient precision is developed by the analyst.

6. The instructions for the procedure should recommend that extraction steps 1 through 3 be followed for the standard oxalate solution.

### FDA's Tentative Findings

FDA tentatively agrees with the Panel's recommendations that the generic type of device manual oxalate test system or automated oxalate test system for the quantitation of oxalate in urine be reclassified from class III into class I.

### References

The transcript of the Section meeting and the following material are on public file in the Dockets Management Branch (address above) where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Sigma Chemical Co. petition and supplements to petition:

a. Hodgkinson, A., "Oxalic Acid in Biology and Medicine," Academic Press, 1st Ed., New York, pp. 13–16, 1977.

b. Robertson, W. G. and A. Rutherford, "Aspects of the Analysis of Oxalate in Urine," *Scandinavian Journal of Urology and Nephrology*, Suppl. 53:85–93, 1979.

c. Gerritsen, T., E. Kaveggia, and H. A. Waisman, "A New Type of Idiophathic Hyperglycinemia with Hypo-oxaluria," *Pediatrics*, 36:882–891, 1965.

d. Gelzayed, E. A., R. I. Breuer, and J. B. Kirsner, "Nephrolithiasis in Inflammatory Bowel Disease," *American Journal of Digestive Diseases*, 13:1027–1034, 1968.

e. Earnest, D. L., "Enteric Hyperoxaluria," *Advanced Internal Medicine*, 24:407–427, 1979.

f. Andersson, H. and R. Jagenburg, "Fat-reduced Diet in the Treatment of Hyperoxaluria in Patients with Ileopathy," *Gut*, 15:360–366, 1974.

g. Smith, L. H., H. Fromm, and A. F. Hofmann, "Acquired Hyperoxaluria, Nephrolithiasis and Intestinal Disease;" *New England Journal of Medicine*, 286:1371–1375, 1972.

h. Dickstein, S. S. and B. Frame, "Urinary Tract Calculi after Intestinal Shunt Operations for the Treatment of Obesity," *Surgery, Gynecology and Obstetrics*, 136:257–260, 1973.

i. Earnest, D. L., et al., "Hyperoxaluria in Patients With Ileal Resection: An Abnormality in Dietary Oxalate Absorption," *Gastroenterology*, 66:1114–1122, 1974.

j. Stauffer, J. Q., "Hyperoxaluria and Calcium Oxalate Nephrolithiasis After Jejunoileal Bypass," *American Journal of Clinical Nutrition*, 30:64–71, 1977.

k. Stauffer, J. Q., R. J. Stewart, and G. Bertrand, "Acquired Hyperoxaluria: Relationship to Dietary Calcium Content and Severity of Steatorrhea," *Gastroenterology*, 66:783, 1974.

l. McDonald, G. B., D. L. Earnest, and W. H. Admirand, "Hyperoxaluria Correlates with Fat Malabsorption in Patients with Sprue," *Gut*, 18:561–566, 1977.

m. Zerwekh, J. E., et al., "Assay of Urinary Oxalate: Six Methodologies Compared," *Clinical Chemistry*, 29:1977–1980, 1983.

n. Chiriboga, J., "Some Properties of an Oxalic Oxidase Purified From Barley Seedlings," *Biochemical and Biophysical Research Communications*, 11:277–282, 1963.

o. Henry, R. J., "Oxalic Acid," *in* "Clinical Chemistry. Principles and Technics," 2d Ed., Harper and Row, Hagerstown, MD, pp. 1349–1354, 1974.

p. Brinkley, L., et al., "Bioavailabilily of Oxalate in Foods," *Urology*, 17:534–538, 1981.

q. Lamden, M. P. and G. A. Chrystowski, "Urinary Oxalate Excretion by Man Following Ascorbic Acid Ingestion," *Proceedings of the Society for Experimental Biology and Medicine*, 85:190–192, 1954.

r. Finch, A. M., G. P. Kasidas, and G. A. Rose, "Urine Composition in Normal Subjects After Oral Ingestion of Oxalate-Rich Foods," *Clinical Science*, 60:411-418, 1981.

s. Hesse, A., et al., "The Effects of Dietary Oxalate Loads on Urinary Oxalate Excretion," *in* "Oxalate in Human Biochemistry and Clinical Pathology," Edited by Rose, G. A., W. G. Robertson, and R. W. E. Watts, Proceedings of An International Meeting in London, pp. 100–110, 1979.

t. Costello, J., "The Effect of Ascorbic Acid on Oxalate Metabolism," *in* "Oxalate in Human Biochemistry and Clinical Pathology," Edited by Rose, G. A., W. G. Robertson, and R. W. E Watts, Proceedings of An International Meeting in London, pp. 271–273, 1979.

u. Sugiura, M., et al., "Purification and Properties of Oxalate Oxidase From Barley Seedlings," *Chemical Pharmacology Bulletin*, 27:2003–2007, 1979.

v. Yriberri, J. and S. Posen, "A Semi-Automated Enzymatic Method for Estimating Urinary Oxalate," *Clinical Chemistry*, 26:881–884, 1980.

w. Gibbs, D. A. and R. W. E. Watts, "The Variation of Urinary Oxalate Excretion with Age," *Journal of Laboratory and Clinical Medicine*, 73:901–908, 1969.

x. Hodgkinson, A. and A. Williams, "An Improved Colorimetric Procedure for Urine Oxalate," *Clinica Chimica Acta*, 36:127–132, 1972.

y. Pik, C. and H. P. M. Kerckhoffs, "A Simple Method for the Quantitative Determination of Oxalic Acid in Urine," *Clinica Chimica Acta*, 8:300–301, 1963.

z. Hockaday, T. D. R., et al., "Primary Hyperoxaluria," *Medicine*, 43:315–345, 1964.

aa. Parry, M. F. and R. Wallace, "Ethylene Glycol Poisoning, *American Journal of Medicine*, 57:143–150, 1974.

bb. Hallson, P. C. and G. A. Rose, "A Simplified and Rapid Enzymatic Method for Determination of Urinary Oxalate," *Clinica Chimica Acta*, 55:29–39, 1974.

cc. Barnett, R. N., "A Scheme for the Comparison of Quantitative Methods," *American Journal of Clinical Pathology*, 43:562–569, 1965.

2. Costello, J., et al., "An Enzymatic Method for the Spectrophotometric Determination of Oxalic Acid," *Journal of Laboratory and Clinical Medicine*, 87:903–908, 1976.

3. Mahle, C. J. and M. Menon, "Determination of Urinary Oxalate by Ion Chromatography: Preliminary Observation," *Journal of Urology*, 127:159–162, 1982.

4. Archer, H. E., et al., "Studies on the Urinary Excretion of Oxalate by Normal Subjects," *Clinical Science*, 16:405–411, 1957.

5. Letter of June 3, 1983, from Robert G. Britain, FDA, to Leo Bressler, Sigma Chemical Co.

6. Memorandum of telephone conversation of August 4, 1983, between Eugene W. Rice, FDA, and Leo Bressler, Sigma Chemical Co.

7. Letter August 19, 1983, from Robert G. Britain, FDA, to Leo Bressler, Sigma Chemical Co.

8. Summary minutes of telephone conference of the Clinical Chemistry Device Section, December 1, 1983.

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition would not have a significant economic impact on a substantial number of small entities. The petitioner, and all future namufacturers of the oxalate test system device, would be relieved of the costs of complying with the premarket approval requirements in section 515 of the act. There are no off-setting costs that the petitioner would incur from reclassification into class I. The magnitude of the economic savings from approval of this petition depends of the extent of premarket approval studies the petitioner would have conducted and the number of future competitors satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulstions (21 CFR 860.134(b)(5)), FDA is required to publish this notice in the Federal Register as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the Federal Register this notice without clearance of the Director, Office of Management and Budget. As soon as practicable, FDA will notify that office of the publication of this notice.

Interested persons may, on or before September 4, 1984, submit to the Dockets Management Branch (address above) written comments on this recommendation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1984.

William F. Randolph,

*Acting Associate Commission for Regulatory Affairs.*

[FR Doc. 84-17750 Filed 7-2-84; 8:45 a.m.]

BILLING CODE 4160-01-M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR 17419]

### Oregon's; Conveyance of Public Lands; Order Providing for Opening of Land

*Correction*

In FR Doc. 84–15974 beginning on page 24607 in the issue of Thursday, June 14, 1984, make the following corrections:

1. On page 24607, third column, in the second entry for "Willamette Meridian",

fourth line, delete the comma between "NW¼" and "NW¼"

2. On page 24608, first column, the second complete paragraph, "5." should have read "6."

BILLING CODE 1505-01-M

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[OR 17526]

## Oregon; Conveyance of Public Land; Order Providing for Opening of Lands

*Correction*

In FR Doc. 84-15799, appearing on page 24455, in the issue of Wednesday, June 13, 1984, in the first column, in the last line, "E¼SW¼" should read "E½SW¼"

BILLING CODE 1505-01-M

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## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register Criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 18, 1984.

Beth Grosvenor,

*Acting Chief of Registration, National Register.*

COLORADO

Montezuma County

Dolores vicinity, *Anasazi Archeological District*, S of Dolores

CONNECTICUT

Fairfield County

Bridgeport, *United Congregational Church*, 877 Park Ave.
Weston, *Greenwald House*, 11 Homeward Lane

Hartford County

Farmington, *Pequabuck Bridge*, Meadow Rd. at Pequabuck River
New Britain, *Washington School*, High and Carmody Sts.
Simsbury, Drake Hill Road Bridge, Drake Hill Rd. at Farmington River

KENTUCKY

Hancock County

Lewisport, *Bank of Lewisport (Lewisport MRA)*, 4th St.
Lewisport, *Hayden, Isaac B., House (Lewisport MRA)*, Pell St.
Lewisport, *Henderson, Tom, House (Lewisport MRA)*, 4th St.
Lewisport, *Lewisport Masonic Lodge (Lewisport MRA)*, 4th St.
Lewisport, *Patterson, Horace, House (Lewisport MRA)*, Market St.
Lewisport, *Pell, Joe, Building (Lewisport MRA)*, Pell St.
Lewisport, *Taylor, J.B., and Son Feed Store (Lewisport MRA)*, 307 4th St.

Jefferson County

Louisville, *Shawnee Elementary School (West Louisville MRA)*, 4151 Herman St.
Louisville, *Shawnee High School (West Louisville MRA)*, 4015 Herman St.

Scott County

Georgetown vicinity, *Craig, Newton, House and Penitentiary Buildings Complex*, U.S. 460
Midway vicinity, *Weisenberger Mills and Related Buildings*, Off U.S. 421 (also in Woodford County)

Union County

Morganfield, *Morganfield Commercial District*, Main, Court, and Morgan Sts.

LOUISIANA

Lafayette Parish

Lafayette, *Salles House and Office*, 512 and 514 S. Buchanan St.

Natchitoches Parish

Natchitoches, *President's Home, Northwestern State University*, College Ave.

MAINE

Aroostock County

Island Falls, *Island Falls Opera House*, Pattern Rd. and Sewall St.

Cumberland County

Bridgton, *Stone House*, Burnham Rd.
Portland, *Griffin House*, 200 High St.

Franklin County

Rangeley vicinity, *Oquossoc Log Church*, ME 4

Kennebec County

Augusta, *St. Mark's Episcopal Church*, 9 Summer St.
Readfield vicinity, *Lee, Jesse, Church*, ME 17 and Plains Rd.

Knox County

Vinalhaven, *Union Church of Vinalhaven*, E. Main St.

Oxford County

Fryeburg, *District No. 1 Schoolhouse*, 98 Main St.

Piscataquis County

Monson, *Swedish Lutheran Church*, Wilkins and Hebron Sts.

Somerset County

Athens, *Somerset Academy*, Academy St.

Washington County

Cherryfield, *Campbell, David W., House*, Main St.
Eastport, *Boynton Street Historic District*, 13—26 Boynton St.

MICHIGAN

Baraga County

Pelkie vicinity, *Hanka, Herman and Anna, Farm*, NE of Pelkie

Lapeer County

Metamora, *Metamora Crossroads Historic District*, Oak and Highs Sts.

MISSISSIPPI

Leflore County

Greenwood, *Whittington, W.M., House*, 401 E. Market St.

Scott County

Lake, *Lake Railroad Station*, Brook St.

MISSOURI

St. Louis (Independent City),

*Clemens House-Columbia Brewery District*, Roughly bounded by Maiden Lane, Cass Ave., 21st, Helen, and Howard Sts.

NEW YORK

Orange County

Middletown, *Oliver Avenue Bridge*, Oliver Ave.

Schenectady County

Schenectady, *Barney, H.S., Building*, 217-229 State St.

OHIO

Belmont County

Barnesville, *Barnesville Historic District*, Roughly bounded by Arch, Main, Gardner, Chestnut, Bond, and Cherry Sts.

Butler County

Trenton vicinity, *Augspurger, Frederick, Farm (Augspurger Amish/Mennonite Settlement TR)*, 1656 Wayne-Madison Rd.
Trenton vicinity, *Augspurger, John, Farm No. 1 (Augspurger Amish/Mennonite Settlement TR)*, 2731 Woodsdale Rd.
Trenton vicinity, *Augspurger, John, Farm No. 2 (Augspurger Amish/Mennonite Settlement TR)*, 3046 Pierson Rd.
Trenton vicinity, *Augspurger, Samuel, Farm (Augspurger Amish/Mennonite Settlement TR)*, 2070 Woodsdale Rd.
Trenton vicinity, *Ehresman, Christian, Farm (Augspurger Amish/Mennonite Settlement TR)*, 900 Woodsdale Rd.
Trenton vicinity, *Iutzi, Christian, Farm (Augspurger Amish/Mennonite Settlement TR)*, 2180 Woodsdale Rd.
Trenton vicinity, *Kennel, John Jr., Farm (Augspurger Amish/Mennonite Settlement TR)*, 2251 Wayne-Madison Rd.
Trenton vicinity, *Kennel, John Sr., Farm (Augspurger Amish/Mennonite Settlement TR)*, 5506 Kennel Rd.
Trenton vicinity, *Schrock, Peter Jr., Farm (Augspurger Amish/Mennonite Settlement TR)*, Edgewood Dr.
Woodsdale, *Augspurger Grist Mill (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison Rd.

Woodsdale, *Augspurger Schoolhouse (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison Rd.
Woodsdale, *Augspurger Samuel, House (Augspurger Amish/Mennonite Settlement TR)*, Wayne-Madison and Kennedy Rds.
Woodsdale, *Mill Office and Post Office (Augspurger Amish/Mennonite Settlement TR)*, Woodsdale Rd.
Woodsdale, *Mill Worker Row House (Augspurger Amish/Mennonite Settlement TR)* Kennedy Rd.
Woodsdale, *Mill Worker Row Houses (Augspurger Amish/Mennonite Settlement TR)* Wayne-Madison Rd.

Cuyahoga County

Cleveland, *Brookyn Bank Building*, 3764 W. 25th St.
Cleveland, *Dall, Andrew Jr. and James, Houses*, 2225 and 2229 E. 46th St.
Cleveland, *Erie Railroad Cleveland Powerhouse*, 1246 River Rd.
Cleveland, *Miller Block*, 3202—3214 Lorain Ave.

Franklin County

Columbus, *York Lodge No. 563*, 1276 N. High St.

Gallia County

Vinton vicinity, *Evans House*, Coal Valley Rd.

Montgomery County

Dayton, *Dayton View Historic District*, Roughly bounded by Broadway, Harvard Blvd., Superior and Salem Aves.

Summit County

Akron, *Grace Reformed Church*, 172 W. Bowery St.

OKLAHOMA

Johnston County

Tishomingo, *Murray, Gov. William H., House*, Off OK 78

PUERTO RICO

Arecibo County

Vega Baja, *Panteon Otero-Martinez*, Old Bega Baja Cemetery, P R 670

RHODE ISLAND

Providence County

Lincoln, *Albion Historic District*, Roughly Berkshire Dr., Willow Lane, Ledge Way, Kennedy Blvd., School, and Main Sts.

Washington County

Westerly, *Westerly Downtown Historic District*, Railroad Ave., High, Canal, Broad, Union, and Main Sts.

TENNESSEE

Bedford County

Wartrace, *Walking Horse Hotel*, Spring St.

Davidson County

Nashville, *Grassmere*, Nolensville Rd.

Giles County

Riversburg vicinity, *Olivet United Methodist Church. Parsonage and School*, Columbia Pike

Hamilton County

Chattanooga, *Schwartz, Robert, and Company Building*, 736–738 Cherry St

Maury County

Spring Hill, *Spring Hill Presbyterian Church*, S. Main St.

McMinn County

Athens, *Lowry, William, House*, 405 E. Madison Ave.

TEXAS

El Paso County

El Paso, *U.S. Post Office*, 219 Mills Ave

VERMONT

Chittenden County

Charlotte, *Charlotte Center Historic District*, Church Hill and Hinesburg Rds.

VIRGIN ISLANDS

St. John Island

Coral Bay, *Creek House (Hawkover Estate House)*, East End Rd.
Cruz Bay vicinity, *Battice House*, E of Cruz Bay
Cruz Bay vicinity, *Bellevue*, SE of Cruz Bay
Cruz Bay vicinity, *Bethany Moravian Mission*, Off Centerline Rd.
Cruz Bay vicinity, *Chocolate Hole Estate*, SE of Cruz Bay
Cruz Bay vicinity, *Dutch Reformed Church*, E of Cruz Bay
Cruz Bay vicinity, *Fish Bay Estate*, E of Cruz Bay
Cruz Bay vicinity, *Frank Bay Estate*, S of Cruz Bay
Cruz Bay vicinity, *Rendezvous Estate*, Gift Hill Rd.
Cruz Bay, *Christiansfort*, Off Center Line Rd.
Cruz Bay, *Enighed (Boundary Increase)*, Off Center Line Rd.
Maho Bay vicinity, *Winthorp*, Off Center Line Rd.

WISCONSIN

Juneau County

*Cranberry Creek Archeological District*,

Marathon County

*Maine Site (47–Mr–22)*,

Milwaukee County

Milwaukee, *Boosen House-German Y M C A (Brewers' Hill M R A)*, 1702 N. 4th St.
Milwaukee, *Fourth Street School (Brewers' Hill M R A)*, 333 W. Galena St.
Milwaukee, *Gallun Tannery Historic District (Brewers' Hill M R A)*, Holton and Water Sts.
Milwaukee, *Ketter, Frederick, Warehouse (Brewers' Hill M R A)*, 325 W. Vine St.
Milwaukee, *Mayer Boot and Shoe Company Building (Brewers' Hill M R A)*, 110 E. Walnut St.
Milwaukee, *North First Street Historic District (Brewers' Hill M R A)*, Roughly 1st and 2nd Sts. between North and Center Sts.
Milwaukee, *North Third Street Historic District (Brewers' Hill M R A)*, Roughly N. 3rd St. between N. 3rd Ave. and Vine St.
Milwaukee, *Public School No. 27 (Brewers' Hill M R A)*, 2215 N. 4th St.
Milwaukee, *Vine-Reservoir Historic District (Brewers' Hill M R A)*, Vine, Reservoir, Palmer, 1st, 2nd, and Brown Sts.

[FR Doc. 84-17517 Filed 7-2-84; 8:45 am]
BILLING CODE 4310-70-M

## Fort Frederica National Monument, Georgia; Designation of Boundary

Section 2 of the Act of May 16, 1958, (72 Stat. 110) authorized a revision of the boundaries of the Fort Frederica National Monument. "The Act provides that the Secretary of the Interior is authorized and directed to acquire by purchase, condemnation, or otherwise, subject to the acreage limitation contained in the aforementioned Act, the site known as the Bloody Marsh Battle memorial monument located on Saint Simons Island, Georgia, together with such additional land, including the marshland across the river to the west of Fort Frederica National Monument, or interest in land, as in the judgment of the Secretary of the Interior might be desirable for the protection of such national monument."

Notice is given that the boundary of Fort Frederica National Monument has been revised pursuant to the above act, to include the land identified in the Land Protection Plan, approved December 9, 1983, and depicted on boundary map number 369/80,000, dated February 1984, prepared by the Land Resources Division of the Southeast Region of the National Park Service.

The Land Protection Plan and boundary map are on file and available for inspection in the Administration Office of the Fort Frederica National Monument, Route 4, Box 286–C, St. Simons Island, Georgia 31522, and in the offices of the National Park Service, Department of the Interior, Washington, D.C. 20240.

Dated: June 6, 1984.

Neal G. Guse,

*Acting Regional Director, Southeast Region, National Park Service.*

[FR Doc. 84-17503 Filed 7-2-84; 8:45 am]
BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-195]

## Certain Apparatus for Installing Electrical Lines and Components Therefor; Investigation

*Correction*

On page 25318 in the issue of Wednesday, June 20, 1984, make the following corrections.

In the first column, above the heading, "Certain Apparatus for Installing Electrical Lines and Compounds Thereof; Investigation" the investigation number was inadvertently omitted and should read "[Investigation No. 337-TA-196]."

In column two at the bottom of the page, four paragraphs, the signature and the file line were inadvertently omitted and should read as follows:

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is 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, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission telephone 202-523-1272.

By order of the Commission.
Issued: June 15, 1984.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 84-16418 Filed 6-19-84; 8:45 am]
BILLING CODE 1505-01-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3; Sub-39]

### Missouri Pacific Railroad Company; Abandonment; In Assumption and LaFourche Parishes, LA Findings

The Commission has issued a certificate authorizing Missouri Pacific Railroad Company to abandon its 22.9 mile rail line near Dow Chemical, milepost 9.4 and milepost 28.7 near Thibodaux in Assumption and LaFourche Parishes, (LA). There is a variance between the milepost numbers and mileage because the line was straightened at one time. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,
*Secretary.*

[FR Doc. 84-17627 Filed 7-2-84; 8:45 am]
BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Senior Executive Service; Appointment of Member to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

Ms. Susan R. Meisinger has been appointed to a new three-year term, effective June 12, 1984. She replaces Mr. Thorne G. Auchter, who resigned from the Department of Labor.

For Further Information Contact: Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, D.C. 20210.

Signed at Washington, D.C., this 26th day of June, 1984.

Raymond J. Donovan,
*Secretary of Labor.*

[FR Doc. 84-17648 Filed 7-2-84; 8:45 am]
BILLING CODE 4510-23-M

### Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526,

Washington, D.C., 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Job Training Partnership Act Good Local Job Training Projects
ETA-RC76
Single-time
State or local governments
180 responses; 225 hours

The primary use of this information is to select sites for visits by the Secretary of Labor and other Administration Officials. The information collected will be utilized in a variety of reports (e.g. congressional oversight hearings), distributed, upon request, to interested parties (e.g. the news media).

Signed at Washington, D.C., this 28th day of June 1984.

Paul E. Larson,

*Departmental Clearance Officer.*

[FR Doc. 84-17645 Filed 7-2-84; 8:45 am]

BILLING CODE 4510-30-M

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## Employment and Training Administration

[TA-W-13,616, 13,676 and 13,698]

### Duval Corp., Mineral Park Property, Kingman, Arizona, Sierrita Property, Sahuarita, Arizona, Esperanza Property, Tucson, Arizona; Further Determination

Pursuant to the U.S. Court of International Trade remand in action *United Steelworkers of America and Its Locals 68, 7508 and 196,* v. *Secretary of Labor* (USCIT No. 83-7-00944) in order to supplement the record with a customer's survey conducted by the Department of Labor and reconsideration thereon and redetermination, if necessary, the Department makes the following further determination.

The Department expanded the scope of its original factfinding investigation by conducting a survey of Duval's customers to determine the extent to which they reduced purchases of refined copper from Duval while increasing purchases from foreign sources. The Department's survey, which represented the preponderant share of Duval's 1982 sales, showed that most customers either reduced their import purchases of refined copper in 1982 compared to 1981 or did not import refined copper in 1982. The few customers which increased their import purchases of refined copper and had reduced purchases from Duval in 1982 represented only a small percent of Duval's 1982 sales decline.

The findings in the subject petitions were compared with petitions TA-W-13,509, TA-W-13,628, TA-W-13,648 and TA-W-13,649 filed by workers of Kennecott who also produced refined copper and were certified for trade adjustment assistance benefits. The results of the Department's findings for the Duval petitions differed from the findings for the Kennecott petitions. In the Kennecott survey many customers reported decreased purchases of refined copper from Kennecott and increased import purchases of refined copper in absolute terms and relative to their total demand in year to date 1982 compared to the like period in 1981. These customers accounted for a substantial proportion of Kennecott's sales decline during the first half of 1982 compared to the first half of 1981.

Results of the customer survey confirm the Department's original determination that imports did not contribute importantly to a decline in production and/or sales and to worker separations at the Duval Corporation in 1982. Sales and production at Duval increased in 1981 compared to 1980.

U.S. imports of refined copper declined both absolutely and relative to domestic production in 1981 compared to 1980 and in the January through September 1982 period compared to the same period in 1981.

#### Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance for workers of the Duval Corporation at the Mineral Park Property, Kingman, Arizona (TA-W-13,616), the Sierrita Property, Sahuarita, Arizona (TA-W-13,676), and the Esperanza Property, Tuscon, Arizona (TA-W-13,698).

Signed at Washington, D.C., this 25th day of June 1984:

Robert O. Deslongchamps,

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 84-17647 Filed 7-2-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,055]

### Weyerhaeuser Co., Columbia River Lumber Corp., Longview, Washington; Affirmative Determination Regarding Application for Reconsideration

By an application dated May 29, 1984, after being granted a filing extension, counsel for the International Woodworkers of America requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment assistance on behalf of the former workers at the Columbia River Lumber Corporation, Longview, Washington. The determination was published in the Federal Register on April 10, 1984 (49 FR 14212).

The application claims, among other things, that the mill closed in May 1984 and now meets all three of the group eligibility criteria of section 222 of the Trade Act of 1974. The Department's denial was based upon increased sales and production by the mill in the first ten months of 1983 compared to 1982 and any layoffs were attributed to the seasonal nature of the lumber industry.

#### Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., the 25th day June 1984.

Stephen A. Wandner,

*Deputy Director, Office of Legislative and Actuarial Services.*

[FR Doc. 84-17648 Filed 7-2-84; 8:45 am]

BILLING CODE 4510-30-M

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## Office of Pension and Welfare Benefit Programs

[Application No. D-3871]

### Proposed Amendments to Prohibited Transaction Exemption (PTE) 81-8 Involving Certain Short-Term Investments

AGENCY: Office of Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Notice of proposed amendments to PTE 81-8.

SUMMARY: This document contains a notice of pendency before the Department of Labor of proposed amendments to PTE 81-8. PTE 81-8 is a class exemption that permits various transactions relating to the investments

by employee benefit plans in certain short-term money market instruments. The proposed amendments, if adopted, would affect participants, beneficiaries and fiduciaries of plans making the stated investments, dealers and banks covered by the amendments, and other persons engaging in the described transactions.

**DATES:** Written comments should be received by the Department on or before September 4, 1984.

**EFFECTIVE DATE:** If adopted, these proposed amendments would be effective as of January 1, 1975.

**ADDRESSES:** All written comments (preferably at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Short-term Investments. The application pertaining to the exemptive relief proposed herein (Application D-3871) and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677 200 Constitution Avenue, N.W., Washington D.C.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7902. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of proposed amendments to PTE 81-6 (46 FR 7511, January 23, 1981). PTE 81-8 provides an exemption from the prohibited transaction restrictions of section 406(a)(1) (A), (B) and (D) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A), (B) and (D) of the Code.

One of the proposed amendments would permit a plan to enter into a repurchase agreement with a dealer in bankers acceptances who reports its positions daily to the Federal Reserve Bank of New York. The other amendment would allow a plan to invest in securities issued by a bank or its affiliate in cases where the bank is a party in interest in relation to the plan only by reason of the furnishing of checking account or related services (such as clearing and record keeping services) to the plan.

Cantor, Fitzgerald Securities Corp. requested the first proposed amendment by application dated November 24, 1982 (Application No. D-3871). In regard to the second amendment, the American Bankers Association brought to the attention of the Department in a correspondence of January 5, 1983, instances where a plan purchases obligations issued by a commercial bank (or its affiliate) which provides checking account services to the plan. Upon consideration of this limited business relationship which nonetheless appears to create a party in interest relationship, the Department is proposing the second amendment on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), specifically section 3.01 of that Procedure.

Information collection requirements contained in PTE 81-8 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB #1210-0061 approved for use through 5/31/87

### A. Repurchase Agreements With Reporting Dealers in Bankers Acceptances

Cantor, Fitzgerald Securities Corp. (the applicant) requested a modification to Section III of PTE 81-8 on behalf of itself and other reporting dealers in bankers acceptances. Section III permits, under specified conditions, the investment by plans in repurchase agreements with banks and certain kinds of dealers, including reporting dealers in U.S. government securities. The seller of the securities underlying the repurchase agreement would be a party in interest in relation to a plan if the seller or its affiliate provides services (such as brokerage services) to the plan. The proposed amendment would add reporting dealers in bankers acceptances, i.e., primary dealers in bankers acceptances who report daily to the Federal Reserve System, to the class of eligible sellers.

The application indicates that, while the reporting practices of dealers in bankers acceptances are not identical to those of dealers in U.S. government securities, such dealers still are required to provide a considerable amount of data, including statistics on their positions, transactions and interest rates, to the Federal Reserve Bank of New York on a daily basis. Bankers acceptance dealers also submit periodic unaudited and audited financial statements to the Federal Reserve. According to the applicant, when the Federal Reserve System makes repurchase agreements for its own account or makes direct purchases on behalf of foreign central banks, it solicits the bid and offer quotations of Cantor, Fitzgerald and other reporting dealers in bankers acceptances.

Section III of PTE 81-8 contains several conditions designed to protect the interests of the participants and beneficiaries of plans which enter into repurchase agreements. These conditions include a requirement that, under the terms of the agreement, the plan must receive securities having a market value of at least 100 percent of the purchase price paid by the plan. As the applicant notes, this collateral may be in the form of bankers acceptances. Also, the repurchase agreement must be made pursuant to a written agreement and the seller must agree to furnish to the plan certain financial statements. Because all these conditions still must be met under the proposed change to Section III and because the group of dealers involved in the modification make primary markets in bankers acceptances and are subject to daily surveillance by the Federal Reserve System, it appears to the Department that sufficient safeguards are present for the protection of the plan assets involved in the transactions.

### B. Investments in Securities Issued by Commercial Banks

The American Bankers Association and one of its members have communicated to the Department their view that, with respect to both banks and plans, the prohibited transaction provisions of ERISA impose unnecessary constraints on investments in securities issued by the bank (or its affiliate) with whom a plan maintains a checking account. The provision of the checking account services and services incidental to the account appears to make the bank a party in interest in relation to the plan.[2] Thus, in the absence of an exemption, investments in debt obligations or direct purchases of other securities of the bank or an affiliated entity might be prohibited

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406, 408 and 3(14) of ERISA should be read to refer as well to the corresponding provisions of sections 4975 of the Code.

[2] In this regard, the Department notes that the Conference Report on ERISA states at page 315 that "Placing plan funds in noninterest bearing checking accounts is an example of the type of an ancillary service that might be provided by a bank that is a plan fiduciary." (H.R. Rept. 93-1280, 93d Cong., 2d Sess. (1974).)

under section 406(a)(1) of ERISA. Purchases of certain kinds of instruments issued by banks, i.e., bankers acceptances, commercial paper or certificates of deposit, already are exempt under other sections of PTE 81-8 provided the conditions contained in those sections are met.

The Department believes that the potential for abuse is minimal in transactions of this kind where neither the bank nor its affiliates have any further relationship to the plan described in section 3(14) of ERISA, and where the sale of the securities to the plan is not tied into any other transaction or arrangement involving the bank and parties in interest with respect to the plan. Therefore, it has decided to propose a new Section V to PTE 81-8.

The Department notes, however, that the proposed exemption provides no relief from the general fiduciary responsibility provisions of section 404(a) of ERISA, including the prudence requirement of section 404(a)(1)(B). In regard to an investment in a security issued by a commercial bank or affiliate, the appropriate plan fiduciaries must determine, based on the relevant facts and circumstances, whether the investment is prudent. Capital notes or debentures of banks, for instance, often are unsecured and subject to prior claims of depositors and creditors of the issuing bank. Plan fiduciaries would have to take these and other factors into account in making a judgment as to the suitability of the obligations as investments in any particular case.

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

*Written Comments*

All interested persons are invited to submit written comments on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced application at the above address.

*Proposed Amendments*

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1, the Department proposes to amend PTE 81-8 as set forth below.

1. The first sentence of Section III is amended by adding "or in bankers acceptances" after the words "or any agency thereof" and by deleting "government securities and borrowings thereon" and substituting the words "these obligations"

2. A new Section V is added to read as follows:

"V. *Securities of Banks.* A security issued by a bank or an affiliate of the bank if:

A. The bank is supervised by the United States or a State;

B. The bank is a party in interest or disqualified person with respect to the plan solely by reason of the furnishing of checking account or related services to the plan;

C. The terms of the transaction are at least as favorable to the plan as those of an arm's-length transaction with an unrelated party would be; and

D. The investment is not part of an arrangement under which the bank causes a transaction to be made with or for the benefit of a party in interest or disqualified person."

Signed at Washington, D.C., this 28th day of June 1984.

Alan D. Lebowitz,

*Deputy Administrator for Program Operations, Office of Pension and Welfare Benefit Programs.*

[FR Doc. 84-17000 Filed 7-2-84; 8:45 am]

BILLING CODE 4510-29-M

## MARINE MAMMAL COMMISSION

### Marine Mammal Commission and Committee of Scientific Advisors on Marine Mammals; Meetings

**AGENCY:** Marine Mammal Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of forthcoming meetings of the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals.

On July 19, 1984, the Marine Mammal Commission will hold a closed executive session from 8:30 a.m. to 10:00 a.m. to provide for deliberations on internal personnel rules and practices, interagency liaison, and proposed policies and actions relating to international negotiations.

Subsequent to the closed executive session, the Commission and its advisory body, the Committee of Scientific Advisors on Marine Mammals, will hold public meetings to consider, among other matters, issues bearing on marine mammals in Alaska, marine mammal/fishery interactions, net entanglement, the Hawaiian Monk seal, the California sea otter, and Outer Continental Shelf oil and gas activities. These meetings will be held on July 19, July 20, and July 21.

**DATE:** The Marine Mammal Commission will meet in a close executive session on July 19 from 8:30 a.m. to 10:00 a.m. The Commission and its Committee of Scientific Advisors on Marine Mammals will meet in public on July 19, from 10:00 a.m. to 6:00 p.m., on July 20, from 9:00 a.m. to 6:00 p.m., and on July 21, from 8.00 a.m. to 12 noon.

**ADDRESS:** The meetings will be held in the Wood Center Ballroom, University of Alaska, Fairbanks, Alaska 99701.

**FOR FURTHER INFORMATION CONTACT:** John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, D.C. 20006, (202) 653-6237

**SUPPLEMENTARY INFORMATION:** Tentative agenda items for the public meetings are:

July 19—Introduction; status of request for return of management to Alaska;

results of the workshop on optimum sustainable populations; principles underlying formation of species working groups; overview of Federal agency marine mammal activities; Pacific walrus; Alaska sea otter; beluga whales; and ice seals;

July 20—polar bear; bowhead whales; humpback whales; North Pacific fur seals; entangement in nets and other debris; other Alaskan marine mammal/fishery interactions; Hawaiian monk seal; California sea otter; and terms of reference for species working groups;

July 21—UA/USSR Environmental Agreement; marine mammal incidental take in California; and a meeting of the Commission.

These meetings will be conducted in accordance with Commission regulations published at 50 CFR Part 510.

Dated: June 28, 1984.

John R. Twiss, Jr.,

*Executive Director.*

[FR Doc. 84-17640 Filed 7-2-84; 8:45 am]

BILLING CODE 6820-31-M

## MERIT SYSTEMS PROTECTION BOARD

### Invitation To Submit Amicus Briefs

**AGENCY:** Merit Protection Board.

**ACTION:** Invitation to submit amicus briefs in *Special Counsel* v. *Susan M. Suso.*

**SUMMARY:** The Merit Systems Protection Board invites interested persons to file amicus briefs in *Special Counsel* v. *Susan M. Suso,* a Hatch Act proceeding involving the issue whether an employee of a regional planning organization is a "State or local officer or employee" under the Hatch Act.

**DATE:** Amicus briefs submitted in response to this notice must be filed on or before August 2, 1984.

**ADDRESSES:** The original and one copy of each amicus brief submitted in response to this notice should be filed with the Office of the Secretary of the Board and addressed as follows: Paula E. Latshaw, Acting Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

In addition, one copy of each brief should be mailed to the following designated representatives:

Robert W. Blakemore, Esq., Blakemore, Rosen & Norris Co., L.P.A., 227 South Broadway, Akron, Ohio 44308.

K. William O'Connor, Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

**FOR FURTHER INFORMATION CONTACT:** Bruce Moyer, Office of General Counsel, [202] 653-7171.

**SUPPLEMENTARY INFORMATION:** The Special Counsel of the Merit Systems Protection Board, pursuant to 5 U.S.C. 1505, has initiated a Hatch Political Activities Act proceeding against Susan M. Suso, an employee of the Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO").[1] The Special Counsel seeks the respondent's removal from her position because allegedly she, as a State or local officer or employee under 5 U.S.C. 1501(4), knowingly and willfully participated in a partisan political campaign as a candidate for elective office in violation of 5 U.S.C. 1502(a)(3). Such participation occurred when respondent acted as a candidate for Member of the Council of Lakemore Village, Summit County, Ohio, during the primary and general elections in 1981.

Upon consideration of the record compiled in the matter, Administrative Law Judge Alan W. Heifetz, in a recommended decision, accepted the Special Counsel's charges and recommended that the Merit Systems Protection Board remove respondent from her employment. The respondent has filed exceptions to the administrative law judge's conclusions with the Board.

A threshold issue arising in this case is whether respondent, as an employee of NEFCO, a regional planning organization established under Chapter 167 of the Ohio Revised Code, is a "State or local officer or employee" under 5 U.S.C. 1501(4). Since the term "State or local officer or employee" is defined, in part, by the meaning ascribed to "State or local agency" under the Hatch Act, resolution of the threshold issue turns upon whether respondent's employer, the Northeast Ohio Four County Regional Planning and Development Organization, is a "State or local agency" under the Hatch Act.

The term "State or local agency" as defined by the Hatch Act means "the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof." 5 U.S.C. 1501(2). The record reflects that NEFCO is a voluntary association of four counties and various municipalities in northeast Ohio, which acts as a forum for its member local governments to discuss matters of regional concern and to coordinate their efforts through regional planning and cooperative agreement.

The Administrative Law Judge determined that NEFCO is a "State or local agency" under the Hatch Act because it is composed of political subdivisions of the State of Ohio, *i.e.*, certain counties and municipalities. Because it is an aggregate of political subdivisions, NEFCO itself is a political subdivision of the State of Ohio and therefore a "State or local agency" under 5 U.S.C. 1501(2), the Administrative Law Judge concluded.

The issue of whether an employee of a regional planning organization established under the authority of a state statute is a "State or local officer or employee" for the purposes of the Hatch Act is a question of first impression before the Merit Systems Protection Board. Analysis of the governmental character of NEFCO under Chapter 167 of the Ohio Revised Code, under which NEFCO was created and by which its powers are ascribed, may be useful in assessing whether NEFCO should be considered a "State or local agency" under the Hatch Act.

All briefs filed with the Board in this matter should be captioned "*Special Counsel* v. *Susan M. Suso,* MSPB Docket No. HQ12068210017," and entitled "Amicus Brief."

For the Board.

Dated: June 27, 1984.

Washington, D.C.

Herbert E. Ellingwood,

*Chairman.*

[FR Doc. 84-17642 Filed 7-2-84; 8:45 am]

BILLING CODE 7400-01-M

[1] Counsel for NEFCO has informed the Board that subsequent to the Special Counsel's initiation of this proceeding, the respondent resigned from her employment with NEFCO and took a position with the State of Ohio, Department of Development, Regional Economic & Community Development Office. Respondent has neither confirmed nor denied this assertion. This development does not moot the Board's inquiry in light of the post-employment limitations of 5 U.S.C. 1506(A)(2). That section prohibits any State or local officer or employee who has been removed for a Hatch Act violation from being employed within 18 months by any State or local agency receiving Federal loans or grants.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-61]

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventories for licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government and

are available for domestic and, possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

**DATE:** July 3, 1984.

**FOR FURTHER INFORMATION CONTACT:** National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP, Washington, D.C. 20546, telephone (202) 453-2430.

**SUPPLEMENTARY INFORMATION:**

Patent Application 519,616: Constant Force Friction Damper; filed August 2, 1983.

Patent Application 523,559: Light Transmitting Assembly; filed August 16, 1983.

Patent Application 523,991: Laboratory Glassware Rack for Seismic Safety; filed August 16, 1983.

Patent Application 548,583: Process for Improving Moisture Resistance of Epoxy Resins by Addition of Chromium Ions; filed November 3, 1983.

Patent Application 548,584: Process for Improving Mechanical; Properties of Epoxy Resins by Addition of Cobalt Ions; filed November 3, 1983.

Patent Application 556,512: Synchronously Deployable Truss Structure; filed November 30, 1983.

Patent Application 563,890: Instrumentation for Sensing Moisture Content of Material Using a Transient Thermal Pulse; filed December 22, 1983.

Patent Application 569,371: Aerospace Vehicle; filed; January 9, 1984.

Patent Application 569,373: Fire Resistance Polymers Based on 1-(Dialkoxyphosphonyl) methyl]-2,4-and 2,6-Diaminobenzenes; filed January 9, 1984.

Patent Application 569,370: Oil Shale Extraction Using Super-Critical Extraction; filed January 9, 1984.

Patent Application 569,372: Liquid Crystal Light Valve Structure; filed January 9, 1984.

Patent Application 571,616: Device and Method for Frictionally Testing Material for Ignitability; filed January 17 1984.

Patent Application 572,617· Oxidation Resistant Slurry Coating for Carbon-based Materials, filed January 17 1984..

Patent Application 571,613: Spectral Slicing X-Ray Telescope With Variable Magnification; filed January 17 1984.

Patent Application 571,614: High Gradient Directional Solidification Furnace; filed January 17 1984.

Patent Application 571,615: High-Temperature, High-Pressure Optical Cell; filed January 17 1984.

Patent Application 573,162: Optimized Bolted Joint; filed January 23, 1984.

Patent Application 576,303: Wingtip Vortex Propeller; filed February 2, 1984.

Patent Application 578,387· Aircraft Control Position Indicator; filed February 8, 1984.

Patent Application 582,492: Method For Thermal Monitoring Subcutaneous Tissue; filed February 22, 1984.

Patent Application 582,643: Modulated Voltage Metastable Ionization Detector; filed February 22, 1984.

Patent Application 582,495: Protective Telescoping Shield for Solar Concentrator; filed February 22, 1984.

Patent Application 582,494: Laser Pulse Detection Method and Apparatus; filed February 22, 1984.

Patent Application 578,390: Increased Voltage Photovoltaic Cell; filed February 8, 1984.

Patent Application 573,388: Aircraft Liftmeter; filed February 18, 1984.

Patent Application 580,397: Self Indexing Latch System; filed February 15, 1984.

Patent Application 580,419: Vortex Generating Flow Passage Design for Increased Film Cooling Effectiveness; filed February 15, 1984.

Patent Application 580,573: Thermionic-Photovoltaic Energy Converter; filed February 15, 1984.

Patent Application 580,574: Tanker Orbit Transfer Vehicle and Method; filed February 15, 1984.

Patent Application 582,493: Improved Impact Tolerant Composite; filed February 22, 1984.

Patent Application 590,925: Method of Coating a Substrate With a Rapidly Solidified Metal; filed March 19, 1984.

Patent Application 588,039: Foldable Self-Erecting Joint; filed March 9, 1984.

Patent Application 587,764: Shuttle-Launched Triangular Space Station; filed March 9, 1984.

Patent Application 587,749: Nanosequencer Digital Logic Controller; filed March 9, 1984.

Patent Application 588,164: Reciprocating Magnetic Refrigerator Employing Tandem Porous Matrices Within a reciprocating Displacer; filed March 9, 1984.

Patent Application 588,036: Space Station Architecture, Module, Berthing Hub, Shell Assembly, Berthing Mechanism and Utility Connection Channel; filed March 9, 1984.

Patent Application 590,921: Ultrasonic Angle Beam Standard Reflector; filed March 19, 1984.

Patent Application 590,923: Tensile Testing Apparatus; filed March 19, 1984.

Patent Application 591,039: Diamondlike Flake Composites; filed 19, 1984.

Patent Application 594,134: Optical System With Reflective Baffles; filed March 28, 1984.

Patent Application 596,980: Dual Clearance Squeeze Film Damper; filed April 5, 1984.

Patent Application 596,959: Space Probe/Satellite Ejection Apparatus for Spacecraft; filed April 5, 1984.

Patent Application 599,128: Fire and Heat Resistant Laminating Resins Based on Maleimido Substituted Aromatic Cyclotriphosphazenes; filed April 11, 1984.

Patent Application 602,050: Oxidizing Seal for a Turbine Tip Gas Path; filed April 19, 1984.

Patent Application 602,049: Spinning Disk Calibration Method and Apparatus for Laser Doppler Velocimeter; filed April 19, 1984.

Patent Application 602,105: Chopped Molecular Beam Multiplexing System: filed April 19, 1984.

Patent Application 603,374: Improved Compliant Hydrodynamic Fluid Journal Bearing; filed April 2, 1984.

Patent Application 604,337: Diffusely Reflecting Paints Including Polytetrafluoroethylene and Method of Manufacture; filed April 26, 1984.

Patent Application 603,373: Liquid Hydrogen Polygeneration System and Process; filed April 24, 1984.

Dated: June 26, 1984.

S. Neil Hosenball,

*General Counsel.*

[FR Doc. 84-17575 Filed 7-2-84; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Minorities in Science and Technology.

Place: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Tuesday, Room 540 and Wednesday, Room 1242, July 17-18, 1984.

Time: Tuesday, 9:30-5:00 p.m., Wednesday, 9:30-Noon.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550, telephone: 202/357-9418.

Purpose of Subcommittee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities in science and technology, and the impact of science and technology on minorities.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of minorities in Foundation programs, on research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to minority appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

Dated: June 28, 1984.

M. Rebecca Winkler,

*Committee Management Coordinator.*

[FR Doc. 84-17633 Filed 7-2-84; 8:45 am]

BILLING CODE 7555-01-M

## Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Women in Science and Technology.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Wednesday and Thursday, July 18-19, 1984.

Time: Wednesday, 9:30-5:00 p.m., Thursday, 9:00-3:30 p.m.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550, telephone: 202/357-9418.

Purpose of Subcommittee: Responsible for all committee matters relating to the participation in and opportunities for education, training, and research for women in science and technology, and the impact of science and technology on women.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of women in Foundation programs on research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to women appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

Dated: June 28, 1984.

M. Rebecca Winkler,

*Committee Management Coordinator.*

[FR Doc. 84-17634 Filed 7-2-84; 8:45 am]

BILLING CODE 7555-01-M

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on July 11, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Wednesday, July 11, 1984—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will be briefed on the following and other related items:

(1) Department of Energy's Mission Plan for the civilian radwaste management program; and

(2) NRC High-Level Waste Management Oversight Committee report.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the DOE and NRC Staffs, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Ms. R. C. Tang (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 27, 1984.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 84-17676 Filed 7-2-84; 8:45 am]

BILLING CODE 7590-01-M

## Senior Executive Service; Appointments to Performance Review Board

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Appointments to Performance Review Board for Senior Executive Service.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has announced that the following Executives will serve on the Performance Review Board (PRB):

Edson G. Case, Deputy Director, Office of Nuclear Reactor Regulation

Guy H. Cunningham, Executive Legal Director

John G. Davis, Director, Office of Nuclear Material Safety and Safeguards

James G. Keppler, Regional Administrator, Region III

Martin G. Malsch, Deputy General Counsel for Domestic Licensing and Regulation, OGC

Patricia G. Norry, Dirctor, Office of Administration

Thomas Rehm, Assistant for Operations, Office of the Executive Director for Operations

Denwood F. Ross, Deputy Director, Office of Nuclear Regulatory Research

James M. Taylor, Deputy Director, Office of Inspection and Enforcement

These appointments are made pursuant to secton 4314 of Chapter 43 of Title 5 of the United States Code.

**EFFECTIVE DATE:** June 26, 1984.

**FOR FURTHER INFORMATION CONTACT:** Patricia G. Norry, Chair, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-492-7335.

Dated at Bethesda, Maryland, this 26th day of June, 1984.

For the Nuclear Regulatory Commission.

Jack W. Roe,

*Chairman, Executive Resources Board.*

[FR Doc. 84-17678 Filed 7-2-84; 8:45 am]

BILLING CODE 7590-01-M

**Commonwealth Edison Company; Consideration of Issuance of Amendments to Provisional and Facility Operating Licenses and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-19 and to Facility Operating License No. DPR-25, issued to Commonwealth Edison Company (the licensee), for operating of the Dresden Nuclear Power Station Unit 2 and Unit 3, respectively, located in Grundy County, Illinois.

The amendments, proposed in a licensee submittal dated June 11, 1984 would authorize approval of new versions of the Technical Specifications (TSs) for Dresden Units 2 and 3. The TSs are proposed to be revised, without changing the technical content, into a format which will have, and continue to have in the future, improved legibility and versatility.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed new amendments would permit the licensee to issue an appropriate number of copies of the Dresden Units 2 and 3 TSs which have been reproduced from a master copy which has been developed with the aid of word-processing equipment. It is the staff's intent, after a review copy of each of the Dresden Units 2 and 3 TSs has been made available, to compare word for word the present Licensee Authority copies of the TSs with those sent for review by the licensee. It is also the staff's intent, during this review process, to correct typographical and minor grammatical errors which appear in the present License Authority copies. The anticipated result for the present and in the future will be more legible and versatile copies of the Dresden Units 2 and 3 TSs. Page changes because of future amendments will also be greatly simplified and clarity will be enhanced. There will be no change in the technical content of the TSs. Thus, the staff proposes to determine that the requested action involves no significant hazards consideration. This proposed determination is also supported by the fact that the requested action corresponds with example (i) in the guidance provided by the Commission (48 FR 14870) since the proposed change to the Technical Specifications is purely administrative.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By August 2, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceeding" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the

license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Robert G. Fitzgibbons, Isham, Lincoln & Beale, Three First National Plaza, Suite 5200 Chicago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1),(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland, this 22 day of June, 1984.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

*Acting Branch Chief, Operating Reactors Branch No. 5, Division of Licensing.*

[FR Doc. 84-17679 Filed 7-2-84; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.89, Revision 1, "Environmental Qualification of Certain Electric Equipment Important to Safety for Nuclear Power Plants," describes a method acceptable to the NRC staff for complying with the Commission's regulations with regard to qualification of electric equipment important to safety for service in nuclear power plants to ensure that the equipment can perform its safety function during and after a design basis accident. This guide endorses, with certain modifications, IEEE Std 323-1974, "IEEE Standard for Qualifying Class IE Equipment for Nuclear Power Generating Stations."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 26th day of June 1984.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 84-17680 Filed 7-2-84; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release NO. 14016; 812-5737]**

## Arch Fund, Inc., et al., Application

June 27, 1984.

In the matter of the Arch Fund, Inc., Bison Money Market Fund, First Phoenix Fund, Inc., Money Express Reserve Fund, Westcore Funds, Inc.; No. 6, The Commons, 3512 Silverside Road, Wilmington, DE 19810; Municipal Fund for California Investors, Inc Municipal Fund for New York Investors, Inc., Municipal Fund for Temporary Investment, Temporary Investment Fund, Inc., and Trust for Short-Term Federal Securities, Suite 204 Webster Building, Concord Plaza, 3411 Silverside Road, Wilmington, DE 19810; Notice of filing of application for an order of the Commission pursuant to sections 6(c) and 17(b) of the Act granting exemptions from the provisions of sections 17(a)(1), 17(a)(2) and 17(e)(1) of the act.

Notice is hereby given that The Arch Fund, Inc., Bison Money Market Fund, First Phoenix Fund, Inc., Money Express Reserve Fund, Municipal Fund for California Investors, Inc., Municipal Fund for New York Investors, Inc., Municipal Fund for Temporary Investment, Temporary Investment Fund, Inc., Trust for Short-Term Federal Securities, and Westcore Funds, Inc. ("Westcore") (collectively, the"Applicants," together with all future diversified management investment companies for which Provident Institutional Management Corporation ("PIMC") or Provident National Bank ("Provident") may serve as investment adviser or subadviser, the "Funds"), each of which is registered under the Investment Company Act of 1940 ("Act") filed an application on January 5, 1984, and an amendment thereto on May 21, 1984. The application requests an order of the Commission pursuant to Sections 6(c) and 17(b) of the Act exempting from sections 17(a)(1), 17(a)(2) and 17(e)(1) of the Act certain purchase and sale transactions between the Funds and certain banks, bank holding companies or affiliates thereof (hereinafter, "banks") which directly or indirectly (1) own, control or hold 5 percent or more of the outstanding voting securities of any of the Funds ("upstream bank affiliates"), or (2) act

as investment adviser to any one of the Funds ("advisory bank affiliates," collectively with upstream bank affiliates hereinafter referred to as "Affiliated Banks"). The requested order would cover transactions between Affiliated Banks and any of the Funds which involve the following specific types of instruments: (a) money market instruments of an Affiliated Bank that is one of the 50 largest United States banks (measured by deposits), their bank holding companies or affiliates thereof, (b) repurchase agreements with no more than 12 Affiliated Banks which participate in the "wholesale" repurchase agreement market and which are among the 50 largest United States banks (measured by deposits), and (c) tax exempt obligations. (Transactions described in (a), (b), and (c) are hereinafter referred to as "Covered Transaction." All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of those of its provisions from which the Applicants request exemption.

The application states that all of the Applicants are registered under the Act as open-end management investment companies and have currently effective registration statements under the Securities Act of 1933. Many of the Applicants have more than one portfolio and several of the Applicants are organizing new investment portfolios under registration statements currently in the registration process. At present, PIMC, a wholly-owned subsidiary of Provident, provides investment advisory services to each of the existing applicants, and Provident provides subadvisory services to each of the existing Applicants, and Provident provides subadvisory services to many of the Applicants. The Boston Company Advisors, Inc., acts as administrator (and as investment subadvisor for one portfolio of Westcore) and Shearson Lehman/American Express Inc. acts as principal underwriter for each of the Applicants.

Applicants state that they are designed primarily for institutional investors, particularly banks investing funds on behalf of accounts for which they act in an agency, trustee or other fiduciary capacity. Applicants represent that banks acting in such capacity usually purchase shares of the Funds through a "master" account, pursuant to which the shares issued by the Funds are registered in the name of the institutional investor or its nominee. Applicants further represent that all of them are utilized extensively by banks. The application states that because most of the Applicants are money market funds in which banks often make short-term investments, the dollar amount of a bank's holdings of their shares can fluctuate significantly on a daily basis, and thus, from time to time, the number of an Applicant's shares held of record by a bank in a "master" account for its agency or fiduciary accounts may exceed five percent of a Fund's outstanding voting shares. Applicants state that where a bank holds legal title to more than five percent of the outstanding shares of a Fund, the bank may be deemed an "affiliated person" of the Fund. Applicants further state that the Commission has taken the position that registered investment companies may be deemed to be affiliates of each other where they share common officers, common directors, or common investment advisers. Applicants state that although they disagree with this interpretation, they assume for the purpose of the application that the Funds are affiliates of each other, and that, as a result, a bank that is an affiliate of one of the Funds is an affiliate of all of the Funds.

According to the application, five of the Applicants sell their shares exclusively to the customers of one bank ("private label bank") or its affiliates or correspondents. The remaining Applicants ("multi-institutional funds") sell shares to many institutional investors although, as noted above, they also are utilized extensively by banks. Four of the five private label Applicants currently have two portfolios, with private label bank acting as investment adviser or sub-adviser to one portfolio and PIMC acting as investment adviser to one or more portfolios of each such fund PIMC is the investment adviser to the one portfolio currently being offered by the fifth private label fund.

Applicants note that a bank acting as investment adviser to private label fund would be deemed an affiliated persons of that fund. Each of the private label banks owns of record more than 5 percent of the outstanding voting securities of a portfolio of such Applicant. Also, a bank (private label or otherwise) may from time to time own of record more than 5 percent of the outstanding voting securities of multi-institutional Applicant or of a portfolio thereof.

Applicants state that the provisions of sections 17(a)(1) and 17(a)(2) of the Act prohibit all Affiliated Banks (both upstream bank affiliates and advisory bank affiliates) from engaging in any Covered Transactions with the Funds with which they are affiliated. If the Funds are deemed affiliates of one another, then the provisions of Sections 17 (a)(1) and 17(a)(2) of the Act prohibit all Affiliated Banks from engaging in Covered Transactions with any of the Funds. Applicants assert that an Affiliated Bank would be prohibited from accepting any consideration whatsoever in connection with a brokerage transaction where it acted as agent for a Fund.

The application states that Applicants have adopted internal control procedures requiring tha banks that would otherwise qualify for Applicants' "approved list" of banks whose many market instruments and repurchase agreements may be purchased for the Funds' portfolios be either removed from the list or eliminated from consideration for inclusion on the list when they have been identified as a possible affiliated persons of one of the Funds. Applicants state that as a result of "upstream" affiliation at least three banks have already been eliminated from consideration for purchases. According to the application, at the present time there are approximately thirty-three banks on the Applicant's "approved lists". Applicants assert that if they continue to grow and if additional Funds are created, the demand for money market instruments from this limited number of banks will become even greater.

Applicants assert that each bank on the "approved list" contributes substantially to the depth and liquidity of the market for money market instruments, and that if the number of banks utilizing the Funds continues to increase, resulting in more Affiliated Banks, the restrictive impact of the statutory provisions could increase to the point of adversely affecting portfolio liquidity and increasing portfolio exposure to adverse credit risk.

Applicants state that they regularly engage in repurchase agreements with only six to eight of the thirty-three banks on the approved lists. In the opinion of the investment advisers to the Applicants, these six to eight banks are the only banks in the United States which regularly engage in large denomination ("wholesale") repurchase agreements and which have the size, the expertise, and the willingness to engage in repurchase agreements which comply with the advisers' policies with respect to safety. The six banks with whom the Applicants engage in the most repurchase agreements are all among the top fifty United States banks (measured by deposits). In addition to

these six to eight banks, the Applicants enter into repurchase agreements with only sixteen large high-quality broker-dealers, the only broker-dealers believed to have the necessary qualifications to satisfy the advisers' safety and credit requirements. Applicants assert that in the event one or more of the banks which sell repurchase agreements to the Funds would become an Affiliated Bank, the potential supply of repurchase agreement available to the Funds would be substantially reduced.

According to the application, during the period from January 1, 1984, through March 31, 1984, the five municipal securities portfolios advised by PIMC, which are authorized to purchase or sell municipal bonds or notes from or to banks, transacted 39.5% of their total dollar volume of transactions with banks that acted in a principal or brokerage capacity. Applicants assert that some banks offering to act as broker or as dealer for the Funds in connection with municipal bond transactions have been disqualified from acting in such capacities because they have been identified as possible Affiliated Banks. Applicants assert that commercial banks are important participants in the municipal bond dealer community.

Applicants express concern that the prohibition in Section 17(e)(1) would significantly limit the Funds' ability to select the best source available for execution of their securities transactions. Applicants state that the Funds frequently purchase or sell securities in transactions executed by commercial banks acting as agent for a particular Fund. If an Affiliated Bank acted on behalf of a Fund in connection with a securities transaction, it could not accept even the customary agent's commission from the Fund, and the Funds might, as a practical matter, be precluded from using that particular bank for securities transactions, even where the bank acting as broker might have provided the Funds with the best available execution.

Applicants assert that it is extremely unlikely that an Affiliated Bank would be able to exercise any adverse influence over the Funds and their investment advisers with respect to Covered Transactions. First, the assert that it is unlikely that a bank could induce the Funds to pay a premium for these instruments, because transactions in these securities occur in an intensely competitive well-informed market among sophisticated parties. Second, they assert that because those Funds that operate pursuant to amortized cost orders must purchase securities which are of "high quality," a bank could not induce those Funds to purchase a security of inferior or questionable quality.

Applicants represent that there is no express or implied understanding between any Applicant and any bank that is (or may become) an Affiliated Bank of a Fund that any Fund will enter into Covered Transactions with any such bank. Moreover, Applicants represent that the Funds will give no preference to any Affiliated Bank in effecting Covered Transactions unless the Fund's board of directors, board of trustees or other governing body ("Board") shall have approved such a policy and appropriate disclosure regarding that policy shall have been made in a prospectus of that Fund declared effective by the commission. PIMC and Provident further represent that, consistent with their fiduciary duties to the Funds, they will initiate all purchase and sale transactions between the Funds and Affiliated Banks and that such transactions will be entered into with the purpose of satisfying the respective investment objectives of the Funds.

Accordingly, Applicants state that they request an order of the Commission, pursuant to Section 17(b) of the Act, exempting from Sections 17(a)(1) and 17(a)(2) of the Act Covered Transactions with Affiliated Banks. Further, Applicants request an order of the commission, pursuant to section 6(c) of the Act, exempting from Section 17(e)(1) of the Act any compensation, not to exceed the limitations in Section 17(e)(2) of the Act, which may be accepted by Affiliated Banks for acting as agent for the Funds in connection with Covered Transactions. The Applicants agree that the following conditions may be imposed in any order of the Commission granting their requested exemptive relief:

(a) The Board of each of the Funds (1) will adopt procedures, pursuant to which Covered Transactions may be effected for the Funds, which are reasonably designed to provide that all the conditions in paragraphs (b) through (f) below have complied with, (2) will review those procedures no less frequently than annually for their continuing appropriateness, and (3) will determine no less frequently than quarterly that Covered Transactions made during the preceding quarter were effected in compliance with those procedures. Those procedures will also be approved by a majority of the disinterested members of the Board of each of the Funds. The investment adviser of each Fund will implement those procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Funds' Boards.

(b) No Fund will engage in a Covered Transactions with a bank that is an investment adviser or sub-adviser to that Fund. No Fund will purchase money market instruments of any Affiliated Bank if, as a result, more than 5% of that Fund's total assets would be invested in the money market instruments of that Affiliated Bank. No Fund will enter into repurchase agreements with any Affiliated Bank if, as a result, 5% of the Fund's total assets would be invested in repurchase agreements issued by that Affiliated Bank.

(c) The Funds (1) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (a) of this section, and (2) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Covered Transactions occurred, the first two years in an easily accessible place, a written record of each Covered Transactions setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or saletransaction, and the information or material upon which the determinations described below were made.

(d) The security to be purchased or sold by a Fund in a Covered Transactions will be consistent with the investment objectives and policies of that Fund as recited in the Fund's Registration Statement, and will be consistent with the interests of that Fund and its shareholders. Further, the security to be purchased or sold by that Fund will be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for that Fund and that are being purchased or sold during a comparable period oftime.

(e) The terms of a Covered Transactions will be reasonable and fair to the shareholders of that Fund and will not involve overreaching of that Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received from the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

(f) The commission, fee, spread or other remuneration to be received by an

Affiliated Bank acting as agent for a Fund will be reasonable and fair compared to the commission, fee, or spread or other remuneration received by other agents in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time but in no event will such fee, commission, spread or other remuneration exceed that which is stated in Section 17(e)(2) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 23,1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 84-17675 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 23347; 70-6791]

## Consolidated Natural Gas Co., et al., Notice of Proposals

June 27, 1984.

In the Matter of Consolidated Natural Gas Company, 100 Broadway, New York, New York 10005; CNG Development Company, One Park Ridge Center, Pittsburgh, Pennsylvania 15244; Consolidated Gas Transmission Corporation, 455 West Main Street, Clarksburg, West Virginia 26301; notice of proposal by associate companies to transfer oil and gas leases and fee properties, and to provide services.

Consolidated Natural Gas Company ("CNG"), a registered holding company, and its nonutility subsidiaries, CNG Development Company ("CNGD") and Consolidated Gas Transmission Corporation ("Transmission"), have filed with this Commission post-effective amendments to an application-declaration under Sections 6(a), 7 9(a), 10, 12(c), 12(f) and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43, 49(d), 86, 87, 90 and 91, thereunder.

CNGD was organized to engage in oil and natural gas exploration in the Appalachian Region (HCAR) No. 22845, February 7 1983). For that purpose, the applicants-declarants seek authority for CNGD to acquire approximately 1,200,000 acres of unoperated oil and gas leasehold and fee properties from Transmission, and to provide certain services for Transmission at cost.

By Agreement dated May 11, 1984, Transmission would declare on account, and at book value, a dividend-in-kind to CNG, of all of its interest in the subject property. CNG, in turn, would convey its interest in the property to CNGD by authorizing an assignment of its dividend account. In consideration for the assignment, CNGD will issue to CNG its $100 par value common stock at par, plus cash to round the aggregate number of shares issued to the nearest ten.

Present valuation is estimated to be $8,230,000.00 on July 1, 1984, but actual valuation will be determined by Transmission for purposes of this transaction on that date.

The amended application-declaration and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 23, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or further amended, may be granted and permitted to become effective.

For the Commission, by Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 84-17673 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14007; 812-5844]

## Equus Investments I, L.P., Filing of Application

June 28, 1984.

Notice is hereby given that Equus Investments I, L.P ("Partnership") River Oaks Bank Tower, 2001 Kirby, Suite 1114, Houston, TX 77219, filed an application on May 11, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") declaring that Independent General Partners of the Partnership are not "interested persons" of the Partnership as defined in section 2(a)(19) of the Act solely by reason of their being general partners of the Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

The Partnership states that it was organized as a Delaware limited partnership, pursuant to a Certificate of Limited Partnership, dated April 30, 1984 (the "Partnership Agreement") and that it will elect to become a business development company pursuant to section 54(a) under the Act. It further states that its investment objective is to seek long-term capital appreciation. The Partnership states that it has filed a registration statement under the Securities Act of 1933 with respect to a proposed public offering of up to 110,000 units of Limited Partnership Interests ("Units"). The proceeds of the offering will be invested in leveraged buy-out investments over period of three to four years. Each investment will be liquidated once it reaches a state of maturity when disposition can be considered (typically within four to seven years of the date of investment), The proceeds of liquidations will not be reinvested (except in limited circumstances) but will be distributed to the Partners. The Partnership will have a duration of not more than 14 years.

It is represented that Equus Capital Corporation will serve as Managing General Partner of the Partnership and will be responsible for selecting the Partnership's investments and arranging financing for leveraged buy-outs. Equus Capital Management Corporation ("ECMC") will serve as the Partnership's management company and, pursuant to a management agreement with the Partnership, will negotiate, structure, monitor, and liquidate the Partnership's investments and perform, or arrange for third parties to perform, the

management, administrative, and certain investment advisory services necessary for the operation of the Partnership. According to the application, both the Managing General Partner and ECMC will be registered investment advisers under the Investment Advisers Act of 1940. ECMC is entitled to cast 97% of all votes at each meeting of stockholders of the Managing General Partner. Equus Corporation International, a Texas corporation, has 98% voting control as of the Managing General Partner. According to the application, the Managing General Partner will not resign or withdraw from the Partnership unless certain specific procedures are followed and a successor is appointed and consented to by the Limited Partners of the Partnership.

The application states that General Partners of the Partnership will consist of Independent General Partners (defined as individuals who are not "interested persons" of the Partnership within the meaning of Section 2(a)(19) of the Act) and the Managing General Partner. According to the application, the Partnership will be managed solely by the Independent General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Independent General Partners, will be responsible for the management of the Partnership's investments and the admission of additional or assignee Limited Partners to the Partnership. The application states that the General Partners will perform the same functions as directors of a corporation and the Independent General Partners will assume the responsibilities and obligations imposed upon the non-interested directors of a corporate business development company by the Act. The application further states that the number of Independent General Partners serving as General Partners will be fixed from time to time by the Independent General Partners, provided, however, that the number of Independent General Partners will in no event be less than two. The Partnership Agreement provides that the Independent General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Independent General Partners or (ii) with the consent of a majority in interest of the Limited Partners. The Managing General Partner may be removed either (i) by a majorityh of the Independent General partners, or (ii) with the consent of a majority in interest of the Limited Partners.

The Partnership states that its Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals. The Partnership further states that it does not presently have an insurance policy that would provide coverage to persons who become Limited Partners, but it undertakes that it will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy.

The application represents that the Independent General Partner are "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act solely by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of section 2(a)(3)(D) of the Act. It is requested that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent the Independent General Partners would otherwise be deemed to be interested persons of the Partnership solely because the Independent General Partners are general partners of the Partnership. According to the application, the Partnership has been structured so that the Independent General Partners are the functional equivalents of non-interested directors of an incorporated investment company. The application states that section 2(a)(19) of the Act excludes from the definition of interested persons of an investment company those individuals who would be interested persons solely because they are directors of an investment company. The application further states that there is no equivalent exception for partners. It is submitted that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of section 2(a)(19) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 84-17670 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

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Release No. 23346; 70-6958]

## New England Energy Inc. et al., Proposal To Amend Intra-System Oil and Gas Accounting; To Make Equity Investment in Subsidiary

June 27, 1984.

New England Energy System ("NEES"), a registered holding company, its fuel supply subsidiary, New England Energy Incorporated ("NEEI") and its generation and transmission subsidiary, New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01581, have filed an application-declaration with this Commission pursuant to Sections 6, 7 9(a), 10, 12(b) and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 86, 90 and 91 thereunder.

On October 30, 1974 (HCAR No. 18635), the Commission authorized the organization of NEEI to undertake exploration and development of oil and gas reserves, and to undertake fuel procurement and inventory activities for the system. NEEI has conducted the exploration and development programs through its continuing partnership with Samedan Oil Corporation, a non-affiliate, and through a partnership with another non-affiliate, since terminated. The partner provides the technical and managerial capacity and capital requirements are shared in negotiated proportions recognizing the operating partner's additional responsibilities. NEEI receives, in kind, half of the production of each partnership prospect.

NEEI's capital consists of $250,000 of common stock, owned by NEES, advances by NEES in the form of subordinated notes under a capital funds agreement, and since 1979, bank borrowings. It also receives amounts equal to the net reductions in consolidated tax liabilities arising from inclusion of its oil and gas operations and tax credits in the NEES system consolidated income tax returns.

On December 31, 1983 the capitalization of NEEI's oil and gas division was:

| | |
|---|---|
| Bank loans [1] | $299,500,000 |
| Deferred taxes | 155,251,646 |
| Subordinated notes—NEES | 44,650,000 |
| Common stock—NEES | 250,000 |
| Total | 499,651,646 |

[1] Revolving credit and term loan agreement authorizing borrowings of up to $400 million through December 31, 1985. NCAR No. 22175, August 24, 1981.

By order dated July 19, 1978 (HCAR No. 20632) NEEI was authorized to adopt a full cost pool method of accounting for the oil and gas program. For this purpose, prospects in or before the exploration stage and their costs are segregated as work in process. All costs of prospects explored, including dry holes and development costs, are entered into the full cost pool, which also includes overhead and capital costs. The capital costs are the interest on the bank loans and an imputed return on the NEES investment.

The full cost pool is amortized as oil and gas is produced and sold. The amortization charge is computed quarterly, by dividing the amount of the unamortized full cost pool by the remaining proven and probable reserves, stated in equivalent barrels of oil, to produce a per barrel amortization charge. This amortization charge is deducted from the net proceeds from oil and gas sold during the following quarter and credited to the full cost pool. The full cost pool changes each quarter to reflect additional costs, including work in process completed, additions to or revisions of reserves and the amortization, to produce a new per barrel amortization charge for the next quarter.

Through December 31, 1983, NEEI had accumulated $571 million of costs in the full cost pool, of which $126 million had been amortized, leaving a balance of $445 million. It had proven and probable reserves of 21.8 million equivalent barrels, after deducting about 7 million of production, which sold for about $132 million, after direct production costs. Work in process was an additional $88 million.

A related fuel procurement contract with NEP approved in the July 19, 1978 order, provides, in substance, that the excess of net revenues from the program over the amortization charge be applied to reduce NEP's fuel costs, while any deficiency would be added to NEP's fuel costs. Through 1983, NEEI has produced a credit to NEP, totalling $8.7 However, the margin between the net revenues per barrel and the amortization charge has declined sharply in recent years.

Applicants-declarants propose to modify several important aspects of those arrangements and request that the modifications be effective for 1984 and thereafter. In anticipation of the modifications, NEES, in 1983, created a reserve to exclude the return on its investment in NEEI from its income for that year. NEEI created a valuation reserve of $5 million in 1983, based on a non-interest bearing advance from NEES, and both companies have since made adjustments, as of December 31, 1983, intended to increase the NEEI reserve to $16.8 million by transferring the 1983 NEES return to NEEI. No return is being accrued or paid by NEEI to NEES in 1984, and it is proposed that the return allowed by the 1978 order cease.

It is proposed that NEP's interest in and obligations as to the program be limited to exploration, development and production of oil and gas prospects recorded on NEEI's books at December 31, 1983 ("Existing Prospects"). Revenues and costs on all of the existing prospects, including those still subject to exploration or development will be segregated from revenue and costs of prospects acquired after the end of 1983 ("New Prospects") and the Fuel Procurement Contract with NEP will apply only to existing prospects.

The costs, excluding NEES' return, of existing prospects will continue to be added to the full cost pool, and amortized as oil and gas is produced and sold from those prospects. The net revenues therefrom, after production costs and amortization charges, and after a proposed payment to NEP will be credited annually to the reserve, or subtracted from the valuation reserve, if negative, as will be other benefits. NEP will receive a per barrel payment from all production from existing prospects, rather than the net savings provided by the 1978 order. Deficiencies, which would be paid by NEP under the fuel procurement contract, will instead be charged to the valuation reserve, augmented by the net savings. NEP would continue to be liable, with respect to existing prospects only, if the valuation reserve were exhausted.

If the valuation reserve becomes large enough to permit writing down the full cost pool of existing prospects to a value conforming to generally accepted accounting principles for a non-utility related oil and gas business, or if NEES agrees to waive and write off any difference, and if any needed consents of lenders are obtained, NEEI may, on six months notice, terminate the fuel procurement contract with NEP and combine the existing prospects with its new prospects.

The applicants also request authorization for an additional investment of up to $50 million by NEES in NEEI, which is expected to be required, in whole or part, to finance new prospects, including refinancing expenditures thereon in 1984, if the application is granted. Related loan agreements and other authorization may be supplied by amendment.

The application-declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 23, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 84-17874 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 21110; SR-Amex-84-20]

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

June 27, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1984, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Amex proposes to make a policy change allowing the introduction of new index options series until the beginning of the month in which they would expire. Because index options expire on the Saturday following the third Friday of the month, this would allow the

introduction of new index options with as few as 16 days left to expiration. The Exchange's current policy in this area requires that an index option series have at least 30 days left to expiration upon its introduction. The Amex states that the purpose of the proposed rule change is to make the exchange's policy regarding the introduction of new series of index options symmetrical with the policy for the introduction of new series of individual stock options. Amex' policy for individual stock options allows the introduction of new series if the series has at least 45 days left to expiration. Forty five days is the mid-point between the time when a particular expiration month of an individual stock option becomes nearest-term (individual stock options expire quarterly) and the time when the option expires. The proposed 16-days policy for index options would similarly establish the cut-off point for the introduction of new series of index options at the approximate hafl-way point between the time an index option becomes nearest-term (index options expire in consecutive months rather than quarterly) and the time when the option expires. The Amex states that the current 30-days policy for index options, by preventing the addition of new series to the nearest-term option month, deprives investors of additional opportunities to trade the full range of near-term options. The Amex also notes that the proposal is substantially identical to a New York Stock Exchange, Inc., ("NYSE") proposal recently approved by the Commission.[1] The Amex states that the statutory basis for the proposed rule change is section 6(b)(5) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Amex-84-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the Amex.

The Commission finds that the proposed rule change is identical to a NYSE proposal recently approved by the Commission.[2] For the reasons identified in the order approving that NYSE proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change is identical to a NYSE proposal that was published for comment and recently approved by the Commission.[3]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 84-17671 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 21067, June 19, 1984.

[2] *Id.*

[3] *Id.*

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[Release No. 21109; SR-CBOE-84-19]

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Filing and Order Granting Accelerated Approval of Proposed Rule Change

June 27 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1984, The Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The CBOE proposes to extend until July 21, 1984, its pilot program under which CBOE member firms may use CBOE's Order Support System ("OSS") to route electronically to CBOE's limit order book any public customer limit orders for Standard and Poor's ("S&P") Telecommunications Industry Index Options.[1] Currently, limit orders for other options may be electronically routed to CBOE's limit order book (thus bypassing the floor brokers) only if they are at a limit price that is above or below the current bid or offer by specified amounts ("Parameters"). The extension of CBOE's pilot program would eliminate these parameters for S&P Telecommunications Industry Index options on an experimental basis until July 19, 1984. CBOE states that the statutory basis for this proposed rule change is section 6(b)(5) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-CBOE-84-19.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for aproving the proposed rule change prior to the thirtieth day after the date of publication or notice of filing thereof in that the proposed rule change would

[1] The original pilot program, which expired on April 20, 1984, was approved on April 2, 1984 (Securities Exchange Act Release No. 20811, April 2, 1984; 49 FR 13932, April 9, 1984.) The pilot was extended to May 22, 1984 on May 15, 1984 (Securities Exchange Act Release No. 20984, May 15, 1984, 49 FR 21588, May 22, 1984).

simply extend until July 21, 1984 an existing pilot program that allows the experimental expansion of CBOE's automated order routing system for a limited class of orders in one index option.[2]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 84-17672 Filed 7-2-84; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE-84-12]**

### Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before July 23, 1984.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 27, 1984.

**John H. Cassady,**

*Assistant Chief Counsel, Regulations and Enforcement Division.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 22539 | Air Methods, Inc | 14 CFR 43.3(h) | To allow petitioner's, appropriately trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs installed on Allison 250 series turbine engines aircraft transmissions, and tail rotor gearboxes of its Bell 206 L-1/L-3 aircraft. |
| 24106 | Fair Air, Inc | 14 CFR 91.303 | To allow petitioner to operate one Stage 1 CV-880 aircraft until December 31, 1987, in noncompliance with the operating noise limits. |
| 24108 | Aerolineas Argentinas | 14 CFR 91.303 | To allow petitioner to operate three Stage 1 Boeing-707 aircraft until January 1, 1988, in noncompliance with the operating noise limits. |
| 24107 | Olympic Airways | 14 CFR 91.303 | To allow petitioner to operate two Stage 1 Boeing 707 aircraft until April 1, 1985, in noncompliance with the operating noise limits. |
| 24092 | American Flight | 14 CFR 135.89(b)(3) | To allow petitioner to operate its GL-25D aircraft up to 41,000 mean sea level without either pilot being required to wear an oxygen mask. |
| 24103 | IBM | 14 CFR 91.191 | To allow petitioner to operate Gates Learjet Aircraft in Minimum Navigation Performance Specifications Airspace and the North Atlantic track utilizing a single UNS-1 Flight Management System with expanded database option and using a Canadian Marconi CMA 734 VLF/Omega remote sensor. |
| 16955 | American Airlines Training Corp | 14 CFR 61.58(e) | To extend Exemption 2473E to allow Petitioner's trainees to complete their entire 24-month pilot-in-command check in an approved flight simulator. |
| 23176 | Tenneco, Inc | 14 CFR 91.169(a) | To extend Exemption 3961 to allow petitioner and its affiliated companies to inspect helicopters in accordance with a continuous inspection program. |
| 24083 | Arnautical, Inc | 14 CFR 63.37(a) | To allow flight engineer students who have completed the approved flight engineer course to substitute the 10 hours of flight training received in an airplane simulator for the 5 hours of flight time required in an airplane. |
| 24052 | Blue Angel's (USN) | 14 CFR 91.70 (a) and (b), 91.71 (c) and (d), 91.79(c). | To permit petitioner to conduct airshow rehearsals at Choctaw, FL, and Pensacola, FL, Naval Air Stations (NAS) and El Centro, CA, NAF, in noncompliance with the cited sections. |

DISPOSITIONS OF PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 8429 | Northern Air Cargo, Inc | 14 CFR 91.39 and 121.157 | To allow the carriage of general cargo for compensation or hire within the State of Alaska in petitioner's restricted category C-82 airplanes. *Granted May 18, 1984.* |

[2] The Commission notes that this experiment will end on July 21, 1984, because the CBOE is delisting the S&P Telecommunications Industry Index Option as of that date.

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 13416 | Sierra Academy of Aeronautics | 14 CFR 63.39(b)(2) | To allow petitioner, and any similarly situated flight engineer school or operator, to allow applicants they are training in preparation for the flight engineer practical test to take the normal procedures portion of the practical test prescribed in § 63.39(b)(2) in an appropriate simulator in lieu of taking that portion of the test in an airplance in flight. *Granted May 23, 1984.* |
| 22874 | Lineas Aereas Costarrocenses, S.A. (LACSA) | 14 CFR Parts 21 and 91 | To extend Exemption 3521 which permits LACSA to operate a leased, U.S.-registered Douglas DC-8-55F aircraft, N29549, using a FAA-approved minimum equipment list (MEL). *Granted May 25, 1984.* |
| 23900 | Kenneth L. Norton | 14 CFR 61.161(b) | To allow petitioner to apply for an airline transport pilot certificate (ATPC) with a rotorcraft category rating without meeting the 1,200 hours of flight time within the preceding 8 years requirements. *Granted May 25, 1984.* |
| 24078 | Funair Corporation | 14 CFR 21.181 | To allow petitioner to operate its corporate Boeing B-727 aircraft, N727SG, using a FAA-approved minimum equipment list (MEL). *Granted May 25, 1984.* |
| 21726 | Executive Air Fleet Corporation | 14 CFR 135.261 (a)(2) and (b) | To extend Exemption 3541 which permits petitioner to assign its flight crewmembers for duty during flight time and permits petitioner's flight crews, consisting of three pilot crewmembers, to accept an assignment for duty during time when the total flight time of that flight exceeds 10 hours during any 24 consecutive hours and that assignment does not provide for at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment, subject to certain conditions and limitations. *Granted May 30, 1984.* |
| 23790 | Capitol Air | 14 CFR 121.349(a) | To allow petitioner to substitute an Omega navigation system (ONS) or an inertial navigation system (INS) for one of two required automatic direction finder (ADF) navigation systems during operations between the east coast of the United States and Puerto Rico. *Granted May 30, 1984.* |
| 19946 | Trans World Airlines | 14 CFR 91.32(b)(1)(ii) and 121.333(c)(2) | To extend Exemption 2914A to permit petitioner to operate its Boeing 747SP aircraft above flight level 410 without one pilot at the controls of the airplane wearing and using an oxygen mask secured, sealed, and supplying oxygen. *Denied May 30, 1984.* |
| 11911 | Avianca | 14 CFR Part 21 | To amend Exemption 2892 to allow petitioner to operate its leased U.S.-registerd B-727-259 and B-747 airplanes using FAA-approved maintenance and inspection programs and FAA-approved B-727 and B-747 Minimum Equipment Lists (MEL. *Granted May 29, 1984.* |
| 23895 | Mr. Bernard Cam | 14 CFR 65.91(c)(2) | To permit petitioner to apply for an inspection authorization without having been actively engaged in maintaining aircraft for at least the 2-year period before he applies. *Denied May 22, 1984.* |
| 24088 | Markair, Inc | 14 CFR 91.307 | To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 2 B737-200: *Granted May 29, 1984.* |
| 23603 | Delta Air Lines, Inc | 14 CFR 91.32 and 121.333 | To permit petitioner to operate its L-1011 and L-767 aircraft up to and including flight level 430 (43,000 feet) without one pilot at the controls being required to wear and use an oxygen mask. *Denied June 1, 1984.* |
| 24067 | Elitos, S.P.A | 14 CFR 61.77 | To allow petitioner to operate in the carriage of persons or property, for compensation of hire a leased helicopter having less than 30 seats and payload capacity of less than 7,500 pounds. *Granted June 4, 1984.* |
| 24104 | Northwest Airlines | 14 CFR 121.311(b) | To allow Gary Prochnow, a 12-year-old handicapped person, to be held by a grandparent, either Mr. or Mrs. Clarence Prochnow, during takeoffs and landings on a round trip flight between Fargo, North Dakota, and Washington, D.C. commencing June 5, 1984. *Granted June 4, 1984.* |
| 23971 | Omniflight Airways, Inc | 14 CFR 45.27 and 45.29 | To permit it to operate its B0105-CBS helicopter ambulance service with 2-inch registration markings on the side of the fuselage. *Denied June 5, 1984.* |
| 19242 | Northwest Orient | 14 CFR 91.32(b)(i)(ii) and 121.333(c)(2) | Extension of Exemption 2795A which permits petitioner to operate B-747-100 aircraft above flight level 410 without one pilot at the controls of the aircraft wearing and using an oxygen mask secured, sealed, and supplying oxygen. *Denied June 5, 1984.* |
| 24089 | Eli Lilly & Co | 14 CFR 91.307 | To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 BAC-1-11: N310EL; *Granted June 5, 1984.* |
| 21635 | Airborne Express, Inc | 14 CFR 91.307 | To amend Exemption 3196e to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 13 DC-9 and 1SE 210; *Granted June 5, 1984.* |
| 23956 | Carefree Vacations, Worldwide Airlines | 14 CFR 91.303 | To allow petitioner to operate three Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" can be installed on the aircraft, whichever is later. *Denied June 5, 1984.* |
| 23998 | Florida West Airlines | 14 CFR 91.303 | To allow petitioner to operate one Boeing 707 in noncompliance with the operating noise limits until December 31, 1984, or one year after issuance of an STC for a "hush kit," whichever is later. *Denied June 5, 1984.* |
| 23978 | Airmark Corp | 14 CFR 91.303 | To allow petitioner to operate one Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" are installed, whichever is later. *Denied June 5, 1984.* |
| 24012 | Trans Eastern Aviation | 14 CFR 91.303 | To allow petitioner to operate one DC-8-50 aircraft until December 31, 1988, in noncompliance with the operating noise limits. *Denied June 5, 1984.* |
| 23969 | Eagle Aviation | 14 CFR 91.303 | To allow petitioner to operate Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" are installed, whichever is later. *Denied June 5, 1984.* |
| 23967 | Challenge Air Transport | 14 CFR 91.303 | To allow petitioner to operate one DC-8-63F in noncompliance with the operating noise limits or until "hush kits" can be installed. *Denied June 5, 1984.* |
| 23993 | Sierra Trans Air | 14 CFR 91.303 | To allow petitioner to operate one Stage 1 Boeing 720 until December 31, 1987, in noncompliance with the operating noise limits. *Denied June 5, 1984.* |
| 23974 | Nautilus Sporting & Medical Industries, and Premiere Airlines, Inc. | 14 CFR 91.303 | To allow petitioner to operate three Stage 1 Boeing 707 aircraft until January 1, 1986, or until "hush kits" can be installed on the aircraft, whichever is later. *Denied June 5, 1984.* |

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 23907 | Bolivar Aviation | 14 CFR 141.65 | To permit petitioner to hold examining authority and to recommend graduates of the schools certification courses for pilot certificate and ratings for flight instructor, instrument flight instructor, and airline transport pilot, without taking the FAA written test. *Granted June 19, 1984.* |
| 23968 | American Travelair | 14 CFR 91.303 | To allow petitioner to operate one Boeing 720 after December 31, 1984, in noncompliance with the operating noise limits. *Denied June 5, 1984.* |
| 23989 | Maryland Air Travel Club | 14 CFR 91.303 | To allow petitioner to operate one Boeing 720 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied June 14, 1984.* |
| 24003 | Northeastern Int'l. Airways | 14 CFR 91.303 | To allow petitioner to operate two DC-8 aircraft in noncompliance with the operating noise limits for a limited period of time. *Denied June 14, 1984.* |
| 23990 | Hawaiian Airlines | 14 CFR 91.303 | To allow petitioner to operate three DC-8 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied June 14, 1984.* |
| 23879 | Comair Inc | 14 CFR 121.411 and 121.413 | To permit petitioner to use Flight Safety International flight instructors for initial factory flight training of Comair pilots in the SAAB/Fairchild SF-340 airplanes. *Partial grant June 12, 1984.* |
| 15194 | Compania Mexicana de Aviacion, S.A | 14 CFR Parts 21, 61, 63 and 91 | To extend Exemption 2195 to allow petitioner to continue to operate two leased, U.S.-registered B-727-2J7 aircraft, N552NA and N553NA, using a FAA-approved continous airworthiness maintenance program and an FAA-approved minimum equipment list (MEL). *Granted June 8, 1984.* |
| 24099 | Minerve, S.A. Compagnie Francaise De Transports Aeriens. | 14 CFR 21.181 | To allow petitioner to operate a leased, U.S.-registered DC-8-73 aircraft, N4805J, utilizing a FAA-approved minimum equipment list (MEL). *Granted June 6, 1984.* |
| 23919 | Clinton Aviation Group Inc | 14 CFR 135.261(b) | To permit petitioner to operate its helicopters in a helicopter hospital emergency medical evacuation service without complying with certain duty time limitations. *Granted June 6, 1984.* |
| 22631 | Air Care/Executive Air Taxi Corp | 14 CFR 135.261 | To extend Exemption 3603 which expires June 30, 1984, to allow petitioner to continue to use a helicopter in hospital emergency medical evacuation service without complying with the duty-time limitations. *Granted June 6, 1984.* |
| 23608 | Landmark Engineering Co | 14 CFR 91.109 and 91.79(b) | To permit petitioner to conduct photographic operations over conjested areas at less than 1,000 feet and conduct operations under VFR at altitudes inconsistent with those specified for direction of flight. *Denied June 15, 1984.* |
| 24007 | U.S. Parachute Assn | 14 CFR 105.43 | To allow foreign parachutists to compete in 1984 National skydiving Championships without meeting the parachute equipment and packing requirements. *Granted June 19, 1984.* |
| 24008 | U.S. Parachute Assn | 14 CFR 91.47 | To allow petitioner to use DC-3/C-47 aircraft to carry 40 parachutists for hire at the 1984 National Parachuting Championships. *Granted June 18, 1984.* |
| 23455 | Reeve Aleutian Airways, Inc | 14 CFR 121.574 | To permit petitioner to carry and operate oxygen storage and dispensing equipment for medical use of patients requiring emergency medical attention. *Partial Granted June 19, 1984.* |
| 21780 | Civil Air Patrol (CAP) | 14 CFR 61.118 | To permit petitioner's members who hold pilot certificates to be reimbursed for fuel, oil, and maintenace while serving on official CAP missions. *Granted June 15, 1984.* |

[FR Doc. 84-175809 Filed 7-2-84; 8:45 am]
BILLING CODE 4910-B-M

## Research and Special Programs Administration

## Hazardous Materials; Grants and Denials of Applications for Exemptions

**AGENCY:** Materials Transportation Bureau, DOT.

**ACTION:** Notice of Grants and Denials of Applications for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in May 1984. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 3302-X | DOT-E 3302 | Air Products and Chemicals, Inc., Allentown, PA. | 49 CFR 173.302, 175.3 | To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases. (Modes 1, 2, 3, 4.) |
| 3667-X | DOT-E 3667 | Groendyke Transport, Inc., Enid, OK | 49 CFR 173.315(a) | To authorize transport of a flammable compressed gas in aluminum cargo tanks otherwise built in compliance with Specification MC-330. (Mode 1.) |
| 3941-X | DOT-E 3941 | Pacific Engineering & Production Co. of Nevada, Henderson, NV. | 49 CFR 173.239a(a)(2) | To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, 2.) |
| 3992-X | DOT-E 3992 | Stauffer Chemical Co., Westport, CT | 49 CFR 173.314 | To authorize transport of anhydrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |
| 3992-X | DOT-E 3992 | Dow Chemical Co., Plaquemine, LA | 49 CFR 173.314 | To authorize transport of anyhdrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |
| 3992-X | DOT-E 3992 | LCP Transportation, Inc., Edison, NJ | 49 CFR 173.314 | To authorize transport of anydrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |
| 3992-X | DOT-E 3992 | Union Carbide Corp., Danbury, CT | 49 CFR 173.314 | To authorize transport of anhydrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |
| 3992-X | DOT-E 3992 | E. I. du Pont de Nemours & Co., Inc., Wilmington, DE. | 49 CFR 173.314 | To authorize transport of anhydrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |
| 3992-X | DOT-E 3992 | Kay-Fries, Inc., Stony Point, NY | 49 CFR 173.314 | To authorize transport of anhydrous hydrogen chloride in a DOT Specification 105A600W or 105S600W tank car. (Mode 2.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 4052-X | DOT-E 4052 | The Boeing Co., Seattle, WA | 49 CFR 173.305, 173.34(d), 175.3 | To authorize shipment of an aerosol formulation pressurized with nitrogen in a DOT Specification 39 seamless aluminum cylinder. (Modes 1, 2, 4, 5.) |
| 4291-X | DOT-E 4291 | United Technologies Chemical Systems, San Jose, CA. | 49 CFR 173.239a(a)(2) | To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2.) |
| 4600-X | DOT-E 4600 | Great Lakes Chemical Corp., El Dorado, AR. | 49 CFR 173.315, 178.245-3(a) | To authorize transport of hydrogen bromide (anhydrous) in DOT Specification 51 type portable tanks with a design pressure of 525 psig. (Modes 1, 4.) |
| 4612-X | DOT-E 4612 | Aldrich Chemical Company, Inc., Milwaukee, WI. | 49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382. | To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.) |
| 4612-X | DOT-E 4612 | EM Science, Division of EM Industries, Inc., Cincinnati, OH. | 49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382. | To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.) |
| 4717-P | DOT-E 4717 | U.S. Industrial Chemicals Co., New York, NY. | 49 CFR 172.101, 173.314(c) | To become a party to Exemption 4717. (Mode 2.) |
| 4719-X | DOT-E 4719 | Allied Corp., Morristown, NJ | 49 CFR 173.314(c), 173.315(a)(1), 179.102-11. | To authorize alternate valve settings for the 120A300W tank cars in chlorodifluoromethane. (Modes 1, 2.) |
| 5038-X | DOT-E 5038 | Airco Industrial Gases, Murray Hill, NJ | 49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 175.3. | To authorize shipment of dimethyldichlorosilane, trichlorosilane, other specifically identified flammable liquids and silicon tetrachloride in non-DOT specification type 304 stainless steel cylinders. (Modes 1, 2, 3, 4.) |
| 5414-X | DOT-E 5414 | E. I. du Pont de Nemours & Co., Inc., Wilmington, DE. | 49 CFR 172.101 and 173.315(a) | To authorize use of a vacuum insulated non-DOT specification portable tank, for transportation of a flammable gas. (Mode 1.) |
| 5701-X | DOT-E 5701 | do | 49 CFR 173.268(a)(3) | To authorize use of a non-DOT specification cargo tank, for transportation of a certain oxidizer. (Mode 1.) |
| 5704-P | DOT-E 5704 | Morton Thiokol, Inc., Huntsville, AL | 49 CFR 173.62, 173.93(e) | To become a party to Exemption 5704. (Modes 1, 2, 3.) |
| 5951-X | DOT-E 5951 | Ashland Chemical Co. Columbus, OH | 49 CFR 173.314(c) | To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106 type tanks. (Modes 1, 2.) |
| 6016-X | DOT-E 6016 | Airco, Inc., Murray Hill, NJ | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Acety-Arc, Inc. Paducah, KY | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Mangonlia Welding Supply Co., Houston, TX. | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | O. E. Meyer & Sons, Inc., Sandusky, OH | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and agon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Weiler Welding Co., Inc., Dayton, OH | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Kanweld Welding Equipment & Supplies, Kankakee, IL. | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Huber Supply Co., Mason City, IA | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6016-X | DOT-E 6016 | Langdon Oxygen Co., Texarkana, TX | 49 CFR 173.315(a) | To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.) |
| 6045-X | DOT-E 6045 | Union Carbide Corp., Danbury, CT | 49 CFR 173.121 | To authorize use of DOT Specification MC-312 cargo tanks for transportation of a flammable liquid. (Modes 1, 3.) |
| 6080-P | DOT-E 6080 | Airco Industrial Gases, Murray Hill, NJ | 49 CFR 173.301(d), 173.327(a), 173.337(a)(1). | To become a party to Exemption 6080. (Mode 1.) |
| 6305-X | DOT-E 6305 | Ensign Bickford Co, Simsbury, CT | 49 CFR 173.113(a)(1) | To authorize shipment of a certain Class C explosive in DOT Specification 23F35 fiberboard boxes. (Modes 1, 2.) |
| 6309-X | DOT-E 6309 | Olin Corp., Stamford, CT | 49 CFR 173.315(a)(1) | To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2.) |
| 6309-X | DOT-E 6309 | Freeman Chemical Corp., Port Washington, WI. | 49 CFR 173.315(a)(1) | To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2.) |
| 6309-X | DOT-E 6309 | General Latex & Chemical Corp., of GA, Dalton, GA. | 49 CFR 173.315(a)(1) | To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2.) |
| 6309-X | DOT-E 6309 | Insta-Foam Products, Inc., Joliet, IL | 49 CFR 173.315(a)(1) | To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2.) |
| 6418-X | DOT-E 6418 | Dow Chemical Co., Midland, MI | 49 CFR 173.357(b) | To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.) |
| 6418-X | DOT-E 6418 | Great Lakes Chemical Corp., El Dorado, AR. | 49 CFR 173.357(b) | To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.) |
| 6466-X | DOT-E 6466 | Ensign Bickford Co., Simsbury, CT | 49 CFR 173.68(a)(1), 173.87 | To authorize shipment of a Class A explosive in DOT Specification 12H fiberboard boxes. (Mode 1.) |
| 6484-X | DOT-E 6484 | ANGUS Chemical Co., Northbrook, IL | 49 CFR 172.101 | To authorize transport of mixtures of nitromethane and various solvents in DOT Specification MC-307 or MC-312 tank motor vehicles. (Mode 1.) |
| 6484-P | DOT-E 6484 | W. R. Grace & Co., Lexington, MA | 49 CFR 172.101 | To become a party to Exemption 6484. (Mode 1.) |
| 6530-X | DOT-E 6530 | Liquid Carbonic Corp., Chicago, IL | 49 CFR 173.302(c) | To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.) |
| 6614-P | DOT-E 6614 | Georgia-Pacific Corp., Montebello, CA | 49 CFR 173.263(a)(28), 173.277(a)(6) | To become a party to Exemption 6614. (Mode 1.) |
| 6704-X | DOT-E 6704 | Dow Chemical Co., Midland, MI | 49 CFR 173.245a, 173.249, 173.253, 173.294, 178.340, 178.343. | To authorize use of non-DOT specification cargo tanks for shipment of certain corrosive liquids. (Mode 1.) |
| 6759-P | DOT-E 6759 | Kesco, Inc., Kittanning, PA | 49 CFR 173.87, 177.835(g)(2) | To become a party to Exemption 6759. (Mode 1.) |
| 6759-P | DOT-E 6759 | Controlled Blasting, Inc., Zelienople, PA | 49 CFR 173.87, 177.835(g)(2) | To become a party to Exemption 6759. (Mode 1.) |
| 6762-P | DOT-E 6762 | H. C. Harrington Co., Inc., Pittsburgh, PA | 49 CFR 173.286(b)(2), 175.3 | To become a party to Exemption 6762. (Modes 1, 2, 3, 4.) |
| 6762-P | DOT-E 6762 | Aqua Labs, Inc., Piscataway, NJ | 49 CFR 173.286(b)(2), 175.3 | To become a party to Exemption 6762. (Modes 1, 2, 3, 4.) |
| 6762-P | DOT-E 6762 | Jamestown Chemical Co., Inc., West Haven, CT. | 49 CFR 173.286(b)(2), 175.3 | To become a party to Exemption 6762. (Modes 1, 2, 3, 4.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 6763-X | DOT-E 6763 | Purex Corp., Carson, CA | 49 CFR 173.217(a)(8) | To authorize use of non-DOT specification single-wall, double-faced corrugated fiberboard boxes, for shipment of certain oxidizers. (Modes 1, 2, 3.) |
| 6765-P | DOT-E 6765 | Teisan K. K., Tokyo, Japan | 49 CFR 173.318(a), 176.76(h)(4) | To become a party to Exemption 6765. (Modes 1, 3.) |
| 6825-X | DOT-E 6825 | Richmond Lox Equipment Co., Livermore, CA. | 49 CFR 172.101, 173.314(c) | To authorize manufacture, marking and sale of non-DOT specification vacuum insulated tank car tanks, for transportation of liquefied ethylene and liquefied ethane. (Mode 2.) |
| 6904-X | DOT-E 6904 | Aldrich Chemical Co., Inc., Milwaukee, WI | 49 CFR 173.246(a), 175.3 | To authorize transport of certain corrosive materials in DOT Specification 12A fiberboard boxes having inside glass acid resistant bottles not exceeding 1 pint capacity. (Modes 1, 3, 4.) |
| 6962-X | DOT-E 6962 | U.S. Department of Energy, Washington, DC. | 49 CFR 173.301(d) | To authorize shipment of argon or helium in a sightly opened DOT Specification 3AA1800 or 3AA2000 cylinder. (Modes 1, 2.) |
| 7024-X | DOT-E 7024 | B. I. Transportation, Inc., Burlington, NC | 49 CFR 173.249(a)(7) | To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealed tanks. (Mode 1.) |
| 7025-X | DOT-E 7025 | Liquid Air Corp., San Francisco, CA | 49 CFR 172.101, 173.315(a)(1) | To authorize use of a non-DOT specification cargo tank, for transportation of a flammable gas and a nonflammable gas. (Mode 1.) |
| 7032-X | DOT-E 7032 | Polaroid Corp., Weedham Heights, MA | 49 CFR 172.101, 175.3 | To authorize outside packages exceeding the 100 pounds limitation to be carried aboard cargo aircraft only for shipment of a certain corrosive solid. (Mode 4.) |
| 7040-X | DOT-E 7040 | Polaroid Corp., Needham Heights, MA | 49 CFR 172.101, 175.3 | To authorize carriage of larger quantities of corrosive liquids in DOT Specification 6D cylindrical steel overpack with inside DOT Specification 2SL container mounted on a pallet and covered with a wooden overwrap. (Mode 4.) |
| 7052-X | DOT-E 7052 | Eagle-Picher Industries, Inc., Joplin, MO | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Industrial Solid State Controls, Inc., York, PA. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Jet Propulsion Laboratory, Pasadena, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Technical Oil Tool Corp., Norman, OK | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Electrochem Industries, Inc., Clarence, NY | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Northrop Corp., Hawthrone, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-P | DOT-E 7052 | ENMET Corp., Ann Arbor, MI | 49 CFR 172.101, 175.3 | To become a party to Exemption 7052. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Honeywell, Inc., Horsham, PA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-P | DOT-E 7052 | EIC Laboratories, Inc., Norwood, MA | 49 CFR 172.101, 175.3 | To become a party to Exemption 7052. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Ray-O-Vac Corp., Madison, WI | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Gearhart Industries, Inc., Fort Worth, TX | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Sonatech, Inc., Goleta, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Hercules, Inc., Wilmington, DE | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | In-Situ, Inc., Laramie, WY | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-P | DOT-E 7052 | Ocean Technology, Inc., Burbank, CA | 49 CFR 172.101, 175.3 | To become a party to Exemption 7052. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | TNR Technical, Farmingdale, NY | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | GTE Products Corp., Waltham, MA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-P | DOT-E 7052 | Teldyne Electronics, Newbury Park, CA | 49 CFR 172.101, 175.3 | To become a party to Exemption 7052. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | U.S. Department of Defense, Washington, DC. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | General Motors Corp., Warren, MI | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Duracell International, Inc., Tarrytown, NY | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | A/S Hellesens, Soborg, Denmark | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | ENDECO, Inc., Marion, MA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Bunker Ramo Corp., Westlake Village, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Geophysical Research Corp., Tulsa, OK | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Rockwell International Corp., Anaheim, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | The Boeing Co., Seattle, WA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | DME Corp., Pompano Beach, FL | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Plainview Electronics Corp., Plainview, NY | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Gould, Inc., Andover, MA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Altus Corp., San Jose, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | EG&G Environmental Equipment Division, Herndon, VA. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | AVCO, Wilmington, MA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-P | DOT-E 7052 | Sippican Ocean Systems, Inc., Marion, MA. | 49 CFR 172.101, 175.3 | To become a party to Exemption 7052. (Modes 1, 2, 3, 4.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 7052-X | DOT-E 7052 | Cubic Corp., San Diego, CA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | National Aernautics and Space Administration, Washington, DC. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Hazeltine Corp., Braintree, MA | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | SAFT America Inc., Cockeysville, MD | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Massachusetts Institute of Technology, Lexington, MA. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | Power Conversion, Inc., Elmwood Park, NJ. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | U.S. Department of Energy, Washington, DC. | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7052-X | DOT-E 7052 | NL Industries, Inc., Houston, TX | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| 7070-X | DOT-E 7070 | Oxy Metal Industries Corp., Nutley, NJ | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | Auric Corp., Newark, NJ | 49 CFR 173.173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | Technic, Inc., Cranston, RI | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | American Chemical & Refining Co., Inc., Waterbury, CT. | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | Engelhardt Industries, Providence, RI | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | Lea-Ronal, Inc., Freeport, NY | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7070-X | DOT-E 7070 | Degussa Corp., Teterboro, NJ | 49 CFR 173.365, 175.3, 175.630 | To authorize shipment of a poison B solid in a plastic jar overpacked in a metal can equivalent to DOT Specification, 2N, packed in a single-faced corrugated DOT Specification 12B fiberboard box. (Modes 4, 5.) |
| 7218-X | DOT-E 7218 | Structural Composites Industries, Inc., Pomona, CA. | 49 CFR 173.302(a), 173.304(a), 175.3 | To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.) |
| 7277-X | DOT-E 7277 | Structural Composites Industries, Inc., Pomona, CA. | 49 CFR 173.173.302(a)(1), 173.304(a), 173.304(d), 175.3. | To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.) |
| 7594-X | DOT-E 7594 | Bromine Compounds, Ltd., Beersheva, Israel. | 49 CFR 173.353 | To authorize transport of certain poison B liquids in non-DOT specification portable tanks. (Modes 1, 3.) |
| 7654-X | DOT-E 7654 | Eastman Kodak Co., Rochester, NY | 49 CFR 173.119(f) | To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.) |
| 7657-X | DOT-E 7657 | Welker Engineering Co., Sugar Land, TX | 49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42. | To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 4.) |
| 7708-X | DOT-E 7708 | HTL Industries, Inc., Duarte, CA | 49 CFR 173.302(a), 175.3, 178.44 | To authorize use of non-DOT specification small, high pressure cylinders of welded construction for military weapons systems use only. (Modes 1, 2, 4, 5.) |
| 7754-X | DOT-E 7754 | Hercules, Inc., Wilmington, DE | 49 CFR 173.103(a), 173.66, 177.835(g)(2)(i). | To authorize transport of non-electric blasting caps in the same vehicle with Class A and Class B explosives when the caps are place in polyethylene plastic bags. (Mode 1.) |
| 7768-X | DOT-E 7768 | Plasti-Drum Corp., Lockport, IL | 49 CFR 173.154, 173.217, 173.245b, 173.365, 178.19. | To authorize manufacture, marking and sale of non-DOT specification blow-molded, high molecular weight polyethylene drums, with removable head, for shipment of certain oxidizers, corrosive, flammable and poison B solids. (Modes 1, 2, 3.) |
| 7770-X | DOT-E 7770 | Parlefer, Paris, France | 49 CFR 173.143, 173.264(b)(4) | To authorize transport of anhydrous hydrogen fluoride or anhydrous methylchloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, 3.) |
| 7777-X | DOT-E 7777 | Sentry Chemical Co., Greeley, Co | 49 CFR 173.248 | To authorize use of DOT Specification 34 polyethylene containers, DOT Specification 12B or 12P corrugated fiberboard boxes, or DOT Specification 6D or 37M cylindrical steel overpacked with an inside Specification 2SL polyethylene containers, for shipment of spent sulfuric acid. (Modes 1, 2, 3.) |
| 7777-X | DOT-E 7777 | Stabilex, Ltd., Boynton Beach, FL | 49 CFR 173.248 | To authorize use of DOT Specification 34 polyethylene containers, DOT Specification 12B or 12P corrugated fiberboard boxes, or DOT Specification 6D or 37M cylindrical steel overpack with an inside Specification 2SL polyethylene containers, for shipment of spent sulfuric acid. (Modes 1, 2, 3.) |
| 7788-X | DOT-E 7788 | Southern Chemical Products Co., Macon, GA. | 49 CFR 178.19, Part 173, Subpart F | To authorize shipment of corrosive liquids in non-DOT specification 20 and 35 gallon capacity reusable, rotationally molded polyethylene drums. (Modes 1, 2, 3.) |
| 7811-X | DOT-E 7811 | Burdick & Jackson Laboratories, Inc., Muskegon, MI. | 49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, 178.210. | To authorize use of DOT Specification 12A corrugated fiberboard box with handholes, for shipment of certain corrosive, flammable, and Class B poisonous liquid. (Modes 1, 2, 3, 4.) |
| 7811-X | DOT-E 7811 | EM Science, Cincinnati, OH | 49 CFR 173.119(a)(23), 173.245(a)(18), 173.346(a)(21), 173.347(a)(8), 175.3, 178.210. | To authorize use of DOT Specification 12A corrugated fiberboard box with handholes, for shipment of certain corrosive, flammable, and Class B poisonous liquid. (Modes 1, 2, 3, 4.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 7835-X | DOT-E 7835 | Wilson Oxygen & Supply, Inc., Austin, TX | 49 CFR 177.848, Part 107 Appen. B(1) | To authorize transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.) |
| 7876-X | DOT-E 7876 | J. T. Baker Chemical Co., Phillipsburg, NJ | 49 CFR 173.299(a), 175.3 | To authorize shipping description etching acid, liquid, n.o.s. to be used for products which do not comply with the definition in 49 CFR 173.299(a). (Modes 1, 2, 3, 4.) |
| 7876-X | DOT-E 7876 | Ashland Oil, Inc., Dublin, OH | 49 CFR 173.299(a), 175.3 | To authorize shipping description etching acid, liquid n.o.s. to be used for products which do not comply with the definition in 49 CFR 173.229(a). (Modes 1, 2, 3, 4.) |
| 7887-X | DOT-E 7887 | Vulcan Systems Inc., Rantoul, IL | 49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B. | To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.) |
| 7891-X | DOT-E 7891 | Gigma-Aldrich Corp., Saint Louis, MO | 49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.126, 173.136, 173.237, 173.246, 173.25(a), 175.3. | To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.) |
| 7909-X | DOT-E 7909 | Dow Chemical U.S.A., Midland, MI | 49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.33. | To authorize manufacture, marking and sale of non-DOT specification plastic metal or plastic coated glass containers, for transport of limited quantities of poisonous liquid and solids. (Modes 1, 2, 4.) |
| 7929-X | DOT-E 7929 | C-I-L Inc., North York, Ont. Canada | 49 CFR 173.65 | To authorize transport of flanked or pelletized TNT in woven polyethylene or polypropylene cloth outer bags, with plastic film liners. (Modes 1, 2.) |
| 7987-X | DOT-E 7987 | Stauffer Chemical Co., Westport, CT | 49 CFR 173.343, 173.377 | To authorize shipment of a poison B, in non-DOT specification five ply natural kraft multiwall bags. (Modes 1, 2.) |
| 7998-X | DOT-E 7998 | Dow Chemical Co., Midland, MI | 49 CFR 173.154 | To authorize transport of sodium persulfate in non-DOT specification composite polyethylene paper bags. (Modes 1, 2.) |
| 8077-X | DOT-E 8077 | Rohm Haas and Co., Philadelphia, PA | 49 CFR 173.199, 173.136(a)(3), 173.247(a)(7). | To authorize use of non-DOT specification steel drums, for shipment of a flammable and corrosive liquid. (Modes 1, 2.) |
| 8077-X | DOT-E 8077 | Dow Corning Corp., Midland, MI | 49 CFR 173.119, 173.136(a)(3), 173.247(a)(7). | To authorize use of non-DOT specification steel drums, for shipment of a flammable and corrosive liquid. (Modes 1, 2.) |
| 8091-P | DOT-E 8091 | BellSouth Services, Birmingham, Al | 49 CFR 100-177 | To become a party to Exemption 8091. (Modes 4, 5.) |
| 8129-P | DOT-E 8129 | Mine Safety Appliances Co., Evans City, PA. | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | Teledyne Battery Products, Redlands, CA | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | The Johns Hopkins Hospital, Baltimore, MD. | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | University of California, Davis, Davis, CA | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | Applied Technology, Inc., Toms River, NJ | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | Magnetic Peripherals, Inc., a Control Data Company, Santa Clara, CA. | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8128 | SET Liquid Wasate Systems, Inc., Wheeling, IL. | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | Bay Area Environmental, San Pablo, CA | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | Suffolk Services, Inc., Boston, MA | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1.) |
| 8129-P | DOT-E 8129 | The Johns Hopkins University, Baltimore, MD. | 49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O. | To become a party to Exemption 8129. (Mode 1) |
| 8175-X | DOT-E 8175 | The Norac Co., Inc., Azusa, CA | 49 CFR 173.157(a) (4), 178.224 | To authorize shipment of benzoyl peroxide, wet, in plastic lined DOT Specification 21C fiber drum, without and inside polythylene container. (Mode 1.) |
| 8284-X | DOT-E | Pressure Vessel Service, Inc., d.b.a. PVS Chemicals, Detroit, MI. | 49 CFR 173.272(a)(i)22, 174.3, 179.202-12(b). | To authorize shipment of oleum in DOT Specification 103AW or 111A100W2 tank cars equipped with safety valves instead of safety vents. (Mode 2.) |
| 8284-X | DOT-E8284 | Allied Chemical, Morristown, NJ | 49 CFR 173.272(a)(i)22, 174.3, 179,202-12(b). | To authorize shipment of oleum in DOT Specification 103AW or 111A100W2 tank cars equipped with safety valves instead of vents. (Mode 2.) |
| 8344-X | DOT-E8344 | Farwest Sport Inc., Olympia, WA | 49 CFR 173.197a | To authorize transport of smokeless powder for small arms in a DOT Specification 12B fiberboard box. (Modes 1, 2.) |
| 8369-X | DOT-E8369 | Degussa Corp., Teterboro, NJ | 49 CFR 173.21 | To authorize transport of glycidol separated from certain other chemicals in non-DOT specification single-trip steel drums. (Modes 1, 2, 3.) |
| 8390-X | DOT-E8390 | Eastman Kodak Co., Rochester, NY | 49 CFR 173.272, 178.210, 178.24a | To authorize shipment of 95%-98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.) |
| 8390-X | DOT-E8390 | Texas Instruments, Inc., Dallas TX | 49 CFR 173.272, 178.210, 178.24a | To authorize shipment of 95%-98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.) |
| 8396-X | DOT-E8396 | Catalyst Resources, Inc. Elyria, OH | 49 CFR 173.119, 173.21, 173.221 | To authorize transport of certain organic peroxide solutions in DOT Specification MC-307 and MC-312 cargo tanks. (Mode 1.) |
| 8408-X | DOT-E8408 | Presvac Systems (Burlington) Ltd., Burlington, Ontario Can. | 49 CFR 173.119(a), 173:119(m),173:245(a), 173:346(a), 1780340-7, 178.342-5, 178.343-5. | To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307 or MC-312, for transportation of flammable liquids, corrosive material or poison B. (Mode 1.) |
| 8432-X | DOT-E8432 | U.S. Department of Defense, Washington, DC. | 49 CFR 172.101, 173.154, 175.3 | To authorize transport of plastic bottles containing an aqueous solution of sodium perchlorate and plastic bottles containing aluminum powder together in a wire bound plywood box. (Modes 1, 2, 3, 4.) |
| 8445-X | DOT-E8445 | Monsanto Co., St. Louis, MO | 49 CFR Part 173, Subpart D, E, F, and H | To become a party to Exemption 8445. (Mode 1.) |
| 8445-X | DOT-E8445 | Bay Area Environmental, San Pablo, CA | 49 CFR Part 173, Subpart D, E, F, and H | To become a party to Exemption 8445. (Mode 1.) |
| 8465-X | DOT-E8465 | Chase Bag Co., Oak Brook IL | 49 CFR 173.182(b)(6)(i), 173.234, 178.241 | To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, 3.) |
| 8525-P | DOT-E8525 | Atlanttrafik Express Service, New York, NY. | 49 CFR Part 173, 389(o)(1), 173.392(c), 176.700(h)(1), 176.700(h)(2). | To become a party to Exemption 8525. (Mode 1, 2, 3.) |

RENEWAL AND PARTY TO EXEMPTIONS—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 8568-X | DOT-E 8568 | Lely Tractor, Inc., Temple, TX | 49 CFR 173.119(a), 173.119(m), 173.245(a), 173.340-7, 173.346(a), 178.342-5, 178.353-5. | To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosive waste liquids or semi solids. (Mode 1.) |
| 8570-X | DOT-E 8570 | Snyder Industries, Inc., Lincoln, NE | 49 CFR 173.119, 173.266, Part 173, Subpart F. | To authorize manufacture, marking and sale of non-DOT rotationally molded, cross-linked polyethylene portable tank, for shipment of corrosive liquids and an oxidizer. (Modes 1, 2.) |
| 8582-P | DOT-E 8570 | Chicago & Northwestern Transportation Co., Chicago, IL. | 49 CFR Part 100-177 | To become a party to Exemption 8582. (Mode 1.) |
| 8582-X | DOT-E 8582 | The Chesapeake & Ohio Railway Co., Cleveland, OH. | 49 CFR Part 100-177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.) |
| 8582-X | DOT-E 8582 | The Western Maryland Railway Co., Baltimore, MD. | 49 CFR Part 100-177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment (Mode 1.) |
| 8582-X | DOT-E 8582 | The Baltimore & Ohio Railroad Co., Baltimore, MD. | 49 CFR Part 100-177 | To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.) |
| 8597-X | DOT-E 8597 | McDonnell Douglas Corp., St, Louis, MO | 49 CFR 173.268, Part 172 Subpart C | To authorize transport of nitric acid in stainless steel non-DOT specification portable tanks. (Mode 1.) |
| 8627-X | DOT-E 8627 | Champion Chemicals, Inc., Houston TX | 49 CFR 173.119, 173.245, 178.253 | To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.) |
| 8786-X | DOT-E 8786 | Stabilus, GMBH, Koblenz, West Germany | 49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3. | To authorize shipment of limited quantities of compressed gases, in accumulators which deviate from the required retest parameters. (Modex 1, 2, 3, 4, 5.) |
| 8791-X | DOT-E 8791 | Stauffer Chemical Co., Westport, CT | 49 CFR 173.245a, 178.245-1 | To authorize use of a non-DOT specification portable tank, for transportation of ethyl chloroformate. (Modes 1, 2, 3.) |
| 8795-X | DOT-E 8795 | The Marison Co., South Elgin, IL | 49 CFR 173.302(a), 173.304(a), 173.305(a), 175.3, 178.55. | To authorize manufacture, marking and sale of non-DOT specification cylinders made in compliance with DOT Specification 4B240ET with certain exceptions, for transportation of flammable and nonflammable gases. (Modes 1, 2, 3, 4, 5.) |
| 8806-X | DOT-E 8806 | Natico, Inc., Chicago, IL | 49 CFR 178.134 | To authorize manufacture, marking and sale of non-DOT specification steel drum overpacks having polyethylene top heads for 55-gallon capacity inner DOT Specification 2SL polyethylene container, for transportation of various hazardous materials. (Modes 1, 2, 3.) |
| 8811-X | DOT-E 8811 | American Hoechst Corp., Somerville, NJ | 49 CFR 173.294(a), 178.340, 178.343-2 | To authorize use of modified DOT Specification MC-312 cargo tanks made of titanium, for shipment of certain corrosive materials. (Mode 1.) |
| 8838-X | DOT-E 8838 | FMC Corp., Philadelphia, PA | 49 CFR 173.217(a)(4), 178.224 | To authorize shipment of tri-chloro-s-triazinetrione, dry in a non-DOT specification fiber drum similar to DOT Specification 21C fiber drum with certain exceptions. (Modes 1, 2, 3.) |
| 8843-P | DOT-E 8843 | GOEX, Inc., Cleburne, TX | 49 CFR 173.246, 175.3 | To become a party to Exemption 8843. (Modes 1, 2, 3, 4.) |
| 8843-X | DOT-E 8843 | Owen Oil Tools, Inc. (formerly Chem Cut, Co.), Fort Worth, TX. | 49 CFR 173.246, 175.3 | To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride. (Modes 1, 2, 3, 4.) |
| 8843-X | DOT-E 8843 | Pengo Industries, Inc., Fort Worth, TX | 49 CFR 173.246, 175.3 | To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride. (Modes 1, 2, 3, 4.) |
| 8844-X | DOT-E 8844 | Beall, Inc., Billings, MT | 49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5. | To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of certain hazardous materials. (Mode 1.) |
| 8845-P | DOT-E 8845 | Goex, Inc., Cleburne, TX | 49 CFR 173.110(c)(1), 173.80(b), 173.80(c). | To become a party to Exemption 8845. (Modes 1, 3.) |
| 8870-P | DOT-E 8870 | Culligan International Co., Northbrook, IL | 49 CFR 172.101, 173.286, 175.3 | To become a party to Exemption 8870. (Modes 1, 2, 3, 4, 5.) |
| 8871-X | DOT-E 8871 | Chase Bag Co., Oak Brook, IL | 49 CFR 173.182, 173.217, 173.245(b) | To authorize manfacture, marking and sale of large, collapsible polyethlene lined woven polypropylene bulk bags, having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.) |
| 8872-X | DOT-E 8872 | .....do | 49 CFR 173.201 | To authorize manufacture, marking and sale of non-DOT specification polyethylene valve-type bags, for transportation of rubber scrap. (Modes 1, 2.) |
| 8958-X | DOT-E 8958 | Goex, Inc., Moosic, PA | 49 CFR 172.101, 173.60 | To increase weight limitations of black powder from 50 to 100 pounds. (Modes 1, 2.) |
| 8966-X | DOT-E 8966 | All Pure Chemical Co., Inc., Tracy, CA | 49 CFR 173.263(a)(15), 173.277(a)(1), 178.205. | To authorize shipment of hydrochloric acid, solutions, corrosive material of up to 32.5 percent strength as an additional commodity. (Mode 1.) |
| 8976-X | DOT-E 8976 | Diamond Shamrock Corp., Irving, TX | 49 CFR 173.204(a)(3), 173.28(m) | To authorize a one time reuse of DOT Specification 17H steel drums, having a liner of polyethylene film and which deviate from retest requirements, for shipment of sodium hydrosulfite. (Modes 1, 2, 3.) |
| 9101-X | DOT-E 9101 | RCA Corp., Princeton, NJ | 49 CFR 172.101 column 6(b) | To authorize shipment of several rocket motors having excess gross weight by cargo aircraft only. (Mode 4.) |
| 9181-X | DOT-E 9181 | GTE Products Corp., Waltham, MA | 49 CFR 173.173.206, 173.21, 173.247 | To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1.) |
| 9199-X | DOT-E 9199 | Cape Fear Tank Co., Inc., Wilmington, NC | 49 CFR 173.34, Part 107, Appendix B | To authorize rebuild, repair, retest, mark and sell DOT Specification 4B, 4BA and 4BW cylinders by a method other than as prescribed. (Modes 1, 2, 3, 4, 5.) |
| 9231-N | DOT-E 7616 | Consolidated Rail Corp., Philadelphia, PA | 49 CFR 172.204(a), 172.204(d) | To become a party to Exemption 7616. (Modes 2, 4.) |

## NEW EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 9005-N | DOT-E 9005 | Emerald Air, Austin TX | 49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B. | To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.) |
| 9050-N | DOT-E 9050 | United Executive Jet, Inc., Chesterfield, MO. | 49 CFR 172.101, 175.30(a)(1) | To authorize carriage of ammunition for small-arms with explosive projectile, Class A explosive via cargo-only aircraft. (Mode 4.) |
| 9118-N | DOT-E 9118 | ICI Americas, Inc., Wilmington, DE | 49 CFR 173.245(a)(38) | To authorize shipment of 1,2-benzisothiazolin-3-one in aqueous solution or dispersion, either by itself or in combination with ethylenediamine or sodium hydroxide, in DOT Specification 57 steel portable tanks. (Modes 1, 2, 3.) |
| 9126-N | DOT-E 9126 | Allied Drum Service, Inc., Louisville, KY | 49 CFR 178.102-4, Part 107, Appendix B | To authorize manufacture, marking and sale of DOT Specification 6D drum to be marked by emobssing on the top permanent head instead of the bottom permanent head and that the drum need not be marked with the exemption number. (Modes 1, 2, 3, 4, 5.) |
| 9131-N | DOT-E 9131 | River City Drum, Inc., Saint Louis, MO | 49 CFR 178.19, Part 173, Subpart F | To authorize manufacture, marking and sale of non-DOT specification 55-gallon polyethylene Specificaiton 34 type containers, for transport of corrosive liquids. (Modes 1, 2, 3.) |
| 9145-N | DOT-E 9145 | Exxon Pipeline Co., Houston, TX | 49 CFR 173.119, 173.304, 173.315 | To authorize use of non-DOT specification container, for shipment of flammable gases. (Mode 1.) |
| 9148-N | DOT-E 9148 | Chas. Martin Inspection & Controls, Inc., Pasadena, TX. | 49 CFR 173.119(m)(12), 177.348 | To authorize shipment of acrylonitrile in glass bottles in DOT-193 wood boxes which are fitted with inside corrugated fiberboard linings, partitions and dividers instead of absorbent cushioning material; and authorizes packages of organic peroxide and corrosive material to be shipped in same vehicle. (Mode 1.) |
| 9168-N | DOT-E 9168 | Air-Pak, Inc., Pittsburgh, PA | 49 CFR 172.400, 172.504, 173.118, 173.244, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33. | To authorize manufacture, marking and sale of specially designed composite type packging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids shipped without labels. (Modes 1, 2, 4.) |
| 9175-N | DOT-E 9175 | Marathon Oil Co., Littleton, CO | 49 CFR 173.119(b) | To authorize shipment of crude oil, classed as a flammable liquid, in a cylindrical aluminum container, no more than six of which are overpacked in a wood box. (Mode 1.) |
| 9183-N | DOT-E 9183 | Bonar Industries, Inc., Macon, GA | 49 CFR 173.154, 173.182, 173.245b | To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2,000 pounds each, for shipment of corrosive solids and nitrates. (Modes 1, 2.) |
| 9194-N | DOT-E 9194 | Cyanamid Canada Inc., East Willowdale, Canada. | 49 CFR 173.370 | To authorize shipment of calcium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bags having a capacity of no more than 2,865 pounds. (Modes 1, 2.) |
| 9195-N | DOT-E 9195 | Owens-Illinois, Inc., Toledo, OH | 49 CFR 173.119(b)(4) | To authorize manufacture, marking and sale of DOT Specification 12B fiberboard boxes with inside bottles of plastic other than polyethylene, for shipment of certain insect control chemicals. (Modes 1, 2, 3.) |
| 9198-N | DOT-E 9198 | U.S. Department of the Interior, Boise, ID | 49 CFR 175.5(a)(2) | To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI, may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.) |
| 9201-N | DOT-E 9201 | Cyanamid Canada, Inc., East Willowdale, Canada. | 49 CFR 173.370 | To authorize calcium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bags having capacity of 2,204 pounds, overpacked in fiberboard boxes; in full freight container loads, docking at various U.S. ports. (Mode 3.) |
| 9211-N | DOT-E 9211 | Braintree Maritime Transportation Corp., Quincy, MA. | 49 CFR 146.29-35(f) | To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, and fire detection systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship. (Mode 3.) |
| 9212-N | DOT-E 9212 | Gibson Cryogenics, Inc., Ogden, UT | 49 CFR 173.315 | To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipment of carbon dioxide, refrigerated liquid. (Modes 1, 3.) |
| 9215-N | DOT-E 9215 | Container Corporation of America, Baltimore, MD. | 49 CFR 172.420, 175.3 | To authorize use of DOT Specification 12B fiberboard boxes bearing pre-printed labels not in full compliance with 49 CFR 173.420. (Modes 1, 2, 3, 4, 5.) |
| 9216-N | DOT-E 9216 | Freeman Industries, Inc., Tuckahoe, NY | 49 CFR 173.270(a)(2), 178.88 | To authorize shipment of phosphorous tribromide, classed as corrosive material, in non-DOT specificaion nickel drums, of 14-gallon capacity, comparable to DOT Specification 5K nickel drums. (Mode 1.) |
| 9217-N | DOT-E 9217 | United Air Lines, Inc., Chicago, IL | 49 CFR 173.118, 173.21, 175.30, 175.85, Part 107, Appendix B. | To authorize carriage onboard an aircraft small quantities of a flammable liquid in safety lamps. (Mode 5.) |
| 9240-N | DOT-E 9240 | Federal Aviation Administration, Fort Worth, TX. | 49 CFR 175.3, 175.85, Part 172, Subpart C, D, E. | To authorize cigarette lighters containing flammable gas to be carried in the passenger carrying cabin of an aircraft. (Mode 5.) |

## EMERGENCY EXEMPTIONS

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof. |
|---|---|---|---|---|
| EE 7052-X | DOT-E 7052 | Sparton Corp., Jackson, MI | 49 CFR 172.101, 175.3 | To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4.) |
| EE 9256-N | DOT-E 9256 | U.S. Department of Defense, Washington, DC. | 49 CFR 173.86 | To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 4.) |
| EE 9258-N | DOT-E 9258 | Schlumberger Well Services, Rosharon, TX. | 49 CFR 175.320(a) | To authorize transport of shaped charges (commercial) and inert material on cargo aircraft only. (Mode 4.) |
| EE 9259-N | DOT-E 9259 | American Screw Co., Wytheville, VA | 49 CFR 173.245b | To authorize use of non-DOT specification metal dump trucks, for transportation of a corrosive material. (Mode 1.) |
| EE 9260-N | DOT-E 9260 | Monsanto Co., Columbia, TN | 49 CFR 173.190 | To authorize transport of large, steel storage tanks containing waste residual phosphorus. (Mode 1.) |

WITHDRAWALS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 6007-X | Falcon Safety Products, Inc., Mountainside, NJ... | 49 CFR 173.391(b)(5), 175.3 | To authorize transport of certain devices containing a greater quantity of polonium—210 that is normally authorized under the provision of 49 CFR 173.391(b). (Modes 1, 2, 3, 4, 5.) |

DENIALS

| | |
|---|---|
| 6940-X | Request by Syntex Chemicals, Inc., Boulder, CO to authorize shipment of sodium, metal dispersion in organic solvent, in DOT Specification. 5, 5C, 6B or 6C closed head metal drums, overpacked in DOT Specification 17H drums denied May 14, 1984. |
| 9200-N | Request by Pacific Northwest Bell, Seattle, WA to ship DOT Specification 4B and 4BA cylinders having water capacity less than 200 pounds, when liquefied petroleum gas content has been verified by fixed length dip tube instead of by weight denied May 14, 1984. |

Issued in Washington, DC, on June 18, 1984.

J. R. Grothe,

*Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.*

[FR Doc. 84-17667 Filed 7-2-84; 8:45 am]

BILLING CODE 4910-60-M

## Urban Mass Transportation Administration

## Solicitation of Proposals for Section 6 Technical Assistance Grants and Cooperative Agreements

**AGENCY:** Urban Mass Transportation Administration: DOT.

**ACTION:** Notice.

**SUMMARY:** The Urban Mass Transportation Administration (UMTA), Office of Technical Assistance (URT), announces that it is soliciting proposals for grants and cooperative agreements under section 6, Research and Training Program, of the Urban Mass Transportation Act of 1964, as amended, for fiscal year 1985 and subsequent funding. The Office of Technical Assistance will select from among the proposals received, contact the submitting parties, and request complete grant applications from them.

**DATE:** Open until further notice.

**ADDRESS:** Proposals for section 6 technical assistance grants and cooperative agreements should be sent to: U.S. Department of Transportaion, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th Street SW., Room 6429, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, including copies of UMTA Circular 6100.1, "Application Instructions for section 6, Technical Assistance Grants and Cooperative Agreements," can be obtained from the Office of Technical Assistance at the above address. Contact: Diane K. Pisano, 202-426-9261.

**SUPPLEMENTARY INFORMATION:**

### Introduction and Program Objective

Section 6 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605), authorizes the Secretary of the Department of Transportation "to undertake research, development, and demonstration projects in all phases of urban mass transportation (including the development, testing, and demonstration of new facilities, equipment, techniques and methods) which he determines will assist in the reduction of urban transportation needs, the improvement of mass transportation services, or the contribution of such services toward meeting total urban transportation needs at minimum cost. He may undertake such projects independently or by grant or contract (including working agreements with other Federal departments and agencies). In carrying out the provisions of this section, the Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources." The Secretary has delegated this authority to the Urban Mass Transportation Adminsitrator (49 CFR 1.51(a)). UMTA's Office of Technical Assistance carries out a large portion of its program under this Section of the Act.

The objective of the section 6 technical assistance program is to conduct technical assisance activities to improve mass transportation facilities, equipment, techniques, methods, management and planning; to provide technical assistance to Federal, State and local governments, transit and planning agencies, private industry, and academia with respect to make such improvements; to insure the transfer to potential users of technical assistance results; and to administer Federally-funded programs related to such activities.

### Types of Projects Funded

To meet these objectives, the Office of Technical Assistance funds projects concerned with investigation of potential improvements through new or improved hardware (components, subsystems, systems) or software (transit planning techniques, transit management systems), service innovation, and studies or analyses of policies, programs, or other factors relevant to UMTA programs or the community. Under the program, projects involving modifications or improvements to proven hardware or software technology or the management and services, methods or techniques with application in urban mass transportation services are also carried out. UMTA also supports demonstrations at specific locations which develop information for national application at other candidate sites by examining the project's economic and technical feasibility.

Among UMTA's program priorities for FY 1985 are:

1. Transit financing techniques and methods that enable States and localities to identify and evaluate likely sources of funding at the local level. This program may include projects on the topics of:

- Assessing non-operator-related transit financing techniques, from perspective of revenue generation potential and implementation costs; and
- Investigating and developing new methods for assessing creative transit service policies, with emphasis on joint public/private service provision. The effort should generate case studies ilustrating alternative approaches to analyzing the cost-effectiveness of different service combinations.

2. Improved transit safety and security. This program may include projects on the topics of:

• Exploring the extent and impact of transit crime;

• Developing and demonstrating selected security counter-measures to reduce crime, drug and alcohol abuse and vandalism; and

• Studying the safety and security aspects of rail transit command and control systems, with consideration given to:

—human factors in the design of operations control centers;

—safety verification techniques for microcomputers used in rail transit;

—innovative surveillance techniques for transit facilities.

3. Reduced costs of maintenance and improved operational reliability of transit systems. This program may include projects on the topics of:

• Investigating enhanced human resource management techniques that will contribute to improved maintenance. Areas of investigation may consider worker qualifications, mechanic training and apprenticeship programs, incentives for managers and workers, use of the quality circle concept, and utilization of handicapped persons;

• Developing innovative techniques to reduce absenteeism in the transit industry, particularly among transit operators;

• Developing techniques to enable lower skilled mechanics to perform required maintenance on transit vehicles, as a means of allowing transit agencies to cope with the problem of shortages of skilled mechanics and/or limits on personnel caused by local budget problems;

• Developing work standards for transit vehicle maintenance and repair jobs similar to the standard times used by dealer and local automotive repair shops;

• More effective use of existing equipment and personnel by applying automating diagnostic procedures; and

• Considering flexible work assignments which might permit operators to also conduct limited maintenance on the vehicles they drive.

## Types of Project Relationships and Applicant Eligibility

UMTA uses grants or cooperative agreements to stimulate or support this research, or the transfer funds to assist recipients in acquiring property or services. The basic factor distinguishing grants from cooperative agreements is that, in the latter, funds are transferred to support or stimulate the recipient's effort and substantial involvement is anticipated by UMTA during the performance of the project, as opposed to grants where the recipient is expected to have a high degree of independence from UMTA in performing the project.

Eligible applicants for technical assistance grants and cooperative agreements include State and local governments, or agencies thereof, nonprofit institutions, and universities. Eligibility to enter into a grant or cooperative agreement relationship must be established prior to project award, since UMTA does not provide grants or cooperative agreements to private entrepreneurs for the development of proprietary systems.

## Cost Sharing Guidelines

UMTA encourage cost sharing by performing organizations in projects funded under Section 6 to the extent feasible and equitable. This is intended to serve the mutual interests of the Federal Government and recipient organizations by assuring maximum utilization of the funding resources available for such projects, and by promoting sound planning and prudent fiscal policies by the recipient organizations. Cost sharing is not a prerequisite to funding; however, it is actively considered in the evaluation of a proposal.

The amount of such is determined by mutual agreement between UMTA and the recipient, and may be in the form of non-monetary contributions as well as cash. Factors to be considered in negotiating the amount of cost sharing include the following:

1. In the case of grants and cooperative agreements with educational institutions and other nonprofit organizations, a higher percentage is expected when the cost of the project consists primarily of the academic-year salary of faculty members.

2. In the case of commercial or industrial organizations, greater private contributions to cost sharing would be expected if the project were likely to enhance the organization's capability, expertise, or competitive position to its financial advantage. Organizations predominantly engaged in research and development with little or no production or other service activities may not be in a favorable position to derive a monetary benefit from such participation. Thus, cost participation by commercial or industrial organizations could reasonably range from no cost to as much as 50 percent or more of the project cost.

3. In the case of grants or cooperative agreements with State and local agencies, some cost sharing and matching of the total project cost is encouraged. The percentage of cost sharing and matching is generally determined by the risk of the project and the relative interest of the Federal Government and the grantee in the project; and

4. A relatively low degree of cost sharing may be appropriate if it is determined that an area of research which requires special stimulus is in the national interest.

## Procedures Prior to Formal Application

Although applications for Section 6 technical assistance projects may be submitted at any time, all potential applicants are encouraged to communicate with UMTA's Office of Technical Assistance before submitting a formal application. The initial contact in response to this notice should be made by submitting a written outline of ideas. Preliminary contact is used to:

(a) Establish a base for communication between UMTA and the applicant;

(b) Determine the applicant's eligibility;

(c) Eliminate any proposals which have little or no chance for Federal funding before applicants incur the expenditures involved in preparing an application; and

(d) Determine conformance to URT's policy and program objectives and funding availability.

## Formal Application Process

When a preliminary concept is agreed upon, the applicant may submit a formal application. UMTA will assist the applicant in application preparation to avoid errors which may lead to unnecessary delays in processing.

One original plus two copies of the application should be sent to the Urban Mass Transportation Administration. Additional copies may be requested if required by the Department of Labor (DOL) for section 13(c) Labor Protection Clearance. It may also be necessary to send a copy of the application to the State for review under the Executive Order 12372, "Intergovernmental Review of Federal Programs."

## Project Approval

UMTA acknowledge receipt of applications. UMTA then reviews and responds to every application received—both solicited and unsolicited—in writing as promptly as possible. However, budgetary and program constraints make it necessary to select for further consideration only those applications most relevant to the

needs of budgeted programs. Criteria for project approval include:

(a) Compatibility with section 6 program purposes and objectives;

(b) Availability of funding;

(c) Non-Federal funding match;

(d) Importance of proposal to the fiscal year program activity;

(e) Potential for impact on the state-of-the-art from the viewpoint of improvement and innovation in transit operations;

(f) Technical feasibility and potential for successful introduction into use in the transit industry;

(g) Background, experience, and demonstrated capability of applicant;

(h) Local commitment to the project;

(i) Private sector participation (where appropriate);

(j) Geographic distribution of existing projects; and

(k) Other pertinent matters, such as questions of environmental impact, labor impact, and displacement of persons by proposed construction.

Successful applicants will be notified of project approval by a "letter of approval." This letter will indicate the effective date of the project and will serve as an authorization for the recipient to incur costs. Early submission of the application is essential to insure that approval can be made before the grantee has begun to incur costs. Costs incurred prior to project approval are not generally eligible as project expenses.

Proposers not selected for participation in a particular fiscal year may, by submitting letters of continuing interest in lieu of new proposals, revise earlier submittals for consideration in subsequent fiscal years.

Issued on: June 27, 1984.

Ralph L. Stanley,

*Urban Mass Transportation Administrator.*

[FR Doc. 84-17684 Filed 7-2-84; 8:45 am]

BILLING CODE 4910-57-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Pub. L. 92-463, that a meeting will be held at the Federal Reserve Bank of New York on July 10, 1984, of the following debt management advisory committee:

Public Securities Association
U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 10 and the preparation of a written report to the Secretary of the Treasury on July 10, 1984. The immediate needs of the Treasuary require that the meeting be held as soon as possible.

Pursuant to the authority placed in Heads of Departments by Section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under Section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by Section 552b(c)(4) of Title 5 of the United States Code for matter which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by Section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee hearings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of Section 552b of Title 5 of the United States Code.

Dated: June 28, 1984.

Thomas J. Healey,

*Assistant Secretary (Domestic Finance).*

[FR Doc. 84-17578 Filed 7-2-84; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular; Public Debt Series No. 18-84]

### Notes of Series M—1988; Interest Rate

June 27, 1984.

The Secretary announced on June 26, 1984, that the interest rate on the notes designated Series M-1988, described in Department Circular—Public Debt Series—No. 18-84 dated June 20, 1984, will be 13⅝ percent. Interest on the notes will be payable at the rate of 13⅝ percent per annum.

Carole Jones Dineen,

*Fiscal Assistant Secretary.*

[FR Doc. 84-17577 Filed 7-2-84; 8:45 am]

BILLING CODE 4810-40-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: June 26, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7227 1201 Constitution Avenue, NW., Washington, D.C. 20220.

**Internal Revenue Service**

*OMB Number:* New
*Form Number:* IRS Form 8257
*Type of Review:* New
*Title:* Documentation of State Data

*OMB Number:* 1545-0702
*Form Number:* IRS form 8023
*Type of Review:* Extension
*Title:* Election under Section 338(g)

*OMB Number:* 1545-0685
*Form Number:* IRS Form 1663
*Type of Review:* Extension
*Title:* Export Exemption Certificate

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0103

*Form Number:* ATF F 2035 (5130.14)
*Type of Review:* Extension
*Title:* Notice of Transfer of Untaxpaid Beer

*OMB Number:* 1512-0045
*Form Number:* AFT Form 27-C
*Type of Review:* Extension
*Title:* Brewer's Notice

*OMB Number:* 1512-0020
*Form Number:* ATF F 9 (5320.9)
*Type of Review:* Extension
*Title:* Application and Permit for Permanent Exportation of Firearms

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

**Bureau of Government Financial Operations**

*OMB Number:* 1510-0009
*Form Number:* TFS 285A
*Type of Review:* Extension
*Title:* List of Excess risks in Force on Application Date

*OMB Number:* 1510-0013
*Form Number:* None
*Type of Review:* Extension
*Title:* States in Which Licensed

*OMB Number:* 1510-0014
*Form Number:* TFS 2208A
*Type of Review:* Extension
*Title:* List of States and Other Areas Licensed to Transit Surety Business on Application Date

**United States Customs Service**

*OMB Number:* 1515-0015
*Form Number:* Customs Form 7511
*Type of Review:* Extension
*Title:* Notice of Exportation of Articles with Benefit of Drawback

*OMB Number:* 1515-0072
*Form Number:* Customs Form 3315
*Type of Review:* Extension
*Title:* Declaration for Free Entry of Game Animals or Birds Killed by United States Residence

*OMB Number:* New
*Form Number:* ICB Form 146
*Type of Review:* Existing Collection
*Title:* Required Records for Smelting and Refining Warehouse

*OMB Number:* New
*Form Number:* ICB Form 141
*Type of Review:* Existing Collection
*Title:* Establishment of Manufacturing Warehouse

*OMB Number:* 1515-0021
*Form Number:* Customs Form 3499
*Type of Review:* Extension
*Title:* Application and Approval to Manipulate, Examine, Sample or Transfer Goods

*OMB Number:* New
*Form Number:* ICB Form 140
*Type of Review:* Existing Collection
*Title:* Bonded Warehouse—Alterations, Suspensions, Relocations and Discontinuance

*OMB Number:* New
*Form Number:* None
*Type of Review:* Existing Collection
*Title:* Declaration of Person Who Performed Repairs

**Comptroller of the Currency**

*OMB Number:* 1557-0140
*Form Number:* None
*Type of Review:* Extension
*Title:* Collective Investment Fund Plan/ Financial Report

*OMB Number:* 1557-0124
*Form Number:* Form TA-1
*Type of Review:* Extension
*Title:* Uniform Form for Registration and Amendment to Registration As a Transfer Agent

OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph Maty,
*Departmental Reports, Management Office.*

[FR Doc. 84-17632 Filed 7-2-84; 8:45 am]
BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

**DATES:** Comments on the information collections should be directed to OMB Desk Officer within 60 days of this notice.

Dated: June 27, 1984.

By direction of the Administrator.

Dominick Onorato,
*Associate Deputy Administrator for Information Resources Management.*

**New Collection**

1. Department of Medicine and Surgery.
2. VA Form 10-20769 (NR).
3. National Needs Assessment Study of Vietnam Era Veterans.
4. Recordkeeping Requirement.
5. Individuals or Households..
6. 5,000 responses.
7 20,000 hours.
8. Not applicable.

[FR Doc. 84-17637 Filed 7-2-84; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 49, No. 129
Tuesday, July 3, 1984

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).

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## 1

### FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, July 9, 1984.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 29, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-17766 Filed 6-29-84; 3:42 pm]

BILLING CODE 6210-01-M

## 2

### INTERNATIONAL TRADE COMMISSION

[USITC SE-84-31]

**TIME AND DATE:** 10:00 a.m., Tuesday, July 10, 1984.

**PLACE:** Room 117 701 E Street, NW., Washington, D.C. 20436

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Certain anodes for cathodic protection and components thereof (Docket No. 1063).
   b. Certain ink jet printing systems (Docket No. 1064).
5. Investigation 731-TA-190 [Preliminary] (Stainless Steel Wire Cloth from Japan)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-17769 Filed 6-29-84; 3:55 pm]

BILLING CODE 7020-02-M

## 3

### INTERNATIONAL TRADE COMMISSION

[USITC SE-84-32]

**TIME AND DATE:** 10:00 a.m., Wednesday, July 11, 1984.

**PLACE:** Hearing Room (Room 331), 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Investigation TA-201-51 (Carbon and Alloy Steel Products)—briefing and vote on remedy.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-17770 Filed 6-29-84; 3:55 pm]

BILLING CODE 7020-02-M

## 4

### MERIT SYSTEMS PROTECTION BOARD

**TIME AND DATE:** 2:30 p.m., Tuesday, July 10, 1984.

**PLACE:** Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. *Joseph D. Caruso, et al.* v *Office of Personnel Management,* MSPB Docket No. SF07318210987
2. *Richard L. Ale* v. *Office of Personnel Management,* MSPB Docket No. SF07318210703.
3. *Robert C. Meyer* v. *Office of Personnel Management,* MSPB Docket No. NY07318310272.
4. *David A. Barson et al.* v. *Department of Transportation,* (Federal Aviation Administration) MSPB Docket No. SE075281F0493ADD.
5. *Refugio Covarrubias, et al.* v. *U.S. Customs Service,* MSPB Docket No. DA07528310171.
6. *Patrick A. Guy* v. *Farm Credit Administration,* MSPB Docket No. DC 531D8211299.
7. *Keith T. Werts* v. *Department of Transportation* (Federal Aviation Administration), MSPB Docket No. SE075281F0756; *James F. Burns* v. *Department of Transportation,* (Federal Aviation Administration), MSPB Docket No. SE075281F0498.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Paula Latshaw, Acting Secretary, (202) 653-7200.

For the Board.

Dated: June 28, 1984, Washington, D.C.

Paula A. Latshaw,

*Acting Secretary.*

[FR Doc. 84-17668 Filed 6-29-84; 8:45 am]

BILLING CODE 7400-01-M

## 5

### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES, INSTITUTE OF MUSEUM SERVICES

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. No. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

**DATE:** July 20-21, 1984.

**ADDRESS:** 1100 Pennsylvania Avenue, NW., Washington, DC 20506, Room M14.

**FOR FURTHER INFORMATION CONTACT:** Michele N. Rossi, Executive Assistant to the National Museum Services Board, 1100 Pennsylvania Avenue, NW. Washington, DC 20506 (202)786-0536.

**SUPPLEMENTARY INFORMATION:**

The National Museum Services Board is established under the Museum Services Act which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has the responsibility for the general policies with respect to the powers, duties and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of the July 20-21 will be open to the public from 9:00 a.m. until 10:00 a.m. on July 20. The meeting will be closed to the public from 10:00 a.m. until the close of the meeting on July 21 pursuant to paragraphs 6, 9 (B), and other relevant provisions of subsection (c) of Section 552 of Title 5, United States Code because the Board will consider information that may disclose: Information of a personal nature that disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly frustrate implementation of proposed agency action related to the award process.

The agenda for the meeting will be as follows:

I. Approval of the Minutes of June 1, 1984
II. Director's Report
III. Legislative Update—1985 Appropriations
IV. Other Business
V. Discussion of Conservation Program Applicants
VI. Discussion of Special Projects Applicants
VII. Reauthorization

Dated: June 27, 1984.

Susan E. Phillips,

*Director.*

[FR Doc. 84-17661 Filed 6-28-84; 4:11 pm]

BILLING CODE 7035-01-M

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6

**NATIONAL TRANSPORTATION SAFETY BOARD**

[NM-84-24]

**TIME AND DATE:** 9 a.m., Tuesday, July 10, 1984.

**PLACE:** Conference Room 8 ABC, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Aircraft Accident Report*—Air Canada Flight 797, McDonnell Douglas DC-9-32, C-FTLU, Greater Cincinnati Airport, June 2, 1983.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,

*Federal Register Liaison Officer.*

June 29, 1984.

[FR Doc. 84-17730 Filed 6-29-84; 11:11 am]

BILLING CODE 4910-58-M

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7

**NATIONAL TRANSPORTATION SAFETY BOARD**

[NM-84-23]

**TIME AND DATE:** 10 a.m., Tuesday, July 3, 1984.

**PLACE:** NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** A majority of the Board determined by recorded vote that the business of the Board required holding this meeting at this time and that no earlier announcement was possible.

1. *Briefing* by the Federal Aviation Administration on Program Activities Related to the Terminal Area Windshear Hazard.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,

*Federal Register Liaison Officer.*

June 28, 1984.

[FR Doc. 84-17731 Filed 6-29-84; 11:11 am]

BILLING CODE 4910-58-M

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8

**POSTAL RATE COMMISSION**

**TIME AND DATE:** Periodic meetings scheduled on short notice during the business day in the period July 2-13, 1984.

**PLACE:** Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** The introductory matters in Docket No. R84-1, Postal Rate and Fee Changes.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone: (202) 254-3880.

Charles L. Clapp,

*Secretary.*

[FR Doc. 84-17733 Filed 6-29-84; 12:37 pm]

BILLING CODE 7715-01-M

Federal Register

Tuesday
July 3, 1984

# Part II

# Department of Energy

## Economic Regulatory Administration

## January 1981 and Entitlements Adjustments Notices

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### January 1981 and Entitlements Adjustments Notices

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of final decision; notice of public proceeding and public hearing.

**SUMMARY:** The Department of Energy (DOE) is announcing its final decision not to issue the January 1981 and Final Entitlements Adjustments lists ("lists"), thereby ending the Entitlements Program. In addition, DOE announces its intent to receive additional comments on the most appropriate manner to handle outstanding exception orders. DOE's tentative decision is not to give effect to the entitlements exception orders, but to consider potential mechanisms which would effectuate those orders under which firms would have received money.

**DATES:** Written comments must be received by August 31, 1984.

Public Hearing: September 11, 1984, in Washington, D.C. The hearing will start at 9:30 a.m.

Requests to Speak: By 4:30 p.m., August 31, 1984.

**ADDRESSES:** All comments and requests to speak at the public hearing should be identified by docket ERA-R-83-01(A) and submitted to the Economic Regulatory Administration, Office of Management Services, Attn: Juanita Walls, Room GA-093, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Hearing Location: U.S. Department of Energy, Forrestal Building, DOE Auditorium, Room GE-086, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:**

Ben McRae, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Rm. 6E-042, (202) 252-6667

Juanita Walls (Hearing Procedures), Office of Management Services, Economic Regulatory Administration, U.S. Department of Energy, Room GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4215

**SUPPLEMENTARY INFORMATION:**

I. The History of the Entitlements Program.
A. Origins of the Entitlements Program.
B. Operation of the Entitlements Program.
C. Modifications to the Entitlements Program.
1. The Small Refiner Bias.
2. Residual Fuel Oil Imports.
3. Naphtha Imported into Puerto Rico.
4. Crude Oil for the Strategic Petroleum Reserve.
5. California Heavy Crude.
6. Alaska North Slope Crude Oil.
7. Petroleum Substitute Entitlements Program.
D. Exception Relief.
II. The Decontrol Order and Subsequent Events Affecting the Issuance of Any Further Entitlements Lists.
A. The Decontrol Order.
B. Issuance of the Lists Was Delayed by Litigation.
III. Decision.
A. In Executive Order 12287, the President Exercised His EPAA Authority to Make the Price and Allocation Regulations Noneffective.
B. Executive Order 12287 Grants DOE Discretion to Issue Entitlements Lists Only if Necessary to Implement Immediate and Orderly Decontrol.
C. Issuance of the Final Entitlements Lists is Not Necessary to Implement Immediate and Orderly Decontrol.
1. Transition to a Decontrolled Market Has Been Completed.
2. Issuance of the Final Entitlements Lists Would Disrupt the Current Market.
D. Issuance of the Lists Is Not Necessary to Achieve the Objectives of the EPAA.
IV. Analysis of Public Comments.
A. Claims of Reliance Raised by the Comments Where Not Sufficient to Require Issuance of Further Lists.
B. Impact on Small and Independent Refiners Does Not Require Issuance of Further Entitlements Lists.
C. Other Issues Raised in the November Notice Do Not Require Issuance of the Lists.
V. Treatment of Outstanding Exception Orders—Tentative Decision.
VI. Comments Requested.
VII. Public Comment Procedures.
A. Written Comments.
B. Public Hearing.
1. Procedure for Requests to Make Oral Presentation.
2. Conduct of the Hearing.
VIII. Procedural Matters.
A. Executive Order 12291.
B. Section 7 of the FEA Act.
C. NEPA Review.
D. Section 404 of the DOE Act.
E. Regulatory Flexibility Act.

## I. History of the Entitlements Program.

The decision announced today ends a complex regulatory program that has an elaborate history. The origin and development of this program must be explored in order to understand the context in which DOE's decision is made. The Entitlements Program began in response to the 1973 Arab oil embargo and had the relatively simple purpose of evenly distributing among refiners the benefits of access to price-controlled oil. Over the course of its operation, however, the Program was repeatedly modified and adjusted to serve other regulatory objectives.

The obligations and benefits bestowed by the January 1981 and Final Adjustments lists and the exception orders arose through operation of this modified Entitlements Program. Rather than reflecting simply an exchange of money between refiners based on their access to price-controlled oil, these lists and orders were part of a comprehensive regulatory effort designed to achieve a variety of goals.

As discussed more fully later in this Notice, the President issued Executive Order (E.O.) 12287 on January 28, 1981, for the puprose of ending immediately all regulation of petroleum prices and allocation. In issuing the E.O., the President determined that the purposes of the Emergency Petroleum Allocation Act of 1973 (EPAA), Pub. L. No. 93-159, 15 U.S.C. 751 *et seq.*, were best accomplished by the operation of the free market and required the removal of all price and allocation controls. The E.O. instructed DOE to take only those additional actions necessary to implement decontrol.[1] At this point, over three years after decontrol, DOE is faced with the question of whether issuance of the lists and effectuation of the exception orders is necessary to implement decontrol. DOE has decided that such action, reviving one vestige of a complex and pervasive regulatory program, cannot now be construed as necessary or compatible with the task of implementing decontrol.

### *A. Origins of the Entitlements Program*

In response to the Arab oil embargo of 1973, Congress passed the EPAA. Section 4(a) of the EPAA required the President to promulgate regulations providing for the allocation and pricing of crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States. Those regulations were to implement, "to the maximum extent practicable," the objectives set forth in section 4(b)(1) of the Act.[2]

[1] Nothing in this notice should be construed to indicate that DOE does not possess continuing authority under the EPAA to undertake and complete enforcement actions arising from the regulations adopted under the EPAA. As discussed in more detail in the November Notice, 48 FR 50324 (November 3, 1983), Section 18 of the EPAA preserved DOE's authority concerning enforcement actions.

[2] The objectives listed in section 4(b)(1) cover a broad and diverse spectrum of interests, including the protection of public health, safety and welfare, and national defense, the maintenance of public services and agricultural operations the preservation of an economically sound and competitive petroleum industry (including independent and small refiners), equitable distribution of crude oil and petroleum products at equitable prices, economic efficiency, and the minimization of economic distortion, inflexibility and unnecessary interference with market mechanisms.

Under the Cost of Living Council (CLC), a two-tier pricing system for crude oil had been established in August 1973, as part of Phase IV of the Economic Stabilization Program. 6 CFR Part 150, Subpart L, 38 FR 2238 (August 22, 1973). This system was continued under the EPAA. Generally stated, the first sale of crude oil produced from a given property at or below the level of production from the same property in 1972 ("old" or after February 1976, "lower tier" oil) was subject to a wellhead ceiling price. The first sales of crude oil produced in excess of 1972 production levels and crude oil produced from properties not in production during 1972 ("new" or after February 1976, "upper tier" oil), imported crude oil, and crude oil produced from "stripper" wells were not subject to a ceiling price.[3]

By mid-1974, the price of imported and uncontrolled domestic crude oil had increased dramatically in comparison with that of price-controlled old oil. The substantial price disparity that existed between price-controlled and uncontrolled crude oils, which was a direct result of the two-tier pricing system, did not have an equal impact upon all refiners, marketers, and consumers. This was due to refiners having uneven access to price-controlled old oil.

Refiners that were forced to rely more heavily on uncontrolled domestic or imported crude oil incurred higher composite costs for crude oil than those refiners having relatively greater access to price-controlled old oil. The differences in crude oil acquisition costs translated into significant differentials in the prices that refiners could significant differentials in the prices that refiners could charge for their refined petroleum products under applicable price regulations. The end result of these price controls was that marketers and consumers were paying widely varying prices for the same refined product. Price controls remained in effect after the end of the Arab oil embargo and reemergence of adequate supplies. Many of those refiners with higher crude oil acquisition costs because of their lack of access to price-controlled old oil, as well as the marketers to whom they sold, experienced a severe cost-price squeeze in order to remain competitive.

In response to the inequities and distortions in the marketplace resulting from the two-tier systerm of price controls, the Federal Energy Administration (FEA), CLC's successor, proposed to allocate price-controlled crude oil to refiners through an Entitlements Program. In the Notice of Proposed Rulemaking, the FEA stated, "[t]he objective of the entitlements program proposed is to achieve the equitable distribution of the low priced old oil among all sectors of the petroleum industry, including independent and small refiners, and therefore to assure that domestically refined petroleum products are sold at equitable prices by all distributors of petroleum products, including branded and non-branded independent marketers, including all regions of the United States." 39 FR 31650 (August 30, 1974). The final rule establishing the Entitlements Program was adopted November 29, 1974. 39 FR 42246 (December 4, 1974).

*B. Operation of the Entitlements Program*

Instead of requiring the transfer among refiners of the actual physical barrels of price-controlled crude oil, the Entitlements Program established a mechanism for money transfers among refiners based on their proportionate access to price-controlled crude oil in comparison to the national average. In general, entitlements were issued to a refiner on the basis of an individual refiner's runs-to-stills for a given month multiplied by the National Domestic Crude Oil Supply Ratio (DOSR)[4] for that month. If the number of entitlements issued to a refiner in a month was less than its adjusted receipts of deemed old oil (as defined in 10 CFR 211.62), the refiner was required to purchase entitlements in order that it share the benefits associated with its greater-than-average access to price-controlled oil. Conversely, it the number of entitlements issued was greater than a refiner's adjusted deemed old oil receipts, the refiner was able to sell entitlements to compensate for its less-than-average access to price-controlled oil. 10 CFR 211.67(b)(1) and 211.67(c).

The data used to calculate firms' entitlements obligations under the regulations were based upon refiners' monthly reports of their crude oil receipts and runs-to-stills.[5] Refiners' reports were required to be filed by the fifth day of the second month after the month of measurement. Refiners' reports were then processed by DOE, resulting in the issuance, some 10–20 days later of the monthly Entitlements Notice, specifying refiner's entitlements obligations for the report month. Once the Notice was published, the actual monetary transactions took place between the firms without any DOE involvement. The Entitlements Program was a zero-sum operation with the number of entitlements for sale equalling the number to be bought.

*C. Modifications to the Entitlements Program*

From the beginning of its actual operation, the Entitlements Program involved more than the relatively simple equalization of refiners' crude oil costs. It was continually altered and expanded as various subsidies were factored into the notices.

1. The Small Refiner Bias

The 1974 final rule establishing the Entitlements Program provided for the issuance of a greater number of entitlements to small refiners under 10 CFR 211.67(E) than otherwise would have been issuable to those firms under the general rule of 10 CFR 211.67(a).

2. Residual Fuel Oil Imports

When the Entitlements Program was first implemented, FEA included provisions for the issuance of entitlements with respect to residual fuel imports. *See* 39 FR 42246 (December 4, 1974). Under these provisions, an entitlements benefit was accorded importers of residual fuel into the East Coast market provided the importer was not a domestic refiner. This subsidy was implemented by giving the importers a 30 percent runs credit for purposes of the Entitlements Program.[6] By the time of decontrol this level had been increased to a 50 percent runs credit and the eligible "East Coast" market had been expanded to include Michigan.

3. Naphtha Imported into Puerto Rico

In 1976 FEA adopted the Puerto Rican naphtha entitlements provisions to address another problem caused by the price and allocation regulations. FEA sought to alleviate a competitive disadvantage suffered by Puerto Rican

[3] After February 1976, the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, amended the EPAA to require ceiling prices for new oil, albeit at a higher level than for old oil. After April 1979, new categories of decontrolled oil were created pursuant to the President's discretionary authority under the EPAA.

[4] The DOSR was defined in 10 CFR 211.62 and basically is the ratio of controlled domestic crude oil to all refiners' crude oil runs-to-stills and thus represented the national average of all refiners' access to price controlled crude oil. In general, a refiner's runs-to-stills is the volume of crude oil processed by a refiner, as adjusted pursuant to § 211.67(d).

[5] The reported data were also used to calculate the price of an entitlement, defined as the difference between refiners' reported weighted average cost per barrel for *all* uncontrolled domestic and imported oils, and their weighted average cost per barrel of old (lower tier) oil.

[6] The "runs credit" for a month is that fraction of an entitlement derived by multiplying the price of an entitlement for that month by that month's DOSR.

petrochemical producers in relation to petrochemical producers located on the United States mainland. *See* 41 FR 30321 (July 23, 1976). Under the regulations in effect at the time of decontrol, Puerto Rican firms were eligible to receive an entitlement benefit for each barrel of naphtha imported for use as a petrochemical feedstock.

4. Crude Oil for the Strategic Petroleum Reserve

The Entitlements Program contained special provisions with respect to crude oil purchased for the Strategic Petroleum Reserve (SPR) from April 1977 until decontrol on January 28, 1981. The regulations provided for the issuance of entitlements to the United States Government for upper tier and uncontrolled domestic oil and imported crude oil acquired for the SPR. In effect, the Government was thus able to pay lower tier prices for such oil.

5. California Heavy Crude

Beginning in December 1977 the regulations included provisions to increase the production and marketability of heavy California crude oil. 42 FR 62897 (December 14, 1977). The regulations provided that the entitlements obligations of refiners purchasing price-controlled crude oil produced in California would be reduced by a specified amount that decreased for each degree that the weighted average gravity of the crude oil exceeded 18 degrees.

6. Alaska North Slope Crude Oil

At the time of decontrol, the regulations provided for the treatment of price-controlled Alaska North Slope (ANS) crude oil as a separate category for purposes of the Entitlement Program.[7] Under 10 CFR 211.67(b)(2)(iii), each barrel of ANS upper tier crude oil was treated as a fractional barrel of deemed old oil. As a result, price-controlled ANS crude oil bore less of an entitlements obligation than other price-controlled tiers to take into account the high costs of transporting that oil from the North Slope to domestic refiners.

7 Petroleum Substitute Entitlements Program

In order to eliminate any economic disincentive to the production and use of petroleum substitute fuels resulting from the operation of price controls on competing petroleum fuels, DOE adopted a series of amendments to the Entitlements Program. The amendments were designed to allocate a portion of the economic advantage of access to price-controlled domestic crude oil, in the form of entitlements, to users and producers of certain petroleum substitute fuels.

At the time of decontrol, the petroleum substitute entitlements provisions (10 CFR 211.67(a)(5)) provided for the automatic inclusion in the Entitlements Program of any shale oil used by refiners and non-refiners; ethyl alcohol derived from biomass for use in gasohol; solid municipal waste and solid derivatives thereof used as fuel; and methane gas derived from municipal sewage or landfills.

Inclusion in the Entitlements Program was also available on a case-by-case basis to liquid fuels derived from domestic sources of coal, biomass, and tar sands, solid fuels derived from non-municipal solid waste and gaseous fuels derived from any domestic solid waste sources.

*D. Exception Relief*

Pursuant to section 504(a) of the Department of Energy Organization Act (DOEOA), DOE was required to provide for the making of adjustments to rules issued under the EPAA, "as may be necessary to prevent special hardship, inequity or unfair distribution of burdens * * *" 42 U.S.C. 7194. *See also* 10 CFR 205.50(a)(1). With respect to the Entitlements Program, DOE fulfilled this statutory mandate by excepting certain firms from obligations incurred through the Program. This exception relief was implemented each month on the lists published by DOE setting forth the number of entitlements to be brought or sold by participants in the program.

Exceptions were granted to address a variety of problems experienced by regulated firms. Some orders relieved firms of their entitlements purchase obligation while others required firms to return excess exception relief by purchasing additional entitlements.[8] Other orders resulted in the issuance of entitlements to firms to compensate for unsold entitlements due to the default of certain Entitlements Program participants in satisfying their entitlements purchase obligations. Some orders granted firms additional entitlements to sell on a future notice to correct their past reporting errors or mistakes in previous notices. In addition, some firms were granted entitlements to sell for reasons that were not directly connected to the Entitlements Program. Both before and after decontrol certain of these orders were affirmed or modified by the Federal Energy Regulatory Commission (FERC) or a court. All of these obligations or benefits originally were based upon the expectation of an ongoing Entitlements Program. At the time of decontrol a number of exception orders were outstanding. After decontrol, OHA, FERC, and the courts continued to grant conditional exception relief.

**II. The Decontrol Order and Subsequent Events Affecting the Issuance of Any Further Entitlements Lists.**

*A. The Decontrol Order*

In 1975 Congress enacted the EPCA which amended the EPAA to provide for the termination of price and allocation regulations no later than September 30, 1981. Congress recognized, however, that an earlier termination of these regulations might be in the public interest and provided that after April 30, 1979, "the President's authority to promulgate, make effective, and amend" the regulations under the EPAA became "discretionary, rather than mandatory." 15 U.S.C. 760(g). Accordingly, at any time after April 30, 1979, the President was empowered to rescind the price and allocation regulations or terminate their effectiveness.

On January 28, 1981, the President exercised his discretionary authority and issued Executive Order 12287 (E.O. 12287) in which he ordered, effective immediately, the elimination of remaining federal controls on crude oil and refined petroleum products. Focusing on the Entitlements Program, the President stated that "elimination of price controls will end the entitlements system, which has been in reality a subsidy for the importation of foreign oil."[9]

Executive Order 12287 made the price and allocation controls non-effective. In order to provide for the immediate and orderly termination of controls,

[7] On July 3, 1980, DOE adopted a final rule imposing entitlement obligations on price-controlled ANS crude oil. 45 FR 46752 (July 10, 1980). Prior to this rule, price-controlled ANS crude oil had been treated as imported crude oil for purposes of the Entitlements Program and thus incurred no entitlements obligation.

[8] These types of orders generally arose from relief received under the standards set forth in *Delta Refining Co.*, 2 FEA ¶ 83,275 (1975) and *Beacon Oil Co.*, 3 FEA ¶ 83,209 (1976). *Delta/Beacon* exception relief was granted by means of a two-step process. Initially, relief was granted prospectively in six month increments and implemented on entitlements notices for the period involved on the basis of firms' projected financial data. At the close of each fiscal year, a "year-end review" was conducted based on firms' actual financial data, and adjustments to the level of relief granted were made by the Office of Hearings and Appeals (OHA) in a subsequent order.

[9] Statement of the President on E.O. 12287, Weekly Comp. Pres. Doc. 53 (Jan. 28, 1981).

however, the President delegated to the Secretary discretionary authority to take certain actions, including the issuance of entitlements notices and adjustments for periods prior to decontrol. However, the President limited use of this authority to those actions necessary to implement decontrol in an immediate and orderly fashion.

*B. Issuance of the Lists Was Delayed by Litigation*

A considerable amount of litigation followed the issuance of the decontrol order. Although DOE issued the December 1980 Entitlements Notice,[10] the Department was prevented from making a decision concerning publication of the January 1981 Entitlements Notice promptly after decontrol because various courts issued a number of temporary restraining orders and preliminary injunctions in favor of firms that anticipated entitlements purchase obligations as a result of the Notice.[11] All of these temporary restraining orders and preliminary injunctions forbidding publication of the January 1981 Notice ultimately were vacated.

However, during the period those temporary restraining orders and injunctions were in effect, the Mobil Oil Corporation obtained a preliminary injunction barring the issuance of any further entitlement notices on June 3, 1981. *Modil Oil Corporation* v. *Department of Energy*, 520 F. Supp. 420 (N.D.N.Y. 1981). This preliminary injunction was vacated by the Temporary Emergency Court of Appeals (TECA) on August 7 1981. 659 F. 2d. 150 (1981). Mobil petitioned the Supreme Court for *certiorari*, however, and Justice Brennan stayed TECA'a judgment pending Supreme Court consideration of Mobil's petition. The Supreme Court denied *certiorari* and lifted the stay on December 7 1981. Currently Mobil's lawsuit on the merits is pending before the district court.[12]

While Mobil's preliminary injuction was in effect, on September 30, 1981, the District Court of the Central District of California held DOE's Ruling 1981-1 to be partially invalid. DOE issued Ruling 1981-1 to respond to questions raised by E.O 12287 The portion invalidated by the Court was DOE's interpretation that expenses incurred or paid after January 27 1981, with respect to the Tertiary Incentive Program (10 CFR 212.78) could be used as a basis for recertifying price-controlled crude oil sold prior to January 28, 1981 to uncontrolled status. *Union Oil Co.* v. *DOE*, 530 F. Supp. 717 (C.D. Cal. 1981).[13] On February 10, 1982, the District Court for the District of Nevada upheld the validity of Ruling 1981-1, but held that the so-called "in-house" expenses amendment to the Tertiary Incentive Program regulations was promulgated invalidly. *Tosco* v. *DOE*, 532 F. Supp. 686 (D Nev. 1982).

Because the resolution of the legal issues presented in these cases clearly would affect firms' obligations on the final entitlements lists, DOE announced that it would not issue the final entitlements lists at that time and would provide at least 30 days notice before issuing any further entitlements lists. *See* 46 FR 60231 (December 9, 1981); 47 FR 11549 (March 17 1982). As the delays necessitated by the various lawsuits distanced issuance of the lists from other steps that implemented decontrol, DOE announced on July 13, 1982 that it would conduct a public proceeding to obtain the views of interested persons concerning "any changes in circumstances that may have occurred or other matters that might affect the publication of further entitlements lists." 47 FR 30279. DOE stated that only after consideration of such views would it make a final decision as to whether to issue further entitlements lists.

The *Union* and *Tosco* cases were considered together on appeal, and on September 1, 1982, TECA ruled in favor of DOE both with respect to Ruling 1981-1 and the "in-house" expenses amendment. *Union Oil Co.* v. *DOE*, 688 F. 2d 797 (Temp. Emer. Ct. App. 1982). Union petitioned for *certiorari* to the Supreme Court and on February 22, 1983, that petition was denied. 103 S.Ct. 1986.

Following the denial of *certiorari*, DOE began efforts to determine whether any further actions in connection with the Entitlements Program should be taken. On November 3, 1983, DOE announced its tentative decision not to issue the January 1981 and Entitlements Adjustments Notices. 48 FR 50824 (November 3, 1983). In order to insure a comprehensive review of the Entitlements Program, DOE's November Notice discussed its position in detail and solicited comments concerning all the issues in connection with its tentative decision.

On December 6 and 7, 1983, DOE held a public hearing on its tentative decision not to issue the final entitlements lists. Over 25 persons presented their views at this public hearing. In addition, over 100 interested parties submitted written comments.

III. Decision.

In response to the November Notice, DOE received information on many aspects of the Entitlements Program. After reviewing the comments and further analyzing DOE's responsibilities in this matter, DOE has decided not to issue any additional entitlements lists. DOE's review and further legal analysis convinced it that its focus must be on: (A) The President's exercise of his EPAA authority in E.O. 12287 to make price and allocation regulations noneffective; (B) the limitation placed on DOE discretion by E.O. 12287 enabling DOE to take only those actions necessary to implement immediate and orderly decontrol; (C) whether issuance of the final lists is necessary to implement immediate and orderly decontrol; and (D) whether any comments persuasively indicate other factors compelling a different approach. The following sections set forth DOE's analysis of the relationship between these factors and the issuance of any further lists.

*A. In Executive Order 12287, the President Exercised His EPAA Authority to Make the Price and Allocation Regulations Noneffective*

Congress gave the President authority under the EPAA to decide whether to continue price and allocation regulations after April 30, 1979. The President was empowered to determine generally what form, if any, price and allocation controls should take. In other words, between May 1, 1979 and the expiration of the EPAA on September 31, 1981, the President was vested with the authority to remove all controls.

[10] 46 FR 14151 (February 28, 1981). Since it was issued soon after decontrol, it did not burden the orderly transition to a decontrolled environment.

[11] These injunctions did not prevent DOE from adopting a final rule to provide a mechanism for effectuating adjustments to crude oil receipts in the last four months of the Entitlements Program, and for effectuating court, FERC, and OHA decisions regarding entitlements obligations. 46 FR 36092 (July 13, 1981). The Entitlements Adjustment Rule provided for a final entitlements adjustments list to be published after the January 1981 Notice and after all entitlements participants had reported their adjustments and amendments relating to the October 1980 through January 1981 period. The rule would not be operative unless the January 1981 notice was published.

[12] At the present time there are a number of outstanding lawsuits challenging on various grounds DOE's authority to issue the January 1981 and Entitlements Adjustments Notices. Among these cases are *Ashland Oil Co.* v. *DOE*, C.A. 81-0107-L(A) (W.D. Ky.); *Marathon Oil Co.* v. *DOE*, C.A. 81-634 (N.D. Ohio); *Mobil Oil Corp* v. *DOE*, C.A. 81-/CV-340 (N.D.N.Y.)' and *Shell Oil Co.* v. *DOE*, C.A. 81-339 (D. Del.).

[13] Earlier, a Delaware District Court had denied a preliminary injunction against the continuation of the Teritiary Incentive Program after January 23, 1981, on the grounds that plaintiffs has failed to show irreparable injury or that they wer likely to succed on the merits. *Diamond Shamrock Inc.* v. *Edwards*, 510 F. Supp. 1378 (D. Del. 1981).

The President exercised this authority on January 28, 1981, when he issued E.O. 12287 Essentially, the President determined that the most expeditious way to achieve the purposes of the EPAA was to return immediately and in an orderly fashion to a decontrolled market. In issuing the E.O. the President stated:

> Restrictive price controls [had] held U.S. oil production below its potential, artificially boosted energy consumption, aggravated our balance of payments problems and stifled technological breakthroughs. Price controls [had] also made us more energy-dependent on the OPEC nations—a development that [had] jeopardized our economic security and undermined price stability at home.[14]

Any further actions by the Secretary of Energy under EPAA authority delegated to him by the President must be evaluated in the context of the President's decision to terminate price controls and return to a decontrolled market.

*B. Executive Order 12287 Grants DOE Discretion to Issue Entitlements Lists Only If Necessary to Implement Immediate and Orderly Decontrol*

The Secretary can take actions in connection with the Entitlements Program only pursuant to EPAA authority delegated by the President. The Original delegations of authority to the Secretary occurred in E.O. 11790, as amended by E.O. 12038. When the President issued E.O. 12287 he did not revoke the original delegation orders. He did, however, significantly modify the nature of the delegated authority and imposed limitations on its exercise.

Executive Order 12287 provided a specific framework for decontrol. Section 1 of the E.O. exempted immediately crude oil and refined petroleum products from the price and allocation regulations. Section 2 continued certain regulatory programs until March 31, 1981, notwithstanding section 1. Section 3 granted the Secretary limited authority to take actions under the EPAA, including the issuance of additional entitlements lists.[15]

Section 3 states:

> The Secretary of Energy *may* pursuant to Executive Order No. 11790, as amended by Executive Order No. 12038, *adopt such regulations and take such actions as he deems necessary to implement this order*, including the promulgation of entitlements notices for periods prior to this order and the establishment of a mechanism for entitlements adjustments for periods prior to this Order. E.O. 12287 (emphasis added).

Section 3 makes clear that any further exercise of the Secretary's delegated authority is discretionary. Section 3 provides that the Secretary "may" take actions under the EPAA, including issuance of entitlements notices. Usage of this term is significant, since courts have typically held that, "[m]ay is a permissive word * * * and will be construed to vest discretionary power unless the context of its use clearly indicates a purpose to use it in a mandatory sense." [16] Unlike section 2 which provides that the Secretary "shall" continue some specific regulatory activities, section 3 did not mandate the continuation of any regulatory programs made non-effective by the President in section 1. Section 3 gave the Secretary the discretion to act, but did not obligate him to take any action, including the issuance of any further entitlements notices.

Any exercise of Secretarial discretion was, however, specifically limited. Section 3 provides that the Secretary may take only those actions necessary to implement E.O. 12287 The stated purpose of the E.O. was "to provide for an immediate and orderly decontrol of crude oil and refined petroleum products." Consequently, the Secretary can exercise his delegated authority to issue the remaining lists only if he determines that such action is necessary for immediate and orderly decontrol.

*C. Issuance of Final Entitlements Lists Is Not Necessary to Implement Immediate and Orderly Decontrol*

1. Transition to a Decontrolled Market Has Been Completed

Issuance of the final entitlement lists is not necessary to implement immediate and orderly decontrol because the transition to a decontrolled market has been completed. The President issued E.O. 12287 over three years ago and, as a result of the E.O., petroleum markets have changed dramatically.

Since decontrol, average prices borne by American consumers for crude oil and refined petroleum products have decreased markedly. With the removal of controls, the average domestic wellhead price initially increased from $28.85/bbl in January 1981 to $34.14/bbl in February 1981. By December 1981, however, the price had decreased to $30.72/bbl. The downward trend has continued with the price being $28.12/bbl in December 1982 and $26.09/bbl in November 1983. Since the removal of controls, the average price of imported oil has also decreased. The price has fallen from $38.85/bbl in January 1981 to $35.95/bbl in December 1981, to $32.85/bbl in December 1982, to $29.09/bbl in November 1983. The average retail price for motor gasoline increased from $1.269/gal. in January 1981 to $1.353/gal. in February 1981, and leveled at approximately the same price throughout 1981. During 1982 the price began to decrease, and by December 1982 the price was $1.244/gal. This trend has continued, and in December 1983 the price was $1.215/gal. In addition, crude oil import volumes have decreased from an average of 4,396,000 b/d in 1981 to 3,488,000 b/d in 1982, and to 3,303,000 b/d in 1983. At the same time, domestic production has increased from an average of 8,572,000 b/d in 1981 to 8,649,000 b/d in 1982, and to 8,656,000 b/d in 1983. [17]

The refining industry also has adjusted to a decontrolled environment. During 1981, 450,940 b/d of refining capacity was shut down. This was followed in 1982 by the shutdown of 1,208,690 b/d in refining capacity. During 1982, however, the amount of refining capcaity shut down decreased from 584,600 in the second quarter to 273,710 in the third quarter to 60,600 in the fourth quarter. In 1983, the amount was 669,034 for the entire year. A review of the number of refinery closings in the same period confirms this pattern of change. Twenty-three refineries closed in 1981, 63 in 1982 and only 18 in 1983. [18]

The price and allocation regulations, especially the Entitlements Program, subsidized many inefficient refinery operations. When these subsidies were terminated, those refining operations

[14] Statement of the President on E.O. 12287, Weekly Comp. Pres. Doc. 53 (Jan. 28, 1981).

[15] In *Union Oil v. DOE*, 688 F. 2d 797, 808 (Temp. Emer. Ct. App. 1983) the Temporary Emergency Court of Appeals concluded that DOE's interpretation of E.O. 12287 was a reasonable one and consequently should be accepted. DOE's interpretation in the Union case was that the E.O. made the price and allocation control non-effective after January 27, 1981. Because the Order was effective "immediately," not retroactively, it did not affect the regulations governing prices charged in crude oil sales prior to decontrol. On the other hand, with respect to reporting and recordkeeping requirements (Section 2(a)), three programs governing the allocation of middle distillates and Canadian crude oil (Section 2(b), 2(c), and 2(e)), allocation orders previously issued under the "Buy-Sell" Program (Section 2(d)) and the Entitlements Program (Section 3), these programs imposed price and allocation controls on crude oil and petroleum products after the date of decontrol. Accordingly, it was necessary specifically to remove these programs from the effect of the order.

[16] *Koch Refining Co.* v. *DOE*, 658 F. 2d 799, 803 (Temp. Emer. Ct. App. 1981).

[17] The data in this paragraph are derived from the January 1984 Monthly Energy Review published by the Energy Information Administration (EIA).

[18] The data in this paragraph are derived from the 1982 Petroleum Supply Annual and the December 1983[2] Petroleum Supply Monthly published by EIA.

which could not remain profitable in a decontrolled market discontinued their refining operations. Although the refining industry today is not static, changes occuring at the point are not a direct response to the act of decontrol. Rather, they are the changes which result in an industry free to respond to market conditions.

2. Issuance of the Final Entitlements List Would Disrupt the Current Market

Further operation of the Entitlements Program would be contrary to the objectives of E.O. 12287 because it would disrupt the competitive status among refiners functioning in a competitive, unregulated market. In the current market, prices and supplies of crude oil and refined petroleum products are set by market conditions and not by government regulations. Any further transfers of money under the Entitlements Program would benefit some firms and place burdens on others, without regard to a firms's efficiency or current onditions and in derogation of current market operations. Money would be transferred on the basis of transactions that were part of a complex regulatory process halted over three years ago. These one-time transfers are now wholly removed from the feedstock costs associated with current product sales and thus could not promote market efficiency. Instead, entitlements-sellers would obtain a windfall that could provide and advantage over competitors who would be entitlements-buyers.

For example, sellers would have the option of using funds acquired from competitors to subsidize costs of making refined products in order to expand market share. In a competitive market, buyers of entitlements would likely be hard-pressed to counter such action. Entitlements sellers could increase their market shares at the expense of entitlements buyers not because of more efficient operations, but rather because of the one-time transfer of money through renewed operation of a defunct regulatory system. While some consumers might pay lower prices for gasoline temporarily, the interests of all consumers would be disserved in the long run since those refiners which increased their market share because of governmental interference could face less competition in the future.

The magnitude of this regulatory interference in today's market can be illustrated by viewing the possible effects issuance of the lists could have on the gasoline prices of refiners. DOE has calculated the amount various refiners would have to raise of lower their gasoline prices in each PADD, [19] other factors being equal, to account for their entitlements benefits or burdens.[20] In PADD V for example, one entitlement-seller could lower its per gallon price by 6.5 cents without affecting net revenues. On the other hand, one entitlement-buyer would have to raise its price by 5.1 cents to maintain net revenues.

*D. Issuance of the Lists Is Not Necessary to Achieve the Objectives of the EPAA*

In deciding whether to issue the lists, DOE began its analysis by looking to the EPAA for decision-making criteria as it had done in regulatory actions prior to the issuance of E.O. 12287. E.O. 11790, as amended by E.O. 12038, delegated to the Secretary the President's authority under the EPAA on an unrestricted basis. The EPAA provides that the price and allocation regulations should achieve certain objectives to the maximum extent practicable. The November Notice focused on the consistency of issuing the lists with the objectives of the EPAA, especially equitable distribution of controlled oil, competitive viability of small and independent refiners, equitable pricing and minimizing economic distortion. The tentative conclusion expressed in the November Notice was that issuance of the lists would not be consistent with the objectives of the EPAA.

The Department received over one hundred comments in writing subsequent to the public hearing. Not surprisingly, the analysis contained in the comments directly reflected the financial stake the commenter had in the outcome of this proceeding. DOE has now fully assessed these comments and concludes that the facts and analysis presented in the comments do not provide any compelling reasons for publication of further lists as the course that would best implement either the objectives of the EPAA or immediate and orderly decontrol.

DOE will address here significant arguments in the comments in favor of issuing further Entitlements lists.[21]

IV. Analysis of Public Comments.

*A. Claims of Reliance Raised by the Comments Were Not Sufficient to Require Issuance of Further Lists*

In the November Notice, the Department tentatively determined that reliance by refiners on issuance of further lists was not a major factor militating for publication. 46 FR at 50832–50833. This conclusion was based on DOE's determination that firms could not have reasonably relied on issuance because the industry recognized by January 1981 that immediate decontrol was likely, and no post-decontrol entitlements mechanism had been established at that time. Also, the Department noted that as firms could not be sure of their exact position on prospective entitlements notices, reliance by refiners on having a particular entitlements position was impossible as a factual matter. *Id.* The latter point was viewed as especially compelling in light of the announced possibility of a negative DOSR for January. *Id.*

A number of refiners disputed the Department's tentative conclusions on reliance, claiming that refiners did rely on issuance of the last lists, and that such reliance requires that the lists be issued. *E.g.*, American Petrofina at 16–18, Arco at 45–57, Tosco at 50–58. As Tosco frames this contention (at 50):

> Tosco and other refiners legitimately relied on the regulations requiring issuance of the January Notice and DOE's assurances that the remaining notices would be issued in making their crude oil purchase decisions prior to decontrol, paying tertiary recertifications after decontrol, and otherwise conducting their business. This reliance confirms that DOE would be acting contrary to law if it were not to issue the remaining notices.

Concerning the contention that refiners could not have relied on issuance of the January list because of imminent decontrol, a number of commenters asserted, on the contrary, that they did so rely. *E.g.*, Chevron at 34–37; Arco at 45–46. As Chevron puts it (at 35; footnote omitted):

> The fact that Chevron and other refiners made their crude oil supply decisions applicable to the first 27 days of January 1981 on the same basis as they had throughout the Entitlements Program demonstrates their reliance on the issuance of the entitlements notice for January 1981.

Chevron concludes that if it had known that it could have acquired price-controlled oil for the first 27 days of

[19] The relevant market for gasoline sales is smaller than a PADD and may, in fact, be smaller than a state. If a refiner sought to increase its market share in a particular market, it could concentrate its entitlements benefits in that market. The effects on market shares in a particular market thus could be much more significant than DOE's analysis.

[20] DOE analyzed the ten largest gasoline marketers in each PADD by dividing a marketer's 1983 sales volume in a PADD into its entitlements benefit or burden.

[21] Comments concerning the agency's legal authority not to issue further lists and the impact such lists would have on the current market have been addressed in the discussions of these issues, *infra*.

January 1981 that would not have been subject to an entitlements obligation, it would have been to Chevron's advantage to have done so.

On the other hand, as a factual matter, a number of the comments disparaged claims of reliance by refiners. *E.g.*, Amerada Hess Corporation at 27–31; Beacon Oil Company at 10–13; Exxon at 20 and 23. These commenters confirm DOE's assertion that reliance on issuance of the January 1981 list would have been an "imprudent" business decision on the part of a refiner, in view of the likely imminence of decontrol and the independent possibility of a negative DOSR. Amerada Hess at 28. Moreover, they dispute that business decisions were made in reliance on further lists. First, as many commenters pointed out, even with advance notice of non-issuance, refiners would not have been able to change their positions in view of the fact that "[m]ost crude purchasing arrangements are continuing in nature and therefore not generally susceptible to month-by-month change." Exxon, Attachment 2, at 5. This was particularly true in January 1981, when the supplier-purchaser rule was still in effect and supplies of price-controlled oil were extremely low, limiting a purchasers discretion. *Id.* [22]Moreover, "crude oil would not [have been] selected solely on the basis of its tier category, * * * [but] had to be compatible with a refinery's configuration and its desired product slate." Beacon Oil Company at 10.

Thus, DOE's review of the comments clearly indicates that any claims of reliance are not predicated on the realistic possibility that refiners would or could have changed positions even had they been certain in January 1981 that no more lists would be issued.

Some commenters seeking to establish claims based on reliance pointed to the agency's pronouncements and regulatory actions in a number of contexts during 1981 as "assurance" or "reason to believe" that the last lists would be issued. *E.g.*, American Petrofina at 17–18. First as the comments indicate, crude oil purchases for January 1981 would have been made prior to those post-decontrol events. Thus, no reliance or change in position on the part of any firm could have been based on these post-decontrol pronouncements by the agency. More importantly, as to such claims, it must be emphasized that whatever the pronouncements of the Department might have indicated in 1981, such statements were based on circumstances then prevailing. The final decision with respect to the termination of the Entitlements Program is being made in 1984 when the circumstances are different. In light of the previously discussed limitations on the exercise of Secretarial discretion, it is the situation at the present time that is significant. Commenters making this "assurance" argument ignore the fact that whatever the agency's statements may have indicated in 1981, it was clear on July 13, 1982 when the intent to hold this public proceeding was announced, that there was at least a possibility that further lists would not be issued.

In view of the foregoing, the Department concludes that its tentative determination in the November Notice that reliance by refiners was not a factor militating in favor of issuance of further lists is essentially confirmed by the comments received. In view of the facts and analysis submitted, we conclude that those refiners which claim to have relied upon the issuance of further lists have not demonstrated that they could or did take any detrimental action in reliance on a belief that further lists would be published.

Moreover, as several commenters pointed out, even if such a showing had been made, such reliance could not have any effect as a matter of law. *E.g.*, Ashland at 109. The real basis of the refiners' claims of reliance is in the nature of an expectation, rather than a legally operative "justifiable reliance." Our review of the applicable authority concerning this issue indicates that a private party's expectation that it will continue to receive benefits conferred by means of a governmental program does not create a right to receipt of continued benefits. "Mere expectation of government benefits in the future does not bar the government from eliminating those benefits."[23]

The President's ability to order that, regardless of industry expectation, no further lists would be published as of the date of decontrol, was not challenged by any commenter. There is no reason why the President's delegation of the discretion to determine whether further lists would issue should transform the legal significance of these expectations. As a matter of law, then, refiners could not have relied on any expectation they might have had concerning the issuance of the last entitlements notices.

In the November Notice, DOE asked several questions concerning the relationship between the Tertiary Program and the Entitlements Program. In general, the Tertiary Program allowed a producer to sell otherwise price-controlled crude oil at the market price in order to offset expenses incurred by the producer in connection with a tertiary project. Several commenters asserted that the Tertiary Program operated to create a reliance-type interest in the issuance of further lists.

Intergrated refiners argued they incurred expenses, as well as increased Windfall Profit Tax liabilities, on the assumption they would receive money through the operation of the Entitlements Program. This argument is premised on the fact that producing entities in integrated refiners sold much of their production to the refining entities in the same firms The result of these intracorporate sales was that integrated refiners did not receive money from outside sources until they sold entitlements based on certifications of oil as tertiary oil. DOE does not find this argument persuasive. The Tertiary Program was intended to promote tertiary projects by permitting producers to charge market prices for their production. The entitlements Program was connected with the Tertiary Program only indirectly, in the same way as other regulations which permitted sales of crude oil at market prices. The decision by producing entities in integrated refiners to charge market prices to affiliated refining entities does not create any right to the issuance of further lists.

Non-integrated refiners argued the Tertiary Program required them to pay twice for the same barrel of crude oil. This argument is premised on the fact that crude oil could be recertified to the refiner as tertiary oil after the refiner had reported the oil to the Entitlements Program as price-controlled oil. Many refiners entered into private contracts requiring them to pay the recertified price. The comments do not establish the extent to which such recertifications took place. In any event, DOE believes that these recertifications, like recertifications for reasons other than the Tertiary Program, create no rights to the issuance of further lists.

*B. Impact on Small and Independent Refiners Does Not Require Issuance of Further Entitlements Lists*

In November Notice, DOE suggested that "the combined impact" of the final entitlements notices "would impose substantial financial burdens on small and independent refiners," in that as a class, for the first time in the Program's history, they would be paying the major refiners as a class. 48 FR 50830–50831.

A number of commenters urging publication disputed this conclusion. *E.g.*, Arco at 30–35, Tenneco at 4–9.

[22] Chevron seems to acknowledge this view. Chevron at 36.

[23] *Richardson v. Belcher*, 404 U.S. 78, 80 (1971).

Tenneco, which advances one of the most detailed criticisms of the November Notice in this regard, contends that the Department's analysis is based on artifical speculation, the effect of which is to elevate the status of small refiner purchasers at the expense of the other participants in the Program. Thus, for example, Tenneco argues that the November Notice analysis fails to consider the impact of not publishing the lists on individual small refiner sellers. It also contends that nonissuance will relieve six large independents of their obligations without any showing of injury on their part, while resulting in lost benefits for one large independent and a number of small refiners.

In addition, DOE's analysis has been criticized by some commenters, Tosco at 75–85, for including the effect of exception orders in the final entitlements lists because they believed DOE's tentative determination was to effectuate exception orders regardless of whether any further entitlements lists were published. DOE, however, is announcing in this Notice its tentative decision not to effectuate exception orders to the extent they require transfers of money among refiners. In any event, DOE did recalculate its analysis to take out the effects of exception orders. This recalculation showed that small and independent refiners as a class would pay over $57 million if the final lists were issued, while the major refiners as a class would receive over $61 million.

A fair assessment of the comments critical of the agency's views in this regard is that various conclusions can be drawn concerning the impact of issuance or nonissuance of the lists on different groups of refiners and on individual refiners. However, the comments do not convince us that the basis of our original assessment is incorrect. The statute and the regulations define the protected class of small and independent refiners. Simple aggregation of the obligation by class as determined by the lists published with the November Notice leads to the conclusion that small and independent refiners as a class would make transfer payments to the major integrated refiners as a class, were the lists given effect. While it is true that individual firms within each class may be benefited by a decision that is unfavorable to the interest of the class as a whole, the nature of rulemaking itself is to deal with classes generally, even if there may be anomalies within the class and that is the case here as well. The consequences of issuance or nonissuance on small and independent refiners, as a statutorily-based regulatory class, are of more significance than the effect on individual refiners. The comments do not alter our conclusion that issuance would have a disportionately adverse impact on that class.

More importantly, none of the comments critical of the agency's approach indicate an adequate basis to compel issuance of the last lists. Thus, while the agency continues to believe that the harm to small and independent refiners if final lists were issued outweighs the harm to potential sellers if no notices are issued, this factor cannot outweigh the conclusion that the objectives of decontrol are best met by no further publication of entitlements lists. In other words, whatever course the agency takes, some refiners will benefit, others will lose. However, the potential impact on any refiner is not such that it would compel issuance of further lists when the Department has decided that such issuance would conflict with the Department's fundamental regulatory duty.[24]

*C. Other Issues Raised in the November Notice Do Not Require Issuance of the Lists*

Several areas for comment raised by the November Notice concerned the Department's assessment that issuance of the final lists would have been irrational because defects that had developed in the last months of the operation of the Program had become substantially aggravated immediately prior to decontrol. For example, the November Notice noted that the last regular list would allocate only 5.3 million barrels of deemed old oil, less than 1.4% of the oil actually received by refiners during January, resulting in a transfer of $150 million, representing less than 1.2% of the industry's crude oil costs for this period. 48 FR 50829–30. As a result, the department tentatively concluded that the amount of price-controlled oil to be allocated by issuance of the January notice "would be so small that it would have no impact on the competitive viability of the industry or any segment thereof." 48 FR 50830 (footnote omitted).

Concerning the small amount of crude to be allocated, the comments were, taken as a whole, inconclusive. Commenters taking issue with DOE on this point argued that the amount of crude oil to be allocated was an irrelevant consideration in determining the future of the Program. *E.g.*, Chevron at 13; Tenneco at 3. Additionally, Chevron asserts that DOE's assessment was faulty, and that the volume of price-controlled oil for allocation on the last notices was not significantly smaller than for the five preceding notices, and would require a cash transfer larger than that which occurred as a consequence of the first entitlements notice in November, 1974. However, even accepting these assertions as correct for the sake of argument, at best they indicate that, were issuance of the final lists not in conflict with the basic goal of decontrol, there would be a sufficient volume of crude oil to be allocated. Moreover, Chevron's arguments are not convincing. At some point, the amount of old oil available to be allocated becomes so small as to eliminate the premise on which the Entitlements Program was based and the needs that it addressed. The agency believes that this point was reached in January 1981 when the amount of old oil available for allocation fell to 1.4% of the total crude received by refiners in that month, especially in light of the fact that decontrol was announced.[25] Necessarily, making such a determination involves the drawing of a line, but it is a determination the agency must make in the course of responsibly administering its programs, employing its institutional expertise and exercising its reasoned judgment.

As to the issue of the reliability of the data, the comments offered no basis to conclude the data was less reliable than the data on which prior lists had been published. Some commenters asserted the data on which the clean-up list would be based contained inaccuracies, though there was disagreement as to the causes and the magnitude of the problem. However, no specific example of inaccuracy was offered and no evidence of wrongdoing was presented. Even if it could be shown that the data were significantly inaccurate and could be made more accurate, this would be irrelevant to the agency's decision today not to publish further lists since this decision is premised on conditions in today's market and not on the data used to compile the lists.

[24] In this regard, we note that no comments indicated that any refiner would go out of business as a result of issuance or non-issuance of further entitlements lists. *See e.g.*, Testimony of William E. Huff, Rock Island Refining Corp., (December 7, 1983), Tr. at 38.

[25] Even if one accepts Chevron's contention that the value of controlled oil to be allocated by January 1981 is almost $1 billion, this is considerably less than the value of controlled oil in November 1974 when that amount is adjusted to reflect inflation between November 1974 and January 1981. The $372 million amount which Chevron asserts to be the value of controlled oil in November 1974 is over $1.4 billion in January 1981 dollars.

In making its decision concerning the issuance of the Notices, DOE has been sensitive to the "fairness" of its action. Some refiners have alleged that the only fair action by DOE would be the issuance of the lists. Other refiners have alleged that the only fair action would be the non-issuance of the lists. Upon examination, refiners in each group appear to have equated "fairness" with their own economic self-interest. Unfortunately, there is no action DOE could take which would not have a detrimental effect on a significant number of refiners. The lists arose through a system of interrelated benefits and burdens. In such a context, fairness cannot be judged now by looking at individual refiners. Rather, it can be judged only by looking at the industry as a whole. DOE has concluded that the industry has made the transition to a decontrolled environment. DOE believes it would be most fair to refrain from disrupting that environment by governmental action based on circumstances that have no relationship to current market conditions.

V Treatment of Outstanding Exception Orders—Tentative Decision.

The November Notice raised several issues concerning exception orders, including the possiblity that such orders would not be implemented. The raising of these issues reflected DOE's sensitivity to the nature of the orders. These orders, while largely unique to each party, nevertheless had in common the fact that each order arose through an adjudicatory process that issued the orders only after examination of each firm's claims and obligations. While DOE indicated that its tentative decision in the November Notice would not moot the orders, it nevertheless recognized that such a decision, if finalized, would make satisfaction of outstanding exception orders more difficult. Accordingly, comments was solicited as to how such orders might be effectuated in the absence of the January 1981 and Final Adjustments lists. A number of comment were received and reviewed.

As DOE analyzed these comments and finalized its decision on the January and Final Adjustments lists, it became clear that effectuating the orders by requiring those firms ordered to return exception relief to pay those firms granted additional exception relief would have the same or substantially similar adverse impacts as publishing the lists. As with the lists, in today's decontrolled market, some firms would receive an infusion of cash taken directly from competitors which would strengthen the receipients while detrimentally impacting the paying firms without regard to present market conditions. This type of transfer would not be a mere resumption of the Entitlements Program on a smaller scale; rather, it would be a unique one-time transfer requiring a totally new procedure. It was instructive to note that in commenting on the November Notice, several firms with conditional orders for additional exception relief indicated that in obtaining satisfaction of their orders, they would prefer not to rely on payment by firms with excess exception relief orders. *E.g.*, Comments of Ergon Refining, Inc., Plateau, Inc., and Navajo Refining Company. DOE therefore reached the tentative conclusion that exception orders should not be effectuated in this or any other fashion that would have such a disruptive impact on the participants in today's decontrolled market.

DOE believes however that insofar as certain firms, during the course of adjudication, were specifically held to have suffered special hardship because of the Entitlements Program, equity may best be served by finding some mechanism to implement the conditional relief. In making such an effort, DOE believes that these equitable claims must be balanced against the harmful effects of further governmental interference with the market. Consequently, DOE has tentatively decided that it will satisfy orders which provide for the receipt of money by firms if an appropriate mechanism can be devised which does not unduly disrupt the market. DOE has also tentatively decided to take no further action to effectuate those orders dealing with excess exception relief since there is no ongoing Entitlements Program through which the money could be allocated and any similar collection and distribution mechanism would be harmful to participants in the market and not in keeping with today's final decision.

In searching for a potential source and mechanism to satisfy the firms with orders for additional exception relief, it should be remembered that during controls certain refiners received entitlements exception relief, and other refiners paid the regulatory costs of this relief, at least in the first instance. These allocations of regulatory burdens were based on assessments of hardship and on a balancing of equities. It would be consistent with the traditional operation of exception relief from the Entitlements Program to implement conditional grants of entitlements exception relief by having other refiners continue to pay the costs of funding relief to individual refiners.

One possible way to have refiners pay for outstanding grants of entitlements exception relief would be to use a fund of money identified as belonging to refiners as a class. Thus, were DOE or the courts to determine that refiners as a class bore some of the economic burden of crude oil overcharges,[26] one source might be the money collected from violators of the petroleum pricing regulations for crude oil overcharges. This would be based on the assumption that any injury to refiners from crude oil overcharges was distributed under the Entitlements Program to that class in the same manner as the costs of funding exception relief were borne by the class. Accordingly, use of any overcharge sums to fund exception relief would involve a two-step process: first, restitution to refiners as a class; and second, using this refiner class "pool" or fund in order to pay the condition exception claims. In this manner refiners as a class would continue to pay the costs of funding exception relief in the same proportion as they did when the Entitlements Program was operating before decontrol.

DOE's restitutionary authority is set forth in section 209 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904n., incorporated by reference in section 5(a) of the EPAA, 15 U.S.C. 754(a). Pursuant to this provision, the DOE may effect "restitution of moneys received in violation of any such order or regulation." *Id.* In order to effect restitution to refiners as a class, OHA would have to make the factual determinations as to whether refiners as a class were injured by crude oil overcharges and if so, in what amount.

The second step in the process of implementing exception relief through use of the overcharge sums does not involve restitution. Instead it would be premised on the assumption that restitution had already taken place—to refiners as a class. Then it would take those restored sums and use them to implement entitlements exception relief. In this way the regulatory relief would flow in the same direction under decontrol as it did when controls were in effect—from refiners as a class to those individual firms singled out for exception relief as is necessary to

[26] In one pending proceeding, OHA has suggested a methodology of imputing or approximating as from 2.64% to 10.79% the amount of harm refiners, as participants in the Entitlements Program, may have suffered by virtue of crude oil overcharges. Stripper Well Exemption Litigation Case No. HFH-0026. While this OHA proposal is tentative and is to be the subject of further proceedings, it does suggest a possibility that some relatively small proportion of crude oil overcharges may be available to refiners as a class.

prevent special hardship, inequity, or unfair distrubtion of burdens.

VI. Comments Requested.

DOE requests comments on all of the issues raised in this tentative decision. DOE also seeks comments on any other issue that any interested person deems of consequence for the purposes of this proceeding. DOE urges commenters to file data, supporting documentation, and any other relevant materials to support the statements and claims made in their written comments, so that a final decision can be made on the basis of the record of this proceeding.

Commenters are also invited to direct their attention to the following specific questions:

1. Whether DOE should attempt to effectuate exception orders.
2. Whether overcharge funds should be used to satisfy claims by those entities with orders for additional execption relief.
3. Whether any other method might be used to satisfy orders for additional exception relief.
4. What should be done about claims for exception relief not yet finally adjudicated.
5. What should be done about claims for exception relief for which an application has not yet been filed with OHA.
6. Whether entitlements sales benefits awarded to firms prior to the establishement of the Office of Hearings and Appeals or which were later superseded by amendments to the regulations should be treated as exception relief.

VII. Public Comment Procedures.

The public is invited to comment on this tentative decision.

*A. Written Comments*

The public is invited to participate in this proceeding by submitting data, views or arguments with respect to the tentative decision concerning exception orders. All comments should be submitted by 4:30 p.m., e.d.t., on August 31, 1984 to the appropriate address indicated in the "ADDRESSES" section of the preamble and should be identified on the outside envelope and on documents submitted with the designation "Exception Orders," Docket No. ERA-R-83-01(A). Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so indentified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

*B. Public Hearing*

1. *Procedure for requests to make oral presentation:* The time and place for the hearing is indicated in the "DATES" and "ADDRESSES" sections of the preamble. If necessary, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

Written requests may be submitted for an opportunity to make an oral presentation. The requests should contain a telephone number where the presenter may be contacted during the day prior to the hearing. Those selected to be heard at the hearing will be notified before 4:30 p.m., September 5, 1984 and will be required to submit 50 copies of their statement to the Office of Management Services of ERA at the address indicated in the "ADDRESSES" section of the preamble by 4:30 p.m., September 10, 1984.

A list of speakers will be available by 4:00 p.m., September 10, 1984.

2. *Conduct of the hearing:* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting presentation time.

An ERA official will be designated to preside at the hearing, which will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Questions may be asked of speakers at the hearing by submitting the questions, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

Transcripts of the heaing will be made. The entire record of the hearing, including the transcripts, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Copies of the transcripts may be purchased from the reporter.

VIII. Procedural Matters

To the extent that this Notice would be subject to informal rulemaking requirements, DOE has complied with the procedural rulemaking requirements set forth below. For purposes of these procedural requirements, DOE's decision not to issue additional entitlements lists will be referred to as a "final rule" and DOE's tentative decision regarding outstanding exception orders as a "proposal"

*A. Executive Order 12291*

Under section 8(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981), the Director of the Office of Management and Budget ("Director") is authorized to exempt any class or category of regulations from any or all requirements of the Executive Order.

An exemption was requested of the Director for those actions taken to implement Executive Order No. 12287 The request was granted.

*B. Section 7 of the FEA Act*

As required by section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. No. 93-275, as amended) a copy of this Notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for comment concerning the impact of the "proposal" on the quality of the environment. The EPA does not foresee these actions as having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

*C. NEPA Review*

DOE has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act. In this notice DOE is exercising its discretion under E.O. 12287 not to issue additional entitlements lists and is "proposing" action regarding outstanding entitlements exception decisions. Therefore, the preparation of an Environmental Impact Statement for these actions is not required under 10 CFR Part 208.

*D. Section 404 of the DOE Act*

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*, Pub. L. 95-91), we have referred this Notice, which contains a "proposal" regarding outstanding exception decisions, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether the "proposal" would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation and publication of an initial and final regulatory flexibility analysis at the time of publication of the notice of proposed rule making and final rule, respectively, if the proposal and final rule are likely to have a significant impact on a substantial number of small entities.

This action, if considered a "final rule" and "proposal," removes regulatory requirements and economic distortions caused by the Entitlements Program and related exception decisions. For those Entitlements Program participants that could be classified as "small entities" by reason of being "small governmental jurisdictions" (e.g., governmental entities that were included pursuant to the petroleum substitutes provisions) or "smalls refiners" the "final rule" and the "proposal" regarding outstanding exception orders generally remove a financial burden from them as a class.

DOE's decision not to issue the entitlements notices will adversely affect small entities that would have been net entitlements sellers on the combined lists. Conversely, it will benefit small entities that would have been net entitlements purchasers or subject to exception decisions requiring pay-backs or others restitution. Thus, a number of small entities may be affected, and at least for some, the impact may be significant. The preceding discussion in this Notice, which analyzes the impacts of the "final rule" and the "proposal" and describes the reasons therefor, satisfies the statutory requirements and constitues the initial regulatory flexibility analysis required by section 603(b) of the Act for the "proposal" regarding outstanding exception decisions and the final regulatory flexibility analysis required by section 604 of the Act for DOE's decision not to issue additional entitlements lists.

(Emergency Petroleum Allocation of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; E.O. 12287, 46 FR 9909)

In consideration of the foregoing, this final decision and tentative decision are issued in Washington, D.C. on June 28, 1984.

Rayburn Hanzlik,

*Administrator, Economic Regulatory Administration.*

[FR Doc. 84-17613 Filed 7-2-84; 8:45 am]

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July 3, 1984

# Part III

# Department of Health and Human Services

## Health Care Financing Administration

42 CFR Part 405

**Medicare Program; Changes to the Inpatient Hospital Prospective Payment System, and Proposed Fiscal Year 1985 Rates; Proposed Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 405**

**[BERC-279-P]**

## Medicare Program; Changes to the Inpatient Hospital Prospective Payment System; and Proposed Fiscal Year 1985 Rates

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Medicare regulations published as interim final rules on September 1, 1983 (48 FR 39752) and final rules on January 3, 1984 (49 FR 234). Those regulations implement section 1886 of the Social Security Act, which changes the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a prospective payment system based on diagnosis. Generally, our proposed changes would be effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984.

In addition, in the addendum to this proposed rule, we are proposing changes in the methods, amounts, and factors necessary to determine prospective payment rates for medicare inpatient hospital services applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion. These changes would be applicable in the second year of the three-year transition period for the prospective payment system.

Congress has passed a bill (H.R. 4170, known as the "Deficit Reduction Act of 1984") which, if approved by the President, will affect the proposed rates and rules included in this notice. We will make adjustments as necessary in the final rule to accommodate changes required by this legislation.

**DATE:** To assure consideration, comments must be received by August 2, 1984.

**ADDRESS:** Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-279-P P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-279-P Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., (202-245-7890).

**FOR FURTHER INFORMATION CONTACT:**

Marilyn Koch, (301) 594-9344—Transfers; Urban/Rural Areas; Referral Centers; Prospective Payment Rates

Sheridan Gladhill, (301) 594-9440—Rehabilitation Units

Thomas Hoyer, (301) 594-9446—Physician Attestation

George Cray, (301) 597-3874—Base Year Appeals

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a regional Federal rate per discharge in the first year and a blend of the regional and national Federal rate per discharge in the second and third years. Beginning with the fourth year, and continuing thereafter (that is, for hospital cost reporting periods beginning on or after October 1, 1986), Medicare payment for inpatient hospital services will be determined fully under a national DRG payment methodology.

We published an interim rule in the Federal Register (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. In that rule we established criteria for determining—

—Which hospitals are included in and excluded from the prospective payment system;

—The basis of payment under the prospective payment system;

—The prospective payment rate methodology;

—Additional payment amounts;

—Special treatment of certain hospitals; and

—Other conforming changes.

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule.

In this proposed rule, as a result of our experience with the prospective payment system to date, we are proposing to amend 42 CFR 405 to make further changes in the prospective payment regulations. In addition, in the addendum to this document, we are proposing changes in the methods, amounts, and factors necessary to implement the second year of the transition payment period, applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion.

### II. Current Provisions and Proposed Changes

#### *A. Transfers (§ 405.470)*

The term "transfer" is defined, for purposes of the prospective payment system, in § 405.470(c)(2) of the regulations. Generally, for hospital inpatients, we do not count a patient as discharged when the patient is transferred from—

- One inpatient area or unit of the hospital to another area or unit of the hospital;
- The care of a hospital paid under the prospective payment system to the care of another hospital paid under the prospective payment system;
- The care of a hospital paid under the prospective payment system to the care of another hospital that—

—Is excluded from the prospective payment system only because of its participation in an approved statewide reimbursement control program or demonstration, or

—Would be paid under the prospective payment system except that its first cost reporting period under the prospective payment system has not yet begun; or

• The care of a hospital paid under the prospective payment system to the care of another hospital or hospital unit not determined to be excluded from the prospective payment system.

Payment for a transferring hospital, as determined under § 405.470(c)(4), is based on the per diem rate for each day of the patient's stay in that hospital, not to exceed the full DRG payment. The per diem rate is determined by dividing the prospective payment amount for the applicable DRG by the average length of stay for that DRG. As an exception to the per diem computation, for discharges classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital is paid the full prospective payment amount for the applicable DRG regardless of the length of stay.

As we stated in both the interim final rule (48 FR 39759) and the final rule (49 FR 246), the transfer policy as described in § 405.470(c) is meant as an interim policy, until we are able to restructure the payment method so that we can make one payment to the final discharging hospital for the entire course of treatment.

Under current regulations (§ 405.470(c)(4)), the transferring hospital's payment may not exceed the full DRG payment. Consequently, no additional payments for exceptional cases (outlier payments) are payable to transferring hospitals. Only those hospitals in which the patient is considered "discharged" (that is, situations in which a patient is formally released from the hospital, dies in the hospital, or is transferred to another hospital or unit excluded from the prospective payment system) may be entitled to outlier payments.

We have continued to analyze transfer policy data based on our experience thus far with the prospective payment system to determine if any further refinements are necessary. In practice, the per diem rate provides payment commensurate with the transferring hospital's services rendered in the majority of cases. However, in caes in which a patient is transferred to another hospital for specialized care after extensive treatment, it is possible for a transferring hospital to incur costs that would have qualified for cost outlier payment.

In order to recognize these exceptional cases and to provide additional compensation to transferring hospitals for extraordinarily high-cost cases, we are proposing to amend § 405.470(c)(4) to allow a transferring hospital to receive additional payments for discharges occurring on or after October 1, 1984 that meet the cost outlier criteria in § 405.475(d).

We still do not believe that it is appropriate to make day outlier payments to a transferring hospital because—

• We would not expect a patient to be present in the transferring hospital long enough to qualify as a day outlier case; and

• If a patient needed to be transferred, but was kept in the first hospital long enough to qualify as a day outlier case, it would be questionable whether the patient was receiving the most appropriate care.

We will continue to develop a payment method that would make it possible to pay the final discharging hospital one payment, less deductibles and coinsurance, for inpatient services associated with a particular episode of hospitalization.

*B. Direction of Rehabilitation Units (§405.471)*

Section 1886(d)(1)(B) of the Act excludes rehabilitation hospitals and rehabilitation units that are distinct parts of hospitals from the prospective payment system. The regulations implementing this exclusion are set forth in §§ 405.471(c)(2), (c)(4)(i), and (c)(4)(iii).

In particular, the regulations at §§ 405.471(c)(2)(v) and (c)(4)(iii)(F) provide that rehabilitation hospitals and units that wish to be excluded from the prospective payment system must have a director of rehabilitation who—

• Provides services to the hospital/unit or its inpatients on a full-time basis;

• Is a doctor of medicine or osteopathy;

• Is licensed under State law to practice medicine or surgery; and

• Has had, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

These criteria were added to the regulations because we believed that an intensive rehabilitation program requires the full-time direction of a physician with special expertise in the medical management of patients who require rehabilitation services. We also took the view that meeting this requirement is an important indicator of the extent to which the unit is primarily engaged in rehabilitation, and thus deserving of exclusion from the prospective payment system.

Since publication of these regulations as a final rule on January 3, 1984 (49 FR 316), many hospitals and some national organizations have expressed dissatisfaction with our application of the full-time director policy, especially with respect to "small" rehabilitations units. Generally, those opposed to this policy have made the following arguments:

• In a small unit, full-time direction is not needed for medical reasons and is not consistent with actual practice. Adequate direction can be provided by a physician who performs the director's duties on a part-time basis.

• Many units that would otherwise qualify for this exclusion cannot find a physician willing to serve as a full-time medical director, or are unable to afford full-time physician direction. The inability of these units to qualify for an exclusion is a financial burden to the hospital and restricts the access of the hospital's patients to rehabilitation services.

After consideration of these arguments, we have decided that we should relax our full-time director requirement to some degree. We are proposing to amend § 405.471(c)(4)(iii)(F)(*1*) to remove the requirement for full-time service by directors of excluded rehabilitation units, and to specify instead that the director of the unit must provide services to the unit and its inpatients for at least 20 hours per week. We believe that this proposal would avoid the potential problems cited by those who oppose application of the current full-time direction requirement to units, while still allowing us to identify units that are primarily engaged in rehabilitation.

In addition, we are proposing a clarification to §§ 405.471(c)(2)(v)(A) and (c)(4)(iii)(F(*1*) that would specify that time spent by the director of a rehabilitation hospital or unit in providing services to the hospital or unit and to its inpatients is to be counted in meeting the direction requirement. We believe that the revision would help make it clear that directors are not required to perform only administrative functions, and that the time they spend in furnishing care to inpatients of the hospital or unit may be included with their administrative service in determining whether the direction requirement is met.

*C. Expansion of Excluded Rehabilitation Units (§405.471)*

Section 405.471(c)(4)(iii)(A) states that in order to be excluded, a rehabilitation unit must have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the ten conditions listed in that paragraph.

Since implementation of these regulations, many hospitals with rehabilitation units that are excluded from the prospective payment system have expressed interest in increasing the size of those units. With regard to these expansions, our current policy is the following:

• If a hospital expands its rehabilitation unit by adding beds or rooms, the added beds or rooms will be considered part of the unit for purposes of exclusion only at the start of a cost reporting period. We believe that this policy, which we have also applied to excluded psychiatric and alcohol/drug units, is consistent with our general policy that changes in status from excluded to not excluded, or from not excluded to excluded, will be made only for entire cost reporting periods.

• The "75 percent rule" will be applied to expanded units consistent with the following:

—If the beds or rooms the hospital wishes to add have previously been used for any type of inpatient care (for example, general acute care or skilled nursing facility care), we consider the 75 percent requirement to be met if, during the most recent 12-month cost reporting period, at least 75 percent of all admissions to (or discharges from) the beds or rooms the hospital wished to exclude, including both the previously excluded space and the added space, were for the intensive rehabilitation of patients with one or more of the medical conditions listed in § 405.471(c)(4)(ii)(A). Thus, not all beds or rooms previously used for inpatient care would have to have been used solely for rehabilitation for a full cost reporting period to qualify them for exclusion.

—If the beds or rooms the hospital wishes to add have not previously been used for inpatient care (for example, newly constructed space or space previously used for training rooms), the added beds or rooms must be used for inpatient care for a full cost reporting period before sufficient information is available to determine if they will be eligible for exclusion. The policy is consistent with the position we have taken with regard to new rehabilitation hospitals and units.

Our current policy on the application of the 75 percent rule to rehabilitation units that hospitals wish to expand has been criticized as too restrictive, especially with regard to "new beds" (that is, space not previously used for inpatient care).

In some cases, a more flexible policy might be desirable. For example, if a 30-bed unit with a high occupancy level wishes to add two new beds, it could be considered unreasonable to require that those added beds be included under the prospective payment system for a full cost reporting period. However, the need for more flexibility in certain cases must be weighed against the potential for abuse. For example, if we were to permit a very small unit (for example, one with only ten beds) to double or triple its size and have all the new beds excluded from their first day of operation, this could be used as a way to circumvent our policy on new units. Also, under a very flexible policy, a hospital may be motivated to move all (or as much as possible) of its idle capacity to the cost-reimbursed excluded unit.

In an effort to permit some added flexibility, while not removing all controls on expansion of rehabilitation units, we are proposing a change in our policy concerning the application of the 75 percent rule to those already excluded rehabilitation units that intend to expand. We would permit units with an occupancy level of at least 90 percent to increase their number of beds or square footage by up to ten percent at the start of a cost reporting period without applying the 75 percent rule to the added beds or space. This expansion would be permitted without regard to the previous uses of the added space. Of course, the previously excluded unit would have to have met the 75 percent rule for all admissions to or discharges from excluded beds or rooms during the preceding cost reporting period.

Any increases in unit size beyond those that would be specifically permitted under this rule would be evaluated under the policy on new units set forth in the preamble to the January 3, 1984 final rule (49 FR 241). Thus, the additional beds or rooms would not be eligible for exclusion until they had been used to provide inpatient care for a full 12-month cost reporting period, and all space the hospital wishes to exclude must qualify for exclusion under the 75 percent rule.

We believe this proposed change in policy would permit some expansion and be relatively easy to implement and administer, yet would not allow expansions to become a means of circumventing inclusion in the prospective payment system. The following examples illustrate how our proposals would be applied.

*Example:* A hospital has a 2,000 square foot rehabilitation unit that includes 20 beds. The unit is excluded from the prospective payment system for the cost reporting period beginning on October 1, 1983 and has an occupancy rate of 90 percent for that period. On July 1, 1984, the hospital begins to furnish inpatient rehabilitation services in a 200 square foot treatment room that it intends to add to the unit. Under our proposal, the added space could be considered part of the excluded rehabilitation unit for the cost reporting period starting on October 1, 1984, even though it had not been used by the unit for inpatient care for a 12-month cost reporting period.

*Example:* A hospital has a 2,000 square foot rehabilitation unit that includes 20 beds. The unit is excluded from the prospective payment system for the cost reporting period beginning on October 1, 1983, and has an occupancy rate of 90 percent for that period. On July 1, 1984, the hospital moves two aditional beds into the unit and begins to furnish inpatient rehabilitation services to the patients who occupy them. Under our proposal, the two additional beds could be considered part of the excluded rehabilitation unit for the cost reporting period starting on October 1, 1984, even though they had not been used by the unit for inpatient care for a 12-month cost reporting period.

*Example:* A hospital has a 2,000 square foot rehabilitation unit that includes 20 beds. The unit is excluded from the prospective payment system for the cost reporting period beginning on October 1, 1983, and has an occupancy rate of 90 percent for that period. On July 1, 1984, the hospital begins to furnish inpatient rehabilitation services in a newly constructed addition that occupies 1,000 square feet and contains 10 beds. Under our proposal, only an additional 200 square feet, containing no more than two beds, could be considered part of the excluded unit for the cost reporting period starting on October 1, 1984. The other 800 square feet of space and eight beds in the new addition could not be considered part of the excluded rehabilitation unit until the addition had been used to provide inpatient care for a full 12-month cost reporting period and the expanded unit, comprising 3,000 square feet and 30 beds, had qualified under the 75 percent rule. Thus, the fully expanded 3,000 square foot unit could not be excluded from the prospective payment system before the cost reporting period beginning on October 1, 1985.

We are also proposing to include in the regulations the policy described above under which changes in the square footage or number of beds of any excluded unit would be recognized only at the start of a cost reporting period. Although this provision would not reflect any change from our current policy, we believe codifying the policy would help avoid any potential misunderstanding of it.

*D. Physician Attestation (§ 405.472)*

Currently, § 405.472(d)(2)(i) requires that, as a part of DRG validation, the attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. These regulations require that the following statement immediately precede the physician's signature:

I certify that the identification of the principal and secondary diagnoses and the procedures performed is accurate and complete to the best of my knowledge. (Notice: Intentional misrepresentation, concealment, or falsification of this information may, in the case of a Medicare beneficiary, be punishable by imprisonment, fine, or civil penalty.)

Since publication of this requirement, many physicians and hospitals have questioned the need for such a requirement and other physicians have found its language to be offensive. The physician certification and penalty statement requirement is primarily intended to facilitate the prosecution of those who choose to participate in schemes to defraud the program and to discourage others who are tempted to do so. The statements were not intended to impugn the integrity of physicians in general.

On April 19, 1984, the Inspector General of HHS received the following letter from Stephen S. Trott, Assistant Attorney General, Criminal Division, U.S. Department of Justice:

Our position on penalty statements has been clear for many years. Such warning statements should be required on all forms containing essential information pertaining to monetary transactions with the Federal Government or other matters material to the operation of a Federal program. The existence of certification and penalty statements can be important in our decision whether to prosecute a case and in its successful prosecution. As you know, individuals and corporations are prosecuted for making or assisting in the making of specific false claims, and the forms themselves are a key item of evidence in the government's case. It has proved extremely useful in the context of a criminal jury trial to point to the certification and penalty statements on the forms in issue. Such statements clearly put the individual on notice of his responsibility to provide truthful, accurate, and complete information, and the consequences of not doing so.

The certification and penalty statements were not required of physicians during the first 19 years of the Medicare Part A program because, during that time, Medicare reimbursement was based on hospital cost reports. Under this former system, patient diagnoses and procedures were unimportant for reimbursement purposes. However, with the shift to a prospective payment system, the basis of payment now turns primarily on specification of a DRG for each patient. The patient's record is essential to the process of DRG validation, under which the diagnostic and procedural codes used by the hospital to describe the diagnoses and treatments in connection with its claim for payment are compared with the statements of the attending physician. Because diagnostic and procedural information is now crucial to proper payment, those few physicians who may be tempted to misrepresent this information should be made aware of the obligation to report this information accurately and truthfully.

Penalty statements are virtually universal on forms used in Federal programs that involve the obligation of Federal funds. In addition, these statements have always appeared on cost reports and claim forms used by physicians and other providers in other parts of the Medicare and Medicaid programs. Again, the penalty language is not intended to impugn the integrity of the medical profession; rather, it is a standard cautionary measure routinely used to single out isolated wrongdoers.

Some physicians have complained about the manner in which hospitals have been implementing the physician attestation requirement and have been under the wrong impression that hospitals are required under the regulations to use particular methods for its implementation. The current regulations only require that the certification and penalty statements, as well as the physician's signature, appear somewhere in the permanent record of the patient (for example, on the face sheet, discharge summary, discharge abstract, or on a completely separate form). The statements may be placed on the appropriate documents by rubber stamp, may appear on a preprinted form, or may be placed on the appropriate document by any other legible means.

Many of the concerns expressed by physicians reflected misunderstandings about the certification and penalty requirement and a need for clarification of the requirement. Therefore, we are proposing several modifications to both the language and the positioning of the statements. It is intended that the following proposed changes would help to clarify the scope of the statements and that they would provide additional guidance to the hospitals in their implementation of the attestation requirement.

- Physicians have complained that the word "identification" in the certification statement suggests that they are responsible for certifying to the accuracy of the coding performed by hospital personnel. We do not intend to require physicians to take responsibility for the coding process. In order to clarify that the physician is attesting only to the diagnoses and procedures performed, we are proposing to replace the word "identification" with the phrase "narrative descriptions."
- Some physicians have expressed concern about their having to attest to "procedures performed" since many minor procedures are performed without the physician's personal knowledge. We believe that the current language limiting the physician's attestation to information which is "to the best of [the physician's] knowledge" makes clear that the physician need not attest to procedures of which he or she is unaware. However, we are also proposing that the word "major" immediately precede the word "procedures"
- We are proposing that the certification statement appear on the discharge summary sheet, rather than on another type of hospital form. This change would help to make clear that the physician is attesting only to the diagnoses and procedures performed and not to codings that the hospital staff might include in the face sheet or other documents.
- We are proposing to separate the certification statement from the penalty statement. The certification would continue to appear on each patient's discharge summary sheet, but the penalty statement would be provided only annually to the physician in a notice for which the physician would acknowledge receipt in writing. The annual notice would state the following:

Notice to Physicians

Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature on the discharge summary sheet. Anyone who misrepresents, falsifies, or conceals this information may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

Acknowledgement of receipt of this notice would be kept on file at the hospital and made available to HCFA upon request. In submitting each claim, the hospital would certify that it had on file an acknowledgement from the attending physician involved.

- We are further proposing that, for a reasonable time, hospitals would be permitted to continue to use the

language and positioning of the certification and penalty statements prescribed in the January 3, 1984 final rule. This is to avoid any inconvenience that may be associated with making the above modifications.

*E. Hospitals in Areas Redesignated as Rural (§§ 405.473 and 405.476)*

Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas of the nine census divisions and the nation. Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is designated as an urban area or as a rural area. The term "urban area" is defined in section 1886(d)(2)(D) of the Act, in accordance with the Executive Office of Management and Budget's (EOMB's) designations, as a Metropolitan Statistical Area (MSA), a New England County Metropolitan (NECMA), or certain New England counties deemed to be urban areas under section 601(g) of Pub. L. 98-21 (42 U.S.C. 1395ww (note)). The term "rural area" means any area outside an urban area.

In administering a national payment system, we must have a national classification system built on clear, objective standards. Otherwise, the program becomes increasingly difficult to administer because the distinction between rural and urban hospitals is blurred. We believe that the MSA system is the only one that currently meets the requirements for use as a classification system in a national payment program. The MSA classification is a statistical standard developed for use by Federal agencies in the production, analysis, and publication of data on metropolitan areas. The standards have been developed with the aim of producing definitions that will be as consistent as possible for all MSAs nationwide.

Periodically, EOMB revises the list of MSA/NECMA designations based on a continuing analysis of factors such as changes in population and commuting patterns. Depending on those changes, a hospital may be reclassified as urban and thus receive the higher urban payment rate, or it may lose its urban area status and receive the lower, rural Federal rate. We will recognize these reclassifications, for the purpose of determining payment, beginning with the next Federal fiscal year following EOMB's announcement of the change.

For a hospital that loses its urban area status, the resulting reduction in its Federal payment rate may cause a serious financial burden for the hospital if it suddenly must operate at the lower rate without time for adaptation.

Section 1886(d)(5)(C)(iii) of the Act authorizes adjustments to the payment amounts as the Secretary deems appropriate. Therefore, we are proposing to revise § 405.476 to provide that a hospital that loses its urban status as a result of an EOMB redesignation occurring after April 20, 1983, may qualify for special consideration by having its rural Federal rate phased in over a two year period and thus receive, in addition to its rural Federal rate, in the first year, two-thirds of the difference between its present rural Federal rate and the urban Federal rate that would have been paid had it retained its urban status, and, in the second year, one-third of the difference. We note that this adjustment would be granted to a hospital that lost its urban status only if its hospital-specific portion exceeds its Federal rural rate after the Federal rate has been adjusted by the hospital's rural area wage level index and by the doubled indirect teaching adjustment factor (of 11.59 percent for fiscal year (FY) 1985). The proposed adjustment would be applied prospectively for the two successive Federal fiscal years beginning with the Federal fiscal year in which we recognize the reclassification.

A hospital would be required to meet the qualifying conditions only once to receive the additional payment for both years for which this adjustment is being granted. However, if the hospital was subsequently reclassified during this special transition period as urban as a result of a new redesignation by EOMB, the special adjustments would cease to apply.

As a result of EOMB's June 30, 1983 revision of the MSA/NECMA designations, 49 counties that were previously classified as urban lost their urban status. This resulted in the reclassification of 51 hospitals from urban to rural status and the subsequent payment to the hospitals of the lower rural rates for the census divisions in which they are located. Each of these hospitals would also be eligible to receive the two year adjustment effective with discharges beginning in FY 85 provided that the hospital-specific rate exceeded its Federal rural rate for discharges occurring in its first cost reporting period under the prospective payment system.

The following summary and example of the qualifying and adjustment computations assume that a hospital would receive the adjustments beginning in FY 85.

Summary of computation to determine qualifying hospitals.

1. Hospital lost urban area status as a result of an EOMB reclassification occurring after April 20, 1983.

2. Hospital-specific portion (for the hospital's first cost reporting period under the prospective payment system)

$$\frac{\text{Average cost per case}}{\text{case-mix index}} \times \text{Budget neutralized updating factor}$$

Exceeds the: Federal rural rate (for the hospital's first cost reporting period under the prospective payment system). The Federal rural rate = applicable labor-related standardized amount × rural area wage index (+ the nonlabor standardized amount) × doubled teaching adjustment factor (48 FR 39778) where appropriate.

A hospital that meets the two conditions above would receive the following adjustment to its rural Federal payment rate effective with the Federal fiscal year in which we recognize the reclassification:

- For discharges occurring in FY 85, the hospital would have added to its Federal rural rate an amount equal to two-thirds of the difference between the applicable Federal rural rate the hospital receives and the Federal urban rate the hospital would have received had it retained its urban status.
- For discharges occurring in FY 86, the hospital would have added to its Federal rural rate an amount equal to one-third of the difference between the applicable Federal rural rate the hospital receives and the Federal urban rate the hospital would have received had it retained its urban status.

Summary of Adjustment Computation

- Adjust the labor-related portions of the Federal urban and rural standardized amounts by the rural area wage index;
- Determine the difference between the adjusted urban and rural standardized amounts;
- Multiply that difference by the applicable percentage (two-thirds in the first Federal fiscal year for which an adjustment is appropriate and one-third in the second Federal fiscal year);
- Add the amount to the adjusted rural standardized amount, and
- Adjust for indirect teaching costs.

The following is an example of how to determine whether a hospital qualifies for a rural area reclassification

adjustment and how much it would be paid.

Assume a 225 bed hospital, with three full-time employed residents, located in an Indiana county that was designated an urban area as of April 20, 1983 but was redesignated as a rural area on June 30, 1983.

1. The hospital-specific portion standardized for case-mix and adjusted for inflation and budget neutrality is 2349.79.

2. The Federal rural standardized amount for the East North Central census division has a labor-related portion of 2060.28 and a nonlabor-related portion of 480.63.

3. Adjust the labor-related portion by the rural area wage index for Indiana:

2060.28×.8617=1775.34

4. Combine the labor-related and nonlabor-related portions and adjust by the doubled indirect teaching adjustment factor:

3−225=.013333−.1=13333
.13333×.1159=.01545

1775.34+480.63=2255.97
2255.97×(1+.01545)=2290.82

*Result*—The hospital-specific portion (2349.79) is greater than the comparable Federal amount (2290.82) and, therefore, the hospital would qualify for the special adjustment.

To compute the adjustment amount:

| | Labor-related | Nonlabor-related |
|---|---|---|
| Urban rate | 2461.45 | 715.43 |
| Rural rate | 2060.28 | 480.63 |

1. Adjust both the urban and rural labor-related portions by the rural area wage index.

2461.45×.8617=2121.03
2060.28×.8617=1775.34

2. Combine the labor-related and nonlabor-related portions for the urban and rural amounts.

2121.03+715.43=2836.46
1775.34+480.63=2255.97

3. Add the rural amount to two-thirds of the difference between the rural and urban amounts.

2255.97+(.67 times
(2836.46−2255.97))=2644.90

4. Adjust the amount in step 3 by the doubled indirect teaching adjustment factor.

2644.90×1.01545=2685.76.

5. For discharges occurring in FY 86, the hospital would not have to requalify. Note that the adjustment would be determined based on our adding one-third of the difference between the urban area and the rural area rates.

*F. Census Division Boundaries*

Section 1886(d)(2)(D) of the Act requires that separate average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas in each of the nine census divisions and the nation. This yields 18 basic regional rates and two national rates. The definition of urban area is generally based on the MSA and NECMA designations issued by EOMB.

Despite the application of a single urban wage index to determine the rate for all hospitals within a given MSA or NECMA, different standardized rates apply to hospitals located in certain MSAs or NECMAs that cross over census divisions. Currently, there are 14 MSAs that overlap census division boundaries resulting in two or more Federal payment rates applying to the same urban area.

Although our current regulations at § 405.473(b)(6) link the payment rate for a hospital to the location within a census division as defined by section 1886(d)(2)(D) of the Act, we believe this policy violates the concept of an MSA. The essential characteristics that define an urban area, and which are embodied in EOMB's definition of an MSA, are a certain population density and economic and social integration of the surrounding counties with the central metropolitan area.

The application of two or more payment rates for hospitals located within the same urban area contradicts this concept of an MSA as being an economically integrated area with relatively uniform prices applicable throughout the area. This inconsistency is most striking when contrasted with the application of a single area wage level index that, according to our hospital market basket, accounts for nearly 80 percent of a hospital's total costs.

Section 1886(d)(5)(C)(iii) of the Act authorizes adjustments to the payment amounts as the Secretary deems appropriate. In the Conference Committee Report accompanying Pub. L. 98-21, it states, in part, that the Secretary is permitted " to provide for such exceptions and adjustments as may be appropriate with respect to hospitals experiencing special problems because of their location within a particular census division" (H.R. Rep. No. 98-47 98th Congress, 1st Session 22 (1983)). We are, therefore, proposing to amend § 405.473(c) by revising the definition of urban area for the purpose of computing the Federal standardized payment rates by deeming an MSA or NECMA that crosses two or more census divisions, as belonging to the census division in which most of the MSA's or NECMA's hospitals are located. This revised definition will be effective for discharges occurring on or after October 1, 1984.

This change would result in all hospitals within the MSA receiving an identical urban rate based on the census division in which the largest proportion of the hospitals (paid under the prospective payment system) within the MSA are located. Most affected hospitals would receive a relatively higher payment as a result of the change, although a few hospitals would be in a relatively less advantageous position because the majority of hospitals in their respective MSA are in a census division with a lower average standardized amount.

To lessen the impact of the reduction on these hospitals' prospective payment rates, we are proposing to adjust the average standardization amounts these hospitals will receive. We propose to pay them an additional amount equal to 50 percent of the difference between the Federal rate applicable in the census division to which they were previously assigned and the Federal rate applicable in the census division in which they will now be assigned for purposes of the prospective payment system. This adjustment will be in effect *only* for discharges occurring during Federal FY 85. (Note: The difference would be determined based on the Federal rates as recalculated to reflect the census division reassignment.)

Example: Assume a hospital is located in Clark County, Indiana, which is in the Louisville, Kentucky MSA. The hospital was reassigned from the East North Central census division, with a proposed Federal rate of 3,176.88, to the East South Central census division, with a proposed Federal rate of 2,640.49. The wage index for the MSA is 1.0354. The hospital's new Federal rate would be adjusted by subtracting the labor adjusted East South Central urban Federal rate from the labor adjusted East North Central urban Federal rate, and adding 50 percent of the difference to the East South Central urban rate. This amount would be further adjusted by the hospital's applicable adjustment factors, including the indirect teaching adjustment factor.

| | Labor | Nonlabor |
|---|---|---|
| Old Census Division rate (Table 1) | 2,461.45 | 715.43 |
| New Census Division rate (Table 1) | 2,693.45 | 547.03 |

1. Multiply the Old Labor rate times the area wage index (plus the old nonlabor rate).

2. Multiply the New Labor rate times the area wage index (plus the new nonlabor rate).

3. Subtract the amount in Step 2 from the amount in Step 1, and multiply by 50 percent.

4. Add the amount in Step 2 to the amount in Step 3.

For all hospitals, we would recalculate the census division urban means (Table 1 in the addendum to this proposed rule) to reflect the revised definition.

In addition, we are proposing to revise the definition of urban area to account for those situations in which the number of hospitals in an MSA or NECMA that crosses census division boundaries is equally split among the census divisions (for example, an MSA with four hospitals that crosses over census divisions one and two, and two hospitals are located in each census division). We are proposing to deem all the hospitals in the MSA or NECMA to be located in the census division with the higher Federal rate.

*G. Base Year Appeals (§ 405.474)*

Section 405.474(b) states that the intermediary's estimate of a hospital's base-year cost and subsequent modifications, made for purposes of determining the hospital-specific rate under the prospective payment system, are final and may not be changed except as prescribed in the regulations. Under this exception (§ 405.474(b)(3)), a change is allowed to take into account a successful appeal of the hospital's base period notice of amount of program reimbursement, as described in §§ 405.1801 through 405.1883. In our discussion of the regulatory exception in the January 3, 1984 final rule (49 FR 259), we noted that, although it would be generally improper to allow subsequent recalculations, we believe that where information is developed for reasons independent of the prospective payment system (such as the appeal of disallowed base year costs), it is acceptable to consider that information on a prospective basis. We indicated that we revised § 405.474(b) to reflect this policy.

Several parties have pointed out that the regulations state that a recalculation of base year costs would be permitted *only* upon the issuance of a final appeal decision. We agree that § 405.474(b) restricts the recalculation to a final appeal decision. However, we believe that the prospective recalculation of base year costs should be allowed as of the date of other subsequent actions that recognize additional costs as allowable costs for a hospital's base year. These actions that would revise a hospital's base year notice of amount of program reimbursement are—

- The results of a reopening and revision under §§ 405.1885 through 405.1889; or
- A prehearing order of or finding under § 405.1821 or § 405.1853.

We are proposing to clarify § 405.474(b)(3) to specifically include the above administrative actions, in addition to a final administrative or judicial review decision (already in § 405.474(b)(3)), as a basis upon which a recalculation of a hospital's base year costs may be made on a prospective basis.

*H. Referral Centers (§ 405.476)*

Section 1886(d)(5)(C)(i) of the Act directs the Secretary to provide exceptions or adjustments to the prospective payment system that consider the special needs of regional and national referral centers (specifically including those hospitals of 500 or more beds located in rural areas).

In part, this provision was included because of congressional concern for the large rural hospitals that offer a variety of specialized services, employ many specially-trained personnel, and therefore, have costs comparable to urban acute care facilities.

In the interim final rule (48 FR 39783), we identified certain criteria that we believed would establish a hospital as a referral center as contemplated in the law. Since the statute specifies "regional and national" referral centers, we concluded that Congress intended that these referral centers would be serving a substantial number of patients from a very broad geographic area. Under those interim final regulations (§ 405.476(g)), in order to be considered a referral center, a hospital had to be an acute care hospital with a provider agreement under 42 CFR Part 489 to participate in the Medicare program; and the hospital had to—

- Be located in a rural area (that is, outside of any MSA or NECMA) and have 500 or more beds available for use; or
- Have an inpatient population such that at least 60 percent of all Medicare patients resided out-of-State or more than 100 miles from the hospital (whichever was further), and at least 60 percent of all the services that the hospital furnished to Medicare beneficiaries had to be furnished to beneficiaries who resided out-of-State or 100 or more miles from the hospital (whichever was further).

For rural hospitals with 500 or more beds, we determine prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index (§ 405.476(g)(2)).

For rural referral centers with less than 500 beds, and for referral centers located in urban areas, there is no adjustment for the first year of the transition period.

The criteria contained in those interim final regulations were constructed based on our best understanding from limited source materials as to what was intended by this statutory provision. The numerical values were chosen as being reasonable in view of what we then perceived as the characteristics of a referral center. While we believe that the criteria we adopted were appropriate, we specifically requested comment on these criteria in the interim final rule. given the scarcity of any material on identification of referral centers, we particularly wanted to obtain public comment and suggestions as to ways in which the criteria could be modified.

The comments we received in response to that interim final rule were uniformly critical of the criteria used to distinguish rural referral centers from other hospitals and emphasized that the policy in the regulations was so restrictive as to assure that hospitals could not qualify. Many commenters were particularly concerned about fairly large rural hospitals (100 to 400 beds) that were sources for specialized care and that therefore should qualify as referral centers. A majority of the comments focused on the inadequacy of a mileage or distance measure as a test for determining whether a hospital was treating referrals.

As a result of the comments received, we revised the criteria for referral centers in the final rule. In that rule (49 FR 174), we outlined several changes to the referral center regulations. As requested by several commenters, we adopted criteria that gave weight to the actual fact of referral. We also eliminated the out-of-State criteria and reduced the mileage limit from 100 to 25 miles. Therefore, as published in the final rule, § 405.467(g)(1) states that a referral center is a hospital, which is an acute care hospital with a Medicare provider agreement, that—

- Is located in a rural area and has 500 or more beds; or
- Has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital

furnishes to Medicare beneficiaries must be furnished to beneficiaries who live more than 25 miles from the hospital.

The payment adjusted provisions were not revised or expanded in the final rule.

While we believe that the criteria published in the final regulations are reasonable for the purpose of defining a referral center, upon further analysis of the special circumstances applicable to rural referral centers of less than 500 beds and based on information we have received, we believe it is necessary to provide a separate set of criteria that would meet these unique circumstances. In keeping with our understanding of congressional intent, and at the same time, seeking a set of qualifying criteria for rural referral centers that characterize the essential features of these facilities, we are proposing to add the following set of criteria (two mandatory and a choice of one out of three other criteria) that could be used to determine whether any hospital located outside of any MSA or NECMA is a referral center:

• The hospital would have to have a 1981 case-mix index of at least 1.03 as published in the September 1, 1983 Federal Register (48 FR 39847).

We selected this criterion as one of the mandatory criteria because, in the case of rural hospitals, the complexity of cases treated in the facility is, in our opinion, one of the principal characteristics that would distinguish between the rural referral centers (hospitals that offer a variety of specialized services and are comparable to urban acute care facilities) and typical rural hospitals. We believe that this level of complexity is the chief characteristic that prompted Congress to include the referral center provision in the prospective payment legislation.

We are proposing to allow hospitals that do not meet the 1.03 case-mix index benchmark an alternative criterion. A hospital whose published case-mix index is below 1.03 could meet this requirement if its case-mix index for the first cost reporting period subject to prospective payment (that is, the first reporting period beginning on or after October 1, 1983) is at least 1.0903. We obtained the 1.0903 figure by multiplying the 1.3 case-mix figure by a factor of 1.0585. This factor represents the estimated increase in a hospital's case-mix index reflecting the increased accuracy and completeness of billing information that would result from making payments to hospitals contingent on this information as occurs under the prospective payment system. Since the hospital case-mix indexes published in the September 1, 1983 Federal Register rely on data from a period in which hospital payments were not dependent on complete and accurate billing data, it is estimated that the indexes were, on average, understated by 5.85 percent.

• The hospital's number of discharges (excluding discharges from subprovider units (as that term is defined in section 2336 of the Provider Reimbursement Manual, HCFA Pub. 15-1)) must have been at least 6,000 for the most recent cost reporting period completed by the hospital before it applies for referral center status.

We would include this criterion as one of the mandatory criteria because we believe that Congress intended that the referral center provision apply to hospitals of above average size and utilization. A suitable measure of the size of a hospital's operation is the number of patients discharged during a given year. We believe that 6,000 discharges is representative of a rural hospital of above average size.

In addition to meeting the two criteria mentioned above (case mix and number of discharges), a hospital would have to meet one of the following three criteria:

• More than 50 percent of the hospital's medical staff are specialists; that is, they have completed minimal training requirements as recognized by the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists. We would include this criterion because, frequently, a hospital serves as a referral center for certain specialized areas of treatment.

Also, we would expect that a hospital that provides a secondary or tertiary level of hospital care would have a high percentage of specialists on the staff.

• The hospital's inpatient population is such that 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital. This criterion would be included to assure that the hospital's patients are drawn from a wide geographic area. However, because of the lack of specific information on referral patterns, we are specifically requesting comments on whether it would be more equitable to apply this criterion or an alternative that would require a lower percentage (for instance, 50 percent) but would be measured in terms of the percentage of a hospital's discharges attributable to Medicare beneficiaries who reside more than 25 miles from the facility.

• At least 40 percent of all inpatients treated at the hospital have been referred to the hospital either from physicians not on the hospital's staff or from other hospitals. As mentioned above, we are particularly interested in receiving comments on whether this criterion should be based on all inpatients or only the Medicare inpatients of the hospital.

These criteria (proposed in § 405.476(g)(1)(iii)) would be used in determining whether a hospital qualifies for an adjustment as a referral center that would be effective for discharges occurring on or after October 1, 1984. We are proposing that these referral centers would be paid prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index. Therefore, these hospitals would be paid on the same basis as those hospitals that meet the criteria in § 405.476(g)(1)(i) (that is, rural hospitals with 500 or more beds). In addition, we are proposing in this document that rural hospitals that meet the criteria in § 405.476(g)(1)(ii) would also be paid, for discharges occurring on or after October 1, 1984, prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts. This change would allow a consistent payment policy for rural hospitals that are eligible for referral center status.

We are not including in this proposal any payment adjustment for urban hospitals that meet the referral center criteria in § 405.476(g)(1)(ii). As we indicated in the January 3, 1984 final rule (49 FR 276), it will not be possible to determine what the appropriate payment adjustments should be until we know how urban hospitals that qualify for referral center status under § 405.476(g)(1)(ii) are atypical when compared to other urban hospitals. We can make this determination only after we have an opportunity to examine and analyze in detail the data pertaining to these hospitals. Since we have received only one application, which is still under review, from an urban hospital under § 405.476(g)(1)(ii), we have been unable to collect the necessary data. Therefore, we are unable to make any proposals in this document concerning payment adjustments for urban hospitals that qualify under § 405.476(g)(1)(ii).

We are considering instituting a periodic review of hospitals that have qualified for a payment adjustment as referral centers. This review would allow us to determine if these hospitals continue to meet the criteria for referral center status. We are specifically requesting comments from the public concerning this procedure.

*I. Inpatient Renal Dialysis*

In the January 3, 1984 final rule (49 FR 247), we agreed to review the issue of payment for inpatient dialysis. We pointed out that for a patient on dialysis who is admitted to a hospital for an unrelated reason, the DRG payment does not recognize the additional cost of furnishing dialysis. This is of particular concern to end-stage renal disease (ESRD) beneficiaries who will require dialysis whenever they are hospitalized.

We note that the DRG weighting factors were constructed to reflect the relative resource consumption associated with cases falling within the DRG. Therefore, these cases, in which dialysis is required, are included in the relative weight of the DRGs. Since the relative weight reflects the average cost incurred in treating cases, payment for any given discharge may be more or less than the cost incurred in treating a particular case.

A distinction should be made between the dialysis services furnished to non-ESRD beneficiaries and the services furnished to ESRD beneficiaries. Non-ESRD beneficiaries can be expected to require dialysis relatively infrequently, and those cases requiring dialysis will be widely dispersed throughout the inpatient population. ESRD beneficiaries, on the other hand, require routine dialysis and may be concentrated in particular hospitals. When ESRD beneficiaries represent a large share of a hospital's patient population, a disparity may exist between the average cost of dialysis represented within the DRG amount and the expense to the hospital.

To assess the impact of providing inpatient dialysis, we identified the discharges of ESRD patients in the 1981 MEDPAR data file. ESRD patient discharges represent 1.05 percent of the appropriately two million discharges for all hospitals in the MEDPAR data file. These ESRD discharges include those DRGs in which dialysis would be expected to occur as well as those in which dialysis would not be expected to occur except when ESRD beneficiaries are involved. We measured the impact of cases in which inpatient dialysis is not expected to occur by excluding those DRGs in which it would be reasonably assumed that dialysis would occur. While there may be others, for simplicity, we excluded only DRGs 302 (Kidney Transplant), 316 (Renal Failure), and 317 (Admit for Renal Dialysis). After excluding these cases, the remaining ESRD discharges represent less than one percent of total discharges. As we expected, the impact was not spread evenly among all hospitals.

However, even among renal-certified hospitals, the ESRD patient discharges represent only 2.28 percent of total discharges. This is not a significant impact even among hospitals that would be expected to treat the greater number of ESRD patients. We do not believe that the data support special treatment for inpatient dialysis. To the extent thats such cases occur in the data base, they are reflected in the DRG rates.

It is not the purpose of the prospective payment system that a hospital will be able to recover its actual cost of treatment for every case. It was assumed that most hospitals will receive less than their cost in some cases and more than their cost in other cases. Therefore, we are not making any changes in the payment for inpatient renal dialysis at this time.

**III. Summary of Regulations Changes**

For the convenience of the reader, we are summarizing the changes we are proposing to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

*A. Transfers*

We are proposing to make the following change in § 405.470(c)(4) for a hospital transferring an inpatient to another hospital.

- A transferring hospital may be paid an additional payment for extraordinarily high-cost cases that meet the cost outlier criteria in § 405.475(d).

*B. Direction of Rehabilitation Units*

We are proposing to revise § 405.471 to provide that the director of an excluded rehabilitation unit must serve the unit and its inpatients for at least 20 hours per week, rather than on a full-time basis.

*C. Expansion of Excluded Rehabilitation Units*

We are proposing to add a new § 405.471(d) to provide that changes in the capacity (that is, number of beds or square footage) of excluded units will be recognized only at the start of a cost reporting period, and that excluded rehabilitation units with an occupancy rate of at least 90 percent in a cost reporting period may increase their capacity by 10 percent per year without applying the 75 percent rule to the added space or considering the previous uses of the added space.

*D. Physician Attestation*

We are proposing to revise § 405.472(d)(2)(i) to clarify the scope of the physician's certification statement and the accompanying penalty statement and to revise the method for implementation of the attestation requirements.

*E. Hospitals in Areas Redesignated as Rural*

We are proposing to add new §§ 405.473(c)(2) and 405.476(i) to provide a special adjustment of the rural average standardized amounts to hospitals that are located in counties in MSAs or NECMAs that are redesignated by EOMB to be no longer a part of an MSA or NECMA.

- In § 405.473(c)(2), we define the phrase "hospital reclassified as rural" as a hospital located in a county that is in an MSA or NECMA that is redesignated by EOMB after April 20, 1983 to no longer be in an MSA or NECMA.
- In § 405.476(i), we indicate that we will provide for a two-year phase-in of the rural Federal payment amounts to a hospital, located in an area redesignated as rural, whose hospital-specific portion exceeds its rural rate. For the first year, the additional amount would be an amount equal to two-thirds of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located. For the second year, the additional amount would be an amount equal to one-third of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located.

*F Census Division Boundaries*

Also, in the proposed new § 405.473(c)(2), we would clarify which census division a hospital belongs to when an MSA/NECMA crosses s census division boundary.

- In § 405.473(c)(2), we define urban area, for the purpose of MSAs or NECMAs that overlap census divisions, by deeming the entire MSA or NECMA as belonging to the census division in which most of the hospitals in that MSA or NECMA are located. We would make a special adjustment for those hospitals that, as a result of the reassigning of hospitals, are in a census division with a lower Federal rate than they would have received. In addition, if there are an equal number of hospitals located in each part of an MSA or NECMA that crosses one or more census divisions, we would deem all the hospitals to belong to the census divisions with the highest Federal rate.

*G. Base Year Appeals*

We are proposing to revise § 405.474(b)(3)(i)(C) to include, as a basis upon which a prospective recalculation of a hospital's base year cost may be made, administrative actions such as a reopening and a revision, or a prehearing order or finding, in addition to a final administrative or judicial review decision.

*H. Referral Centers*

We are proposing to add a set of criteria to § 405.476(g) that would expand the definition of referral centers to encompass more rural hospitals. We would pay hospitals that meet these criteria the urban (rather than the rural) adjusted standardized amounts. We are also proposing that rural hospitals that meet the criteria set forth in § 405.476(g)(1)(ii) would also be paid the urban (rather than the rural) adjusted standardized amounts for discharges occurring on or after October 1, 1984.

V Regulatory Impact Analysis

*A. Introduction*

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in an annual effect on the national economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity or innovation.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires that an initial regulatory flexibility analysis be performed and made available for each proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities.

Under the RFA, small entities include small businesses, nonprofit organizations, and governmental jurisdictions of less than 50,000 population. We treat all hospitals as small entities. Thus, a regulatory flexibility analysis is required if a substantial number of hospitals would be significantly affected by a regulatory document.

If we considered the net effects only, we would not expect the policy changes proposed in this rule to meet the criteria of a major rule. Due to the distributive effects of the prospective payment rate methodology, such as adjustments for budget neutrality, a change that would result in substantially increased payments for one group of hospitals under the prospective payment system would be offset by compensating decreases in payment rates for all other hospitals under the system. (Note that the *aggregate* effect of an increase is offset by a corresponding *aggregate* decrease. Thus, a large increase for a small group is balanced by a small decrease for a large group.) Further, many of the proposed changes that would increase payment for some hospitals, such as the provision affecting the hospitals located in areas redesignated rural by EOMB in June 1983, would not have a substantial effect on total payments, and would have negligible effects on the budget neutrality adjustment factors.

However, some of the provisions proposed in this rule would result in increases in payments to certain groups of hospitals large enough so that the budget neutrality mechanism would result in a redistribution of aggregate payments, due to the offsetting decrease of payments to other hospitals, amounting to over $100 million, even though the *net* effect on aggregate payments to all hospitals might not be significant, due to increases and decreases offsetting each other, we believe that a redistribution of this magnitude constitutes an economic impact meeting the threshold criteria of a major rule.

Further, it is clear that these proposed changes would affect a substantial number of hospitals, and that the effects for certain groups of those hospitals, such as those reclassified as rural by the MSA system, or hospitals that would meet the proposed new referral center criteria, would certainly be significant. Therefore, a regulatory flexibility analysis is required.

In the discussion below, we discuss the expected impacts of these proposed changes and then summarize our expectations of their net effect. This discussion, in combination with the rest of this preamble, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

*B. Objectives*

The changes we are proposing do not represent any change in the objectives or basic incentives of the prospective payment system. Rather, we are merely resolving the first and most pressing problems of implementation, in order to ensure that those objectives are achieved and that the incentives created push toward the intended effects. As noted in the final rule published January 3, 1984, we fully expected the prospective payment system to:

- Restructure hospitals' economic incentives, establishing market-like forces;
- Link payment to diagnosis, basing payment on a system that more accurately identifies the product being purchased on behalf of Medicare beneficiaries;
- Establish the Federal government as a prudent buyer of services, adopting an active role in determining payments for inpatient services on behalf of Medicare beneficiaries; and
- Restrain the rate of hospital cost increases, and, therefore, moderate the outflow from the Medicare trust funds.

We expect these proposed changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes in general are reasonable and equitable. Thus, the intent of these proposals is essentially to fine tune the prospective payment system without undercutting our original objectives. This means giving more to some hospitals, where appropriate, and therefore, if necessary, taking a little from others, to maintain balance.

*C. Transfers*

Our proposal to pay cost outlier payments to transferring hospitals would benefit those hospitals incurring such costs and would be more equitable than our current payment policy. Although it may appear that this change would result in larger aggregate payments for outlier services, we do not expect the aggregate amount of such payments to be substantial. Generally, transfers occur in less than 1.5 percent of cases. Of this number, a small portion result in high costs to the transferring hospital. Since this is a small portion of a group of cases already known to be relatively small, we believe the increased payments for these cases would be negligible, in view of total payments for inpatient hospital services. We do not believe it is necessary or desirable to reflect this change in either our budget neutrality methodology or in the determination of cost outlier trim points. As a result, we do not expect any hospitals would be disadvantaged by this proposal.

*D. Rehabilitation Units*

The revision of the "full-time director" requirement for rehabilitation units would result in the approval of a larger number of those units for exclusion from the prospective payment system. Similarly, proposed changes concerning expansion of rehabilitation units would affect the total amount of inpatient hospital costs subject to the prospective

payment system. The greater the cost-based payments made to hospitals and units excluded from the prospective payment system, the smaller the total of payments under that system becomes.

Before October 1, 1983, rehabilitation hospitals and units were not given special recognition by Medicare payment methods, and we did not collect data on them. Since they were excluded by statute from the prospective payment system, we have established criteria and procedures to identify and pay them, and have begun to develop data on them.

As of April 30, 1984, we have recognized 39 rehabilitation hospitals and 181 rehabilitation units for purposes of excluding them from the prospective payment system. By October 1, 1984, we expect to have excluded around 80 hospitals and around 440 units under the current regulations. (Since we do not have historical program data, these are only rough estimates, but they are not inconsistent with the applications for exclusion to date.)

Of the 53 hospitals that had been denied exclusion of a potential rehabilitation unit by April 30, 1984, 19 applicants were denied because they lacked a director who could be considered "full-time" under the current regulations. We expect that some, but not all, of these would be approved under the requirements contained in this proposed rule. Any unit so approved would be excluded from the prospective payment system beginning with its next cost reporting period.

The proposed changes concerning unit expansion would result in an increased rate of growth of the total number of rehabilitation beds (and associated costs) excluded from the prospective payment system as part of existing units. Unfortunately, presently we have only fragmentary data on the numbers of beds in approved units, and no historical experience in the occupancy rates of units. As a result, we cannot estimate accurately the future effect of these proposed changes. However, based on discussions and review of what data are available, primarily from the hospital industry, we believe that the combination of a 90 percent occupancy threshold and a 10 percent growth cap will tend to permit a reasonable rate of expansion where justified, without allowing over-permissive exclusion of beds and costs from the prospective payment system.

It has been suggested that the use of a threshold occupancy for allowing limited expansion mught create incentives for units to keep their beds filled even if all the patients do not require the services of the unit. We agree that this type of provider behavior, if it did result, would be undesirable. However, for several reasons, we do not believe this to be a substantial threat to the integrity and utility of our proposal.

First, under the rate of increase limits required by section 1886(b) of the Act and implemented by regulations at § 405.463, excluded units already have strong incentives to maximize utilization. We do not believe these incentives would be increased significantly by this proposal. Second, and more important, since these incentives and behaviors are very familiar to us, there are already mechanisms in place that do restrain them. For example, both pre-admission screening and later medical reviews create counter-incentives in the form of potential denial of payment.

*E. Physician Attestation*

The proposed change concerning physician attestation is insignificant in terms of its economic impact. In essence, it is a revision of language and method of implementation of the attestation requirements that is intended to address criticisms aimed at phrasing and potential misunderstandings. We would still require a signed certification statement for each discharge; however, the penalty statement would be provided to the physician for his acknowledgement on only an annual basis. We do not expect this change to have any effect on payments or costs.

*F MSA Redesignations*

As discussed above, we are proposing to make additional payments to hospitals located in counties that lost their urban status as a result of an EOMB MSA/NECMA redesignation after April 20, 1983. There would be additional payments per case for cost reporting periods beginning during the second year of the prospective payment transition period. These payments would be made only to those hospitals that have hospital-specific rates higher than their Federal rural rates.

We estimate that 32 of 51 hospitals affected by the June 1983 EOMB redesignation would receive additional payments under this proposal. These hospitals, located for the most part in the East North Central and West South Central regions, would receive an estimated $4 million for discharges occurring in FY 85. The remaining 19 hospitals would continue to receive their blended Federal rural rate. There may be future redesignations, but we have no way to predict them or estimate their impact.

Increasing payments for a group of hospitals would normally reduce payment to other hospitals through the budget neutrality mechanism. However, these additional payments would affect too few hospitals and be too small in the aggregate to have a substantial effect on the budget neutrality adjustment factors. We estimate that the average payment per case to other hospitals would be reduced by less than 50 cents.

*G. Census Division Boundaries*

As explained above, we are proposing to deem a hospital that is located in an MSA or NECMA that crosses census division boundaries to belong to the census division in which most of the hospitals within the MSA or NECMA are located. Assuming that all of the hospitals in the affected MSAs continue to participate in the Medicare program, and that no new hospitals emerge in those areas, we estimate that this change would have major impacts on only 23 of the 146 hospitals in the 14 MSAs affected:

- 11 hospitals would be paid at a higher Federal regional rate; and
- 12 hospitals would be paid at a lower adjusted Federal regional rate (receiving, for one year, 50 percent of the difference between the Federal rates of its old and new regions).

One hundred and twenty of the 146 hospitals in affected MSAs would not be reclassified. The remaining three hosptials are located in States that have waivers and are thus excluded from the prospective payment system.

We project that the 11 hospitals reclassified into regions that have higher regional rates would receive about $140 more per case than they could receive if we did not implement this proposal. The 12 hospitals adversely affected would receive about $45 less per case, taking into consideration the payment of half the differential between old and new regions.

Nearly all of the affected hospitals are located in only three regions: South Atlantic, East North Central, and East South Central. The larger proportion of the decrease in payments would be experienced by hospitals in the East North Central region. Hospitals located in the East South Central region would benefit the most from this proposal.

We estimate that the total payment increase for benefited hospitals would amount to about $4 million in the aggregate, and the corresponding decrease to adversely affected hospitals would amount to about $1 million. The net increase of about $3 million, considering payments to all 23 directly affected hospitals, would have the result

of reducing payments to other hospitals through the budget neutrality mechanism, but only by a small amount. The magnitude of this offset would be comparable to that of the additional payments to those hospitals classified rural under the MSA redesignations, reducing the average per case payment by less than 50 cents.

*H. Base Year Appeals*

We do not expect a significant economic impact to result from the proposed clarification of the provision governing the appeal of base year costs on which transition period prospective payment rates are partially based. We do not view this clarification as a change of policy, since we had not intended to implement the regulation, as published on January 3, 1984, as rigidly as some parties seem to believe. Further, the impact of the base year costs involved diminishes throughout the transition period. Once full national DRG-related payment rates are implemented, revisions or new findings concerning base-year costs would have no effect on prospective payment rates.

We do not have adequate data to estimate how many hospitals will have their base period costs recalculated under this provision. However, we believe the aggregate amounts of additional payments resulting from recalculations would not be substantial enough to affect our overall expectations of program expenditures. This proposal has no effect on the budget neutrality adjustment calculations.

*I. Referral Centers*

The proposed additional criteria permitting rural hospitals to qualify as referral centers and be paid at urban rates would result in a significant number of new referral centers being recognized. We do not have adequate data to project how many hospitals could meet each of the criteria proposed. However, we can determine how many hospitals had enough discharges and met the case-mix criteria based on the MEDPAR data.

Based on just this data, we project that as many as 113 hospitals may qualify as referral centers under the new criteria. Considering the difference between urban and rural rates, the increased aggregate payments to these hospitals would be substantial. We project that these hospitals could be paid, in the aggregate, about $80 million more than they would be paid without this proposal.

Note.— It appears that some rural hospital with less than 500 beds may qualify as referral centers under the existing criteria at § 405.476(g)(1)(ii). Under this proposed rule, we would pay those hospitals at the urban rate, too. We cannot be sure how many hospitals may so qualify, just as we cannot be certain how many hospitals may be denied referral center status under the proposed criteria. Considering both these problems, we do not believe the total number of potential rural referral centers with less than 500 beds is likely to exceed the projection of 113 based on discharge and case mix.

Based on case mix and volume of discharge, we have identified some potential referral centers in every region, but there are significant regional differences in their distribution. More than half of the potential referral centers identified are in only three regions East North Central, East South Central, and South Atlantic. The New England, Middle Atlantic, and West South Central regions each have less than seven potential referral centers.

Due to the budget neutrality mechanism, the increased payments to new referral centers would result in reduced payments to all other hospitals. We estimate that the average per case payment to other hospitals would be reduced by about $8 as a result of this proposal.

*J. Updated Payment Rates*

One of the primary functions of this document is to propose updated prospective payment rates in accordance with statutory and regulatory requirements (section 1886(d) of the Act and § 405.470(e) of the regulations). Accordingly, the Addendum to this document, which is printed after the text of the proposed regulations, sets forth tables of proposed new Federal national and regional rates, new DRG relative weights and outlier thresholds, and new factors for calculating hospital-specific rates. In accordance with section 1886(d)(1)(D) of the Act, the Federal rate for FY 85 will be a blend set at 75 percent of the Federal regional rate plus 25 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1984. Further, as each hospital begins its second year under prospective payment, with its cost reporting period beginning on or after October 1, 1984, the relative proportions of hospital-specific and Federal portions will change from 75 and 25 percent, respectively, to 50 percent hospital-specific and 50 percent Federal.

FY 85, section 1886(e)(1) of the Act requires that Federal and hospital-specific payment rates continue to be adjusted for budget neutrality. (See the technical explanation of the budget neutrality adjustment methodology in section V of the Addendum.) As a result, aggregate FY 85 prospective payments for inpatient hospital services are projected to be the same as they would have been for those services in FY 85 had the Medicare payment system in effect at the time of enactment of the prospective payment legislation continued in effect. It should be emphasized that we have no discretion in this matter—the FY 85 payment rates must be made budget neutral to what would have been paid under prior law.

In the absence of the budget neutrality requirement, the FY 85 payment rates would increase over the FY 1984 rates, in accordance with section 1886(d)(3) of the Act, by the percentage increase in the hospital market basket index (an input price index) plus one percentage point. For FY 85, we estimate that increase would be about 7.4 percent. However, as a result of the budget neutrality and other adjustments, the proposed payment rates as published would increase by 5.6 percent.

The main factors that contribute to the reduction of the rate of increase below 7.4 percent are:

- Incorporation into the estimate of payments under prior law, on which the budget neutrality adjustment is based, of:
  - —The statutory reduction of the case-mix adjusted limits (from 115 percent of the mean for each group of hospitals) that would have applied under section 1886(a) of the Act; and
  - —The ending of payment for 25 percent of costs in excess of a hospital's rate of increase limit (target amount) under section 1886(b) of the Act;
- The disparity resulting from the difference between the months when lower and higher cost hospitals tend to enter the prospective payment system during FY 84. More of the hospitals that have higher costs, due to higher wage index values and higher indirect teaching adjustments, have cost reporting periods beginning late in the Federal fiscal year. As a result, these hospitals had little effect on the estimated FY 84 average payment levels used in the budget neutrality adjustment methodology. However, all of these hospitals will be paid based on the new Federal rates for all fiscal months of FY 85. Reflection of this situation in the budget neutrality calculations for FY 85, which eliminates the disparity, results in some reduction of the published FY 85 rates;
- Finally, the proposed increases in payments to certain hospitals as discussed elsewhere in this analysis,

which must be offset by decreases in the Federal payment rates.

However, in addition to the factors that would decrease the rates, other factors (other than increasing the rates by the market basket plus one percentage point) result in rate increases. Specifically, the change in outlier policy and the adjustment to reflect the most recent data on the level of transfer payments under the prospective payment system both produce increases in the adjusted Federal rates. (See the addendum for discussion of both of these subjects.)

The following example serves to illustrate in dollar terms the impact of these factors on the increase in the Federal rates published in the Addendum to this rule. The New England region's urban rate is $2,967 in FY 84 (adding labor and non-labor components). This rate, increased by 7.4 percent, would be $3,187 for FY 85, before adjustment for budget neutrality. However, the proposed FY 85 urban Federal regional rate for the New England is $3,134, or $53 less than the rate would have been if we had simply increased the FY 84 rate by 7.4 percent. The example below indicate how the requirement for budget neutrality accounts for the $53 dollar difference. (See Section V of the Addendum, Technical Explanation of Budget Neutrality Adjustment Methodology, for more details.)

*Example:*

| | |
|---|---|
| FY 84 Rate: New England urban | $2,967 |
| —Increase by 7.4% | +220 |
| —Additional year of rate of increase limits and elimination of 25% allowance for costs in excess of limits | −54 |
| —Reduce case-mix limits from 115% to 110% of mean | −12 |
| —Phase-in disparity | −13 |
| —Effect of regulatory changes | −22 |
| —Adjust for transfers under prospective payment | +16 |
| —Adjust for change in outlier policy | +32 |
| FY 85 Rate: New England urban | 3,134 |

We expect that the actual average *payment* per case during FY 85 will increase by more than the published Federal payment *rates* as a result of the following.

- Hospitals with higher wage index values entered the prospective payment system later, on average, than hospitals with lower wage index values. Thus, average payments to hospitals in FY 85 will be higher than in FY 84 because a higher proportion of admissions in FY 85 will be associated with hospitals with a higher wage index.
- Hospitals with higher payments for the indirect costs of medical education entered the prospective payment system later, an average, than hospitals with lower payments for those costs. Therefore, average payments to hospitals in FY 85 will be higher than in FY 84 because a higher proportion of admission in FY 85 will be associated with hospitals with higher payments related to indirect medical education cost.
- Hospitals with reporting periods starting later in FY 84 would be expected to have higher base year costs and hospital-specific rates because of the continuing increases in costs. This would further increase FY 85 average prospective payments over FY 84 average prospective payments.
- Several provisions allowing for increased payments would be added for FY 85. These provisions include new criteria for rural referral centers, extra payments to certain hospitals that are in counties redesignated from urban to rural by EOMB, and relief for hospitals in MSAs that overlap more than one region.

*K. Summary*

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise, and to discuss those costs and benefits in impact analyses for major rules to show that the potential benefits outweigh the cost to society.

In the aggregate, the net effect these proposals would have on the overall level of total payments would be negligible. To the extent that any aggregate change resulted at all, it would be the result of our inability to reflect all these proposals explicity and accurately in the budget neutrality adjustment methodology. Five of the major provisions of this rule (outlier payments to transferring hospitals, director of rehabilitation units expansion of rehabilitation units, physician attestation, and base year appeals) are not reflected in that methodology. However, as discussed above in relation to each provision, although we expect the economic impacts of these provisions to be negligible in the aggregate, each of them has significant benefits.

For the most part, the costs and disadvantages that could result from these proposals would take the form of reductions of payment rates through budget neutrality adjustment. However, as discussed above, the decrease in the budget neutrality factors largely results from considerations outside the scope of these proposals, and, under budget neutrality quantifiable benefits in the form of payment increases for some must be offset by payment decreases for others.

The primary benefit resulting from this proposed rule is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of these proposals is to fine tune the prospective payment system. Compared to the magnitude and impact of the system as a whole, the effects of these changes would be trivial. For FY 85, Medicare expenditures for inpatient hospital services (including inpatient operating costs, capital costs, medical education, and excluded hospitals and units) are projected to be about $48 billion. This proposed rule would affect the distribution of less than 0.2 percent of those expenditures.

We believe that, from this perspective, the higher payment rates afforded to a little more than 150 hospitals (32 reclassified rural, 11 deemed to be in regions receiving higher payment rates, and perhaps as many as 113 rural referral centers), as well as the nonquantifiable benefits afforded to rehabilitation units and hosptials with affected transfer outlier cases and base year appeals, more than offset the resulting costs. For the above reasons, we believe that this proposal would meet the objectives of E.O. 12291 and the Regulatory Flexibility Act.

## V Other Required Information

*A. Responses to Public Comments*

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, which will be published shortly, we will consider all comments that we receive by the close of the comment period and will respond to them in the final rule.

*B. Paperwork Reduction Act*

These proposed changes do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Managment and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health

professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reasonable charges, Reporting requirements, Rural areas, Prospective Payment System, X-rays.

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405, Subpart D would be amended as set forth below:

### Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. The table of contents for Subpart D is amended by revising the title of § 405.476 to read as follows:

**Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians**

Sec.

* * * * *

405.476 Special treatment for certain facilities under the prospective payment system.

* * * * *

3. Section 405.470 is amended by reprinting the introductory language of paragraph (b)(5) unchanged, revising paragraph (b)(5)(iv); redesignating paragraph (c)(4) as (c)(4)(i), and adding a new paragraph (c)(4)(ii) to read as follows:

42 CFR Part 405, Subpart D would be amended as set forth below:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. The table of contents for Subpart D is amended by revising the title of § 405.476 to read as follows:

**Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians**

Sec.

* * * * *

405.476 Special treatment for certain facilities under the prospective payment system.

* * * * *

3. Section 405.470 is amended by reprinting the introductory language of paragraph (b)(5) unchanged, revising paragraph (b)(5)(iv); redesignating paragraph (c)(4) as (c)(4)(i), and adding a new paragraph (c)(4)(ii) to read as follows:

**§ 405.470 Prospective payment: General provisions.**

* * * * *

(b) *Basis of payment.*

(1) * * *

(5) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates, hospitals will receive payments for:

(i) * * *

(iv) Bad debts of Medicare beneficaries (see § 405.420 and 405.477 (d)(1).

(c) *Discharges and transfers.*

* * * * *

(4) *Payments to a hospital transferring an inpatient to another hospital.*

(i) * * *

(ii) Effective with discharges occurring on or after October 1, 1984, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliers as described in § 405.475(d).

* * * * *

4. Section 405.471 is amended by reprinting the introductory language unchanged in paragraphs (c)(2) and (c)(2)(v) and revising paragraph (c)(2)(v)(A); by reprinting the introductory language unchanged in paragraphs (c)(4)(iii) and (c)(4)(iii)(F) and revising paragraph (c)(4)(iii)(F)(*l*); and by adding a new paragraph (d) to read as follows:

**§ 405.471 Hospitals and hospital services subject to and excluded from the prospective payment system.**

* * * *

(c) *Excluded hospitals and hospital units: classifications.* * * *

(2) *Rehabilitation hospitals.* A rehabilitation hospital must—* * *

(v) Have a director of rehabilitation who—

(A) Provides services to the hospital and its inpatients on a full-time basis;

* * * * *

(4) *Psychiatric, rehabilitation, and alcohol/drug units (distincts parts).*

* * *

(iii) A rehabilitation unit (distinct part) must—* * *

(F) Have a director of rehabilitation who—

(*1*) Provides services to the unit and to its inpatients for at least 20 hours per week;

* * * * *

(d) *Changes in the size of excluded units.*—(1) *All excluded units.* For purposes of exclusion from the prospective payment system under this section, the number of beds and square footage of each excluded unit will remain the same throughout each cost reporting period, and any change in the number of beds or square footage considered to be part of an excluded unit may be made only at the start of a cost reporting period.

(2) *Rehabilitation units.* (i) A hospital that has an excluded rehabilitation unit may increase the number of beds and the square footage of the unit by as much as ten percent for a cost reporting period if during the immediately preceding cost reporting period the number of patient days of care furnished by the unit was at least 90 percent of the total available patient days. However, neither the number of beds nor the square footage of the unit may increase by more than ten percent for any cost reporting period.

(ii) Except as specified in paragraph (d)(2)(i) of this section, the number of beds or the square footage of an excluded rehabilitation unit may be increased only if—

(A) The added beds or rooms were used to provide hospital inpatient care during all of the hospital's most recent 12-month cost reporting period; and

(B) The entire unit the hospital wishes to have excluded, including both previously excluded beds or rooms and added beds or rooms, meets the requirement in paragraph (c)(4)(iii)(A) of this section.

5. In § 405.472, paragraph (d)(2)(i) is revised to read as follows:

**§ 405.472 Conditions for payment under the prospective payment system.**

* * * * *

(d) *Medical review activities for hospitals paid under the prospective payment system.*

* * * *

(2) *DRG validation.* (i) The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to in writing on the discharge summary the principal

diagnosis, secondary diagnoses, and names of procedures performed. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's signature:

I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge." In addition, when the claim is submitted, the hospital must certify that it has on file a signed acknowledgement from the attending physician that the physician has received the following notice:

**Notice To Physicians**

Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature on the discharge summary sheet. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

* * * * *

6. Section 405.473 is amended by revising paragraph (c)(1), revising and redesignating paragraphs (c)(2) through (c)(6) as (c)(3) through (c)(7) respectively, and adding a new paragraph (c)(2) to read as follows:

**§ 405.473 Basic methodology for determining Federal prospective payment rates.**

* * * * *

(c) *Federal rates for fiscal years after Federal fiscal year 1984—(1) General rule.* HCFA will determine a national adjusted prospective payment rate, for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under §405.471, and will determine a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A. Each such rate will be determined for hospitals located in urban or rual areas within the United States and within each such region respectively, as described in paragraphs (c)(2) through (c)(7) of this section.

(2) *Geographic classifications.* (i) For purposes of this paragraph, the following definitions apply:

(A) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(B) The term "urban area" means—

(*1*) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(*2*) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term "rural area" means any area outside an urban area.

(D) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an executive Office of Management and Budget redesignation occurring after April 20, 1983.

(ii) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(A) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located. For discharges occurring during fiscal year 1985 only, if a hospital receives a lower Federal rate because the census division in which most of the hospitals are located has a lower Federal rate than the other census division in which the other part of the MSA is located, we will pay an additional amount to the hospital equal to 50 percent of the difference between the fiscal year 1985 Federal rate applicable prior to the reassignment and the fiscal year 1985 Federal rate applicable in the division to which the hospital has been assigned.

(B) The higher Federal rate is payable to all hospitals in the MSA or NECMA if an equal number of hospitals within the MSA or NECMA are located in each census division.

(3) *Updating previous standardized amounts*—(i) *For fiscal year 1985.* HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section (urban areas and rural areas within the United States, and urban areas and rural areas within each region), equal to the respective adjusted average standardized amount computed for fiscal year 1984 under paragraph (b)(7) of this section—

(A) Increased for fiscal year 1985 by the applicable percentage increase under § 405.463(c);

(B) Adjusted by the estimated amount of medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475; and

(D) Adjusted for budget neutrality under paragraph (c)(5) of this section.

(ii) For fiscal year 1986 and thereafter, HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section, equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(A) Increased by the applicable percentage increase determined under paragraph (c)(4) of this section; and

(B) Adjusted by the estimated amount of Medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the amount of payments based on the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475.

(4) *Determining applicable percentage changes for fiscal year 1986 and following.* The Secretary will determine for each fiscal year (beginning with fiscal year 1986) the applicable percentage change which will apply for purposes of paragraph (c)(3)(ii) this section as the applicable percentage increase for discharges in that fiscal year, and which will take into account amounts the Secretary believes necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In making this determination, the Secretary will consider the recommendations of the Prospective Payment Assessment Commission.

(5) *Maintaining budget neutrality for fiscal year 1985.* For fiscal year 1985, HCFA will adjust each of the reduced standardized amounts determined under paragraph (c)(3) of this section as required for fiscal year 1985 to ensure that the estimated amount of aggregate payments made, excluding the hospital-specific portion (that is, the total of the

Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for fiscal year 1985) is not greater or less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the law as in effect on April 19, 1983. The aggregate payments considered under this paragraph exclude payments for per case review by a utilization and quality control peer review organization, as allowed under section 1866(a)(1)(F) of the Act.

(6) *Computing Federal rates for urban and rural hospitals.* For each discharge classified within a Diagnosis-Related Group, HCFA will establish for the fiscal year a national prospective payment rate and will establish a regional prospective payment rate, for each region, each of which is equal—

(i) For hospitals located in an urban area in the United States or that region respectively, to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in an urban area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group; and

(ii) For hospitals located in a rural area in the United States or that region (respectively), to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in a rural area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group.

(7) *Adjusting for different area wage levels.* HCFA will adjust the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (c)(6) of this section which are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

7 In § 405.474, the introductory language of paragraph (b)(3)(i) is reprinted unchanged, and paragraph (b)(3)(i)(C) is revised to read as follows:

**§ 405.474 Determination of transition period payment rates.**

* * * *

(b) *Determining the hospital-specific rate.*

* *

(3) *Limitations on modifying calculations.* (i) The intermediary will use the best data available at the time in estimating each hosptial's base year costs and the modifications to those costs authorized by paragraph (b)(2) of this section. The intermediary's estimate of base year costs and modifications thereto is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as follows: * * *

(C) (*1*) To take into account additional costs recognized as allowable costs for the hospital's base year as the result of—

(*i*) A reopening and revision of the hospital's base year notice of amount of program reimbursement under §§ 405.1885 through 405.1889;

(*ii*) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under §§ 405.1821 or 405.1853 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement; or

(*iii*) A final administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement.

(*2*) The intermediary will recalculate the hospital's base year costs, incorporating the additional costs recognized as allowable for the hospital's base year. Adjustments to base year costs to take into account these additional costs will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order or finding, or review decision. The hospital's revised base year costs will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the revision, order or finding, or review decision.

* *

8. Section 405.476 is amended by: Revising the title; amending paragraph (a) by adding a new paragraph (a)(6); revising paragraph (g); and adding a new paragraph (i) to read as follows:

**§ 405.476 Special treatment of certain facilities under the prospective payment system.**

(a) *General rules.* * * *

(6) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA will adjust the rural Federal payment amounts for hospitals reclassified as rural, as defined in § 405.473(c)(2)(i)(D). The criteria for this adjustment are set forth in paragraph (i) of this section.

* * * *

(g) *Referral centers.*—(1) *Criteria.* HCFA will consider a hospital's request for a referral center adjustment to the hospital's prospective payment rates only if the hospital is an acute care hospital that has a provider agreement under Part 489 of this chapter to participate in Medicare as a hospital; and the hospital meets the criteria specified in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section.

(i) The hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and has 500 or more beds available for use.

(ii) The hospital has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries are furnished to beneficiaries who live more than 25 miles from the hospital.

(iii) For discharges occurring on or after October 1, 1984, the hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and the hospital meets the criteria specified in paragraphs (g)(1)(iii)(A) and (g)(1)(iii)(B) of this section and at least one of the three criteria specified in paragraphs (g)(1)(iii)(C) through (g)(1)(iii)(E) of this section.

(A) The hospital's 1981 case-mix index is at least 1.03, or, as an alternative, the hospital's case-mix index is at least 1.0303 for its first cost reporting period subject to the prospective payment system.

(B) The hospital's number of discharges (excluding discharges from subprovider units) is at least 6,000 for the hospital's most recently completed cost reporting period.

(C) More than 50 percent of the hospital's medical staff are specialists; that is, they have completed minimal training requirements as recognized by the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists.

(D) The hospital's inpatient population is such that at least 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

(E) At least 40 percent of all inpatients treated at the hospital are referred from other hospitals or from physicians not on the hospital's staff.

(2) *Payment to referral centers.*—(i) Payment to rural referral centers with 500 or more beds. A hospital that meets the criteria of paragraph (g)(1)(i) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473(b)(10) or (c)(6), as adjusted by the hospital's area wage index.

(ii) *Payment to all other rural referral centers.* Beginning with discharges occurring on or after October 1, 1984 a hospital that is located in a rural area (as defined in § 405.473(c)(2)(i)) and meets the criteria of paragraph (g)(1)(ii) or (g)(i)(iii) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473 (b)(10) or (c)(6), as adjusted by the hospital's area wage index.

* * * *

(i) *Hospitals reclassified as rural.* Effective with discharges occurring on or after October 1, 1984, a hospital reclassified as rural, as defined in § 405.473(c)(2)(i)(D), may receive an adjustment to its rural Federal payment amount for two successive Federal fiscal years provided that its hospital-specific portion for discharges occurring in the hospital's first cost reporting period under the prospective payment system exceeds the Federal rural rate for that same period that is adjusted for the rural area wage index and the indirect teaching adjustment factor.

(1) *First year adjustment.* A hospital that is reclassified as rural, as defined in § 405.473(c)(2)(i)(D), and whose hospital-specific portion exceeds the Federal rural rate, will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals two-thirds of the difference between the urban and rural standardized amounts reflecting the appropriate regional/national blend otherwise applicable to the fiscal year for which an adjustment is made.

(2) *Second year adjustment.* A hospital that continues to meet the definition in § 405.473(c)(2)(i)(D), will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals one-third of the difference between the urban and rural amounts reflecting the appropriate regional/national blend otherwise applicable to the fiscal year for which an adjustment is made.

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

Dated: June 21, 1984.

Carolyne K. Davis,

*Administrator, Health Care Financing Administration.*

Approved: June 28, 1984.

Margaret M. Heckler,

*Secretary.*

Editorial Note.—The following addendum will not appear in the Code of Federal Regulations.

## ADDENDUM—PROPOSED SCHEDULE OF STANDARIZED AMOUNTS EFFECTIVE WITH DISCHARGES ON OR AFTER OCTOBER 1, 1984, AND UPDATE FACTORS EFFECTIVE WITH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1984

### I. Summary and Background

In this addendum, under § 405.470(e)(2)(ii), we are proposing changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the second year of the transition period. For hospital cost reporting periods beginning October 1, 1984 through September 30, 1985, each hospital's payment per discharge will be comprised of 50 percent of the Federal rate and 50 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act). We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During Federal FY 85, the Federal rates will, for the first time, be comprised of a blend of the national rate (25 percent) and the regional rate (75 percent) as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, Federal FY 1984), the Federal rates are comprised solely of the regional rate.

As discussed in further detail in section II below, we are proposing changes in the determination of the prospective payment rates that were published in the interim final rule on September 1, 1983 (48 FR 39752) and modified in the final rule published on January 3, 1984 (49 FR 234). The changes, to be made prospectively, would affect the calculation of adjusted standardized amounts and the transition period prospective payment rates. As part of these changes, we would incorporate adjustments for the new market basket index and budget neutrality.

### II. Proposed Changes to Prospective Payment Rates and DRG Weighting Factors for FY 85

Section 1886(d)(3)(A) of the Act specifies that the FY 84 Federal prospective payment rates be updated for FY 85. In accordance with section 1886(b)(3) of the Act, the FY 84 urban and rural average standardized amounts are to be increased by the applicable market basket index plus one percent.

The basic methodology for determining a hospital's prospective payment rates is set forth in §§ 405.473 and 405.474 of the regulations. For a more detailed discussion of that methodology, we refer the reader to the interim final rule (48 FR 39752) and the final rule (49 FR 234).

Below, we discuss the manner in which we are proposing to change some of the factors or methodology used for determining the prospective payment rates. Note that these proposed changes are supported by new studies and data, and that we may wish to consider further studies and even more recent data, which may change the proposed rates, when publishing the final methodology and rates. These changes would be effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984.

#### *A. Calculation of Adjusted Standardized Amounts*

##### 1. Development of a New Hospital Wage Index

Section 1886(d)(2)(C)(ii) of the Act requires that, in computing Federal prospective payment rates for the first year of the prospective payment rates for the first year of the prospective payment system (FY 84), we standardize the average cost per case of each hospital used in the data base for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts for the nine census regions and national rates (Table 1 of this addendum) be adjusted for a hospital's area wage level as part of the methodology for determining the prospective payment to a hospital. To fulfill both requirements, we constructed a wage index to eliminate variations in the average cost per case.

We used hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS') ES 202 reporting system to construct the wage index, applied under both of the above provisions of the Act, for computing prospective payments to hospitals during FY 84. The BLS ES 202 system

compiles information on employment and total wages for workers covered by unemployment insurance.

We have used this BLS data since 1979 when we began incorporating an area wage index into the methodology for computing the hospital routine services cost limits (the section "223" cost limits) authorized under section 1861(v) of the Act, and for determining the total inpatient operating cost limits enacted under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248). We were aware, from the outset, of certain limitations in the data, especially in regard to the lack of information on hours of employment or full-time equivalents (FTEs). The BLS data only provide information on the number of workers employed at a hospital. As a result, area wage indexes produced from these data do not distinguish between part-time and full-time employees.

Although we recognize these shortcomings at the time, the disadvantages were outweighed by the advantage of being able to utilize the best data available. In addition, since the wage indexes were used only for computing cost limits rather than the actual payment amounts, we believed the technical deficiencies of the data had less of an impact on hospitals.

In response to the interim final rule published in the Federal Register on September 1, 1983, we received many comments concerning the nature and potential impact of deficiencies in the BLS data used to construct the hospital wage index on the propriety of the prospective payment rates. Rural hospitals in particular expressed their concern regarding the inability of the BLS data to account for regional differences in part-time employment.

Numerous hospitals maintained that they traditionally employed a greater proportion of part-time employees. To the extent that this is true, these providers pointed out that the wage indexes would be understated, which would result in lower prospective payments than would otherwise be warranted.

We concluded from these comments that we needed to critically examine those deficiencies in the wage index that seemed of greatest concern, especially the part-time employment issue, in order to ensure the accuracy of the payment rates, and thereby to maintain confidence in the equity of the prospective payment system. For this reason, we established a joint workgroup with representatives of the hospital industry from across the country to evaluate alternatives to the current wage index. The workgroup's participants included representatives from HCFA, the American Hospital Association, and State hospital associations from Connecticut, Ohio, Louisiana, Nebraska, and California.

The workgroup concluded that addressing all of the deficiencies of the present BLS wage index could only be a long range process due to the need to identify or create a data base specifically designed to overcome all of the techical limitations of the BLS data that may distort the wage index values. These limitations include not only the inability of the data to recognize regional variations in part-time employment, but also the apparent insensitivity of the data to other factors as well, including area differences in hospital occupational mix, overtime utilization, and length of work week.

However, the workgroup's consensus was that we should focus the immediate effort on what was agreed to be the most serious deficiency, the inability of the BLS data to control for area differences in the utilization of part-time employees, by obtaining more accurate data from hospitals subject to the prospective payment system. It was recognized that obtaining the essential data and performing the necessary analysis would have to be accomplished under severe time constraints in order to permit some assessment of the alternative data before the FY 85 update of the prospective payment system. Because of these constraints, the workgroup concluded that the Medicare cost report should be used as the primary source for our obtaining the required salary data. Because of the need to supplement cost report records with additional information on hours of work that would address the part-time employment problem, the workgroup also concluded that the Medicare fiscal intermediaries would be in the best position to collect the additional data from hospitals.

The workgroup reviewed and approved a survey form and instructions for collecting hospital financial data that would permit the analysis of options for the construction of an improved wage index. The survey instrument provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report for hospital fiscal years ending in calendar year 1982. This period was selected because calendar year 1982 is the most recent period for which intermediaries could be expected to have a complete set of hospital cost reports. Because the number of reported hospital employees in the BLS data currently used to construct the wage indexes does not distinguish between full-time and part-time employment, the survey was designed to permit the construction of wage indexes based on the average *hourly* hospital wage in each urban/rural area under the prospective payment system. In addition, in order to make the indexes as comparable as possible for all locales despite variation in hospital employment practices, the survey also provided for the exclusion of compensation paid to contracted personnel, interns and residents, personnel employed in non-hospital cost centers, and hospital-based physicians.

Copies of the survey form are available from HCFA on request.

After obtaining the required approval for use of the form from EOMB on March 8, 1984, we initiated the survey through the Medicare fiscal intermediaries on March 16, 1984. As of May 8, 1984, survey forms from 5,538 U.S. non-Federal short term acute care hospitals had been completed and returned to our central office.

*Explanation of Survey.* For each hospital for which a survey form was submitted, we computed its adjusted gross hospital salaries. The salaries were calculated to exclude wages for contracted labor, interns and residents, personnel employed in nonhospital cost centers, and hospital-based physicians. In order to reduce the effects of differences in hospital accounting periods, each hospital's adjusted gross salaries were inflated through the end of calendar year 1982 using the annual rate of increase in the wages and salaries portion of the hospital market basket. The annual rate used was 11.0 percent. The resulting inflated gross hospital salaries were divided by the corresponding total number of paid hours worked to yield an average hourly wage for each hospital.

Initial analysis of the survey forms revealed that of the 5538 hospitals for which we received data, approximately 3300 contained questionable entries. The data were questionable for a variety of reasons. For example, the figures on total paid hours worked that were reported for one particular State did not conform to the survey instructions but represented "productive hours" an alternative definition of worker output, therby distorting the results for this State. Numerous survey forms from hospitals in other locales failed to properly exclude salaries for hospital-based physicians. In many instances where this type of error occurred, the total remuneration for these physicians was inappropriately excluded, resulting in an average hourly hospital wage that we believe grossly understates actual compensation levels in certain locales

compared to other areas. Initially, we also received a significant number of survey records that failed to exclude paid hours for the excluded categories of hospital employees.

We attempted to obtain corrected data for all hospitals in which we detected errors in the survey reports. We contacted each fiscal intermediary serving hospitals for which questionable data had been submitted. In many instances, repeated contacts were made. Despite these efforts, of the 5538 hospitals in the survey data base, we were unable to obtain either an adjusted gross hospital salary figure or the corresponding total paid hours worked for 444 hospitals, thereby making it impossible to compute an average hourly wage for these hospitals. In addition, usable data were not submitted for 10 locales for which wage indexes are required. Also, the data for an additional 237 hospitals yielded an average hourly wage either less than $3.35, the minimum wage in 1982, or greater than $19.58. The latter figure is 2½ times the estimated national average hourly wage of $7.83 for nonsupervisory hospital workers in December 1982 as reported in the February 1984 edition of BLS's *Employment and Earnings*. We believe the survey data from hospitals with an average hourly wage less than the 1982 minimum wage or greater than $19.58 are questionable. Thus, after extensive attempts to correct the survey reports were made, data from 681 hospitals, representing approximately 12 percent of the providers in the survey data base, were, on their face, suspect as to their accuracy. This figure does not reflect survey reports from areas in which the quality of the data are questionable for other reasons, some of which are discussed above.

Although we attempted to obtain corrected data for all hospitals in which we discovered errors in the survey reports, we believe the quality of the survey data, even after including corrected records, is suspect in enough areas so that a reliable index cannot be constructed at this point, even assuming that values for some areas could be estimated by reference to the relationship between the HCFA and BLS data sets. Preliminary analysis reveals that implementation of survey-based wage indexes that conform computationally as closely as possible to the 1981 BLS indexes currently used in the prospective payment system would adversely impact a significant number of hospitals without any assurance that the result represented a true measure of area wage levels. While other hospitals, of course, would benefit, we do not believe it would be equitable to implement a new wage index developed from a survey in which a high proportion of records are either incorrect or otherwise suspect.

Therefore, the prospective payment rates proposed in this rule were developed from the same 1981 BLS wage indexes previously published on September 1, 1983 (see 48 FR 39871). We are publishing in this rule only those revised 1981 BLS wage indexes that reflect all corrections implemented subsequent to their initial publication on September 1, 1983. (See section II.B.1. of this addendum.)

Although we could have calculated new indexes based on 1982 BLS ES 202 data, we have elected not to do this as we would only be updating and not correcting the existing technical deficiencies in the BLS data base.

During the next several weeks, we will be working to overcome the deficiencies in the survey data and evaluating alternatives for correcting the part-time employment distortion that exists in the 1981 indexes. It is our intention to analyze alternatives using data from accurately completed survey forms obtained from the fiscal intermediaries serving hospitals in each urban/rural locale based on the latest available MSA/NECMA definitions announced by EOMB. We shall continue to correct errors in the data reported on the survey forms as we detect them in order to obtain a data base of sufficiently high quality to permit revision of the wage indexes. However, our ability to attain this objective depends in large measure on factors whose timing is difficult to predict or control, such as our ability to thoroughly identify remaining errors in the data base and obtain accurate data from hospitals where the present records are questionable. We wish to note in this regard that the area wage index is a relative measure so that correction of distortions has the effect of both raising the value for some areas and lowering values for other areas. This is a fact inherent in any scale of relativity. Implicit in the notion of relative differences in the premise that where, because of imprecision in the measure, some values are understated, other values must necessarily be overstated.

Therefore, we believe it is important to point out that even if the final survey data are sufficiently accurate to construct more refined wage indexes, there will be, in all likelihood, substantial differences for many areas between any new indexes and the 1981 BLS indexes. We are specifically soliciting comments on resolving all aspects of the part-time employment issue through the use of a new wage index.

It should also be noted that the final wage indexes ultimately adopted for FY 85 may affect the amount of the education adjustment factor (presently 5.795 percent) used in determining the indirect medical education costs in accordance with section 1886(d)(2)(C)(i) of the Act. To the extent wage indexes published in the final rule are revised, we will adjust the education adjustment factor, as appropriate.

2. Grouping of Urban/Rural Averages Within Geographic areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts per discharge must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation.

For FY 85 the Federal rates will be comprised of the national rate (25 percent) and the regional rate (75 percent) (section 1886(d)(1)(D) of the Act). Therefore, we are proposing to revise Table 1 in this addendum to add a category for national averages so that Table 1 would contain 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related and nonlabor-related portions). The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural groups include hospitals from all urban or rural geographic areas, respectively. However, certain national adjustment factors, such as those for outliers and budget neutrality, differ slightly from the regional adjustment factors.

EOMB may announce revised listings of MSA/NECMA designations that are used in calculating the standardized amounts. If EOMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in the addendum to the final rule. As stated in the January 3, 1984 final rule (49 FR 253), these changes in designation will not be recognized in the prospective payment rates until the beginning of each new fiscal year following the announced changes.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the urban and rural average standardized amounts using the applicable target rate percentage specified in section 1886(b)(3)(B) of the

Act. The target rate to be applied is defined under this section of the law as the estimated increase in the hospital market basket of goods and services plus one percent. The market basket identifies the most commonly used categories of hospital inpatient operating expenses and weights each category to reflect the estimated proportion of total hospital operating expenses attributable to that category.

MARKET BASKET PLUS 1 PERCENT

| Calendar year | (Percentage) |
|---|---|
| 1984 | 7.0 |
| 1985 | 7.5 |
| 1986 | 8.1 |

Because we are required to update the standardized amounts and the hospital-specific portion of the FY 85 prospective payment rates using the market basket rate of increase plus one percent, we are also prosposing to apply these rates in determining the target amounts for those hospitals that are excluded from the prospective payment system but subject to the target rate of increase limits specified in § 405.463. These target rate percentages would be applied in computing hospital target amounts for cost reporting periods beginning on or after October 1, 1984.

4. Adjustments to Average Standardized Amounts

a. Part B Costs. Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital or by an entity under arrangements made by the hospital. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, we are proposing for FY 85 that the amounts be increased by .13 percent. (We note that this figure (.13 percent) represents the same percentage increase that is used in FY 84.)

This is an estimate made by HCFA's Office of Financial and Actuarial Analysis of the costs of inpatient hospital services previously billed to HCFA.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made in the rate of increase base period costs in recognition that certain hospitals were required to enter the Social Security system and being paying FICA taxes as of January 1, 1984. We estimate the amount of the adjustment for FY 85 to the urban and rural regional and national standardized amounts necessary to account for additional costs of payroll taxes for hospitals entering the Social Security system to be .18 percent, which is the same percentage increase as in FY 84. Therefore, we are proposing to increase the standardized amounts by this percentage.

c. *Outliers.* Section 1886(d)(5)(A) of the Act requires that in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act further directs that outlier payments may not be less than five percent or more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the interim final rule (48 FR 39767), we estimated that outlier payments for FY 84 would be 6.0 percent of total payments (including both standard prospective payment system rates and outlier payments). We made the maximum estimate permitted under the law in order to ensure that we would provide an adequate margin for outlier payments. To achieve this result, we multiplied both the standardized amounts and the hospital-specific portion by .943 (a 5.7 percent reduction factor). For the final rule (49 FR 262), in light of comments received that stated that the uniform 5.7 percent reduction factor benefits facilities with a greater incidence of outliers and penalizes those hospitals with relatively few outliers, we correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act further directs that outlier payments may not be less than five percent or more than six percent of total payments projected to be made based on the prospective payment rates in any year.

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We think it is desirable to reduce the size of the reserve for outliers from 6.0 percent of total payments, which we had established for FY 84, to 5.0 percent of total payments while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantages to hospitals. While we could continue to set the prospective payment rates as if outliers would approximate 6.0 percent of total payments, we are mindful that this results in less payment to all hospitals for typical cases. We believe that it is in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and include the corresponding amount in the standardized amounts thereby providing hospitals with somewhat larger Federal rates for typical cases. We note that this has the effect of increasing the predictability of total payments for hospitals in that less of the total is attributable to those cases that meet particular qualifications. As we indicated in the final rule (49 FR 265), we will pay for any outlier that meets the criteria in § 405.475, even if the aggregate outlier payments result in more than five percent (as proposed) of total payments. For those hospitals that experience a higher incidence of outliers, we believe that, in the aggregate, other adjustments (such as the medical education adjustment) are in place to assist these hospitals.

In accordance with these requirements, we have calculated the factors necessary to adjust the national and regional standardized amounts for FY 85 to take into account outlier payments of five percent of total payments on the blended Federal rates. The proposed outlier adjustment factors are as follows:

Regional—.950
National—.950

We are proposing, as well, to revise the day outlier and cost outlier threshold to ensure that total estimated outlier payments for FY 85 would be 5.0 percent of total payments. We are proposing that a discharge in FY 85 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 22 days or 1.94 standard deviations. We refer the reader to Table 5 in this addendum for the proposed DRG outlier thresholds.

For FY 85, we are also proposing that a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 2.0 times the Federal rate for the DRG or $13,000.

The methodology for calculating these factors is explained in detail in section V of this addendum. It should be noted that the regional outlier reduction value (.950) represents an adjustment to the standardized amounts for FY 85 but without regard to reductions for outlier payments in FY 84.

d. *Budget Neutrality.* In accordance with section 1886(e)(1) of the Act, the prospective payment should result in aggregate program reimbursement equal to "what would have been payable" under the reasonable cost provisions of prior law; that is, for FYs 84 and 85, the prospective payment system must be "budget neutral"

The prospective payment rates are a blend of a hospital-specific portion and a Federal portion. Further, effective October 1, 1984, the Federal portion will be a blend of national and regional rates. As a result, we must determine three budget neutrality adjustments—one each for both the national and regional rates, and one for the hospital-specific portions. The methodology we propose to use to make these adjustments is explained in detail in section V of this addendum.

To summarize, each of these factors is computed based on a comparison of estimated average payment per case (before adjustment for budget neutrality) to estimated average reimbursement under the law in effect before the enactment of section 1886(d) of the Act. We have estimated average payments for both regional and national rates based on early data on payments under the prospective payment system. Further, our estimates take into account the various regulations changes and other matters proposed in this document. We intend to continue to analyze the data emerging from the prospective payment system. Based on the data and analysis available at the time we publish the final rule and rates, we may make further changes that affect the magnitude of the budget neutrality adjustment factors. Such changes would, in turn, affect the regional and national standardized amounts and the hospital-specific rates.

Based on the data available to date, we have computed the following Federal rate budget neutrality adjustment factors:

Regional—.947

National—.950

As with the regional outlier adjustment factor, the regional budget neutrality factor represents estimated payments under the prospective payment system for FY 85 as compared to estimated reimbursement under the law in effect prior to Pub. L. 98–21, for the same period (FY 85), without regard to the reduction for either outlier payments in FY 84 or budget neutrality in FY 84.

### *B. Adjustments for Area Wage Levels and Cost-of-Living in Alaska and Hawaii*

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section C. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as revised in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates.

#### 1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located. The wage index values that intermediaries would apply in computing the hospital Federal payment rates are those published in Tables 4a and 4b in the interim final rule (48 FR 39871 ff) with the addition of the following revised wage indexes that became effective for the indicated areas after October 1, 1983.

REVISED WAGE INDEX FOR CERTAIN URBAN AREAS

| Urban area | Wage index | Effective date |
|---|---|---|
| (Constituent Counties or County Equivalents): | | |
| Fort Worth-Arlington, TX; Johnson, TX; Parker, TX; Tarrant, TX. | 0.9847 | Feb. 9, 1984. |
| Lincoln, NE; Lancaster, NE | .8709 | Do. |
| Davenport-Rock Island-Moline, IA-IL; Scott, IA; Henry, IL; Rock Island, IL. | .9840 | Mar. 23, 1984. |
| Grand Forks, ND | .9893 | Do. |

REVISED WAGE INDEX FOR CERTAIN URBAN AREAS—Continued

| Urban area | Wage index | Effective date |
|---|---|---|
| Richmond-Petersburg, VA; Charles City Co., VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA. | .9299 | Do. |
| Sacramento, CA; Eldorado, CA; Placer, CA; Sacramento, CA; Yolo, CA. | 1.1454 | Do. |
| West Palm Beach-Boca Raton-Delray Beach, FL; Palm Beach, FL. | 1.0010 | Do. |
| Rural area: Kentucky | .8162 | Do. |

#### 2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 85, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE—COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

| | |
|---|---|
| Alaska—All areas | 1.25 |
| Hawaii: | |
| Oahu | 1.225 |
| Kauai | 1.15 |
| Maui | 1.20 |
| Molokai | 1.20 |
| Lanai | 1.20 |
| Hawaii | 1.125 |

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM-591 letter series.)

### *C. DRG Weighting Factors*

In both the interim final rule (48 FR 39889) and the final rule (49 FR 332), we explained that, as a part of applying budget neutrality, we were adjusting the Federal standardized amounts downward to reflect a 3.38 percent expected improvement in hospitals reporting of patient diagnoses and procedures performed on the Medicare hospital bill. This improvement in the accuracy and completeness of reported patient information was anticipated because the prospective payment system makes payments to hospitals based on a patient's diagnosis and procedures performed. Thus, the

prospective payment system offers hospitals an incentive to report complete and accurate medical information on the billing records sent to the fiscal intermediaries, whereas the previous system, based as it was on the reimbursement of incurred costs, without regard to a patient's condition, provided no such incentive.

Increasing the accuracy and completeness of medical data reported on the bills has the effect of raising hospital case-mix index values which in turn results in higher payments to hospitals. The emerging experience under the prospective payment system indicates that the average case mix submitted on the inpatient bills has increased more than the 3.38 percent anticipated for FY 84. To correct for the distortion caused by this higher than expected case mix, we must revise the payment system for FY 85.

The amount of the anticipated increase in hospital payments attributable to the improvement in reporting was based on a study of hospital bills that were coded for the 1981 MEDPAR file and bills coded after medical review. The carefully and completely coded bills were provided from the PSRO Uniform Hospital Discharge Data Set (UHDDS) data base. The study found that reimbursement under the prospective payment system using the PSRO data would be 3.38 percent higher than reimbursement using the MEDPAR data. Since the prospective rates are set using the MEDPAR data, actual payments under the prospective payment system would have been higher than predicted from the MEDPAR data.

The adjustment to the prospective payment rates could have been accomplished in a number of different ways, but because the data used to compute the estimated impact on hospital payments did not reflect actual experience under the prospective payment system, it was considered highly likely that the case mixes of hospitals under prospective payment would vary from the initial estimates based on the PSRO data. Comparing the MEDPAR coding of discharges with the PSRO coding of discharge data could only reveal some measure of the degree to which improvement in the overall reporting of patient data could be expected. This analysis could not reflect changes in case mixes due to other reasons, such as a hospital's decision to specialize in certain DRGs with relatively high relative weights. Therefore, for the first year of the prospective payment system, it was decided to adjust the Federal standardized amounts through the budget neutrality mechanism since the methodology would be reviewed in the second year and could be easily updated based on more current data.

As part of HCFA's prospective payment monitoring system, we have been generating monthly case-mix index values for each hospital under the prospective payment system. Based on hospital bills received through March 1984, which include 896,000 discharges billed under the prospective payment system, we have observed that hospital case-mix index values have increased an average of 5.85 percent over the values published in the interim final rule. This increase reflects the difference between the mix of cases in the 1981 MEDPAR file and the mix of cases actually reported under the prospective payment system.

To determine the degree of difference, we computed a separate case-mix index for each hospital for each month in which we received bills under the system by multiplying the number of discharges for each DRG by the relative weight for that DRG, summing the products, and then dividing that sum by the number of total discharges for that month and hospital. The discharge weighted average prospective payment case-mix index for all hospitals and months in the file was 1.10299.

We then computed a comparable average case mix for the 1981 MEDPAR file. This was done by computing a case-mix index for each hospital on the MEDPAR for each month in 1981 and determining a weighted average of the MEDPAR case-mix indices using the FY 84 prospective payment system discharges already reported to us through March 1984 as weights.

This automatically excludes data for hospital months with no prospective payment bills. This also compensates for any biases that could have been due to seasonal variations, hospital cost reporting period distributions, and the timeliness of submitting bills. The average MEDPAR case-mix index for all hospitals reporting bills under the prospective payment system was 1.04207

We then computed the ratio of the average MEDPAR case-mix index to the average prospective payment case-mix index. This ratio is 1.0585.

The following example illustrates the methodology for computing the case-mix improvement ratio.

January 1984 PPS Discharges Already Reported to us by March 1984 by DRG

| | Hospital A | Hospital B | Hospital C |
|---|---|---|---|
| DRG X (weight .800) | 4 | 0 | 0 |
| DRG Y (weight 1.000) | 20 | 20 | 0 |
| DRG Z (weight 1.200) | 41 | 15 | 0 |
| Total | 65 | 35 | 0 |
| January 1981 MEDPAR case mix | 1.060 | 1.010 | .957 |
| January 1981 MEDPAR discharges | 900 | 750 | 850 |

The case mix for January 1984 is the DRG relative weights multiplied by the number of discharges, summed, and then divided by the total number of discharges. For example,

$(.800\times4)+(1.000\times20)$
$+(1.200\times41)+(1.000\times20)$
$+(1.200\times15)=110.4$

$110.4-100+1.104$

The comparable MEDPAR case mix for January is the January 1981 MEDPAR case mix multiplied by January 1984 discharges, summed, and then divided by the total number of January 1984 discharges.

For example, $(1.060\times65)+(1.010\times35)$
$+(.957\times0)=104.25$

$104.25-100+1.0425$

Since hospital C did not contribute to the January 1984 case mix, it does not contribute to the comparable MEDPAR case mix. It may be that either we had not yet received January 1984 prospective payment system bills by March 1984 from hospital C, or that hospital C was not being reimbursed under the prospective payment system in January 1984.

The increase in case mix is computed by dividing 1.104 by 1.0425 which yields 1.059 for this example.

Since this computed increase in the prospective payment case-mix index values is derived from prospective payment discharge data, we are more confident that it reflects changes not only in improved medical record keeping and reporting of patient diagnoses, but also other changes in hospital behavior. For example, the higher observed case-index values maybe the result of conscious management decisions on the part of hospital staffs to treat some of the less complicated cases without resorting to inpatient services or to specialize more strongly in certain DRGs having relatively high relative weights, and thereby increase the proportion of total admissions currently assigned to high weighted DRGs.

Because the calculated increase in hospital case mix is based on a more comprehensive analysis of changes in

hospital case mix, we expect the difference between a hospital's case-mix index value under the prospective payment system and its published index value to be a fair measure of the increment in coding which is the natural outgrowth of the early stages of adaption to the new system. We would expect that the effect of this process would stabilize over time.

Thus, for discharges occurring on or after October 1, 1984, we are proposing to reduce each DRG relative weight by an amount equal to the observed increase in hospital case-mix value over the increase projected for FY 84. That is, we are proposing to reduce the DRG relative weights. 2.4 percent by dividing each of the relative weights published in table 5 of the interim final rule (48 FR 39876) by 1.024. (We note that the relative weight for DRG 302 was corrected in a Federal Register notice (48 FR 48469).)

The decision to reduce the DRG relative weights to eliminate the distortions resulting from changes in coding practices rather than incorporating the case-mix change into the budget neturality adjustment factors is based on a number of considerations.

As explained in section V section 1886(e) of the Act requires us not only to maintain budget neutrality of total prospective payment compared to payment under the previous law, but also that the Federal and hospital-specific payments must be equal to the appropriate blend prescribed for each fiscal year. However, the hospital-specific rate changes only at the beginning of a hospital's cost reporting period. In addition, the hospital-specific blend is reduced from 75 percent to 50 percent at the beginning of a hospital's second year on prospective payment. As a result, to assure compliance with the budget neutrality provisions of the law, the budget neutrality methodology must compensate both for the phase-in of hospitals, and for the difference in the hospital-specific portions.

If we were to propose adjusting the prospective payment amounts for the increase of case mix through the budget neutrality adjustment factors, the resulting impact on the hospital-specific rates would result in an actual decrease in the hospital-specific rates beginning in FY 85 over those rates that went into effect in FY 84. By reducing the weights by 2.4 percent instead of the rates, hospital-specific rates will not be reduced as much as they otherwise would be. This, we believe, will benefit hospitals by maintaining a more even cash flow.

Another benefit of recognizing the observed increase in case mix through an adjustment to the DRG weights rather than the rates is that reducing payment in this manner is more equitable to those hospitals with cost reporting periods beginning early in the Federal fiscal year. This is because the adjustment to compensate for average growth in case mix would take effect on October 1, 1984 rather than being phased in through the budget neutrality adjustment of the hospital-specific portion. By reducing the DRG weights and the resulting payment amounts at the beginning of the Federal fiscal year, rather than with each hospital cost reporting year, hospitals with cost reporting periods beginning earlier in the Federal fiscal year would not have to subsidize those hospitals with cost reporting periods beginning later in the Federal fiscal year. The following example can be used to illustrate this point.

Consider two hospitals, A and B. Hospital A starts its cost reporting period on January 1 and Hospital B starts its cost reporting period on July 1. Both hospitals have hospital-specific rates of $2,500 and 1200 discharges each for FY 85. Suppose that the budget neutrality goal for FY 85 averages $2542, and that the market basket plus 1 percent increase for each hospital is 7.4 percent.

Both hospitals have a reported case-mix 2.4 percent higher than expected. In the absence of an adjustment, each hospital would average, in FY 85, $2,500×1.024 = $2,560 hospital-specific portion payment per discharge before the start of a new cost reporting period, and $2,560×1.074 = $2,749.44 hospital-specific portion reimbursement per discharge after the start of the new cost reporting period.

One option would be to adjust the hospital-specific portion of the rate for new cost reporting periods to compensate for the increment in coding. This can be computed by:

Admissions before new cost reporting period/(Hospital A) $2,560×300×.75 blend + admissions in new cost reporting period/ $2,749.44×900×BN×.5 blend

plus (Hospital B) $2,560×900×.75 blend + $2,749.44×300×BN×.5 blend equals Budget Neutality Goal: $2542×2400×.625 average blend

Solving: $2560×1200×.75 + $2749.44×1200×.5×BN = $2542×2400×.625

Budget Neutrality = .915

This implies that we can only pay $2749.44×.915 = $2516, a 1.7 percent decrease from the payment for discharges occurring in FY 85 prior to the start of the hospitals' new cost reporting periods.

Another option is to reduce the relative DRG weights by 2.4 percent so that the payment in FY 1985, before a new cost reporting period would be $2,560 divided by 1.024=$2,500 and after a new cost reporting period would be $2,749.44 divided by 1.024=$2,685 before budget neutrality. To compute budget neutrality:

Admissions before new cost reporting period/(Hospital A) $2,500×300×.75 blend + admissions in new cost reporting period/$2,685×900×BN×.5 blend

plus (Hospital B) $2,500×900×.75 blend + $2,685×300×BN×.5 blend equals Budget Neutrality Goal: $2542×2400×.625 average blend

Solving: $2500×1200×.75 + $2685×1200×BN×. 5=$2542×2400×.625

Budget Neutrality=.970

which implies we can pay $2,685×.970=$2604 for discharges in the new cost reporting period, a 4.2 percent increase over payment for discharges occurring in FY 85 prior to the start of the hospital's new cost reporting periods.

The difference between the $2,516 average hospital-specific portion rate using budget neutrality to adjust for the expected increase in hospital case-mix indexes and the $2,604 hospital-specific portion rate using a reduction in the DRG relative weights results in a 3.5 percent increase in the average hospital-specific payment rate. It should be noted that even though the difference in the hospital-specific rates between the two options for the new cost reporting years differed by 3.5 percent, the difference in the hospital-specific portion average payments between the two options for the old cost reporting periods differed by 2.4 percent. This example illustrates that cash flow patterns are more managable if the DRG relative weights are adjusted, enabling the adjustment to be spread evenly throughout the fiscal year. Further, if the first option was adopted, questions of equity would arise because hospital A would be subsidizing hospital B due to the fact that hospital A would suffer a reduced hospital-specific rate for nine months in FY 85 so that hospital B could enjoy a higher hospital-specific rate for nine months in FY 85. Therefore, we believe that the adoption of the option to reduce the relative weights is more equitable and manageable.

All inpatient hospital discharges are categorized according to one of 470 DRGs, as discussed in the interim final

rule (48 FR 39760). We believe that the titles of five DRGs, as issued in Table 5 of the interim final rule, are inaccurate or misleading. For example, the title of DRG 316 should have been "Renal Failure" instead of "Renal Failure Without Dialysis" Accordingly, revised titles for DRGs 57 58, 129, 316 and 317 are included in Table 5 of this addendum.

*D. Calculation of Prospective Payment Rates for FY 85*

FY 85 represents the second year of the three-year transition period.

*General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or After October 1, 1984 and Before October 1, 1985*

Prospective Payment Rate=Hospital Specific Portion+Federal Portion

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience and is derived from the following formula:

(Base-year Costs)×Updating Factor×50 percent×DRG Weight (Case-mix Index)

For a more detailed discussion of the hospital-specific portion, we refer the reader to the interim final rule (48 FR 39772).

a. *Budget Neutrality.* The hospital-specific portion of the payment rates will be adjusted for cost reporting periods that begin between October 1, 1983 and October 1, 1985, to maintain budget neutrality in accordance with section 1886(e)(1)(A) of the Act. The hospital-specific portion of the rate is set at 50 percent in the hospital's second transition period.

An adjustment will be made to the otherwise applicable target rate percentage to maintain budget neutrality of the hospital-specific portion of the payment. To determine the necessary adjustment, we estimated what the average payment per case would have been under the reasonable cost methodology under the law in effect before enactment of Pub. L. 98–21. This estimate is compared to a projection of average payment per case based on the hospital-specific portion of the prospective payment amount. The methodology we used in making these estimates and comparisons is explained in further detail in section V of this addendum. We are proposing that the applicable factor for adjusting the hospital-specific portion to maintain budget neutrality in FY 85 is .987 This factor has been included in the updating factor discussed in section b. below.

b. *Updating Factor.* For cost reporting periods ending on or after September 30, 1984 and before August 31, 1986, we are proposing to apply an update factor to a hospital's previous hospital-specific rate that is equal to the compounded applicable target rate percentage (as applied under the rate of increase limits in § 405.463) as adjusted by a budget neutrality factor of .987. The table below sets forth the updating factors applicable to discharges in FY 85.

| If cost reporting period ends | And second cost reporting period under PPS ends | Updating factor |
|---|---|---|
| Sept. 30, 1984 | Sept. 30, 1985 | 1.05379 |
| Oct. 31, 1984 | Oct. 31, 1985 | 1.05020 |
| Nov. 30, 1984 | Nov. 30, 1985 | 1.05081 |
| Dec. 31, 1984 | Dec. 31, 1985 | 1.06103 |
| Jan. 31, 1985 | Jan. 31, 1986 | 1.06152 |
| Feb. 28, 1985 | Feb. 28, 1986 | 1.06201 |
| Mar. 31, 1985 | Mar. 31, 1986 | 1.06250 |
| Apr. 30, 1985 | Apr. 30, 1986 | 1.06300 |
| May 31, 1985 | May 31, 1986 | 1.06349 |
| June 30, 1985 | June 30, 1986 | 1.06393 |
| July 31, 1985 | July 31, 1986 | 1.06440 |
| Aug. 31, 1985 | Aug. 31, 1986 | 1.06497 |

If a hospital's cost reporting period ends on a day other than those listed above, the update factor for the month nearest to (that is, either before or after) the actual ending date is used. However, for those cases in which a hospital's cost reporting year ending date for the first year under the prospective payment system (column 1 in the table shown above) does not match the ending date of the second cost reporting year under the prospective payment system (column 2 in the table shown above), the fiscal intermediary contacts HCFA for the appropriate adjustment factor.

c. *Calculation of Hospital-Specific Portion.* The hospital-specific portion of a hospital's payment rate for a given discharge is calculated by:

*Step 1*—Multiplying the hospital-specific rate (*Base-year costs*)×(Updating factor) (Case-mix index) by 50 percent, and

*Step 2*—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge.

The result is the hospital-specific portion.

d. *New Providers.* Hospitals that have not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed without regard to the hospital-specific portion. Thus, new providers are paid a blend of 75 percent of the appropriate Federal regional rate and 25 percent of the Federal national rate for discharges occurring on or after October 1, 1984 and before October 1, 1985.

2. Federal Portion

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the Federal portion of the hospital's total prospective payment will be 50 percent of the hospital's payment amount. Beginning with discharges occurring on or after October, 1, 1984, the Federal portion is comprised of a blend of the Federal regional rate (75 percent) and the Federal national rate, (25 percent).

III. Summary of Prospective Payment Rate Changes

We are proposing to make the following changes in determining of prospective payment rates for FY 85:

*A. Calculation of Adjusted Standardized Amounts*

- Update the market basket index.
- List the wage indexes revised subsequent to September 1, 1983.
- Update the cost-of-living adjustment factors for hospitals in Alaska and Hawaii.
- Revise the adjusted standardized amounts to contain 20 standardized amounts, that is, nine regional figures and a national figure for labor-related and nonlabor-related amounts (Table 1).
- Adjust the average standardized amounts upward to reflect the estimated costs under Part B and for FICA taxes.
- Adjust the average standardized amounts downward to remove the estimated costs for outliers.
- Adjust the average standardized amounts to reflect budget neutrality.

*B. Calculation of Prospective Payment Rates*

- Determine a new target rate percentage factor for computing the hospital-specific portion that incorporates an adjustment for budget neutrality.
- Determine total prospective payment based on 50 percent Federal portion and 50 percent hospital-specific portion.
- Determine Federal portion based on 75 percent of the Federal regional rate and 25 percent of the Federal national rate.
- Reduce the DRG relative weights for increases in case mix based on bills submitted under the prospective payment system.

## IV Tables

This section contains the tables referred to throughout the preamble to the proposed rule and in this addendum.

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

| Region | Urban | | Rural | |
|---|---|---|---|---|
| | Labor related | Nonlabor related | Labor related | Nonlabor related |
| 1. New England (CT, ME, MA, NH, RI, VT) | 2,463.34 | 671.14 | 2,106.13 | 509.17 |
| 2. Middle Atlantic (PA, NJ, NY) | 2,214.44 | 663.25 | 2,096.26 | 516.39 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 2,305.84 | 614.61 | 1,896.74 | 429.08 |
| 4. East North Central (IL, IN, MI, OH, WI) | 2,461.45 | 715.43 | 2,060.28 | 480.63 |
| 5. East South Central (AL, KY, MS, TN) | 2,093.46 | 547.03 | 1,913.31 | 401.48 |
| 6. West North Central (IA, KS, MN, MO, NB, ND, SD) | 2,401.03 | 636.44 | 1,922.71 | 412.49 |
| 7. West South Central (AR, LA, OK, TX) | 2,256.85 | 601.98 | 1,852.74 | 400.01 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 2,217.46 | 638.98 | 1,920.58 | 448.94 |
| 9. Pacific (AK, CA, HI, OR, WA) | 2,334.09 | 748.21 | 2,007.20 | 523.50 |
| 10. National | 2,327.14 | 666.31 | 1,948.67 | 439.41 |

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 1 | 1 | SURG | CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA | 3 2762 | 19 4 | 41 |
| 2 | 1 | SURG | CRANIOTOMY FOR TRAUMA AGE >17 | 3 2060 | 15 8 | 38 |
| 3 | 1 | SURG | * CRANIOTOMY AGE <18 | 2.8798 | 12.7 | 35 |
| 4 | 1 | SURG | SPINAL PROCEDURES | 2.1926 | 16.0 | 38 |
| 5 | 1 | SURG | EXTRACRANIAL VASCULAR PROCEDURES | 1 6387 | 9 8 | 31 |
| 6 | 1 | SURG | CARPAL TUNNEL RELEASE | 3899 | 2.6 | 8 |
| 7 | 1 | SURG | PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE >69 +/OR C.C. | 1.0038 | 5.3 | 27 |
| 8 | 1 | SURG | PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE <70 W/O C.C. | .7069 | 4 1 | 23 |
| 9 | 1 | MED | SPINAL DISORDERS + INJURIES | 1.3631 | 9.1 | 31 |
| 10 | 1 | MED | NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C. | 1.2780 | 9.6 | 32 |
| 11 | 1 | MED | NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C C. | 1 2251 | 8.5 | 31 |
| 12 | 1 | MED | DEGENERATIVE NERVOUS SYSTEM DISORDERS | 1.0875 | 9.4 | 31 |
| 13 | 1 | MED | MULTIPLE SCLEROSIS + CEREBELLAR ATAXIA | .9912 | 8.9 | 31 |
| 14 | 1 | MED | SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA | 1.3210 | 9.9 | 32 |
| 15 | 1 | MED | TRANSIENT ISCHEMIC ATTACKS | .6517 | 5.6 | 24 |
| 16 | 1 | MED | NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C. | .8391 | 7.4 | 29 |
| 17 | 1 | MED | NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C | .8195 | 7.2 | 29 |
| 18 | 1 | MED | CRANIAL + PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C. | 7729 | 6 6 | 29 |
| 19 | 1 | MED | CRANIAL + PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C. | .6812 | 5.7 | 28 |
| 20 | 1 | MED | NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS | 1 2833 | 7.6 | 30 |
| 21 | 1 | MED | * VIRAL MENINGITIS | 6153 | 4.5 | 15 |
| 22 | 1 | MED | HYPERTENSIVE ENCEPHALOPATHY | .7685 | 6.4 | 28 |
| 23 | 1 | MED | NONTRAUMATIC STUPOR + COMA | 1.1297 | 5.9 | 28 |
| 24 | 1 | MED | SEIZURE + HEADACHE AGE >69 AND/OR C.C. | .7108 | 5.6 | 26 |
| 25 | 1 | MED | SEIZURE + HEADACHE AGE 18-69 W/O C.C. | .6242 | 4.9 | 25 |
| 26 | 1 | MED | * SEIZURE + HEADACHE AGE 0-17 | .4247 | 3.3 | 13 |
| 27 | 1 | MED | * TRAUMATIC STUPOR + COMA, COMA >1 HR | 1 1102 | 4.1 | 26 |
| 28 | 1 | MED | TRAUMATIC STUPOR + COMA, COMA <1 HR AGE >69 AND/OR C.C. | 1.0450 | 5.9 | 28 |
| 29 | 1 | MED | * TRAUMATIC STUPOR + COMA <1 HR AGE 18-69 W/O C.C. | .7007 | 3.8 | 25 |
| 30 | 1 | MED | * TRAUMATIC STUPOR + COMA <1 HR AGE 0-17 | 3492 | 2.0 | 8 |
| 31 | 1 | MED | CONCUSSION AGE >69 AND/OR C.C. | .5909 | 4.6 | 27 |
| 32 | 1 | MED | CONCUSSION AGE 18-69 W/O C.C. | .4413 | 3.3 | 19 |
| 33 | 1 | MED | * CONCUSSION AGE 0-17 | .2425 | 1.6 | 5 |
| 34 | 1 | MED | OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR C.C. | .9694 | 7.1 | 29 |
| 35 | 1 | MED | OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C. | .8262 | 6.2 | 28 |
| 36 | 2 | SURG | RETINAL PROCEDURES | 6927 | 5.0 | 15 |
| 37 | 2 | SURG | ORBITAL PROCEDURES | .6498 | 3.4 | 11 |
| 38 | 2 | SURG | PRIMARY IRIS PROCEDURES | 4224 | 3.0 | 9 |
| 39 | 2 | SURG | LENS PROCEDURES | .4893 | 2 8 | 6 |
| 40 | 2 | SURG | EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17 | .3884 | 2 4 | 7 |
| 41 | 2 | SURG | * EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17 | .3608 | 1.6 | 4 |
| 42 | 2 | SURG | INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS + LENS | .5768 | 3.8 | 12 |
| 43 | 2 | MED | * HYPHEMA | .3730 | 4.2 | 12 |
| 44 | 2 | MED | ACUTE MAJOR EYE INFECTIONS | .6150 | 6.5 | 22 |
| 45 | 2 | MED | NEUROLOGICAL EYE DISORDERS | .5509 | 4.3 | 18 |

* HEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 46 | 2 | MED | OTHER DISORDERS OF THE EYE AGE >17 WITH C C | 5824 | 4.1 | 23 |
| 47 | 2 | MED | OTHER DISORDERS OF THE EYE AGE >17 W/O C C | 4945 | 3 0 | 12 |
| 48 | 2 | MED | * OTHER DISORDERS OF THE EYE AGE 0-17 | .3965 | 2 9 | 13 |
| 49 | 3 | SURG | MAJOR HEAD + NECK PROCEDURES | 2.4678 | 13.6 | 36 |
| 50 | 3 | SURG | SIALOADENECTOMY | 6992 | 4 6 | 14 |
| 51 | 3 | SURG | SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY | 6545 | 4.2 | 15 |
| 52 | 3 | SURG | * CLEFT LIP + PALATE REPAIR | 6336 | 3 8 | 11 |
| 53 | 3 | SURG | SINUS + MASTOID PROCEDURES AGE >17 | 5757 | 3 5 | 11 |
| 54 | 3 | SURG | * SINUS + MASTOID PROCEDURES AGE 0-17 | 6798 | 3.2 | 11 |
| 55 | 3 | SURG | MISCELLANEOUS EAR, NOSE + THROAT PROCEDURES | 4056 | 2.5 | 7 |
| 56 | 3 | SURG | RHINOPLASTY | 4047 | 2.8 | 8 |
| 57 | 3 | SURG | * T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE >17 | 5128 | 2 7 | 9 |
| 58 | 3 | SURG | * T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE 0-17 | .3057 | 1.5 | 3 |
| 59 | 3 | SURG | * TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17 | .3073 | 2 0 | 4 |
| 60 | 3 | SURG | * TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17 | .2581 | 1.5 | 3 |
| 61 | 3 | SURG | * MYRINGOTOMY AGE >17 | .4173 | 2.1 | 9 |
| 62 | 3 | SURG | * MYRINGOTOMY AGE 0-17 | .3048 | 1.3 | 3 |
| 63 | 3 | SURG | OTHER EAR, NOSE + THROAT O R PROCEDURES | 1 0830 | 5 8 | 28 |
| 64 | 3 | MED | EAR, NOSE + THROAT MALIGNANCY | 1.0559 | 5 7 | 28 |
| 65 | 3 | MED | DYSEQUILIBRIUM | .4743 | 4 6 | 17 |
| 66 | 3 | MED | EPISTAXIS | 4020 | 3 7 | 15 |
| 67 | 3 | MED | * EPIGLOTTITIS | 6604 | 4.3 | 17 |
| 68 | 3 | MED | OTITIS MEDIA + URI AGE >69 AND/OR C C. | .6142 | 6 0 | 22 |
| 69 | 3 | MED | OTITIS MEDIA + URI AGE 18-69 W/O C C. | 5290 | 4 8 | 19 |
| 70 | 3 | MED | * OTITIS MEDIA + URI AGE 0-17 | 3610 | 3 1 | 10 |
| 71 | 3 | MED | * LARYNGOTRACHEITIS | 3505 | 2 9 | 9 |
| 72 | 3 | MED | NASAL TRAUMA + DEFORMITY | .4743 | 3 8 | 18 |
| 73 | 3 | MED | OTHER EAR, NOSE + THROAT DIAGNOSES AGE >17 | .5095 | 3 5 | 17 |
| 74 | 3 | MED | * OTHER EAR, NOSE + THROAT DIAGNOSES AGE 0-17 | 3382 | 2 1 | 9 |
| 75 | 4 | SURG | MAJOR CHEST PROCEDURES | 2 5434 | 14 4 | 36 |
| 76 | 4 | SURG | O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST WITH C C. | 1.8295 | 10 6 | 33 |
| 77 | 4 | SURG | O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST W/O C.C. | 1 7752 | 9 5 | 32 |
| 78 | 4 | MED | PULMONARY EMBOLISM | 1.3765 | 10 4 | 32 |
| 79 | 4 | MED | RESPIRATORY INFECTIONS + INFLAMMATIONS AGE >69 AND/OR C C. | 1.7561 | 11 2 | 33 |
| 80 | 4 | MED | RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 18-69 W/O C.C. | 1 7036 | 10.9 | 33 |
| 81 | 4 | MED | * RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 0-17 | 8538 | 6.1 | 28 |
| 82 | 4 | MED | RESPIRATORY NEOPLASMS | 1.1133 | 7 4 | 29 |
| 83 | 4 | MED | MAJOR CHEST TRAUMA AGE >69 AND/OR C.C. | 9579 | 8 1 | 30 |
| 84 | 4 | MED | * MAJOR CHEST TRAUMA AGE <70 W/O C C. | 7557 | 5 3 | 22 |
| 85 | 4 | MED | PLEURAL EFFUSION AGE >69 AND/OR C C | 1 1192 | 8.4 | 30 |
| 86 | 4 | MED | PLEURAL EFFUSION AGE <70 W/O C C. | 1 0954 | 7 6 | 30 |
| 87 | 4 | MED | PULMONARY EDEMA + RESPIRATORY FAILURE | 1.5165 | 7 7 | 30 |
| 88 | 4 | MED | CHRONIC OBSTRUCTIVE PULMONARY DISEASE | 1 0168 | 7 5 | 30 |
| 89 | 4 | MED | SIMPLE PNEUMONIA + PLEURISY AGE >69 AND/OR C C. | 1 0771 | 8.5 | 31 |
| 90 | 4 | MED | SIMPLE PNEUMONIA + PLEURISY AGE 18-69 W/O C.C. | .9618 | 7 6 | 29 |

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS
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*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 91 | 4 | MED | * SIMPLE PNEUMONIA + PLEURISY AGE 0-17 | 5011 | 4 6 | 14 |
| 92 | 4 | MED | INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C C | 1 0127 | 7.8 | 30 |
| 93 | 4 | MED | INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C. | 9496 | 6.9 | 29 |
| 94 | 4 | MED | PNEUMOTHORAX AGE >69 AND/OR C.C. | 1 4037 | 9.2 | 31 |
| 95 | 4 | MED | PNEUMOTHORAX AGE <70 W/O C C | 1 0988 | 7 7 | 30 |
| 96 | 4 | MED | BRONCHITIS + ASTHMA AGE >69 AND/OR C.C | .7809 | 6.9 | 24 |
| 97 | 4 | MED | BRONCHITIS + ASTHMA AGE 18-69 W/O C.C. | 7086 | 6 2 | 21 |
| 98 | 4 | MED | * BRONCHITIS + ASTHMA AGE 0-17 | .4175 | 3.7 | 11 |
| 99 | 4 | MED | RESPIRATORY SIGNS + SYMPTOMS AGE >69 AND/OR C C | 7847 | 5 5 | 27 |
| 100 | 4 | MED | RESPIRATORY SIGNS + SYMPTOMS AGE <70 W/O C.C | 7549 | 5.1 | 24 |
| 101 | 4 | MED | OTHER RESPIRATORY DIAGNOSES AGE >69 AND/OR C.C. | 8823 | 6.8 | 29 |
| 102 | 4 | MED | OTHER RESPIRATORY DIAGNOSES AGE <70 | .8813 | 6 1 | 28 |
| 103 | 5 | SURG | * HEART TRANSPLANT | .0000 | 0 | 0 |
| 104 | 5 | SURG | ** CARDIAC VALVE PROCEDURE WITH PUMP + WITH CARDIAC CATH | 6 6921 | 20 9 | 43 |
| 105 | 5 | SURG | ** CARDIAC VALVE PROCEDURE WITH PUMP + W/O CARDIAC CATH | 5 1082 | 16.2 | 38 |
| 106 | 5 | SURG | ** CORONARY BYPASS WITH CARDIAC CATH | 5 1391 | 20 4 | 42 |
| 107 | 5 | SURG | ** CORONARY BYPASS W/O CARDIAC CATH | 3.8956 | 13.5 | 35 |
| 108 | 5 | SURG | CARDIOTHOR PROC,EXCEPT VALVE + CORONARY BYPASS,WITH PUMP | 4 2730 | 13.3 | 35 |
| 109 | 5 | SURG | CARDIOTHORACIC PROCEDURES W/O PUMP | 3.6097 | 12.1 | 34 |
| 110 | 5 | SURG | MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE >69 AND/OR C.C. | 2 8641 | 14.3 | 36 |
| 111 | 5 | SURG | MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE <70 W/O C.C. | 2 5245 | 13.2 | 35 |
| 112 | 5 | SURG | VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION | 2 2949 | 11.2 | 33 |
| 113 | 5 | SURG | AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB +/TOE | 2 6172 | 21.6 | 44 |
| 114 | 5 | SURG | UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS | 2 0573 | 16 6 | 39 |
| 115 | 5 | SURG | PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI OR CHF | 3 8232 | 15.8 | 38 |
| 116 | 5 | SURG | PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI OR CHF | 2.7993 | 9 3 | 31 |
| 117 | 5 | SURG | CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY | 1.7783 | 6.4 | 28 |
| 118 | 5 | SURG | CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY | 1.7392 | 4 2 | 18 |
| 119 | 5 | SURG | VEIN LIGATION + STRIPPING | 1.0361 | 7.2 | 29 |
| 120 | 5 | SURG | OTHER O R PROCEDURES ON THE CIRCULATORY SYSTEM | 2.4613 | 15.0 | 37 |
| 121 | 5 | MED | ** CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH ALIVE | 1 8211 | 11.9 | 34 |
| 122 | 5 | MED | ** CIRCULATORY DISORDERS WITH AMI W/O C V. COMP DISCH. ALIVE | 1 3331 | 9.8 | 32 |
| 123 | 5 | MED | CIRCULATORY DISORDERS WITH AMI, EXPIRED | 1 1094 | 3 1 | 25 |
| 124 | 5 | MED | CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG | 2.1680 | 8.4 | 30 |
| 125 | 5 | MED | CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG | 1 6069 | 5 0 | 27 |
| 126 | 5 | MED | ACUTE + SUBACUTE ENDOCARDITIS | 2 6021 | 18 4 | 40 |
| 127 | 5 | MED | HEART FAILURE + SHOCK | 1.0164 | 7.8 | 30 |
| 128 | 5 | MED | DEEP VEIN THROMBOPHLEBITIS | .8437 | 9 6 | 28 |
| 129 | 5 | MED | CARDIAC ARREST, UNEXPLAINED | 1.5143 | 4 6 | 27 |
| 130 | 5 | MED | PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C C. | .9419 | 7 1 | 29 |
| 131 | 5 | MED | PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C. | 9269 | 6 4 | 28 |
| 132 | 5 | MED | ATHEROSCLEROSIS AGE >69 AND/OR C.C | 8967 | 6 7 | 29 |
| 133 | 5 | MED | ATHEROSCLEROSIS AGE <70 W/O C C. | .8397 | 5.2 | 25 |
| 134 | 5 | MED | HYPERTENSION | .6804 | 6.1 | 26 |
| 135 | 5 | MED | CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C. | 9609 | 6 1 | 28 |

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 136 | 5 | MED | CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C | .9447 | 4 9 | 27 |
| 137 | 5 | MED | * CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 0-17 | 6231 | 3 3 | 20 |
| 138 | 5 | MED | CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE >69 AND/OR C C. | .9079 | 5.7 | 27 |
| 139 | 5 | MED | CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C C | .8108 | 4.8 | 23 |
| 140 | 5 | MED | ANGINA PECTORIS | .7371 | 5 5 | 21 |
| 141 | 5 | MED | SYNCOPE + COLLAPSE AGE >69 AND/OR C.C | 6323 | 5.0 | 21 |
| 142 | 5 | MED | SYNCOPE + COLLAPSE AGE <70 W/O C C | .5547 | 4.3 | 18 |
| 143 | 5 | MED | CHEST PAIN | .6654 | 4.4 | 19 |
| 144 | 5 | MED | OTHER CIRCULATORY DIAGNOSES WITH C C | 1.1003 | 7 0 | 29 |
| 145 | 5 | MED | OTHER CIRCULATORY DIAGNOSES W/O C C. | 9785 | 6 4 | 28 |
| 146 | 6 | SURG | RECTAL RESECTION AGE >69 AND/OR C C | 2 6447 | 19.1 | 41 |
| 147 | 6 | SURG | RECTAL RESECTION AGE <70 W/O C C | 2.4499 | 17 9 | 40 |
| 148 | 6 | SURG | MAJOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C C | 2.4896 | 17 0 | 39 |
| 149 | 6 | SURG | MAJOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C. | 2.1635 | 15.2 | 37 |
| 150 | 6 | SURG | PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C | 2 3189 | 15 3 | 37 |
| 151 | 6 | SURG | PERITONEAL ADHESIOLYSIS AGE <70 W/O C C | 1 9799 | 13.4 | 35 |
| 152 | 6 | SURG | MINOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C | 1 4503 | 10.6 | 33 |
| 153 | 6 | SURG | MINOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C C | 1.2304 | 9.3 | 31 |
| 154 | 6 | SURG | STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE >69 AND/OR C C. | 2.6271 | 14 8 | 37 |
| 155 | 6 | SURG | STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 18-69 W/O C C | 2.2789 | 13 0 | 35 |
| 156 | 6 | SURG | * STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 0-17 | 8271 | 6.0 | 20 |
| 157 | 6 | SURG | ANAL PROCEDURES AGE >69 AND/OR C.C. | .7798 | 6 0 | 25 |
| 158 | 6 | SURG | ANAL PROCEDURES AGE <70 W/O C C. | .6258 | 5 2 | 19 |
| 159 | 6 | SURG | HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE >69 AND/OR C C. | 9079 | 7 1 | 23 |
| 160 | 6 | SURG | HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE 18-69 W/O C.C | 7496 | 6.0 | 18 |
| 161 | 6 | SURG | INGUINAL + FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C C | 6902 | 5.7 | 16 |
| 162 | 6 | SURG | INGUINAL + FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C. | .5717 | 4.8 | 12 |
| 163 | 6 | SURG | * HERNIA PROCEDURES AGE 0-17 | .4256 | 2 1 | 6 |
| 164 | 6 | SURG | APPENDECTOMY WITH COMPLICATED PRINC DIAG AGE>69 AND/OR C C | 1 7891 | 11 9 | 33 |
| 165 | 6 | SURG | APPENDECTOMY WITH COMPLICATED PRINC DIAG AGE <70 W/O C C | 1 5775 | 11.3 | 29 |
| 166 | 6 | SURG | APPENDECTOMY W/O COMPLICATED PRINC DIAG AGE >69 AND/OR C C | 1 3992 | 9.4 | 29 |
| 167 | 6 | SURG | APPENDECTOMY W/O COMPLICATED PRINC DIAG AGE <70 W/O C.C. | 1.0564 | 7.4 | 22 |
| 168 | 6 | SURG | PROCEDURES ON THE MOUTH AGE >69 AND/OR C C | .8429 | 4.3 | 25 |
| 169 | 6 | SURG | PROCEDURES ON THE MOUTH ACE <70 W/O C.C. | 8781 | 4.2 | 26 |
| 170 | 6 | SURG | OTHER DIGESTIVE SYSTEM PROCEDURES AGE >69 AND/OR C C | 2.5979 | 14 6 | 37 |
| 171 | 6 | SURG | OTHER DIGESTIVE SYSTEM PROCEDURES AGE <70 W/O C C. | 2 3414 | 13.3 | 35 |
| 172 | 6 | MED | DIGESTIVE MALIGNANCY AGE >69 AND/OR C C | 1 1980 | 8 2 | 30 |
| 173 | 6 | MED | DIGESTIVE MALIGNANCY AGE <70 W/O C C | 1 0271 | 6.7 | 29 |
| 174 | 6 | MED | G I. HEMORRHAGE AGE >69 AND/OR C C. | .9063 | 6.7 | 29 |
| 175 | 6 | MED | G.I HEMORRHAGE AGE <70 W/O C C | 8043 | 5 8 | 24 |
| 176 | 6 | MED | COMPLICATED PEPTIC ULCER | 1 2146 | 8.1 | 30 |
| 177 | 6 | MED | UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C | .7248 | 6.6 | 24 |
| 178 | 6 | MED | UNCOMPLICATED PEPTIC ULCER <70 W/O C.C. | .5997 | 5.5 | 20 |
| 179 | 6 | MED | INFLAMMATORY BOWEL DISEASE | .9915 | 8.0 | 30 |
| 180 | 6 | MED | G I. OBSTRUCTION AGE >69 AND/OR C.C. | .8005 | 6.2 | 28 |

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 181 | 6 | MED | G I. OBSTRUCTION AGE <70. W/O C.C. | .7661 | 5 9 | 28 |
| 182 | 6 | MED | ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE >69 +/OR C C | .6040 | 5 4 | 22 |
| 183 | 6 | MED | ESOPHAGITIS,GASTROENT.+ MISC DIGEST. DIS AGE 18-69 W/O C C. | .5520 | 4 8 | 19 |
| 184 | 6 | MED | * ESOPHAGITIS, GASTROENTERITIS + MISC DIGEST DISORDERS AGE 0-17 | .3732 | 3 3 | 11 |
| 185 | 6 | MED | DENTAL + ORAL DIS EXC EXTRACTIONS + RESTORATIONS,AGE >17 | .6524 | 4 2 | 26 |
| 186 | 6 | MED | * DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17 | .4058 | 2.9 | 11 |
| 187 | 6 | MED | DENTAL EXTRACTIONS + RESTORATIONS | .3896 | 2 7 | 8 |
| 188 | 6 | MED | OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C. | .7270 | 5.1 | 27 |
| 189 | 6 | MED | OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C. | 6422 | 4 5 | 23 |
| 190 | 6 | MED | * OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17 | .3300 | 2 1 | 8 |
| 191 | 7 | SURG | MAJOR PANCREAS, LIVER + SHUNT PROCEDURES | 4 0812 | 20 8 | 43 |
| 192 | 7 | SURG | * MINOR PANCREAS, LIVER + SHUNT PROCEDURES | 3 8278 | 20 1 | 42 |
| 193 | 7 | SURG | BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C. | 2.3938 | 17.3 | 39 |
| 194 | 7 | SURG | BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C C. | 1 9415 | 13.9 | 36 |
| 195 | 7 | SURG | ** TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C C | 2.1162 | 16 0 | 38 |
| 196 | 7 | SURG | ** TOTAL CHOLECYSTECTOMY WITH C D.E. AGE <70 W/O C C. | 2 0111 | 15.8 | 38 |
| 197 | 7 | SURG | ** TOTAL CHOLECYSTECTOMY W/O C.D E. AGE >69 AND/OR C.C. | 1.4520 | 11.5 | 29 |
| 198 | 7 | SURG | ** TOTAL CHOLECYSTECTOMY W/O C D.E. AGE <70 W/O C C. | 1.2453 | 10.1 | 24 |
| 199 | 7 | SURG | HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY | 2.3998 | 17.9 | 40 |
| 200 | 7 | SURG | HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY | 2 5213 | 15.1 | 37 |
| 201 | 7 | SURG | OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES | 2.6651 | 16 9 | 39 |
| 202 | 7 | MED | CIRRHOSIS + ALCOHOLIC HEPATITIS | 1.1685 | 9 3 | 31 |
| 203 | 7 | MED | MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS | 1.0681 | 8.0 | 30 |
| 204 | 7 | MED | DISORDERS OF PANCREAS EXCEPT MALIGNANCY | .9455 | 7.5 | 30 |
| 205 | 7 | MED | DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C. | 1.0568 | 7.9 | 30 |
| 206 | 7 | MED | DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C. | .9030 | 6.8 | 29 |
| 207 | 7 | MED | DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C C. | .8293 | 6.6 | 28 |
| 208 | 7 | MED | DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C. | .7144 | 5.5 | 24 |
| 209 | 8 | SURG | MAJOR JOINT PROCEDURES | 2.2375 | 17.1 | 39 |
| 210 | 8 | SURG | HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C C. | 2.0345 | 17.8 | 40 |
| 211 | 8 | SURG | HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C. | 1.9072 | 15.9 | 38 |
| 212 | 8 | SURG | * HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17 | 1.6730 | 11.1 | 33 |
| 213 | 8 | SURG | AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM + CONN. TISSUE DISORDERS | 2.0815 | 14.3 | 36 |
| 214 | 8 | SURG | BACK + NECK PROCEDURES AGE >69 AND/OR C.C. | 1 7995 | 15.6 | 38 |
| 215 | 8 | SURG | BACK + NECK PROCEDURES AGE <70 W/O C.C. | 1.4570 | 13 0 | 35 |
| 216 | 8 | SURG | BIOPSIES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE | 1.5230 | 11.3 | 33 |
| 217 | 8 | SURG | WND DEBRID + SKN GRFT EXC HAND,FOR MUSCSKELETAL + CONN.TISS.DIS | 2.2289 | 13.1 | 35 |
| 218 | 8 | SURG | LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 +/OR C.C | 1.3916 | 10.9 | 33 |
| 219 | 8 | SURG | LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C. | 1.0537 | 8 3 | 27 |
| 220 | 8 | SURG | * LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17 | 9120 | 5.3 | 25 |
| 221 | 8 | SURG | KNEE PROCEDURES AGE >69 AND/OR C C. | 1.2429 | 8 3 | 30 |
| 222 | 8 | SURG | KNEE PROCEDURES AGE <70 W/O C.C | 9665 | 6 4 | 28 |
| 223 | 8 | SURG | UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE >69 AND/OR C.C. | 1 0472 | 6.9 | 29 |
| 224 | 8 | SURG | UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE <70 W/O C.C. | .8742 | 5.6 | 4 |
| 225 | 8 | SURG | FOOT PROCEDURES | .6324 | 4.8 | 5 |

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|
| 226 | 8 SURG | SOFT TISSUE PROCEDURES AGE >69 AND/OR C C | .7797 | 5 1 | 27 |
| 227 | 8 SURG | SOFT TISSUE PROCEDURES AGE <70 W/O C C | .6188 | 4 2 | 18 |
| 228 | 8 SURG | GANGLION (HAND) PROCEDURES | .3541 | 2 2 | 7 |
| 229 | 8 SURG | HAND PROCEDURES EXCEPT GANGLION | 5857 | 3.4 | 14 |
| 230 | 8 SURG | LOCAL EXCISION + REMOVAL OF INT FIX DEVICES OF HIP + FEMUR | 1 3275 | 8.9 | 31 |
| 231 | 8 SURG | LOCAL EXCISION + REMOVAL OF INT FIX DEVICES EXCEPT HIP + FEMUR | 9296 | 5 3 | 27 |
| 232 | 8 SURG | ARTHROSCOPY | 5921 | 3 6 | 15 |
| 233 | 8 SURG | OTHER MUSCULOSKELET SYS + CONN TISS O R PROC AGE >69 +/OR C C. | 1 7321 | 13 1 | 35 |
| 234 | 8 SURG | OTHER MUSCULOSKELET SYS + CONN TISS O R PROC AGE <70 W/O C C | 1 2162 | 8 2 | 30 |
| 235 | 8 MED | FRACTURES OF FEMUR | 1.7174 | 13.6 | 36 |
| 236 | 8 MED | FRACTURES OF HIP + PELVIS | 1 3530 | 11.9 | 34 |
| 237 | 8 MED | SPRAINS, STRAINS, + DISLOCATIONS OF HIP, PELVIS + THIGH | 7743 | 6 4 | 28 |
| 238 | 8 MED | OSTEOMYELITIS | 1.5147 | 12 3 | 34 |
| 239 | 8 MED | PATHOLOGICAL FRACTURES + MUSCULOSKELETAL + CONN TISS MALIGNANCY | 1 0722 | 9 2 | 31 |
| 240 | 8 MED | CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C C. | .9481 | 8 6 | 31 |
| 241 | 8 MED | CONNECTIVE TISSUE DISORDERS AGE <70 W/O C C | 8836 | 8.0 | 30 |
| 242 | 8 MED | SEPTIC ARTHRITIS | 1.5508 | 11 2 | 33 |
| 243 | 8 MED | MEDICAL BACK PROBLEMS | .7374 | 7 5 | 30 |
| 244 | 8 MED | BONE DISEASES + SEPTIC ARTHROPATHY AGE >69 AND/OR C C. | .7609 | 7 5 | 30 |
| 245 | 8 MED | BONE DISEASES + SEPTIC ARTHROPATHY AGE <70 W/O C.C. | 7009 | 6 3 | 28 |
| 246 | 8 MED | NON-SPECIFIC ARTHROPATHIES | .6979 | 6.8 | 28 |
| 247 | 8 MED | SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE | 6405 | 5 8 | 27 |
| 248 | 8 MED | TENDONITIS, MYOSITIS + BURSITIS | 5992 | 5.4 | 24 |
| 249 | 8 MED | AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE | 9964 | 7 6 | 30 |
| 250 | 8 MED | FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C C. | .7254 | 6 0 | 28 |
| 251 | 8 MED | FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C | 5824 | 4 2 | 26 |
| 252 | 8 MED | * FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 0-17 | 3450 | 1.8 | 7 |
| 253 | 8 MED | FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE >69 +/OR C C | .7291 | 6 6 | 29 |
| 254 | 8 MED | FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C C. | .6111 | 5 3 | 27 |
| 255 | 8 MED | * FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 0-17 | .4577 | 2.9 | 15 |
| 256 | 8 MED | OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE | .8502 | 6.5 | 29 |
| 257 | 9 SURG | TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C. | 1.0825 | 9.3 | 23 |
| 258 | 9 SURG | TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C | 1.0478 | 8 9 | 21 |
| 259 | 9 SURG | SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C C. | .9903 | 7.4 | 29 |
| 260 | 9 SURG | SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70 | .9106 | 6.4 | 27 |
| 261 | 9 SURG | BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC | .7157 | 4.8 | 19 |
| 262 | 9 SURG | BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY | .4509 | 3.0 | 10 |
| 263 | 9 SURG | SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE >69 AND/OR C.C. | 2.4157 | 21 3 | 43 |
| 264 | 9 SURG | SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE <70 W/O C.C. | 2 1515 | 18.2 | 40 |
| 265 | 9 SURG | * SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS WITH C.C | 1 4608 | 8 6 | 31 |
| 266 | 9 SURG | SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C.C. | .9263 | 5.9 | 28 |
| 267 | 9 SURG | PERIANAL + PILONIDAL PROCEDURES | 5970 | 5 0 | 18 |
| 268 | 9 SURG | SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES | .5262 | 3 0 | 15 |
| 269 | 9 SURG | OTHER SKIN, SUBCUT TISS + BREAST O R. PROC AGE >69 +/OR C.C. | .9714 | 5.7 | 28 |
| 270 | 9 SURG | OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C. | .7933 | 4.5 | 27 |

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 271 | 9 | MED | SKIN ULCERS | 1.3479 | 12 1 | 34 |
| 272 | 9 | MED | MAJOR SKIN DISORDERS AGE >69 AND/OR C C | .8418 | 7 8 | 30 |
| 273 | 9 | MED | MAJOR SKIN DISORDERS AGE <70 W/O C C. | .8092 | 7 3 | 29 |
| 274 | 9 | MED | MALIGNANT BREAST DISORDERS AGE >69 AND/OR C C | 9871 | 7.5 | 30 |
| 275 | 9 | MED | MALIGNANT BREAST DISORDERS AGE <70 W/O C.C | 8803 | 6.4 | 28 |
| 276 | 9 | MED | NON-MALIGANT BREAST DISORDERS | 5924 | 4 2 | 22 |
| 277 | 9 | MED | CELLULITIS AGE >69 AND/OR C.C. | 8655 | 8 3 | 30 |
| 278 | 9 | MED | CELLULITIS AGE 18-69 W/O C C | .7906 | 7 2 | 29 |
| 279 | 9 | MED | * CELLULITIS AGE 0-17 | .4677 | 4.2 | 13 |
| 280 | 9 | MED | TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C. | 6056 | 5 4 | 27 |
| 281 | 9 | MED | TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C C. | 5251 | 4.2 | 23 |
| 282 | 9 | MED | * TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 0-17 | 3379 | 2 2 | 9 |
| 283 | 9 | MED | MINOR SKIN DISORDERS AGE >69 AND/OR C.C. | .6244 | 5.3 | 27 |
| 284 | 9 | MED | MINOR SKIN DISORDERS AGE <70 W/O C.C. | 5831 | 4 4 | 24 |
| 285 | 10 | SURG | AMPUTATIONS FOR ENDOCRINE,NUTRITIONAL + METABOLIC DISORDERS | 2 7986 | 24.0 | 46 |
| 286 | 10 | SURG | * ADRENAL + PITUITARY PROCEDURES | 2.8273 | 16 1 | 38 |
| 287 | 10 | SURG | SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS | 2.7483 | 22 8 | 45 |
| 288 | 10 | SURG | * O R PROCEDURES FOR OBESITY | 1.5327 | 10.0 | 24 |
| 289 | 10 | SURG | PARATHYROID PROCEDURES | 1.3414 | 8 3 | 29 |
| 290 | 10 | SURG | THYROID PROCEDURES | .8349 | 6.0 | 17 |
| 291 | 10 | SURG | * THYROGLOSSAL PROCEDURES | .4794 | 2.9 | 8 |
| 292 | 10 | SURG | OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C. | 1 9831 | 10.8 | 33 |
| 293 | 10 | SURG | * OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C. | 1.4601 | 8.0 | 30 |
| 294 | 10 | MED | DIABETES AGE =>36 | 7897 | 7.7 | 30 |
| 295 | 10 | MED | DIABETES AGE 0-35 | .7282 | 5.6 | 26 |
| 296 | 10 | MED | NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C. | 8769 | 7.3 | 29 |
| 297 | 10 | MED | NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C. | .7737 | 6.0 | 28 |
| 298 | 10 | MED | * NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17 | .7361 | 5.4 | 26 |
| 299 | 10 | MED | INBORN ERRORS OF METABOLISM | .9187 | 6.8 | 29 |
| 300 | 10 | MED | ENDOCRINE DISORDERS AGE >69 AND/OR C.C. | .9503 | 7.8 | 30 |
| 301 | 10 | MED | ENDOCRINE DISORDERS AGE <70 W/O C C. | .7952 | 6.4 | 28 |
| 302 | 11 | SURG | KIDNEY TRANSPLANT | 4.1288 | 24.1 | 46 |
| 303 | 11 | SURG | KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM | 2 4802 | 16.2 | 38 |
| 304 | 11 | SURG | KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE >69 +/OR C.C. | 1.7531 | 12.8 | 35 |
| 305 | 11 | SURG | KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE <70 W/O C.C. | 1 6644 | 11.9 | 34 |
| 306 | 11 | SURG | PROSTATECTOMY AGE >69 AND/OR C.C. | 1 1132 | 8.6 | 30 |
| 307 | 11 | SURG | PROSTATECTOMY AGE <70 W/O C.C. | .9290 | 7.2 | 26 |
| 308 | 11 | SURG | MINOR BLADDER PROCEDURES AGE >69 AND/OR C C. | 1 0196 | 7 1 | 29 |
| 309 | 11 | SURG | MINOR BLADDER PROCEDURES AGE <70 W/O C C | .9072 | 5 7 | 28 |
| 310 | 11 | SURG | TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C | 6905 | 4.9 | 20 |
| 311 | 11 | SURG | TRANSURETHRAL PROCEDURES AGE <70 W/O C C. | 5733 | 4.1 | 15 |
| 312 | 11 | SURG | URETHRAL PROCEDURES, AGE >69 AND/OR C.C. | 7250 | 5.2 | 22 |
| 313 | 11 | SURG | URETHRAL PROCEDURES, AGE 18-69 W/O C.C. | 6735 | 5.1 | 21 |
| 314 | 11 | SURG | * URETHRAL PROCEDURES, AGE 0-17 | .4266 | 2.3 | 11 |
| 315 | 11 | SURG | OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES | 2.4301 | 9.8 | 32 |

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

| DRG | MDC | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|
| 316 | 11 MED | RENAL FAILURE | 1.3002 | 6.7 | 29 |
| 317 | 11 MED | * ADMIT FOR RENAL DIALYSIS | .2329 | 1.2 | 3 |
| 318 | 11 MED | KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C. | .8928 | 5 5 | 28 |
| 319 | 11 MED | KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C C. | .7756 | 4.2 | 26 |
| 320 | 11 MED | KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C C. | .7933 | 7.0 | 29 |
| 321 | 11 MED | KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C | .6644 | 5 6 | 23 |
| 322 | 11 MED | * KIDNEY + URINARY TRACT INFECTIONS AGE 0-17 | 4446 | 3 7 | 13 |
| 323 | 11 MED | URINARY STONES AGE >69 AND/OR C.C. | .6964 | 4.9 | 26 |
| 324 | 11 MED | URINARY STONES AGE <70 W/O C C. | .5344 | 3.9 | 19 |
| 325 | 11 MED | KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C C. | 7077 | 5.4 | 27 |
| 326 | 11 MED | KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C C. | 5737 | 4.3 | 21 |
| 327 | 11 MED | * KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17 | 4909 | 3.1 | 14 |
| 328 | 11 MED | URETHRAL STRICTURE AGE >69 AND/OR C.C. | 6355 | 4.8 | 22 |
| 329 | 11 MED | URETHRAL STRICTURE AGE 18-69 W/O C C. | 5201 | 3 9 | 17 |
| 330 | 11 MED | * URETHRAL STRICTURE AGE 0-17 | .2751 | 1.6 | 5 |
| 331 | 11 MED | OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE >69 AND/OR C.C. | .8710 | 6.3 | 28 |
| 332 | 11 MED | OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C. | .7581 | 5.0 | 27 |
| 333 | 11 MED | * OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17 | .5025 | 3.2 | 18 |
| 334 | 12 SURG | MAJOR MALE PELVIC PROCEDURES WITH C.C. | 1.5246 | 12.7 | 30 |
| 335 | 12 SURG | MAJOR MALE PELVIC PROCEDURES W/O C C. | 1.3271 | 11.8 | 29 |
| 336 | 12 SURG | TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C | .9843 | 8 4 | 22 |
| 337 | 12 SURG | TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C. | .8292 | 7.2 | 17 |
| 338 | 12 SURG | TESTES PROCEDURES, FOR MALIGNANCY | 8856 | 6.3 | 28 |
| 339 | 12 SURG | TESTES PROCEDURES, NON-MALIGNANT AGE >17 | 5950 | 4.5 | 15 |
| 340 | 12 SURG | * TESTES PROCEDURES, NON-MALIGNANT AGE 0-17 | .4278 | 2.4 | 7 |
| 341 | 12 SURG | PENIS PROCEDURES | 9749 | 6.0 | 23 |
| 342 | 12 SURG | CIRCUMCISION AGE >17 | 4129 | 2.8 | 10 |
| 343 | 12 SURG | * CIRCUMCISION AGE 0-17 | 3738 | 1.7 | 4 |
| 344 | 12 SURG | OTHER MALE REPRODUCTIVE SYSTEM O R PROCEDURES FOR MALIGNANCY | 1.0941 | 7.4 | 29 |
| 345 | 12 SURG | OTHER MALE REPRODUCTIVE SYSTEM O R. PROC EXCEPT FOR MALIG | .8139 | 5.6 | 27 |
| 346 | 12 MED | MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C. | .9175 | 6.9 | 29 |
| 347 | 12 MED | MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C. | 8109 | 5.7 | 28 |
| 348 | 12 MED | BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C. | .8656 | 6.2 | 28 |
| 349 | 12 MED | BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C C. | .6834 | 4.9 | 22 |
| 350 | 12 MED | INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM | .5953 | 5.2 | 20 |
| 351 | 12 MED | * STERILIZATION, MALE | .2593 | 1.3 | 3 |
| 352 | 12 MED | OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES | .6235 | 4.4 | 20 |
| 353 | 13 SURG | PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY | 1.8922 | 12.4 | 34 |
| 354 | 13 SURG | NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C C. | 1 0848 | 9.6 | 20 |
| 355 | 13 SURG | NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C. | .9918 | 8 8 | 17 |
| 356 | 13 SURG | FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES | .8262 | 8.1 | 18 |
| 357 | 13 SURG | UTERUS + ADENEXA PROCEDURES, FOR MALIGNANCY | 1.8738 | 13 9 | 36 |
| 358 | 13 SURG | UTERUS + ADENEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT | 1 0635 | 8.0 | 30 |
| 359 | 13 SURG | * TUBAL INTERRUPTION FOR NON-MALIGNANCY | .4179 | 2 3 | 7 |
| 360 | 13 SURG | VAGINA, CERVIX + VULVA PROCEDURES | .5845 | 4 2 | 19 |

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| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 361 | 13 | SURG | * LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION | .4750 | 2.6 | 10 |
| 362 | 13 | SURG | * LAPAROSCOPIC TUBAL INTERRUPTION | 3053 | 1.4 | 3 |
| 363 | 13 | SURG | D+C,CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY | .6363 | 4.3 | 18 |
| 364 | 13 | SURG | D+C,CONIZATION EXCEPT FOR MALIGNANCY | 3934 | 2.6 | 9 |
| 365 | 13 | SURG | OTHER FEMALE REPRODUCTIVE SYSTEM O R. PROCEDURES | 1 7544 | 12 7 | 35 |
| 366 | 13 | MED | MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C. | .8246 | 5.2 | 27 |
| 367 | 13 | MED | MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C. | .5650 | 3 5 | 24 |
| 368 | 13 | MED | INFECTIONS, FEMALE REPRODUCTIVE SYSTEM | .7758 | 6.7 | 29 |
| 369 | 13 | MED | MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS | 6796 | 5 1 | 27 |
| 370 | 14 | SURG | * CESAREAN SECTION WITH C.C | 9680 | 7.6 | 15 |
| 371 | 14 | SURG | * CESAREAN SECTION W/O C C. | .7358 | 6.1 | 10 |
| 372 | 14 | MED | * VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES | .5404 | 3.8 | 9 |
| 373 | 14 | MED | VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES | .3968 | 3.2 | 9 |
| 374 | 14 | SURG | * VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C | 5363 | 3 6 | 7 |
| 375 | 14 | SURG | * VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C | .6728 | 4.4 | 15 |
| 376 | 14 | MED | * POSTPARTUM DIAGNOSES W/O O.R PROCEDURE | .4061 | 2.9 | 10 |
| 377 | 14 | SURG | * POSTPARTUM DIAGNOSES WITH O.R. PROCEDURE | .4649 | 2.2 | 8 |
| 378 | 14 | MED | * ECTOPIC PREGNANCY | .7904 | 5.5 | 11 |
| 379 | 14 | MED | * THREATENED ABORTION | .3095 | 2 2 | 8 |
| 380 | 14 | MED | * ABORTION W/O D+C | .2642 | 1.5 | 4 |
| 381 | 14 | MED | * ABORTION WITH D+C | .3518 | 1 4 | 4 |
| 382 | 14 | MED | * FALSE LABOR | .1799 | 1.2 | 2 |
| 383 | 14 | MED | * OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS | .4216 | 3.4 | 14 |
| 384 | 14 | MED | * OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS | .3169 | 2.2 | 9 |
| 385 | 15 | | * NEONATES, DIED OR TRANSFERRED | .6722 | 1.8 | 14 |
| 386 | 15 | | * EXTREME IMMATURITY, NEONATE | 3.5999 | 17.9 | 40 |
| 387 | 15 | | ** PREMATURITY WITH MAJOR PROBLEMS | 1.8026 | 13.3 | 35 |
| 388 | 15 | | ** PREMATURITY W/O MAJOR PROBLEMS | 1.1419 | 8.6 | 31 |
| 389 | 15 | | * FULL TERM NEONATE WITH MAJOR PROBLEMS | .5354 | 4.7 | 16 |
| 390 | 15 | | * NEONATES WITH OTHER SIGNIFICANT PROBLEMS | .3440 | 3.4 | 9 |
| 391 | 15 | | * NORMAL NEWBORNS | .2188 | 3.1 | 7 |
| 392 | 16 | SURG | SPLENECTOMY AGE >17 | 2.7096 | 16.4 | 38 |
| 393 | 16 | SURG | * SPLENECTOMY AGE 0-17 | 1.5006 | 9.1 | 31 |
| 394 | 16 | SURG | OTHER O.R. PROCEDURES OF THE BLOOD + BLOOD FORMING ORGANS | 1.0885 | 6.1 | 28 |
| 395 | 16 | MED | RED BLOOD CELL DISORDERS AGE >17 | .7655 | 6.1 | 28 |
| 396 | 16 | MED | * RED BLOOD CELL DISORDERS AGE 0-17 | .6147 | 4.1 | 18 |
| 397 | 16 | MED | COAGULATION DISORDERS | .9632 | 6.7 | 29 |
| 398 | 16 | MED | RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE >69 AND/OR C.C. | .8691 | 6.1 | 28 |
| 399 | 16 | MED | RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE <70 W/O C.C. | .8261 | 5.6 | 28 |
| 400 | 17 | SURG | LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE | 2.7609 | 16.9 | 39 |
| 401 | 17 | SURG | LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROC AGE >69 AND/OR C.C. | 1.2118 | 8.9 | 31 |
| 402 | 17 | SURG | * LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROCEDURE AGE <70 W/O C.C. | 1.1051 | 7.1 | 29 |
| 403 | 17 | MED | LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C | 1.1440 | 7.1 | 29 |
| 404 | 17 | MED | LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C. | 1.1511 | 6.4 | 28 |
| 405 | 17 | MED | * LYMPHOMA OR LEUKEMIA AGE 0-17 | 1.0271 | 4.9 | 27 |

* HEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 406 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O R.PROC + C C. | 2.2140 | 15.0 | 37 |
| 407 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O R PROC W/O C C. | 2 0865 | 13 3 | 35 |
| 408 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH MINOR O R.PROC | 1.1122 | 7.1 | 29 |
| 409 | 17 | MED | * RADIOTHERAPY | .7943 | 5 7 | 28 |
| 410 | 17 | MED | CHEMOTHERAPY | 3444 | 2.6 | 12 |
| 411 | 17 | MED | HISTORY OF MALIGNANCY W/O ENDOSCOPY | .7052 | 4.7 | 27 |
| 412 | 17 | MED | HISTORY OF MALIGNANCY WITH ENDOSCOPY | .3320 | 2.0 | 8 |
| 413 | 17 | MED | OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 +/OR C C | 1.0718 | 7.3 | 29 |
| 414 | 17 | MED | OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C C | 1 0116 | 6 4 | 28 |
| 415 | 18 | SURG | O R. PROCEDURE FOR INFECTIOUS + PARASITIC DISEASES | 2.9323 | 15.1 | 37 |
| 416 | 18 | MED | SEPTECEMIA AGE >17 | 1.5141 | 9.2 | 31 |
| 417 | 18 | MED | * SEPTECEMIA AGE 0-17 | .6984 | 5 2 | 20 |
| 418 | 18 | MED | POSTOPERATIVE + POST-TRAUMATIC INFECTIONS | 9734 | 8 4 | 30 |
| 419 | 18 | MED | FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C C. | .8426 | 6 9 | 29 |
| 420 | 18 | MED | FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C | .7834 | 6.2 | 26 |
| 421 | 18 | MED | VIRAL ILLNESS AGE >17 | .5903 | 5.4 | 21 |
| 422 | 18 | MED | * VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17 | .4258 | 3.2 | 10 |
| 423 | 18 | MED | OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES | 1 1823 | 8.8 | 31 |
| 424 | 19 | SURG | O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS | 2.1424 | 14.2 | 36 |
| 425 | 19 | MED | ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION | .6652 | 5.8 | 28 |
| 426 | 19 | MED | DEPRESSIVE NEUROSES | 9272 | 9 4 | 31 |
| 427 | 19 | MED | NEUROSES EXCEPT DEPRESSIVE | 7498 | 6.9 | 29 |
| 428 | 19 | MED | DISORDERS OF PERSONALITY + IMPULSE CONTROL | .9513 | 8.3 | 30 |
| 429 | 19 | MED | ORGANIC DISTURBANCES + MENTAL RETARDATION | .9300 | 8.8 | 31 |
| 430 | 19 | MED | PSYCHOSES | 1.0678 | 10.8 | 33 |
| 431 | 19 | MED | * CHILDHOOD MENTAL DISORDERS | 2.1991 | 15.4 | 37 |
| 432 | 19 | MED | * OTHER DIAGNOSES OF MENTAL DISORDERS | 1.0278 | 7.2 | 29 |
| 433 | 20 | | ** SUBSTANCE USE + SUBST INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA | .4353 | 2.5 | 17 |
| 434 | 20 | | ** DRUG DEPENDENCE | 1.0160 | 9.1 | 31 |
| 435 | 20 | | ** DRUG USE EXCEPT DEPENDENCE | 1.0486 | 8.0 | 30 |
| 436 | 20 | | ** ALCOHOL DEPENDENCE | .8646 | 8.1 | 30 |
| 437 | 20 | | ** ALCOHOL USE EXCEPT DEPENDENCE | .6038 | 3.5 | 26 |
| 438 | 20 | | ** ALCOHOL + SUBSTANCE INDUCED ORGANIC MENTAL SYNDROME | .8223 | 6.9 | 29 |
| 439 | 21 | SURG | * SKIN GRAFTS FOR INJURIES | 1.7792 | 8.9 | 31 |
| 440 | 21 | SURG | * WOUND DEBRIDEMENTS FOR INJURIES | 1.4460 | 7.2 | 29 |
| 441 | 21 | SURG | * HAND PROCEDURES FOR INJURIES | .7012 | 3.0 | 16 |
| 442 | 21 | SURG | OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C. | 1.8580 | 9.1 | 31 |
| 443 | 21 | SURG | OTHER O.R PROCEDURES FOR INJURIES AGE <70 W/O C.C | 1.4854 | 6.6 | 29 |
| 444 | 21 | MED | MULTIPLE TRAUMA AGE >69 AND/OR C.C. | .8623 | 6.7 | 29 |
| 445 | 21 | MED | MULTIPLE TRAUMA AGE 18-69 W/O C.C. | .7354 | 5.2 | 27 |
| 446 | 21 | MED | * MULTIPLE TRAUMA AGE 0-17 | .4732 | 2.4 | 10 |
| 447 | 21 | MED | ALLERGIC REACTIONS AGE >17 | .4673 | 3.7 | 19 |
| 448 | 21 | MED | * ALLERGIC REACTIONS AGE 0-17 | .3423 | 2.9 | 9 |
| 449 | 21 | MED | TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C C. | .7159 | 5.6 | 28 |
| 450 | 21 | MED | TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C. | .5817 | 3.9 | 23 |

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM (PROPOSED 1985)

| DRG | MDC | | TITLE | RELATIVE WEIGHTS | GEOMETRIC MEAN LOS | OUTLIER THRESHOLD |
|---|---|---|---|---|---|---|
| 451 | 21 | MED | * TOXIC EFFECTS OF DRUGS AGE 0-17 | .2844 | 2.1 | 8 |
| 452 | 21 | MED | COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C | .8293 | 5 5 | 28 |
| 453 | 21 | MED | COMPLICATIONS OF TREATMENT AGE <70 W/O C.C. | .8809 | 5 1 | 27 |
| 454 | 21 | MED | OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C. | .8031 | 5 3 | 27 |
| 455 | 21 | MED | * OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C C. | 6040 | 3 5 | 22 |
| 456 | 22 | | ** BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY | 2.0412 | 11.6 | 34 |
| 457 | 22 | | ** EXTENSIVE BURNS | 6.7022 | 12.6 | 35 |
| 458 | 22 | SURG | ** NON-EXTENSIVE BURNS WITH SKIN GRAFTS | 2 7902 | 18.3 | 40 |
| 459 | 22 | SURG | ** NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC | 2.6922 | 12 7 | 35 |
| 460 | 22 | MED | ** NON-EXTENSIVE BURNS W/O O R PROCEDURE | 1.3892 | 9 0 | 31 |
| 461 | 23 | SURG | O R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES | 1 6120 | 8 0 | 30 |
| 462 | 23 | MED | * REHABILITATION | 1 7840 | 13 5 | 36 |
| 463 | 23 | MED | SIGNS + SYMPTOMS WITH C.C. | .7521 | 6.3 | 28 |
| 464 | 23 | MED | SIGNS + SYMPTOMS W/O C C. | .7150 | 6 0 | 28 |
| 465 | 23 | MED | ** AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX | 2022 | 1 5 | 4 |
| 466 | 23 | MED | ** AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX | .6228 | 3 7 | 26 |
| 467 | 23 | MED | OTHER FACTORS INFLUENCING HEALTH STATUS | .9569 | 6.1 | 28 |
| 468 | | | UNRELATED OR PROCEDURE | 2 0544 | 11.2 | 33 |
| 469 | | | ***PDX INVALID AS DISCHARGE DIAGNOSIS | .0000 | .0 | 0 |
| 470 | | | ***UNGROUPABLE | .0000 | .0 | 0 |

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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## V Technical Explanation of the Budget Neutrality Adjustment Methodology

### A. Overview

Section 1886(e)(1) of the Act requires that, for FYs 84 and 85, prospective payments be adjusted so that aggregate payments for the operating costs of inpatient hospital services are neither more nor less than we estimate would have been paid under prior legislation for the costs of the same services. To implement this provision, we are making actuarially determined adjustments to the average standardized amounts used to determine Federal national and regional payment rates and to the updating factors used to determine the hospital-specific per case amounts incorporated in the blended transition payment rates for FYs 84 and 85. Section 1886(d)(6) of the Act requires that the annual published notice of the methodology, data and rates include an explanation of any budget neutrality adjustments. This section is intended to fulfill that requirement.

In determining the amount of the budget neutrality adjustment factors, we have considered all hospital costs, including pass-through costs such as capital-related and direct medical education costs.

However, it should be noted that the *aggregate payments* that will be adjusted to be budget neutral do not include payment for capital-related costs or direct medical education costs, payments for hospital and distinct part unit services excluded from the prospective payment system, payment of a return on equity capital, or payments on a reasonable cost basis to hospitals under the prospective payment system for outpatient services.

For payments in FY 85, we must take into consideration two situations that did not affect the determination of budget neutrality adjustments for payments in FY 84. First, effective October 1, 1984, the Federal rate will be a blend of national and regional rates. As a result, we must compute separate estimated per discharge payments for Federal national and regional rates, separate outlier adjustments for those rates, and a budget neutrality adjustment factor for each Federal rate. In addition, during FY 85 each hospital will experience a change in the blending ratio of its transition payment rates as it enters the cost reporting period beginning on or after October 1, 1984. For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the transition payment rate is a blend of 75 percent hospital-specific rates and 25 percent Federal rates.

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the blend is 50 percent hospital-specific rates and 50 percent Federal rates. These facts must be reflected at several different points in the methodology, as discussed below.

The budget neutrality adjustments required by the statute are determined by comparing an estimate of FY 85 reimbursement per discharge, as it would have been under the law in effect prior to enactment of Pub. L. 98-21, with estimates of DRG-related payments per discharge under both regional and national Federal rates (including outlier payments, and payments for the indirect costs of medical education, before budget neutrality adjustment) and with an estimate of the hospital-specific payments per discharge (before budget neutrality adjustment). Therefore, payment under each of the four systems (reasonable cost reimbursement, Federal regional rates, Federal national rates, and hospital-specific rates) must be estimated separately.

Based on the estimates of projected payments under all four systems, we must derive three budget neutrality adjustment factors for FY 85. The first such factor will be applied in computing Federal regional rates for FY 85. The second budget neutrality adjustment factor will be applied in computing Federal national rates for FY 85. The third budget neutrality adjustment factor will be applied in computing the updating factors used to determine the hospital-specific portion of transition payment rates for cost reporting periods beginning during FY 85.

Although, for methodological reasons, the budget neutrality adjustment is calculated on a per discharge basis, it should be emphasized that the ultimate comparison is between the aggregate payments to be made under the prospective payment system and the aggregate payments that would have been incurred had the prior legislation remained in effect. Therefore, changes in hospital behavior from that which would have occurred in the absence of the prospective payment system are required to be taken into account in determining the budget neutrality adjustment if they affect aggregate payment. For example, if admissions were to increase under prospective payment beyond the level that would have occurred under prior law, that would have to be considered in the adjustment. However, since we have observed no increase in admissions beyond the level that would have occurred under prior law, we are making no adjustment for admission levels.

### B. Assumption and Data

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) established a DRG-adjusted limit on the allowable amount of inpatient operating costs per case and a per case limit on the rate of increase of operating costs of inpatient hospital services. If TEFRA had remained in effect, the DRG-adjusted limit on per case costs would have been set at 115 percent of the mean for cost reporting periods beginning in FY 84, and at 110 percent of the mean for cost reporting periods beginning in FY 85. Further, although a hospital that had allowable costs in excess of its rate of increase target amount could expect to be paid for 25 percent of those costs for a cost reporting period beginning in FY 83 of 84, it would be paid no more than its target amount per case for its cost reporting period beginning in FY 85.

Due to the TEFRA per case limits, the incentives that influence hospital admission patterns are similar under TEFRA and prospective payment. In developing the budget neutrality adjustment factors for the first year under prospective payment, we assumed that the number of admissions under both prior law and the prospective payment system will be the same. As a result, the budget neutrality factors can be calculated by comparing reimbursement per discharge for each of the four systems, and there is no need to estimate an actual number of hospital admissions.

Most hospitals have cost reporting periods beginning and ending on dates that do not coincide with the beginning and ending of Federal fiscal years. Further, at the beginning of a hospital's second cost reporting peiod under the prospective payment system, the blend between the hospital-specific and Federal portions of the hospital's transition payment rate changes, and the hospital's hospital-specific rate is updated using the most recent updating factor (see section II. D.1.b. in this Addendum). As a result, during FY 85, most hospitals will have two separate hospital-specific rates and two separate blends of Federal and hospital-specific rates. (The Federal rate blend of regional and national portions changes at the beginning of FY 85, not at the beginning of hospital cost-reporting periods, and is therefore constant throughout FY 85.)

To properly allocate the various payment rates, we developed a distribution of discharges that accounts for:

- The proportion of discharges that occur on or after the beginning of FY 85

(October 1, 1984) and on or before the end date of the hospital's cost reporting period; and

• The complementary proportion of discharges that occur on or after the beginning date of the hospital's new cost reporting period and on or before the end of the Federal fiscal year (September 30, 1985).

This distribution, which was developed from the March 1983 update of the 1982 discharge notice file, was applied to the number of discharges in the hospital's 1981 data. This procedure properly weights the relative sizes of hospitals and cost reporting period distributions for computing payments per discharge.

Since the prospective payment system is to be budget neutral for included hospitals, and since the prospective payment system will not change payments to hospitals that are excluded from that system, excluded hospitals were removed from the estimates (for example, long term care, psychiatric, and children's hospitals). Further, four States (Maryland, Massachusetts, New Jersey, and New York) currently operate alternative reimbursement systems under Medicare waivers. Since payment amounts in these States will not change because of the prospective payment system, hospitals in these States were removed from the estimation of payment per discharge under each of the systems for purposes of determining budget neutrality.

We also assumed that the means of affording exceptions or special treatment for sole community hospitals under different systems would provide comparable relief to those relatively few hospitals that qualify for such exceptions and treatment. Since the amounts of special payments to these hospitals are assumed to be the same under all four systems, the budget neutrality determination is not affected by these payments. Therefore, we did not make explicit allowance for additional payments to these hospitals in our estimates and comparisons.

Section 1886(e)(1) of the Act requires that total payments under the Federal systems and under the hospital-specific rate system be the same as total payments that would have been payable under provisions of the prior law (that is the limits that would have been implemented under provisions of TEFRA for FY 85). To achieve this we have equalized the amounts payable under the Federal rates (both regional and national) and hospital-specific rate systems with those that would have been payable on a periodic basis under TEFRA, not with the total end-of-year cash amounts. As a result, changes of cash flow, timing of payments, and retroactive payments will not affect the budget neutrality determination.

Operating costs are defined differently under the different systems. We excluded malpractice costs and kidney acquisition costs from operating costs under the TEFRA limits. However, both Federal rate systems and the hospital-specific rate system exclude the same kidney acquisition costs but include malpractice costs under operating costs. We must use a method of comparing costs that takes into account "the payment amounts which would have been payable for such services for those same hospitals" as required under section 1886(e)(1)(A)(ii) of the Act. The actual amounts paid are comparable only if we include both operating and nonoperating costs. Therefore, if we were to compare only the operating costs of the different payment systems we would not fulfill the statutory requirement. Hence, nonoperating costs (excluding payments to proprietary hospitals for a return on equity capital) must also be included in the calculation of the budget neutrality adjustment factors.

By using total costs, including nonoperating costs, in the comparisons necessary to determine budget neutrality adjustments, we will ensure that the amounts considered under both Federal rate systems and the hospital-specific rate system are comparable to amounts payable under prior law.

These comparisons will yield adjustments reflecting differences between the systems in a way that prevents distortions by differing definitions of operating costs. The nonoperating costs per discharge were computed using data from the same cost reports and the same increase assumptions as for operating costs. hence, any inaccuracies in nonoperating cost assumptions would also affect the operating cost estimates in the same manner, so that the effect on the budget neutral factors would be negligible. Further, only the *difference between prospective payment nonoperating costs and TEFRA nonoperating costs affects the budget neutrality factor. Since the difference is extremely small, the impact of any inaccuracies is minimal.*

The equations below illustrate that comparing total costs in determining budget neutrality adjustments produces results identical to those that would have been produced using only operating costs under the Federal national rate system and comparable costs under the TEFRA system.

*Cost Components under Federal rate and TEFRA systems*

Federal national rate × budget neutral factor = TEFRA operating costs + Malpractice costs

Federal national rate × budget neutral factor + (kidney acquisition costs capital costs + direct medical education costs) = TEFRA operating costs + (Malpractice costs + capital costs + kidney acquisition costs + direct medical education costs)

Federal national rate × budget neutral factor + Federal system nonoperating costs = TEFRA operating costs + TEFRA nonoperating costs

The analysis is identical for the Federal regional rate system and the hospital-specific rate system. Note that payments for a return on equity (which are not classified as operating costs) are excluded from the equations. Since the amounts for return on equity differ among the systems, adding in return on equity would unbalance the equations. (Under prior law, which must be reflected in the TEFRA estimates, the rate of return was set at 1.5 times the Hospital Insurance Trust Fund interest rates, whereas under Pub. L. 98-21 the rate of return applicable to the costs related to inpatient hospital services was reduced to 1.0 times that rate.)

*C. Estimated Payment Per Discharge Under Prior Law (TEFRA Limits)*

To estimate payment per discharge under prior law, the TEFRA limits that would have been published must first be determined. These limits are calculated in the same manner as the FY 83 limits, except that more recently available data (that is, 1981 cost report and billing data) are used, and the FY 84 and 85 limits are set at 115 and 110 percent of the mean, respectively, instead of 120 percent of the mean, in accordance with section 1886(a)(1)(A)(ii) of the Act. In addition, for cost reporting periods beginning in FY 85, we would have discontinued payment of 25 percent of the excess costs over a hospital's target amount. The FY 84 limits are computed using the same cost per discharge assumptions and market basket increase published on January 3, 1984. Since the FY 84 limits would have been promulgated by October 1, 1983 under the prior law, they must be computed using data and assumptions comparable to what would have been available at the time of issuance, rather than data or assumptions developed subsequently.

Both FY 1984 and 1985 limits were increased by 0.1326 percent to account for the shift to Part A of the cost of certain services furnished by physicians

to providers as a result of the regulation on payment for those physicians' services published March 2, 1983. (These rules implement section 1887 of the Act, established by section 108 of TEFRA. (48 FR 8902; 42 CFR 405.480 through 405.482, and 405.550 through 405.556.))

To estimate payment per discharge under the TEFRA limits, cost per discharge must be estimated for each hospital and compared to the costs allowable under the TEFRA limits, that is, DRG-adjusted cost per case limits on inpatient operating costs and the separate limit on the rate of increase of those costs. Since the rate of increase target rate percentage is less than the average rate of increase in hospital costs, comparison of the rate of increase target rate percentage to the average rate of increase in hospital costs would lead to the conclusion that all hospitals would be penalized by the rate of increase limit and that no hospital would receive a bonus. To overcome this erroneous conclusion, the rate of increase target must be compared to cost increases that vary by hospital.

Under section 1886(b)(1) of the Act, a hospital that has per case costs less than its target amount would be paid a bonus of 50 percent of the amount by which the target amount exceeds its cost, or five percent of its target amount, whichever is less. Alternatively, a hospital that has costs in excess of its target amount for any cost reporting periods beginning in FY 1983 or 1984 would be paid only 25 percent of its costs in excess of the target amount. However, such a hospital would be paid no more than its target amount per discharge for any cost reporting period beginning on or after October 1, 1984.

Hospital cost per discharge data for cost report years 1978, 1979, 1980, and 1981 were analyzed for patterns in rates of increase in costs per discharge. Since the second year of TEFRA uses a two-year rate of increase target over the hospital's base year, and the third year uses a three-year rate of increase target, we analyzed both two-year and three-year rates of increases.

We developed two empirical distributions covering two-year periods of hospitals' percentage rates of cost increase from the available data for 1978 to 1981, inclusive. The means of the two distributions differed, but, for both distributions, the best-fit normal distribution had a standard deviation of 12 percent. In addition, for both cases the standard error of the fit was less than 0.2 percent. Hence, both empirical distributions showed a close fit to normal distribution. In addition, their standard deviations were equal, even though the means were different. Similarly, we found that a normal distribution with a standard deviation of 17 percent closely approximated the three-year rate of increase distribution.

To compute a hospital's cost per discharge for comparison to the hospital's TEFRA rate-of-increase target amount, the hospital's base year costs were increased by a randomly determined factor. For cost reporting periods beginning in FY 84 this factor was computed by adding the estimated two-year average rate of increase in cost per case to a random number. This random number is generated from a statistical distribution that is normal with a mean of zero, and has a standard deviation of 12 percent. For cost reporting periods beginning in FY 85, the factor was computed by adding the estimnated three-year average rate of increase to a random number generated from the normal distribution with a mean of zero and a standard deviation of 17 percent. In all cases, the random numbers were restricted so that none were further than three standard deviations from the mean. This randomly determined cost per admission for a hospital was compared to the rate of increase limit target amount for determining the reimbursement per discharge under TEFRA. Because of the randomizing process, not all hospitals are shown to be penalized by the target. Hospitals with cost per case over the target amount for reporting periods beginning in FY 84 are shown as receiving one quarter of their excess costs over that limit. Hospitals with costs over the target amount for periods beginning in FY 85 are shown as receiving no more than the limits. For purposes of this estimate, payments to those hospitals assigned rates of increase that would result in bonus payments are affected by cost reporting period beginning dates only in relation to the applicable target rate percentage, since the method for determining the amount of bonus payments does not change. To measure the overall stability, the model was tested with ten different sets of random numbers and found to be stable.

The cost per discharge that is compared to the TEFRA limits was adjusted by 0.1326 percent before comparison to the TEFRA limits to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physician's services to patients and providers, published March 2, 1983 and referred to above. Since this adjustment increases the costs of hospitals below the limits, it will have the effect of raising slightly the estimate of TEFRA payment per discharge.

*D. Estimated Payment on a Federal Rate (DRG) Basis*

The estimated payments per discharge based on DRG-related payments (that is, Federal rates plus outlier payments) were computed separately for national and regional Federal rates and were estimated by directly using the appropriate national or regional adjusted average standardized amounts, adjusted by the applicable wage index, cost of living adjustment (for hospitals in Alaska and Hawaii), and case mix for each hospital. Additional outlier payments were computd using each hospital's historical experience in the MEDPAR files. The payment amounts were further adjusted to include the indirect costs of medical education.

Before the ratios of estimated DRG-related payments to the estimated payments under prior law are computed, we made adjustments to reflect the provisions of these proposed regulations and certain changes of circumstances. These adjustments take into account:

- The difference in case mix between cases actually reported under the prospective payment system and the 1981 MEDPAR file;
- Payment for transfer cases at less than the full DRG-related payment rate;
- The proposal to pay hospitals located in MSAs that cross census division (regional) boundaries based on the regional rate of the region in which most of the hospitals are located;
- The proposal for payment of hospitals reclassified from urban to rural by the EOMB MSA redesignation; and
- The projected increased number of rural referral centers expected to meet the new criteria.

To adjust for the latest case-mix data, we increased the estimated regional and national payment rates by 5.85 percent. This increase reflects the difference between the mix of cases in the 1981 MEDPAR file and the mix of cases actually reported under the prospective payment system. The derivation of this factor is discussed earlier in the addendum. Since the relative weight for each DRG was reduced by 2.4 percent, as described earlier in the addendum, this 5.85 percent adjustment is actually split between the 2.4 percent adjustment in the DRG relative weights, and the 3.38 percent case mix increase factor we developed for the FY 84 Federal rates.

In order to take the level of payment for transfer cases into account, we computed the transfer savings by month for each hospital using the prospective payment billing data described above. For each transfer case, we subtracted

the actual payment from the standard payment for the DRG assigned to that case, then we summed the savings for all transfers in each month to determine the total transfer savings by month. We then divided each hospital's transfer savings by month by the total of what the standard payments would have been for that month if all discharges, including transfers, had been paid at the full DRG-adjusted rate. We then weighted the savings ratios for each hospital by month by the 1981 MEDPAR discharge data for the corresponding months. By this means, we determined that the average payment per case was 0.5 percent lower than if all transfer cases had been paid at the full rate for the applicable DRG.

To reflect the proposed changes affecting hospitals in MSAs that cross census division (regional) boundaries, we took into account the one-year increase in payments to hospitals whose regional rates declined as a result of reclassification. For discharges occurring in FY 85, we propose to pay these hospitals 50 percent of the difference between their new Federal rate and the rate for the region in which they had previously been classified. The estimated national payment rates are not affected by this provision.

Similarly, we recomputed the estimated national and regional payment rates using the payment rates that would apply for FY 85 for hospitals that were reclassified from urban to rural as a result of the June 1983 EOMB redesignation of MSAs. For those hospitals so affected that have estimated hospital-specific rates higher than their Federal rural rate, we would pay two-thirds of the difference between the applicable Federal urban and rural rates. Hospitals with hospital-specific rates lower than their Federal rural rate would receive the rural rate.

We also recomputed the estimated national and regional payment rates to reflect appropriate payments to existing referral centers with more than 500 beds and to new rural referral centers with less than 500 beds. We identified rural hospitals in the 1981 cost report files and MEDPAR files with total annual admissions greater than 6000 and case-mix indices greater than 1.03. For these hospitals, we substituted urban for rural adjusted average standardized amounts.

For reasons given in the January 3, 1984 final regulations, we did not increase the estimated national or regional payments to reflect the costs of hospital-based physicians' services shifted from Part B to Part A as a result of the regulations published March 2, 1983. The law does not authorize us to adjust the standardized amounts for the effect of those regulations. However, we increased the estimated average per case payments for both hospital-specific rates and payments under prior law to reflect the March 2, 1983 regulations. Our reasons for making this adjustment in only the latter two cases are quite specific. First, the hospital-based physician regulations were primarily intended to implement section 108 of TEFRA. As such, they are clearly related to the Social Security Act as it stood on April 19, 1983, and should be included, with the case-mix limits and rate of increase limit, among provisions affecting payment levels under previous law. Second, the methodology used by intermediaries to determine each hospital's hospital-specific rate permits hospitals to submit data on this shift from Part B to Part A for purposes of adjusting base-year costs. Thus, the hospital-specific estimates would be inaccurate if we failed to take into account the hospital-based physicians regulations.

By increasing the estimated average per case payments under prior law, we increase the amount against which estimated prospective payments are compared to determine the budget neutrality adjustment. This increases the budget neutrality adjustment factor, which in turn results in higher payments under the prospective payment system. Hence, the adjustment for the hospital-based physicians regulations is reflected in both the Federal rate systems and the hospital-specific rate system, even though the standardized amounts from which the Federal rates are determined are not explicitly adjusted. Further, if the Federal rates did reflect explicit adjustment for the hospital-based physicians regulations, the resulting Federal rate budget neutrality adjustment factor would have been lower than it actually is. The net result would be virtually identical.

*E. Estimated Hospital-Specific (HSP) Payment Per Discharge*

To properly estimate the payments per discharge based on the hospital-specific rates to be used during the transition period, the hospital's base year cost per case must first be estimated, since actual base year data are not available currently. To estimate the base year cost, the 1981 cost report data were adjusted by the change in the nursing differential from 1981 to the base year. These data were updated to the base year and the resulting routine operating costs were compared with the appropriate routine cost limit applicable to base year cost reporting periods, as calculated from the September 30, 1981 Federal Register notice, to compute the savings resulting from application of the routine cost limits. Total costs were also reduced by the remainder of the amounts based on the Medicare nursing differential, since section 103 of TEFRA, by amending section 1861(v)(1)(I) of the Act, eliminated this differential effective with services furnished on or after October 1, 1982.

Operating costs were computed by carving direct medical education, capital-related, and certain kidney acquisition costs out of total costs. Operating costs were increased by 0.18 percent and 0.13 percent to adjust, respectively, for the extra estimated costs hospitals will report for their base year because of required coverage of their employees under FICA (as required by section 1886(b)(6) of the Act) and for the requirement that certain services are now required to be paid under Part A of Medicare, which were formerly paid under Part B (as required by section 1886(b)(5)(D) of the Act). Operating costs were further increased by 0.1326 percent to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physicians' services to patients and providers, published March 2, 1983 and referred to above.

For hospital cost reporting periods beginning in FY 84, we inflated the base year operating costs by two years of the market basket index increased by one percentage point for each year, using the market basket index values published January 3, 1984. For hospital cost reporting periods beginning in FY 85, we increased each hospital's estimated hospital-specific rate by the most recently available market basket index values plus one percentage point. We then increased the resulting amount for each hospital by 5.85 per cent to account for increases in reported case mix, divided by 1.024 to account for the revision of the DRG relative weights, and decreased the amount by 0.5 percent to account for payment for transfer cases at less than the full DRG-related amount. These adjustments are discussed above in the section on Federal rates.

*F. Adjustment for Outlier Payments*

Sections 1886(d)(2)(E) and (d)(3)(B) of the Act require that the average standardized amounts for the Federal rates be reduced so that, when combined with the outlier payments, the resulting payments will be the same as payments under a DRG-related system with no outlier payments but full standard DRG-adjusted rates.

The determination of the outlier payment criteria budget neutrality

adjustment was done only with respect to hospitals that will be reimbursed under the prospective payment system, since outlier payments and standard payments under the prospective payment system will not be on behalf of excluded hospitals and hospitals in waiver States. Reimbursement to excluded hospitals and hospitals in waiver States is not changed by the provisions of the prospective payment system.

The outlier criteria were caliberated using experience in the 1981 MEDPAR file so that outlier payments would be five percent of total Federal rate payments.

Since the outlier criteria were calibrated to yield outlier payments equal to five percent of Federal rate payments, the outlier adjustment for both the national and regional rates is 1−.05=.95.

*G. Calculation of Budget Neutrality Adjustment Factors*

As noted above, we must compute three budget neutrality adjustment factors—one each for adjusting Federal national and regional rates and the other for adjusting the updating factors used to determine the hospital-specific rates. Further, the Federal rate blend changes effective October 1, 1984, and each hospital's blending ratio of hospital-specific and Federal rates will change during FY 85. To reflect these factors in computations of the budget neutrality adjustment factors, we have weighted estimated payment rates and outlier payments by the discharges that would be paid under each blending ratio.

1. Federal Regional Rate Budget Neutrality Adjustment

Since the standard Federal rate before outlier adjustment, by definition, equals the outlier adjusted Federal rate plus outlier adjusted outlier payments, the former can be substituted for the latter in computing budget neutrality while producing identical results.

For the Federal regional rate system, the following equation must be solved:

Federal regional standard weighted payment per discharge × Federal regional rate budget neutral factor (FRBN) + Federal rate system weighted nonoperating cost per discharge=weighted TEFRA operating reimbursement per discharge=weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL REGIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FRBN)

| | |
|---|---|
| Estimated values: | |
| TEFRA operating reimbursement per discharge (Federal blend weighted) | $1,362.81 |
| TEFRA nonoperating cost per discharge (Federal blend weighted) | 153.38 |
| Weighted Federal regional rate standard payment per discharge | 1453.78 |
| Weighted Federal nonoperating cost per discharge | 139.71 |

Solve:

$1,453.78 × FRBN + $139.71=$1,362.81 + $153.38

FRBN = ($1,362.81 + $153.38 − $139.71) divided by $1,453.78 = .947

2. Federal National Rate Budget Neutrality Adjustment

For the Federal national rate system, the following equation must be solved:

Federal national standard weighted payment per discharge × Federal national rate budget neutral factor (FNBN) + Federal rate system weighted nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL NATIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FNBN)

| | |
|---|---|
| TEFRA operating reimbursement per discharge | $1,362.81 |
| TEFRA nonoeprating cost per discharge | 153.38 |
| Federal national rate standard payment per discharge | 1,448.27 |
| Federal nonoperating cost per discharge | 139.71 |

Solve:

$1448.27 × FRBN + $139.71=$1,362.81 + $153.38

FNBN = ($1,362.81 + $153.38 − $139.71) divided by $1,448.27 = .950

3. Hospital-Specific Rate Budget Neutrality Adjustment

The budget neutrality adjustment factor for the hospital-specific rate system is only applied to payments for discharges occurring in cost reporting periods starting in FY85. We cannot readjust a hospital's hospital-specific rate for its first cost reporting period under prospective payment (the period beginning in FY 84). The first year hospital-specific rates have been calculated using an updating factor that is already adjusted for FY 84 budget neutrality. These rates will change only as each hospital begins its second cost reporting period under prospective payment.

As a result, any differences between budget neutrality levels for FYs 84 and 85 can be applied only to each hospital's second year hospital-specific rate. Thus, a change in overall level is allocated over less than the full number of discharges occurring in FY 85.

For the hospital-specific rate system (HSP) the following must be solved:

(HSP payment per discharge for cost reporting periods starting in FY 85 × Fraction of discharges in FY 85 for cost reporting periods starting in FY 85 × 0.50 blending factor X hospital-specific budget neutrality adjustment factor (HSBN)) + (HSP payment per discharge for cost reporting periods starting in FY 84 adjusted for FY 84 budget neutrality adjustment factor × Fraction of discharges occurring in FY 85 for cost reporting periods starting in FY 84 × 0.75 blending factor) + weighted HSP system nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

This yields an HSBN that includes the effect of the FY 84 HSBN on discharges occurring in FY 85 for cost reporting periods starting in FY 84. The effect of the FY 84 HSP budget neutrality factor must be removed to avoid double application of two years' HSBNs when updating the hospital-specific rates for cost reporting periods starting in FY 85. This is done by dividing the result of the calculation described above by the FY 84 HSBN, which was .983.

EXAMPLE: COMPUTATION OF HOSPITAL-SPECIFIC RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (HSBN)

| | |
|---|---|
| Estimated values | |
| TEFRA operating reimbursement per discharge (HSP blend weighted) | $2,113.10 |
| TEFRA nonoperating cost per discharge (HSP blend weighted) | 239.16 |
| HSP payment per discharge for cost reporting periods beginning in FY 85 × fraction of FY 85 discharges × 0.50 blending factor | 1,034.05 |
| HSP payment per discharge for cost reporting periods × fraction of FY 85 discharges beginning in FY 84×0.75 blending factor × FY 84 HSBN of 0.983 | 1,131.11 |
| Weighted HSP nonoperating cost per discharge | 218.08 |

*Solve:*

($1034.05×HSBN)+$1131.11+ 218.08=$2113.10+$239.16

HSBN=($2113.10+ $239.16−$1113.11−$218.08) divided by $1034.05=.970

Then, to remove the effect of the FY 84 HSBN: .970 divided by .983=.987

Note that the HSP budget neutral factor is not applied to the outlier

payments. Outliner payments are paid based only on applicable Federal rates, which already incorporate an adjustment for budget neutrality.

H. SUMMARY—TABLE OF INFLATION ASSUMPTIONS USED IN BUDGET NEUTRALITY DETERMINATION

| Calendar year | Cost per admission (percent) | Hospital input price index (percent) |
|---|---|---|
| 1982 | 15.0 | 9.4 |
| 1983 | 10.9 | 6.2 |
| 1984 | 9.8 | 6.0 |
| 1985 | 9.8 | 6.5 |

I. SUMMARY—TABLE OF OUTLIER AND BUDGET NEUTRALITY ADJUSTMENT FACTORS—FEDERAL FISCAL YEAR 1985

| Adjustment factors | Federal national rates | Federal regional rates | Hospital-specific rates |
|---|---|---|---|
| Outlier | 0.950 | 0.950 | — |
| Budget neutrality | 0.947 | 0.950 | 0.937 |

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July 3, 1984

# Part IV

# Department of Agriculture

## Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 29**

## Tobacco Inspection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Tobacco Adjustment Act of 1983 (Title II of Pub. L. 98-180) ("the Act") approved November 29, 1983, requires the inspection for grade and quality of all tobacco offered for importation into the United States except cigar and oriental tobacco which must be certified by the importer as to kind and type and, in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars. The Act also requires that the Secretary establish grade and quality standards for the inspection of imported tobacco and fix and collect fees from the importers to cover, as nearly as practicable, the costs of such services. The Department issued a notice of proposed rulemaking in the Federal Register on May 16, 1984, allowing interested parties a 15-day comment period for views and comments on the inspection for grade and quality of all tobacco offered for importation into the United States except cigar and oriental tobacco. Based on comments received from a cross section of the industry, the Department has determined that effective 10 days from the date of this publication, official grading and inspection will be provided to all tobacco offered for importation into the United States except cigar and oriental tobacco. The Department will also fix and collect fees from the importers to cover as nearly as practicable, the costs of such services. Regulations governing the certification of imported cigar and oriental tobacco will be proposed at a later date.

**EFFECTIVE DATE:** July 13, 1984.

**FOR FURTHER INFORMATION CONTACT:** Lionel Edwards, Director, Tobacco Division, Agricultural Marketing Service (AMS), Room 502, Annex Building, United States Department of Agriculture, Washington, DC 20250, (202) 447-2567

**SUPPLEMENTARY INFORMATION:** The authority for these regulations is contained in the Tobacco Inspection Act (48 Stat. 731; 7 U.S.C. 511 *et seq.*) and the Tobacco Adjustment Act of 1983 (Title II of Pub. L. 98-180), which requires the inspection for grade and quality of all tobacco offered for importation into the United States except cigar and oriental tobacco which must be certified by the importer as to kind and type and, in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars. The Act also requires the Department to fix and collect fees from the importer for the inspection services. These fees and charges would, as nearly as practicable, cover the cost of such services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The Act also requires the Secretary to establish grade and quality standards for the inspection of imported tobacco. These standards were published in the Federal Register on April 20, 1984 (49 FR 16755).

These regulations are designed to accomplish the statutory requirements of inspection of imported tobacco in a manner, insofar as practicable, that does not place an undue burden on the Federal inspection service or impede the expeditious movement of the commodity in commerce. The data collected on volume, grade, and quality of the tobacco inspected will be compiled, summarized, and published on a quarterly basis. This information will be periodically compared with statistics released by other government agencies to insure that all imported tobacco is inspected as required by the Act. Official standards for the inspection and grading of imported tobacco were approved in a separate rulemaking procedure (49 FR 16755).

The Department investigated the importation of tobacco into the United States prior to publishing proposed rules. Most imported tobacco arrives in this country by vessel, typically in 40-foot containers which carry 90-99 packages weighing approximately 500 pounds each. Generally, these containers are transferred to a rail or truck carrier and transported to an inland port of entry where the tobacco is unloaded for warehousing, manipulation, or manufacturing. Most imported tobacco is initially stored in bonded warehouses. Shipments are identified by invoices and packing lists which give detailed accountings of the tobacco, including country of origin, weight, and company grade.

USDA will inspect all tobacco offered for importation into the United States, including tobacco entering foreign trade zones, but excluding transshipped tobacco, oriental and cigar tobacco. Tobacco shall be inspected at the point of entry as it is unpacked from a container, or otherwise unloaded from a carrier, for warehousing, manipulation, or manufacturing using a selective sampling technique. The importer shall be issued an inspection certificate showing, among other things, the type, U.S. standard grade, date of inspection, country of origin, and net weight in pounds.

The fee for inspection of imported tobacco shall initially be set at $.0035 per pound. This fee was determined after a thorough review of the procedures to be used, the anticipated volume of inspection, and the number of staff hours necessary to provide the inspection service. Since this is a new program, the costs actually incurred would be closely monitored during the startup phase. Based on this review, adjustments would be made in the fee as necessary.

Regulations pertaining to the inspection of imported tobacco pursuant to section 213(a)(1) are being adopted at this time in order to expedite the information collection purposes of the statute as it pertains to the vast majority of imported tobacco. Regulations pertaining to the certification of cigar and oriental tobacco pursuant to section 213(a)(2) will be proposed at a later date.

The notice of proposed rulemaking published in the May 16, 1984, Federal Register (49 FR 20711) generated nine comments.

Three tobacco dealers criticized the requirement that importers retain the import inspection certificate until the inspected lot has been manufactured or exported, at which time they must send the original certificate to the Director.

AMS has decided to revise § 29.407 to require that the importer retain the certificate until the entire lot covered by it has been sold, manufactured or exported. When the importer no longer has ownership of any tobacco covered by the inspection certificate, the importer may dispose of the certificate. This minor revision places a lesser burden on importers while still accomplishing the Department's purpose.

An exporter-importer suggested that the needed information could be collected just as easily on the basis of samples submitted by the importer, subject to spot-checking. One producer organization, on the other hand, believes that submitted sampling should not be considered a satisfactory substitute for onsite sampling and grading by an inspector and urges that its use be kept to a minimum.

The Department believes that it is the intent of Congress, as illustrated in the legislative history of the Dairy and Tobacco Adjustment Act of 1983, that submitted sampling by importers should not be the primary means of inspecting imported tobacco. Congress has

indicated that all imported tobacco be inspected except where time, geographical distance or availability of inspectors prevent a timely onsite inspection.

Several commenters asked that TIB (temporary importation under bond) tobacco be treated the same as transshipped tobacco—i.e., excluded from inspection requirements.

The Department interprets the legislation to require that all tobacco offered for importation, except cigar, oriental, and transshipped tobacco, be inspected. Transshipped tobacco is defined as that which is not unloaded for warehousing, manipulation, manufacturing or exporting. Since TIB tobacco is unloaded, it does not meet the definition for exclusion. Moreover, TIB tobacco may be blended with domestic tobacco and manufactured, and, thus has an impact on the domestic tobacco price support program. Further, TIB tobacco may be imported, subject to penalty.

A manufacturer of smokeless products and smoking tobacco commented on the certification of imported cigar and oriental tobacco. Certification, however, is not the subject of this final rule. Regulations covering the certification of imported cigar and oriental tobacco will be proposed at a later date.

A manufacturer stated that the proposed $.0035-per-pound fee is excessive and should be based on an hourly rate rather than a price per pound. The Department has made a thorough analysis of importation and the inspection procedures, and has determined that a fee based on poundage inspected would be the most appropriate means for recovering its costs. The Department points out that inspectors must be continuously available for import inspection, and fees charged must cover this expense. The Department will closely monitor the cost of service and make appropriate adjustments as it determines to be necessary.

A dealer proposed that the term "lot" be redefined to include only that tobacco on a single invoice that is encompassed by a single grademark.

The inspection certificate will provide for itemization of different grades within the same lot. This should allow sufficient detail to describe mixed lots. Therefore, the Department will be able to record the required information on each shipment on a single certificate.

A dealer proposed that § 29.402 requiring five days' notice of the date and location of unloading be amended to allow for notice of the approximate date, maintaining that this information often cannot be obtained accurately.

The Department believes that five days is a reasonable period of time to provide for the orderly scheduling of inspectors. This will also be closely monitored for possible adjustment by the Department.

One dealer expressed concern that the Department would be collecting sensitive data about a company's operation that could be of interest to competitors.

The Tobacco Division, Agricultural Marketing Service, has been collecting individual company data on tobacco stocks since the implementation of the Tobacco Stocks Reporting Act of 1929. The Division is fully familiar with the need for confidentiality of data, and intends to provide safeguards against the inadvertent release of such data.

Some of the respondents questioned the need for inspection of imported tobacco.

The Department must carry out the mandate of Congress. The Dairy and Tobacco Adjustment Act of 1983 requires the inspection and certification of imported tobacco.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29, for need, currentness, clarity, and effectiveness has been completed. During the startup phase of this operation, the Department will closely monitor the procedures established in this final rule to ensure that any problems which may arise are promptly addressed.

In compliance with Office of Management and Budget (OMB) regulations, 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96-511, the information collection requirements contained in the proposed rule were submitted to OMB for review as prescribed in § 1320.13 Clearance of Collection of Information Requirements in Proposed Rules under section 3504(h) of the Paperwork Reduction Act. OMB has approved the information collection requirements under the control number 0581-0056.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this final rule. A number of firms which are affected by these adopted regulations do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing areas. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will have no significant economic impact upon all entities, small or large, and will not substantially affect the normal movement of the commodity in the market place.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that an emergency situation exists which warrants an effective date less than 30 days following publication. There is a need to implement and test procedures prior to the opening of the flue-cured marketing season when inspectors and supervisors will be occupied in the inspection and grading of domestically produced tobacco. Therefore, this final rule will become effective (insert a date 10 days following date of publication).

List of Subjects in 7 CFR Part 29

Administrative practices and procedure, Tobacco.

For the reasons set out in the preamble, the regulations contained in 7 CFR Part 29, are amended as follows:

1. The authority citation for Part 29 reads as follows:

Authority: Title II of Pub. L. 93-180; (49 Stat. 731; 7 U.S.C. *et seq.*).

2. After § 29.133 the following sections are added:

**§ 29.400 Inspection of Imported Tobacco.**

All Tobacco offered for importation into the United States, including tobacco entering foreign trade zones, but excluding transshipped tobacco, oriental and cigar tobacco, shall be inspected for grade and quality. Tobacco subject to inspection shall be inspected at the point of entry.

**§ 29.401 Definitions.**

As used in §§ 29.400-29.500, the words and phrases hereinafter defined shall have the following meanings:

(a) *Importation.* Arriving within the territorial limits of the United States with the intent to unload.

(b) *Importer.* The owner of the tobacco at the time of importation or the owner's successor in interest if the tobacco is sold prior to the completion of the requirements of §§ 29.400-29.500.

(c) *Inspection Certificate.* An official written representation of a lot of tobacco made by an inspector and issued to an importer.

(d) *Invoice.* A writing on behalf of the importer that is used in commercial

transactions of tobacco for selling, purchasing, shipping, or consigning.

(e) *Lot.* A unit of shipment of tobacco encompassed by a single invoice.

(f) *Package.* A hogshead, carton, case, bale, or other securely enclosed parcel or bundle.

(g) *Packing List.* A document itemizing each package covered by a single invoice listing, among other things, the kind of tobacco in each package, the net weight, and the marks and numbers identifying each package.

(h) *Point of Entry.* The place at the port of entry or foreign trade zone where tobacco is unloaded from a carrier or unpacked from a container for the purpose of warehousing, manipulation, or manufacturing.

(i) *Port of Entry.* Any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and Navigation Laws. The term "port of entry" incorporates the geographical area under the jurisdiction of the port director when such port is one other than a district headquarters port.

(j) *Tobacco.* Tobacco between the time it is cured and stripped from the stalk or primed and cured, in whole leaf or unmanufactured form, and the time it is utilized in product manufacturing. Conditioning, sweating, stemming, and threshing are not considered manufacturing.

(k) *Transshipped Tobacco.* Tobacco that arrives within the territorial limits of the United States for the purpose of continuous transportation without being unloaded for warehousing, manipulation, or manufacturing, to a destination outside the territorial limits of the United States.

(l) *Unload.* To remove from a carrier at the port of entry or at a foreign trade zone.

**§ 29.402 Advance notice.**

The importer shall notify, orally or in writing, the Raleigh Regional Office, USDA, AMS, Tobacco Division, P.O. Box 27846, Raleigh, North Carolina, 27611, or the Lexington Regional Office, USDA, AMS, Tobacco Division, 333 Waller Avenue, Lexington, Kentucky, 40504, of the date and location that tobacco subject to inspection under § 29.400 will be unloaded for warehousing, manipulation, or manufacturing. This notice shall be received at the Regional Office at least five working days prior to unloading the tobacco for warehousing, manipulation, or manufacturing.

**§ 29.403 Accessibility of Tobacco.**

All tobacco subject to inspection under § 29.400 shall be made accessible by the importer for examination in a manner prescribed by the inspector. This includes providing proper lighting, removal of package coverings, and such other provisions as the inspector may deem necessary for inspection.

**§ 29.405 Inspection.**

The inspector shall review each lot of tobacco through a process of selective sampling in sufficient detail to allow an accurate determination of the types and grades contained in each lot.

**§ 29.405 Inspection by submitted samples.**

The Director, in lieu of onsite inspection, may approve submission by the importer of samples where time, geographical distance, or availability of inspectors prevent a timely onsite inspection, or where tobacco is classified as a "temporary importation under bond" as defined in 19 CFR 10.31 *et seq.* The importer shall certify that sampling was conducted in accordance with procedures approved by the Director. All tobacco inspected by submitted sample is subject to spot-checking at the discretion of the Director. Submitted samples shall be disposed of in a manner approved by the Director unless return of the sample is requested by the importer at the time of submission. Samples will only be returned at the importer's expense.

**§ 29.406 Import inspection certificate.**

An import inspection certificate shall consist of a certificate issued by the Tobacco Division in a form approved by the Director. A certificate shall be issued to the importer as soon as practicable following the completion of inspection. A separate certificate shall be issued for each lot of tobacco. In case of a lost or destroyed certificate, a duplicate may be issued under the same number, date, and name by an authorized official. Duplicate certificates shall be plainly marked "Duplicate" above the signature of the supervising official who issued it.

**§ 29.407 Disposition of import inspection certificate.**

The inspector shall provide the importer with the original portion of the certificate and forward the first copy to the Director and the second copy to the appropriate Regional Office. The importer shall retain the original inspection certificate until the lot inspected has been sold, manufactured into products or exported from the United States.

**§ 29.500 Fees and charges for inspection of imported tobacco.**

The fee for inspection of imported tobacco is $.0035 per pound, and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service"

Dated: June 29, 1984.

William T. Manley,

*Deputy Administrator, Marketing Program Operations.*

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# Part V

# Office of Personnel Management

5 CFR Part 550

Pay Administration (General); Final Rule

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 550**

**Pay Administration (General)**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management is publishing final regulations to implement the salary offset provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, enacted on October 25, 1982). Proposed regulations were published in the Federal Register on September 26, 1983 (48 FR 43687).

Based on the comments received on the proposed regulations and the publication of the final amendments to the Federal Claims Collection Standards (FCCS) (49 FR 8889, dated March 9, 1984), we are making changes which will clarify the required contents of agency salary offset regulations. The final regulations also simplify the procedures for processing salary offset requests when the creditor agency and the employee's paying agency are not the same.

**EFFECTIVE DATE:** These regulations are effective August 2, 1984.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Rochester, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** In the September 26, 1983 Federal Register, the Office of Personnel Management (OPM) proposed to add a new Subpart K to Part 550 of Title 5 of the Code of Federal Regulations to deal with salary offset under 5 U.S.C. 5514. Interested parties were initially given until October 26, 1983, to submit written comments concerning this proposal; however, the comment period was later extended through December 5, 1983 (see 48 FR 53121, dated November 25, 1983).

There were 20 respondents to OPM's proposed salary offset regulations. The respondents included 18 Federal agencies and two labor organizations. A summary of the comments, OPM's responses to them and the changes in the final regulations follow:

*Section 550.1101 Purpose*

Part 550.1101 contains a general statement of OPM's purpose in preparing these regulations. We added a statement to clarify that the procedures described in § 550.1106 for processing salary offset requests apply only when the employee's creditor and paying agencies are not the same.

*Section 550.1102 Scope.*

Part 550.1102, explaining the scope of the regulations, was changed as follows: (1) In § 550.1102(b)(1), we added examples of debts which are separately authorized by other statutes. These debts may be recovered under the statute specifically authorizing their recovery (e.g., travel advances and employee training expenses). (2) Section 550.1102(b)(2) was reworded for clarity. (3) Section 550.1102(b)(3) was eliminated and its contents were moved to the introductory paragraph of § 550.1102(b). Based on a commenter's request, we clarified the relationship between salary offset under 5 U.S.C. 5514 and administrative offset under 31 U.S.C. 3716. Administrative offset is defined in 31 U.S.C. 3701(a)(1) as "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government." So, even though it is separately authorized and governed by 5 U.S.C. 5514, salary offset is still an administrative offset. Therefore, any matters not addressed in these regulations should be consistent with the provisions of the FCCS.

*Section 550.1103 Definitions.*

Part 550.1103 contains definitions of terms as they are used in the regulations. Changes were made in the definitions discussed below.

(1) "Creditor agency" was amended by deleting the word "Federal" as unnecessary.

(2) The definition of "debt" was amended. Four commenters requested that additional categories of pay adjustments be excluded from § 5514; another requested that the current excluded pay adjustments be dropped. Upon further consideration, we determined that exclusion (b), relating to certain ministerial adjustments to pay, should be eliminated from the final regulations. While we determined that the matters listed as exclusion (a), relating to certain claims arising from an election or change of election in coverage under a Federal benefits program, was warranted, treating the adjustment as an exclusion from the term "debt" did not adequately express the reasons underlying OPM's position that the procedures of 5 U.S.C. 5514 need not be extended to such matters. Individuals who elect coverage or a change in coverage under a Federal benefits program either know, or should know, that they are consenting to deductions from their pay. The employee, in electing such coverage has, in the authorizing form, consented to deductions from his or her salary and, accordingly, such deductions are not in fact involuntary salary offsets under § 5514.

Limiting this exception from the procedures provided under § 5514 to deductions for four pay periods or less will insure that the terms of the employee's consent are honored.

For these reasons, the reference to exclusions from the definition of the term "debt" has been deleted from the final regulations. Section (c) of 5 CFR 550.1104 has been rewritten to reflect these changes.

(3) "Delinquent debt" was deleted as unnecessary since it is defined in the FCCS.

(4) "Disposable pay" was amended in response to several comments. One comment requested clarification of the relationship between the 15 percent limitation on salary offset in § 5514 and the garnishment limitation under 15 U.S.C. 673 (which provides for garnishment of salaries for alimony and child support). Two commenters requested specific enumeration of the deductions "required by law."

The amended section requires an agency to exclude the deductions listed by OPM's garnishment regulations at 5 CFR 581.105 (b) through (f) to determine disposable pay for salary offset purposes. For garnishment purposes, agencies must exclude the deductions at § 581.105 (b) through (f) plus any amount deducted for a debt(s) due the United States (§ 581.105(a)).

(5) The definition of "employee" was amended to delete the word "former." Former employees are not entitled to the same procedures as current employees, so their inclusion in the definition of employee is misleading.

(6) "FCCS" has been added to the list of definitions.

(7) "Paying agency" was revised slightly to improve clarity.

(8) "Salary offset" now explains that it means an administrative offset from current pay not requiring the employee's consent.

(9) "Waiver" now includes "non-recovery" as a term more descriptive of the waiver action taken based on a comment by one of our commenters. A number of comments and questions were received on this definition and the subsequent provisions in the proposed regulation Most commenters were confused about the relationship of the hearing requirements on the waiver decision and the hearing requirements of the salary offset procedure. Because of the confusion, we decided that OPM regulations would be limited to the salary offset process and most of the

material on waiver has been deleted. Debt collection efforts which should be undertaken before making a salary offset are explained in the FCCS.

*Section 550.1104. Agency regulations.*

Section 550.1104 lists the minimum provisions OPM will expect to see in agency regulations. The list of required provisions is substantially the same as in the proposed regulation; however, we made editorial changes where it was possible to clarify or simplify the language and changed the order of presentation for former parts (8) through (12). An explanation of the substantive changes and discussion of the comments is provided for each affected paragraph.

(1) Several commenters requested OPM to prepare a model regulation that can be adopted by any agency whose needs are satisfied by its provisions. However, because of the number and variety of programs that are involved in salary offset, a model regulation will be of limited use. We prefer simply to expand on the regulatory instructions in material to be included in a Federal Personnel Manual System letter.

(2) Paragraph 550.1104(b) requires a description of the employee's rights under § 5514. Several changes were made to this provision as a result of the comments received. (a) The references to waiver in the proposed regulation were deleted. (b) We added a requirement that the creditor agency tell the employee about other rights and remedies available in addition to those provided by § 5514. This requirement was previously included in the discussion of the hearing decision (former § 550.1105(h)). One commenter suggested, and we agree, that the hearing decision should be limited to a report on the hearing. So, the requirement is more appropriately included here. (c) Another commenter requested that we specify who has responsibility for providing a hearing officer. The regulations now state that the creditor agency must make arrangements for a qualified official. (d) One commenter believed it was not clear that there is an alternative to using an administrative law judge (ALJ) to hold the hearing. We amended the language to make this choice more apparent.

(3) Former paragraph 550.1104(d), "exceptions to when hearing must be offered" was deleted, so subsequent paragraphs were renumbered.

(4) Current paragraph 550.1104(d) requires an agency to prescribe regulations to notify the employee a minimum of 30 days prior to the proposed date of the collection, and includes a list of items which must be covered in the notice. A majority of the items to be included in the notice are identical to those in the proposed regulation. The changes are discussed below.

(a) The proposed regulation stated that "deductions shall not be made, *nor may payments be required*, unless

" A commenter suggested that the language "nor may payments be required" might be misinterpreted to mean that the creditor agency cannot require payments under other collection methods until the § 5514 offset is effective. We agree that the language could be misinterpreted, so it has been deleted.

(b) Another commenter pointed out that some employees might not be able to physically inspect agency records on the debt and suggested that we add language to permit the employee to request and receive a copy of the applicable records from the creditor agency. This suggestion was adopted.

(c) The language in part 550.1104(d)(6) was reworded at the suggestion of another commenter. The proposed regulation suggested that the employee be given an opportunity to arrange a repayment schedule differing from that proposed by the creditor agency. The commenter noted that, in some cases, the employee will already have had such an opportunity. We amended this provision to note that only one opportunity need be given. We also amended the language so it is clear that agencies must allow the employee one opportunity to make voluntary payment of the debt as required by 4 CFR 102.2(e). Agencies generally should attempt to secure an employee's consent to repayment of a debt prior to instituting salary offset. The personal interview referenced in 4 CFR 102.7 should normally be used for this purpose.

(d) Part 550.1104(d)(7) was amended for the reasons noted at (c) in our discussion of § 550.1104(b).

(e) A new paragraph (11) has been added to § 550.1104(d). This paragraph makes no substantive change in procedures under 5 U.S.C. 5514 as explained by these regulations. Its purpose is solely to provide for specific notice to debtors that they may be subject to civil or criminal penalties, or to administrative disciplinary action, if they submit any knowingly false or frivolous representations, statements or evidence in a petition for hearing. The new § 550.1104(d)(11) references existing provisions of statute and regulation.

(f) Current part 550.1104(d)(12) was added for the reasons noted at (b) in our discussion of § 550.1104(b).

(g) Paragraph 550.1104(e) concerns petitions for a hearing. Except for several editorial changes and the deletion of the provisions on waiver, the paragraph is the same as in the proposed regulation. A commenter suggested that the regulation be amended to require notice via "certified" or "registered" mail with "return receipt requested" to provide agencies information on when notice is received. We did not adopt this suggestion; however, we recommend that notices be sent this way.

(h) Paragraph 550.1104(g) requires agencies to prescribe the form and content of hearings, responses and decisions. Here again, the waiver material was deleted. One commenter requested that we discuss the employee's right to representation. As mentioned earlier, most commenters were confused about the relationship of the hearing requirements on waiver decisions and the hearing requirements of the salary offset procedure. Because of the confusion, we have deleted the information concerning the content of the hearing and have simply referenced the applicable portion of the FCCS, 4 CFR 102.3(c) which provides a full explanation of the type of hearing an agency should provide.

Salary offset procedures are, under 5 U.S.C. 5514(a)(3), to be effected in accordance with the standards established in the FCCS. Accordingly, we have deleted the language that could be viewed as requiring an oral hearing in each instance. The provisions of 4 CFR 102.3(c) set out those circumstances under which an oral hearing is required and those situations when a hearing on the written record will suffice. The discussion, formerly located at the end of this section, of the employee's rights and remedies if the decision is unfavorable was moved to paragraph 550.1104(b).

(i) Paragraph 550.1104(h) is a combination of paragraphs (i) and (j) from the proposed regulation. The discussion of the method and source of deductions was simplified and shortened, and the material on the repayment schedule was moved to paragraph (d).

(j) Paragraph (i) requires a description of agency policy on establishing reasonable deductions. A number of comments requested changes to the minimum installment amount and to the time limit for repayment of the debt. Since this material is included in the FCCS, we have deleted it from this subpart. Agencies are reminded that their regulations must also be consistent with the FCCS.

(k) Paragraph 550.1104(k) requires agencies to prescribe when deductions will be scheduled to begin in their internal collections. We also added language to 5 CFR 550.1106(d)(2)(i) requiring deductions to begin at the next officially established pay interval, when the creditor and paying agencies are different. The remaining provisions from the proposed regulation were deleted as unnecessary.

(l) Paragraph 550.1104(1) requires paying agencies to provide for collecting an employee's debt from any final payments due from their agency. Paragraph 550.1104(m) requires agencies to provide for collecting an employee's debt from any subsequent payments due from other government agencies. Two commenters requested guidance on the application of § 5514 to collections from a former employee. We amended the language in both of the paragraphs to show such collections will come under 31 U.S.C. 3716. Collections under § 3716 are not subject to the 15 percent limitation.

(m) Paragraph 550.1104(n) requires provisions on interest, penalties and administrative costs. Several commenters requested further guidance; however, we retained the language from the proposed regulation, since specific information is given in the FCCS.

(n) Paragraph 550.1104(p) discusses provisions for refunding money received in payment of debts later found not to be due. Two commenters suggested that some statement should be made about the employee's entitlement to interest on the monies refunded. We added language to show that such refunds do not bear interest unless required or permitted by law or contract.

*Section 550.1105 Approval of agency regulations.*

Part 550.1105 concerning OPM review and approval of agency regulations is substantially the same as in the proposed regulations.

*Section 550.1106 Requesting recovery when the current paying agency is not the creditor agency.*

(1) Paragraph 550.1106(a) concerns the statute of limitations on commencing collection under § 5514. A number of comments were received on the statute of limitations in § 550.1106(a). Several commenters noted that some of the programs that will be using the salary offset have specific statutory provisions governing the period for collection of debts. Other commenters felt that the limitation period should be consistent with that established for administrative offsets under 31 U.S.C. 3716. Another commenter suggested the provision was unnecessary since the limitation period is specified by statute. We have amended this provision to require that the statute of limitations applied for salary offset be consistent with 4 CFR 102.3(b)(3) as required by 5 U.S.C. 5514(a)(3).

(2) Four comments were received on § 550.1106(d). Most commenters expressed concern over the additional burden placed upon the paying agency and the additional delay in commencing the actual offset from the employee's salary. One commenter suggested that the employee be requested to sign a statement acknowledging that certain facts dealing with the provision of the required procedures under § 5514(b) were established.

We amended § 550.1106 (b) and (d), to permit the employee's paying agency to furnish him or her with a copy of the creditor agency's debt claim form and immediately establish the deduction effective in the next officially established pay interval. We believe this is permissable because the debt claim form to be completed by the creditor agency (§ 550.1106(b)) calls for specific details on certain actions taken by the employee and the creditor agency and will show that the required due process was given. As an alternative to providing the detailed information, the creditor agency may have the employee sign a statement acknowledging receipt of the required procedures and submit it as an attachment to the debt claim form.

**E.O. 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only the Federal Government.

**List of Subjects in 5 CFR Part 550**

Administrative Practice and Procedures, Government employees, Personnel Management Office, Wages.

U.S. Office of Personnel Management.

**Donald J. Devine,**

*Director.*

Accordingly, OPM adds a new Subpart K of Part 550 of Title 5 of the Code of Federal Regulations to read as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

* * * *

### Subpart K—Collection by Offset From Indebted Government Employees

Sec.
550.1101 Purpose.
550.1102 Scope.
550.1103 Definitions.
550.1104 Agency regulations.
550.1105 Review and approval of agency regulations.
550.1106 Requesting recovery when the current paying agency is not the creditor agency.

Authority: 5 U.S.C. 5514; sec. 8(1), E.O. 11609, 3 CFR, 1971–1975 Comp., 586; redesignated in sec. 2–1, E.O. 12107 3 CFR, 1978 Comp., 264.

**§ 550.1101 Purpose.**

This subpart provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514 and by OPM to review and approve such agency regulations, and establishes procedural guidelines to recover debts from the current pay account of an employee when the employee's creditor and paying agencies are not the same.

**§ 550.1102 Scope.**

(a) *Coverage.* This subpart applies to agencies and employees defined by § 550.1103.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of FCCS.

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

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other

types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

**§ 550.1103 Definitions.**

For purposes of this subpart—

"Agency" means (a) an Executive Agency as defined by § 105 of title 5 of the United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, and (b) a Military Department as defined by § 102 of title 5, United States Code.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

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

"Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

**§ 550.1104 Agency regulations.**

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) *Applicability or scope.* Indicate whether regulations cover internal or Government-wide collections under 5 U.S.C. 5514, or both.

(b) *Entitlement to notice, hearing, written responses and decisions.* Identify when the employee is entitled to notice, when hearings will be offered, when the employee is entitled to a response or decision after exercising his or her rights under § 5514 and this subpart, and if the hearing official's decision is not in the employee's favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

(1) A written notice as described in paragraph (d) of this section;

(2) The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

(i) The determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.*

In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) *Notification before deductions begin.* Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency or his designee provides the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay accont;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency; and documented in the creditor agency's files (4 CFR 102.2(e));

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

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

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

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under §§ 286, 287 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

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

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

(e) *Petitions for hearing.* (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the agency concerning the existence or amount of the debt is in error.

(2) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) *Petitions for hearing made after time expires.* Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(g) *Form of hearings, written responses, and final decisions.* (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under § 5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to 4 CFR 102.3(c) for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or creditor agency's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

(h) *Method and source of deductions.* Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(j) *Duration of deductions.* Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump-sum where possible. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (l) and (m) of this section.

(k) *When deductions may begin.* Prescribe when deductions will be scheduled to begin in internal agency collections.

(l) *Liquidation from final check.* Provide for offset under 31 U.S.C. 3716, if the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(m) *Recovery from other payments due a separated employee* Provide for offset under 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate, if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. (See 4 CFR 102.3.)

(n) *Interest, penalties, and administrative costs.* Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with 4 CFR 102.13.

(o) *Non-waiver of rights by payments.* Provide that an employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

(p) *Refunds.* (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—

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

(ii) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(2) Refunds do not bear interest unless required or permitted by law or contract.

**§ 550.1105 Review and approval of agency regulations.**

(a) *Initial OPM review of agency regulations.* (1) Creditor agencies must submit regulations to the Office of Personnel Management (OPM) for review in accordance with 5 U.S.C. 5514 and this subpart prior to publication of final regulations or prior to implementation, if intragency collection procedures are not published. Submissions must be for agency-wide and/or Government-wide collections.

(2) Creditor agency regulations must contain all provisions specified in § 550.1104. If agency regulations are incomplete, OPM will return them with information as to what must be done to obtain approval.

(b) *Proposed changes in salary offset regulations.* If a creditor agency proposes significant changes in the regulations covering provisions specified in § 550.1104, the proposed revisions must be submitted to OPM for review and approval prior to implementation.

(c) *Supplemental regulations.* When a creditor agency has issued approved regulations covering the provisions specified in § 550.1104, the agency may issue any supplemental regulations or instructions, consistent with its approved regulations, which are necessary for solely internal operations, without prior OPM approval.

**§ 550.1106 Requesting recovery when the current paying agency is not the creditor agency.**

(a) Under 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph.

(b) *Format of the request for recovery.* (1) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must complete and certify the appropriate debt claim form specified by OPM.

(2) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing § 5514 have been approved by OPM.

(3) If the collection must be made in installments, the creditor agency must also advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required. Ordinarily, hearings may consist of informal conferences before a hearing official in which the employee and creditor agency will be given full opportunity to present evidence, witnesses, and argument. The employee may represent him or herself or be represented by an individual of his or her choice. The creditor agency must provide for maintaining a summary record of the hearings provided under this subpart.

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the action(s) taken under § 5514(b) and give the date(s) the action(s) were taken.

(c) *Submitting the request for recovery.* (1) *Current employees.* The creditor agency must submit the appropriate debt claim form, agreement, or other instruction on the payment schedule to the employee's paying agency.

(2) *Employees who are separating or have separated.*—(i) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(l). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(2)(iii) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(ii) *Employees who have already separated.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*) or other similar funds, be administratively offset in order to collect the debt (see 31 U.S.C. 3716 and the FCCS).

(iii) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the employee's paying agency, he or she transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. The original of the debt claim form must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 and this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt by the paying agency.*—

(1) *Incomplete claims.* If the paying agency receives an improperly completed debt claim form, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly completed debt claim form received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If the paying agency receives a properly completed debt claim form, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim form must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim form.

(3) The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

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July 3, 1984

# Part VI

# Department of Agriculture

## Animal and Plant Health Inspection Service

7 CFR Part 301

Mediterranean Fruit Fly; Interim Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

**[Docket No. 84-331]**

## Mediterranean Fruit Fly

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This document amends the "Domestic Quarantine Notices" by adding a new subpart 301.65, captioned "Mediterranean Fruit Fly." Subpart 301.65 quarantines the State of Florida and establishes regulations restricting the interstate movement of regulated articles out of a regulated area in Dade County, Florida. This document is necessary on an emergency basis to prevent the artificial spread of Mediterranean fruit fly into noninfested areas of the United States.

**DATES:** Effective date of this amendment July 3, 1984. Written comments concerning this interim rule must be received or on before September 4, 1984.

**ADDRESSES:** Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Helath Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** B. Glenn Lee, Emergency Programs, Coordination, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

**SUPPLEMENTARY INFORMATION:**

### Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Due to the possibility that Mediterranean fruit fly could be spread artificially to certain noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments will be solicited for 60 days after publication of this document, and final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

This document amends the "Domestic Quarantine Regulations" in Part 301 of Title 7 Code of Federal Regulations (7 CFR Part 301) by adding a new subpart 301.65, captioned "Mediterranean Fruit Fly." Subpart 301.65 quarantines the State of Florida, designates an area in Florida as a "regulated area" designates certain articles as "regulated articles" and imposes conditions on the interstate movement of regulated articles from regulated areas.

### Background

The Mediterranean fruit fly, *Ceratitus capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that a portion of Miami, Florida, in Dade County, is infested with the Mediterranean fruit fly. Specifically, on June 19, 1984, inspectors collected from a Jackson trap in a sour orange tree 4 specimens which were later confirmed to be 1 female and 3 male Mediterranean fruit flies. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except for infestations in Hawaii.

Officials of USDA and State agencies of Florida have begun an intensive Mediterranean fruit fly eradication program in the regulated area in Florida. Also, as explained below, Florida has taken action to impose restrictions on the intrastate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly within Florida. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly. These regulations are described below by section.

### *Quarantine and Regulations (§ 301.65)*

Section 301.65(a) of subpart 301.65 reflects a finding by the Secretary of Agriculture that it is necessary to quarantine the State of Florida and impose regulations on the interstate movement of certain articles designated as regulated articles in order to prevent the artificial spread of Mediterranean fruit fly. Section 301.65(b) prohibits any common carrier or other person from moving interstate from any regulated area any regulated article except in accordance with conditions prescribed in § 301.65-4. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect, seize, quarantine, treat and otherwise dispose of regulated articles in accordance with the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) and the Plant Quarantine Act (7 U.S.C. 164a).

### *Definitions (§ 301.65-1)*

Section 301.65-1 contains, for informational purposes, definitions of the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Regulated area," "Regulated article" and "State." These terms are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 1620 and the Federal Plant Act (7 U.S.C. 150dd, 150ee).

### *Regulated Articles (§ 301.65-2)*

The regulations impose conditions on the interstate movement of articles which present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from areas regulated for Mediterranean fruit fly into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of Mediterranean fruit fly by the movement of these articles. Such articles are designated as regulated articles and are prohibited from moving interstate from

regulated areas, except in accordance with conditions specified in §§ 301.65–4 through 301.65–10.

Section 301.65–2 designates the following articles as regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Akee (*Blighia sapida*)
Almond with husk (*Prunus dulcis (P amygdalus)*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Argan tree (*Argania sideroxylon=A. spinosa*)
Avocado (*Persea americana*)
Barbados cherry, W.I. cherry (*Malpighia glabra, & punicifolia*)
Bourbon orange (*Ochrosia elliptica*)
Calamondin orange (*Citrus mitis*)
Canistel (*Pouteria campechiana*)
Cattley guava (*Psidium cattleianum*)
Ceylon-gooseberry (*Dovyalis hebecarpa*)
Chanar (*Geoffroea decorticans*)
Cherimoya (*Annona cherimola*)
Cherries (sweet and sour) (*Prunus avium, Prunus cerasus*)
Citrus citron (*Citrus medica*)
Coffee (*Coffea arabica*)
Custard apple (*Annona reticulata*)
Custard apple (*Annona reticulata*)
Date (*Phoenix dactylifera*)
Dwarf papaya (*Carica quercifolia*)
Fig (*Ficus carica*)
Gourka (*Garcinia xanthochymus*)
Grape (*Vitis vinifera*)
Grapefruit (*Citrus paradisi*)
Guava (*Pisdium guajava*)
Hawthorne (*Crataegus* spp.)
Hog plum (*Spondias mombin*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Jocote (*Spondias purpurea*)
Kei apple (*Dovyalis caffra*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Cirtus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lime (*Citrus aurantiifolia*)
Litchi (Lychee) (*Litchi chinensis*)
Longan (*Euphorbia longana*)
Loquat (*Eribotrya japonica*)
Mammee, sapote (*Calocarpum sapota*)
Mandarin orange (tangerine) (*Citrus reticulata*)
Mango (*Mangifera indica*)
Mock orange (*Murraya exotica*)
Mombin (*Spondias* spp.)
Mountain apple (*Syzygium malaccense (Eugenia mallacensis)*)
Myrobalan nut (*Terminalia chebula*)
Natal plum (*carissa macrocarpa=C. grandiflora* and *Terminalia chebula*)
Nectarine (*Prunus persica*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Papaya (*Carica papaya*)
Passion fruit (*Passiflora edulis*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum annuum* and *Capsicum frutescens*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava 'Pomiform'*)
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pummelo (Shaddock) (*Citrus maxima*)
Pyriform guajava (*Psidium guajava 'Pyriform'*)
Quince (*Cydonia oblonga*)
Rose apple (*Syzygium jambos (Eugenia jambos*)
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona Muricata*)
Spanish cherry, Medlar (*Mimusops elengi*)
Spanish cherry, (Brazilian plum) (*Eugenia dombeyi*) (*E. brasiliensis*))
Spanish plum, (*Spondias mombin*)
Star-apple (*Chrysophyllum* spp.)
Strawberry guava (*Psidium cattleianum*)
Sugar apple (*Annona squamosa*)
Sugarplum (*Arenga pinnata*)
Surinam cherry (*Eugenia uniflora*)
Sweet orange (*Citrus sinensis*)
Tomato (pink and red ripe) (*Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (bestill) (*Thevetia peruviana*);

Except that the list does not include any fruits, nuts, vegetables, or berries which have been canned, or frozen below—17.8°C (0°F);

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a); and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

Articles that are canned, or frozen below—17.8°C (0°F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under such conditions. Otherwise, based on research and experience, the articles listed in § 301.65–2 (a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Mediterranean fruit fly. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Mediterranean fruit fly, these articles are regulated by paragraph (c). These articles would have to be determined to present a risk by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 301.65–2(c) on an emergency basis in sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Mediterranean fruit fly an amendment to this rule to include such items in the list of regulated articles will be considered.

*Regulated Areas (§ 301.65–3)*

An infestation of Mediterranean fruit fly was found in Miami, Florida on June 19, 1984. This area in Dade County remains infested at this time. The area to be regulated because of this infestation is specifically described in § 301.64–3 and is designated as a "regulated area" The area in Dade County designated as a regulated area is described as follows:

That part of Dade County beginning at a point 200 feet west of where Red Road intersects Sunset Drive; then north along an imaginary line 200 feet west of Red Road to its intersection with State Road 836; then east along an imaginary line 200 feet north of State Road 836 to its intersection with LeJeune Road; then north along an imaginary line 200 feet west of LeJeune Road to where it becomes East 8th Avenue; then north along an imaginary line 200 feet west of East 8th Avenue to its intersection with Hialeah Drive; then east along an imaginary line 200 feet north of Hialeah Drive to where it becomes Northwest 54th Street; then east along an imaginary line 200 feet north of Northwest 54th Street to its intersection with Northwest 27th Avenue; then north along an imaginary line 200 feet west of Northwest 27th Avenue to its intersection with Northwest 62nd Street; then east along an imaginary line 200 feet north of Northwest 62nd Street to where it becomes Northeast Street and east along an imaginary line 200 feet north of Northeast 62nd Street to its intersection with Northeast 2nd Avenue; then south along an imaginary line 200 feet east of Northeast 2nd Avenue to its intersection with Northeast 61st Street; then east along an imaginary line 200 feet north of Northeast 61st Street it its intersection with Biscayne Bay; then southeasterly along an imaginary line to the northern point of Di Lido Island; then southerly along the east side of Di Lido Island to its southern point; then southeasterly along an imaginary line from Di Lido Island to the northwest corner of Fishers' Island; then southwesterly along an imaginary line from the northwest corner of Fishers' Island to the point where Rickenbacker Causeway intersects the mainland; then southwesterly along the shoreline to its intersection with Coral Gables Canal; then westerly along Coral Gables Canal to its intersection with LeJeune Road; then south along an imaginary line 200 feet east of LeJeune Road to its intersection with Sunset Drive; then west along an

imaginary line 20 feet south of Sunset Drive to the point of beginning.

It is necessary to designate the above described portion of Dade County as a regulated area because it is an area in which the Mediterranean fruit fly has been found, or in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present or an area deemed necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

*Conditions Governing the Interstate Movement of Regulated Articles From Regulated Areas (§§ 301.65–4 Through 301.65–10)*

*Section 301.65–4.* Section 301.65–4(a) requires regulated articles moved interstate from regulated areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.65–5 through 301.65–10 or unless moved as prescribed in § 301.65–4(b).

Specifically, § 301.65–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a regulated area, if it is moved directly through the regulated area, if the point of origin is clearly indicated by shipping documents, and if the identity of the article is maintained.

In § 301.65–4, a footnote (number 2) is added to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met during an interstate movement.

*Section 301.65–5.* Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by the Department that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas and movement for limited purposes. Section 301.65–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.65–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if: (1) The inspector determines that the article has been treated under direction of an inspector in accordance with § 301.65–10, or if it comes from a premise of origin which is free from Mediterranean fruit fly or the inspector determines that the regulated article is free of Mediterranean fruit fly; and (2) the inspector determines that it will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

A footnote (number 3) is added which explains that USDA, can pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate which are believed to be infested or infected by plant pests.

Section 301.56.5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if, after consultation with the Deputy Administrator, it is determined that such article is to be moved to a specified destination for specified handling, utilization or processing, and upon evaluation of all of the circumstances involved, the movement will not result in the spread of Mediterranean fruit fly.

Section 301.56–5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.56–5(a) or (b). These initial determinations concerning the eligibility for issuance of a certificate or limited permit are limited to inspectors because of their nature and complexity.

Also, § 301.56–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

*Section 301.65–6.* Section 301.65–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving of regulated articles who agrees in writing to comply with the provisions of subpart 301.65 and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from regulated areas and are designated to insure that persons issuing certificates and limited permits are knowledgable with respect to the requirements of subpart 301.56 and have agreed to comply with them.

Section 301.56–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions for notifying the holder of the compliance agreement of the reasons for cancellation and to provide such holder with an opportunity for a hearing to resolve a conflict as to any material fact. A footnote (number 4) is added to explain where compliance agreement forms can be obtained.

*Sections 301.65–7 301.65–8 and 301.65–9.* Section 301.65–7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote (number 5) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.91–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.65–9 explains the Departments's policy that services of an inspector needed in order for a person to comply with the provisions of the quarantine and regulations in subpart 301.65 are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

*Section 301.65–10.* Section 301.65–10 sets forth treatment schedules for certain regulated articles that must be met if such articles are to be certified prior to movement as provided in § 301.65–4. These treatments are recommended because research has determined that these treatments would be adequate to destroy the Mediterranean fruit fly with little or no effect on the regulated article. Treatment schedules have not been developed for all regulated articles. However, § 301.65–5 provides alternatives to treatment by cold storage, methyl bromide, or diazinon that can be used if an individual wishes to obtain a certificate or limited permit for the interstate movement of the regulated article from a regulated area.

The treatment schedules for regulated articles in § 301.65–10 are as follows:

(a) *Avocado:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21°C. (70°F.) or above followed by refrigeration for 7 days at 7.22 °C. (45°F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70°F.) or above.

(c) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate-center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note:—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

(d) Apple, apricot, cherry, grape, peach, pear, and plum: Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

| Fumigation exposure time | Refrigeration |
|---|---|
| 2 Hours | 4 days at 0.55°–2.7°C. (33°–37°F.); or 11 days at 6.11 –8.3°C. (43°–47°F.). |
| 2½ hours | 4 days at 3.33°–4.44°C. (38°–40°F.); or 6 days at 5.0°-8.33°C. (41°–47°F.); or 10 days at 8.88°–13.33°C. (48°–56°F.). |
| 3 hours | 3 days at 6.11°–8.33°C. (43°–47°F.); or 6 days at 8.88°–13.33°C. (48–56°F.). |

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)
(18 g minimum gas concentration at 2 or 2½ hrs.)
(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. time lapse between fumigation and start of cooling not to exceed 24 hours

Note.—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(e) *Bell peppers:* Fumigation with methyl bromide at normal atmospheric pressure with 32 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Note.—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Self life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem calyx.

(f) *Apple, apricot, Calamondin orange, cherry, citrus, citron, grape, grapefruit, kiwi, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange:* Cold treat the article according to one of the following:

10 days at 0 °C. (32 °F.) or below
11 days at 0.55 °C. (33 °F.) or below
12 days at 1.11 °C. (34 °F.) or below
14 days at 1.66 °C. (35 °F.) or below
16 days at 2.22 °C. (36 °F.) or below

(g) *Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Minimum concentration for above fumigations:

26g minimum gas concentration at first ½ hour
22g minimum gas concentration at 2 or 2½ hours
21g minimum gas concentration at 3½ hours.

(h) *Grape:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 4 hours at 18 °C (65 °F) or above.

Minimum concentration for above fumigations:

26g minimum gas concentration at first ½ hour
22g minimum gas concentration at 2 or 2½ hours
19g minimum gas concentration at 4 hours.

(i) *Soil:* Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.65–2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line of host plants. The diazinon is to be mixed with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour on treatment procedures are acceptable. Soil may be certified 7 days after treatment.

## Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment affects the interstate movement of regulated articles from a portion of Dade County, Florida, which is about 81 square miles in size. It appears that there is very little commercial activity that occurs in the regulated area. Specifically, the regulated area is comprised of private residences and small shops. The small entities in the regulated area that may be affected by this regulation appear to consist of approximately 75 nurseries, 50 retail stores, 125 street vendors and open fruit stands, and 20 premises with orchards and vegetable plots (ranging in size from ½ acre to 15 acres). Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, that this regulation will have on these entities appears to be minimal. Further, the number of affected entities mentioned above compares with thousands of small entities that move such articles interstate from nonregulated areas in Florida and many more thousands of small entities that move such articles interstate from other States.

## Paperwork Reduction Act

The regulations in this subpart contain no information collection or

recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the Mediterranean Fruit Fly Quarantine and Regulations in 7 CFR Part 301.65 (7 CFR 301.65 *et seq.*) are amended to read as follows:

### Subpart—Mediterranean Fruit Fly Quarantine and Regulations

Sec.

301.65 Quarantine and regulations; restrictions on interstate movement of regulated articles.
301.65–1 Definitions.
301.65–2 Regulated articles.
301.65–3 Regulated areas.
301.65–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.
301.65–5 Issuance and cancellation of certificates and limited permits.
301.65–6 Compliance agreement and cancellation thereof.
301.65–7 Assembly and inspection of regulated articles.
301.65–8 Attachment and disposition of certificates and limited permits.
301.65–9 Costs and charges.
301.65–10 Treatments.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U S.C. 150dd, 150ee); 37 FR 28464, 28477 as amended; 45 FR 8564, 8565.

* * * * *

### Subpart—Mediterranean Fruit Fly Quarantine and Regulations

#### § 301.65 Quarantine and regulations; restrictions on interstate movement of regulated articles.[1]

(a) *Quarantine and regulations.* The Secretary of Agriculture hereby quarantines the State of Florida in order to prevent the artificial spread of the Mediterranean fruit fly, a dangerous plant pest not heretofore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interestate movement of regulated articles specified in § 301.65–2.

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

#### § 301.65–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.65–5(c).

(b) *Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or any hereafter be delegated.

(d) *Infestation.* The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

(e) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

(f) *Interstate.* From any State into or through any other State.

(g) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.65–5(b).

(h) *Mediterranean fruit fly.* The insect known as Mediterranean fruit fly (Ceratitus capitata (Wiedemann)) in any stage of development.

(i) *Moved.* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

(j) *Movement or move.* The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

(k) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(l) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

(m) *Regulated area.* Any State, or any portion thereof, listed in § 301.65–3(c) or otherwise designated as a regulated area in accordance with § 301.65–3(b).

(n) *Regulated article.* Any article listed in § 301.65–2 or otherwise designated as a regulated article in accordance with § 301.65–2(c).

(o) *State.* Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

#### § 301.65–2 Regulated articles.

(a) The following fruits, nuts, vegetables, and berries are regulated articles:

Akee *(Blighia sapida)*
Almond with husk *(Prunus dulcis (P. amygdalus))*
Apple *(Malus sylvestris)*
Apricot *(Prunus armeniaca)*
Argan tree *(Argania sideroxylon=A. spinosa)*
Avocado *(Persea americana)*
Barbados cherry, W.I. cherry *(Malpighia glabra, & punicifolia)*
Bourbon orange *(Ochrosia elliptica)*
Canistel *(Pouteria campechiana)*
Calamondin orange *(Citrus mitis)*
Canistel *(Pouteria campechiana)*
Cattley guava *(Psidium cattleianum)*
Ceylon-gooseberry *(Dovyalis hebecarpa)*
Chanar *(Geoffroea decorticans)*
Cherimoya *(Annona cherimola)*
Cherries *(sweet and sour) (Prunus avium, Prunus cerasus)*
Citrus citron *(Citrus medica)*
Coffee *(Coffea arabica)*
Custard apple *(Annona reticulata)*
Date *(Phoenix dactylifera)*
Dwarf papaya *(Carica quercifolia)*
Fig *(Ficus carica)*
Gourka *(Garcinia xanthochymus)*
Grape *(Vitis vinifera)*

1 Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Grapefruit *(Citrus paradisi)*
Guava *(Pisdium guajava)*
Hawthorne *(Crataegus spp.)*
Hog plum *(Spondias mombin)*
Japanese persimmon *(Diospyros kaki)*
Japanese plum *(Prunus salicina)*
Jocote *(Spondias purpurea)*
Kei apple *(Dovyalis caffra)*
Kiwi *(Actinidia chinensis)*
Kumquat *(Fortunella japonica)*
Lemon *(Citrus limon)* except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lime *(Citrus aurantiifolia)*
Litchi (Lychee) *(Litchi chinensis)*
Longan *(Euphorbia longana)*
Loquat *(Eribotrya japonica)*
Mammee, sapote *(Calocarpum sapota)*
Mandarin orange *(tangerine) (Citrus reticulata)*
Mango *(Manifera indica)*
Mock orange *(Murraya exotica)*
Mombin (*Spondias* spp.)
Mountain apple *(Syzygium malaccense (Eugenia malaccensis))*
Myrobalan nut *(Terminalia chebula)*
Natal plum *(Carissa macrocarpa=C. grandiflora* and *Terminalia chebula)*
Nectarine *(Prunus persica)*
Olive *(Olea europea)*
Opuntia cactus (*Opuntia* spp.)
Papaya *(Carica papaya)*
Passion fruit *(Passiflora edulis)*
Peach *(Prunus persica)*
Pear *(Pyrus communis)*
Pepper *(Capsicum annuum* and *Capsicum frutescens)*
Pineapple guava *(Feijoa sellowiana)*
Plum *(Prunus americana)*
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava 'Pomiform'*)
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pummelo (Shaddock) (*Citrus maxima*)
Pyriform guajava (*Psidium guajava* 'Pyriform')
Quince (*Cydonia oblonga*)
Rose apple (*Syzygium jambos (Eugenia jambos)*)
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona Muricata*)
Spanish cherry, Medlar (*Mimusops elengi*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi E. brasiliensis*))
Spanish plum (*Spondias mombin*)
Star-apple (*Chrysophyllum* spp.)
Strawberry guava (*Psidium cattleianum*)
Sugar apple (*Annona squamosa*)
Sugarplum (*Arenga pinnata*)
Surinam cherry (*Eugenia uniflora*)
Sweet orange (*Citrus sinensis*)
Tomato (pink and red ripe) *Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (bestill) (*Thevetia peruviana*);

Except that the list does not include any fruits which have been canned, or frozen below −17.8°C (0°F);

(b) Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in paragraph (a) of this section, and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions of this section.

**§ 301.65-3 Regulated areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interestate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

Florida

*Dade County*

That part of Dade County beginning at a point 200 feet west of where Red Road intersects Sunset Drive; then north along an imaginary line 200 feet west of Red Road to its intersection with State Road 836; then east along an imaginary line 200 feet north of State Road 836 to its intersection with LeJeune Road; then north along an imaginary line 200 feet west of LeJeune Road to where it becomes East 8th Avenue; then north along an imaginary line 200 feet west of East 8th Avenue to its intersection with Hialeah Drive; then east along an imaginary line 200 feet north of Hialeah Drive to where it becomes Northwest 54th Street; then east along an imaginary line 200 feet north of Northwest 54th Street to its intersection with Northwest 27th Avenue; then north along an imaginary line 200 feet west of Northwest 27th Avenue to its intersection with Northwest 62nd Street; then east along an imaginary line 200 feet north of Northwest 62nd Street to where it becomes Northeast 62nd Street and east along an imaginary line 200 feet north of Northeast 62nd Street to its intersection with Northeast 2nd Avenue; then south along an imaginary line 200 feet east of Northeast 2nd Avenue to its intersection with Northeast 61st Street; then east along an imaginary line 200 feet north of Northeast 61st Street to its intersection with Biscayne Bay; then southeasterly along an imaginary line to the northern point of Di Lido Island; then southerly along the east side of Di Lido Island to its southern point; then southeasterly along an imaginary line from Di Lido Island to the northwest corner of Fishers' Island; then southwesterly along an imaginary line from the northwest corner of Fishers' Island to the point where Rickenbacker Causeway intersects the mainland; then southdwesterly along the shoreline to its intersection with Coral Gables Canal; then westerly along Coral Gables Canal to its intersection with LeJeune Road; then south along an imaginary line 200 feet east of LeJeune Road to its intersection with Sunset Drive; then west along an imaginary line 200 feet south of Sunset Drive to the point of beginning.

**§ 301.65-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.**[2]

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.65-5 and 301.65-8;

(b) Without a certificate or limited permit, if

(1)(i) Moved directly through (moved without stopping except under normal traffic conditions, such as for traffic lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth), and

(ii) The article originated outside of any regulated area, and

(iii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

**§ 301.65-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an inspector [3] in accordance with § 301.65-10; or

(ii) Determines based on inspection of the premises of origin that the premises are free from the Mediterranean fruit fly and the article has not been exposed to Mediterranean fruit fly; or

(iii) Determines based on inspection of the article that it is free from Mediterranean fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[4] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 301.65-10 (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing, or treatment;

(2) Determines that is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [4] and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 301.65-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that such article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.65-6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart. [5] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(a) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Treatments shall be monitored by inspectors in order to assure compliance with the requirements in this subpart.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides among other things, the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

[5] Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.65-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.65-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector [6] to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

**§ 301.65-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, at the times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

**§ 301.65-9 Costs and charges.**

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

[6] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

**§ 301.65-10 Treatments.**

Treatments for regulated articles shall be as follows:

(a) *Avocado:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21°C. (70°F.) or above followed by refrigeration for 7 days at 7.22°C. (45°F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) *Tomato:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21°C. (70°F.) or above.

(c) *Bell pepper and tomato:* Heat the article by saturated water vapor at 44.44°C. (112°F.) until approximate center of article reaches 44.44°C. (112°F.), and maintain at 44.44°C. (112°F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44°C. (112°F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

(d) *Apple, apricot, cherry, grape, peach, pear, and plum:* Fumigation with 32 g/m³ methyl bromide at 21°C. (70°F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

| Fumigation exposure time | Refrigeration |
|---|---|
| 2 hours | 4 days at 0.55°-2.7°C. (33°-37°F.); or 11 days at 6.11°-8.3°C. (43°-47°F.). |
| 2½ hours | 4 days at 3.30°-4.44°C. (33°-40°F.); or 6 days at 5.0°-8.33°C. (41°-47°F.); or 10 days at 8.89°-13.33 (49-56°F.). |
| 3 hours | 3 days at 6.11°-8.33°C. (43°-47°F.); or 6 days at 8.89°-13.33°F. (49-56°F.). |

Minimum concentrations for above fumigations.
(25g minimum gas concentration at ½ hr.)
(18g minimum gas concentration at 2 or 2½ hrs.)
(17g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(e) *Bell peppers:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Note.—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem calyx.

(f) *Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange:* Cold treat the article according to one of the following:

10 days at 0 °C. (32 °F.) or below
11 days at 0.55 °C. (33 °F.) or below
12 days at 1.11 °C. (34 °F.) or below
14 days at 1.66 °C. (35 °F.) or below
16 days at 2.22 °C. (36 °F.) or below

(g) *Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C (70 °F) or above.

Minimum concentration for above fumigations:
26g minimum gas concentration at first ½ hour
22g minimum gas concentration at 2 or 2½ hours
21g minimum gas concentration at 3½ hours.

(h) *Grape:* Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 4 hours at 18 °C (65 °F) or above.

Minimum concentration for above fumigations:
26g minimum gas concentration at first ½ hour
22g minimum gas concentration at 2 or 2½ hours
19g minimum gas concentration at 4 hours.

(i) *Soil:* Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.65-2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable. Soil may be certified 7 days after treatment.

Done at Washington, D.C., this 2nd day of July, 1984.

William F. Helms,

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

[FR Doc. 84-17033 Filed 7-2-84; 12:04 pm]
BILLING CODE 3410-34-M

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