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Monday
June 24, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

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Coast Guard

Marketing Agreements
Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Mortgage Insurance
Housing and Urban Development Department

Pensions
Veterans Administration

Public Housing
Housing and Urban Development Department

Quarantine
Animal and Plant Health Inspection Service

Radio Broadcasting
Federal Communications Commission

Seamen
Coast Guard

Tariffs
Federal Communications Commission

Television Broadcasting
Federal Communications Commission

Water Pollution Control
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-335]

Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends "Subpart—Citrus Canker" by expanding the list of regulated articles and by including Guam, the Northern Mariana Islands, and the Virgin Islands of the United States in the listing of jurisdictions that have commercial citrus producing areas. The effect of this action is to restrict or prohibit certain interstate movements of articles added to the list of regulated articles, and to prohibit fruit moved from Florida pursuant to a limited permit from being moved to Guam, the Northern Mariana Islands, and the Virgin Islands of the United States. The action taken by this document is necessary to help prevent the artificial spread of citrus canker into noninfested areas of the United States.

DATES: Effective date of this interim rule is June 19, 1985. Written comments on this interim rule must be received on or before August 23, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85-335. 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. Glen Lee, Assistant Director of the National Program Planning Staff, in charge of the Survey and Emergency Response Staff, 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:

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris* pv. *citri* (Hasse) Dowson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae). Infection by the pathogen-causing citrus canker can result in defoliation and other serious damage to the leaves and twigs of susceptible plants. Infected fruit becomes unmarketable and often drops from a tree prematurely. Citrus canker is a very aggressive disease which can rapidly infect susceptible plants, and can lead to extensive economic losses throughout entire citrus growing areas. Citrus canker presents a severe threat to citrus producing and packing industries and poses a burden to interstate and international commerce.

Because of the finding of citrus canker in Florida, the Department established regulations captioned "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations; 49 FR 36623-36626, 41268, 43448-43449, 50 FR 9261-9263, 9785-9786). The regulations contain provisions regulating certain interstate movements of regulated articles to help prevent the artificial spread of citrus canker. The regulations also contain extraordinary emergency provisions to help in the citrus canker eradication effort in Florida.

Under the regulations, the entire State of Florida is designated as a quarantined area. The regulations allow the interstate movement from Florida of regulated articles if moved by the United States Department of Agriculture for experimental or scientific purposes under certain conditions. The regulations also allow fruit designated as regulated articles to be moved interstate from Florida by any person to other than listed jurisdictions determined to have commercial citrus producing areas, if moved pursuant to a limited permit under certain conditions. Further, with respect to the fruit moved out of Florida under a limited permit, the regulations prohibit the subsequent interstate movement of such fruit back to Florida or other listed jurisdictions that have commercial citrus producing areas.

Guam, the Northern Mariana Islands, and the Virgin Islands of the United States

As indicated above, the regulations include provisions designed to prevent fruit moved from Florida pursuant to a limited permit from being moved interstate to jurisdictions that have commercial citrus producing areas (49 FR 36624). The regulations in §§ 301.75 and 301.75-5 list American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, and Texas as jurisdictions that have commercial citrus producing areas (Florida is also included in the list of jurisdictions in § 301.75 that have commercial citrus producing areas). Guam, the Northern Mariana Islands, and the Virgin Islands of the United States also have commercial citrus producing areas but were inadvertently not included as jurisdictions with such areas. Therefore, it is necessary to amend the regulations in §§ 301.75 and 301.75-5 to include Guam, the Northern Mariana Islands, and the Virgin Islands of the United States in the list of jurisdictions that have commercial citrus producing areas.

Regulated Articles

Prior to the effective date of this document, § 301.75-2 of the regulations designated the following articles as regulated articles:

(a) Plants and any plant parts, including fruit and seeds, of any of the following:

Calamondin orange (*Citrus mitis*)
Citrus citron (*Citrus medica*)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunello japonica*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Mandarin orange (*Tangerine*) (*Citrus reticulata*)
Pummelo (*Shaddock*) (*Citrus maxima*)
Sour orange (*Citrus aurantium*)
Sweet orange (*Citrus sinensis*)
Tangelo (*paradisi* x.c. *reticulata*)
Temple orange (*reticulata* x.c. *sinensis*)
Trifoliata orange (*Poncirus trifoliata*)

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of the citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provision of this subpart.

It is intended that the list or regulated articles in paragraph (a) include all articles that have been determined to be likely to be a means of causing the artificial spread of citrus cranker if originating from an area infested with citrus canker. It has been determined that the list of articles in paragraph (a) should be expanded to read as follows:

(a) Plants and plant parts, including fruit and seeds, of any of the following:

All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Poncirus trifoliata* (this includes large numbers of such articles; the most common are lemons, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, and trifoliate orange).

Based on a search of scientific literature and Departmental research [1] and experience, it has been determined that any of these articles would be likely to be a means of causing the artificial spread of citrus canker if originating from an infested area.

Executive Order 12291 and Regulatory Flexibility Act

This interim 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 not have a significant effect on the economy; 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 have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

[1] The Departmental research and a list of this literature can be obtained from the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 628 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The regulations regulate certain interstate movements of articles from Florida that are designated as regulated articles.

With regard to nursery stock designated as regulated articles, a review of the Florida nursery industry indicates that, although there are over 7,000 certified wholesale/retail nurseries in Florida, only 141 nurseries (or about 1.8 percent of all nurseries in Florida, and 3.1 percent of all wholesale and wholesale/retail nurseries in Florida) are certified to produce nursery stock designated as regulated articles for commercial groves in Florida. In addition to these wholesale and wholesale/retail nurseries, other nurseries produce nursery stock for ornamental plantings. It appears that many of the wholesale and wholesale/retail nurseries are small entities. However, it appears that the primary market for all nursery stock designated as regulated articles is in Florida; although prior to the establishment of the regulations, very small amounts of such Florida nursery stock were sold for use in citrus groves in Louisiana, Texas, Hawaii, Puerto Rico, and American Samoa. Also, only an insignificant number of nurseries that produced nursery stock for ornamental plantings move such nursery stock interstate. Therefore, it has been determined that regulations affecting the production or sale of nursery stock will not have a significant economic impact on a substantial number of small entities.

With regard to fruit designated as regulated articles (primarily citrus fruit), it also appears that the regulations will not have a significant effect on a substantial number of small entities. Specifically, the regulations affect only fresh fruit and less than 20 percent of Florida citrus fruit is sold fresh. Further, the regulations permit fresh fruit designated as a regulated article to be shipped interstate if certain conditions are met, including the requirement that the fresh fruit not be shipped directly or indirectly to other citrus producing States. Shipment of fresh fruit from Florida to other citrus producing States has historically only involved about 1 percent of the total Florida citrus production. Therefore, it appears that, although many of the entities that produce or sell citrus fruit may be small entities, the regulations will not have a significant economic impact on these entities or any other small entities.

Further, with regard to seed designated as regulated articles, it appears that prior to the establishment of the regulations, there was an insignificant amount of such seed shipped interstate from Florida.

Under these circumstances, the 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.

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. It is necessary to make this interim rule effective immediately in order to help prevent the spread of citrus canker.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior 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 upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart—Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0579–0093.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant disease, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*) is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75 is revised to read as follows:

§ 301.75 Prohibition.

No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this subpart. No common carrier or other person shall move from an area not designated as a quarantined area to American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States any fruit which is designated as a regulated article and which originated in a quarantined area.

3. In § 301.75–2, paragraph (a) is revised to read as follows:

§ 301.75–2 Regulated articles.

The following are designated as regulated articles:

(a) Plants or plant parts, including fruit and seeds, of any of the following:

All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Poncirus trifoliata* (this includes large numbers of such articles; some of the most common are lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, and trifoliate orange).

* * * * *

4. In § 301.75–5, paragraph (a) is revised to read as follows:

§ 301.75–5 Movement of regulated articles under limited permit.

(a) Fruit designated as a regulated article may be moved interstate from a quarantined area to any State other than American Samoa, Arizona, California, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the Virgin Islands of the United States, if moved pursuant to a limited permit issued pursuant to paragraph (b) of this section and attachment in accordance with § 301.75–7, and if not unloaded in any of the States listed in this paragraph without permission from an inspector.

* * * * *

Done at Washington, D.C., this 19th day of June 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–15152 Filed 6–21–85; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 301

[Docket No. 85-340]

Golden Nematode, Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on April 3, 1985, which amended the "Golden Nematode" quarantine and regulations by designating a previously nonregulated area in Livingston County, New York, as a generally infested area. This action is necessary in order to prevent the artificial spread interstate of golden nematode. The effect of this amendment was to impose restrictions on the interstate movement of certain articles from suppressive areas and generally infested areas in New York.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on April 3, 1985, (50 FR 13178–13180) set forth an interim rule amending § 301.85–2a of the "Golden Nematode" quarantine and regulations (7 CFR 301.85 *et. seq.;* hereinafter known as regulations). The document amended the regulations by designating a previously nonregulated area in Livingston County, New York, as a generally infested area. The regulations impose restrictions on the interstate movement of certain articles from suppressive areas and generally infested areas in New York.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to prevent the artificial spread interstate of golden nematode, a serious pest affecting potatoes.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of April 3, 1985, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on April 3, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been 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 amendment will have an annual effect on the economy of less than § 4,000; 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 significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The 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 action affects the interstate movement of regulated articles from a specified area in Livingston County in New York. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are thousands of small entities that move regulated articles interstate from New York and many more thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that fewer than 32 small entities move regulated articles interstate from the specified area affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $4,000.

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, Golden nematode, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly the interim rule published at 50 FR 13178–13180 on April 3, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 19th day of June 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–15151 Filed 6–21–85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 350]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 350 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 28-July 4, 1985. The 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.

EFFECTIVE DATE: Regulation 350 (§ 908.650) is effective for the period June 28–July 4, 1985.

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.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) 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 1984–85. The committee met publicly on June 18, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand remains slow for fruit of all sizes, and prices are likely to continue to decline in the next few week due to significant competition from deciduous fruit.

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 the 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 the regulatory provisions 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, Orange (Valencia).

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

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

2. Section 908.650 is added to read as follows:

§ 908.650 Valencia Orange Regulation 350.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 28, 1985, through July 4, 1985, are established as follows:

(a) *District 1:* 160,000 cartons;

(b) *District 2:* 240,000 cartons;

(c) *District 3:* Unlimited cartons.

Dated: June 19, 1985.

William J. Doyle,

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

[FR Doc. 85–15150 Filed 6–21–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Egyptair

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Egyptair to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: June 13, 1985.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Egyptair on June 13, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

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

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

2. In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Egyptair.

* * * * *

Dated: June 17, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-15086 Filed 6-21-85; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Government in the Sunshine Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim rule with request for comments: Extension of comment period.

SUMMARY: On May 21, 1985 (50 FR 20889), the Nuclear Regulatory Commission published an interim rule change conforming the definition of "meeting" in its Government in the Sunshine Act regulations to guidance contained in a recent Supreme Court decision. The notice provided a 30-day period for public comment on whether the interim rule change should be made final. Two interested parties having requested a two-week extension of time, based on the significance of the issues involved and other factors, the NRC has decided to extend the comment period by 15 days, to July 5, 1985.

DATE: The extended comment period expires July 5, 1985. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, Washington, D.C. 20555, attention: Docketing and Servicing Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Peter Crane, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-1465.

Dated at Washington, D.C. this 19th day of June, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-15144 Filed 6-21-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-27, Amendment 39-5072]

Airworthiness Directives; Pratt & Whitney Aircraft JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -7J Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of the centrifugal oil filter (COF) and related gears, bearings, and attaching hardware from the main gearbox on Pratt & Whitney Aircraft (PWA) JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -7J series turbofan engines in accordance with PWA Service Bulletin (SB) 5486, Revision 3. This AD is needed to prevent gearbox initiated fires which can result in an inflight shutdown, complete loss of engine power, and an aircraft fire hazard which may require ground equipment for extinguishment.

DATES:

Effective—July 17, 1985.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** on July 17, 1985.

ADDRESSES: The applicable SB may be obtained from Pratt & Whitney Aircraft, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket No. 84-ANE-27, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Transport Engine Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FARs) to include a new AD requiring removal of the COF and related hardware from the main gearbox on PWA JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines was published in the **Federal Register** on February 8, 1985, (50 FR 5396). The proposal was prompted by a number of COF failure induced gearbox fires on certain PWA JT9D-3A, -7, -7H, -7A, -7AH, -7F and -7J series turbofan engines, and by a number of COF element failures on certain PWA JT9D-20 turbofan engines. The FAA has determined that since this condition is likely to exist or develop on other engines of the same type design, a new AD is being issued which requires incorporation of PWA SB 5486, Revision 3, dated August 29, 1983. This SB specifies the procedure for the removal of the COF, related gears, bearings, and attaching hardware from the main gearbox in the Boeing 747 series, JT9D engine powered, aircraft..

Interested persons have been afforded the opportunity to participate in the making of this amendment. Two comments were received.

The first commentator recommended modification of the compliance schedule to read "whenever another module is being replaced, i.e. LPC, HPT, LPT, etc., which requires an engine test, but not later than December 31, 1988". The second commentator recommended modification of the compliance schedule to read "when access to remove gearbox is afforded, but not later than December 31, 1988". The second commentator conducted an industry-wide survey regarding compliance accomplishment, based on the FAA's proposed schedule and on the commentator's proposed schedule. The results showed that industry can comply with this rule at an equivalent rate without undue hardship by adhering to the commentator's schedule. The FAA has reviewed both commentator's recommendations and has adopted the second commentator's proposal because it provides an equivalent level of safety and it is less restrictive.

The first commentator also recommended that the JT9D-20 engine model not be included in this rule for the following reasons:

(a) The intent of this AD is to eliminate gearbox fires by removing certain bearings from the gearbox. Incorporation of SB 5558 does not remove any gearbox bearings from the JT9D-20 engine model, only the COF because the COF bearings and gear are

part of the main gearbox drive for other accessories.

(b) There has never been a gearbox fire in this model. The FAA concurs with this commentator and has deleted the JT9D-20 engine model from this rule.

Conclusion

The FAA has determined that this regulation involves 1,731 JT9D engines installed on Boeing 747 series aircraft, and the approximate total cost is $4,152,152. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (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) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this section is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and (14 CFR 11.89); 49 CFR 1.47.

2. By adding the following new AD.

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -7J, series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent centrifugal oil filter (COF) bearing failures which may initiate main gearbox fires, accomplish the following:

Remove the COF, related gears, bearings, and attaching hardware from the main gearbox of PWA JT9D-3A, -7, -7H, -7A, -7AH, -7F, and -7J series turbofan engines per PWA SB 5486, Revision 3, dated August 29, 1983, or FAA approved equivalent, when access to the removed gearbox is afforded, but not later than December 31, 1988.

Upon request, an alternative means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Manager, Engine Certification Office, FAA New England Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

The PWA SB 5486, Revision 3, dated August 29, 1983, described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the SB from the manufacturer may obtain copies upon request to Pratt & Whitney Aircraft, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, Rules Docket No. 84-ANE-27, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on July 17, 1985.

Issued in Burlington, Massachusetts, on May 20, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-15180 Filed 6-21-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 76N-0324]

Investigational Device Exemptions; Conforming Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its investigational device exemption (IDE) regulations to make clear that IDE supplements are considered approved 30 days after FDA receives an application if FDA does not expressly disapprove the application. This action will conform the IDE regulations to the Federal Food, Drug, and Cosmetic Act.

DATES: Effective June 24, 1985; comments by July 24, 1985.

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 INFORMATON CONTACT: Halyna Breslawec, Center for Devices and Radiological Health (HFZ-403), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 18, 1980 (45 FR 3732), FDA issued a final rule (21 CFR Part 812) setting forth the conditions under which investigations of medical devices involving human subjects may be exempt from certain requirements of the Federal Food, Drug, and Cosmetic Act (the act) in accordance with the Medical Device Amendments of 1976 (Pub. L. 94-295) to the act. Paragraphs (a) and (b) of § 812.35 of the final rule (approved by the Office of Managment and Budget under control number 0910-0078), as amended effective April 12, 1983 (48 FR 15621), provide, in pertinent part:

(a) *Changes in investigational plan.* A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan that may affect its scientific soundness or the rights, safety, or welfare of subjects, and (2) obtain FDA approval of any such change, and IRB [institutional review board] approval when the change involves the rights, safety, or welfare of subjects (see §§ 56.110 and 56.111), before implementation. * * *

(b) *IRB approval for new facilities.* A sponsor shall submit to FDA a certification of any IRB approval of an investigation or a part of an investigation not included in the IDE application. If the investigation is otherwise unchanged, the supplemental application shall consist of an updating of the information required by § 812.20(b) and a description of any modifications in the investigational plan required by the IRB as a condition of approval. A certification of IRB approval need not be included in the initial submission of the supplemental application, and such certification is not a precondition for agency consideration the application. Nevertheless, a sponsor may not begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the certification of IRB approval, and FDA has approved the supplemental

application relating to the part of the investigation (see § 56.103(a)).

FDA has determined that the references in § 812.35 (a) and (b) to "FDA approval" and "FDA has approved," respectively, are ambiguous in that they could be interpreted as: (1) Requiring express prior approval of a supplemental IDE application by the agency or (2) providing for express prior approval of a supplemental IDE application by the agency, as well as providing for automatic approval of a supplemental IDE application if FDA does not expressly disapprove the application within 30 days after the agency receives the application. Of these two interpretations, only the second is consistent with section 520(g)(4)(A) of the act (21 U.S.C. 360j(g)(4)(A)), which provides:

(4)(A) An application, submitted in accordance with the procedures prescribed by regulations under [section 520(g)(2)], for an exemption for a device (other than an exemption from section 516) *shall be deemed approved on the thirtieth day after the submission of the application to [FDA] unless on or before such day [FDA] by order disapproves the application and notifies the applicant of the disapproval of the application.* [Emphasis added.]

Section 520(g)(4)(A) of the act applies to supplemental, as well as original, IDE applications because FDA's authority to establish procedures for supplemental applications derives from the general authority in section 520(g) to establish procedures for original applications.

FDA is correcting the ambiguity in § 812.35 (a) and (b) by amending these paragraphs to conform them to section 520(g)(4)(A) of the act. FDA is amending § 812.35 (a) and (b) by providing in each paragraph that agency approval of a supplemental IDE application is to be obtained under § 812.30(a), which provides for automatic approval of applications that FDA does not disapprove within 30 days after receipt. As a result of the amendments to § 812.35 (a) and (b), § 812.30(a) now specifically governs FDA action on supplemental, as well as original, IDE applications.

An original IDE application that does not contain the information required by § 812.20(b) is not subject to automatic approval. Similarly, FDA advises that it may not treat as a supplemental IDE application a submission under § 812.35 (a) or (b) which is deficient on its face in that it does not contain the information required under § 812.35, including, under § 812.35(b), updating of the information required by § 812.20(b), and any other relevant information FDA requires under § 812.20(c). FDA interprets these provisions to require the submission of, among other items: (1) A description of any change in the previously approved investigational plan; (2) the reasons for the change; (3) the name and address of the institution and the name, address, and chairperson of the reviewing IRB, if a new institution is to be added; and (4) any information previously required by FDA as a condition to approval of a proposed change in the investigation. A submission not including this information will not be deemed approved under § 812.30(a)(1) 30 days after receipt by the agency. Within 30 days after FDA receives a submission, FDA will notify the sponsor orally or in writing if the submission is not complete.

Section 812.35 permits a sponsor to submit a supplemental IDE application in two stages. Although § 812.35(b) provides that both FDA and IRB approval are required to add a new facility, a complete supplemental application for the purpose of FDA review need not contain certification of IRB approval. As amended § 812.35(b) states, however, "[n]evertheless, a sponsor may not begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the certification of IRB approval, and FDA, under § 812.30(a), has approved the supplemental application relating to that part of the investigation (see § 56.103(a))." If a supplement requests approval for an additional device but does not include certification of IRB approval to add a new facility, the sponosr is not authorized to ship the additional device to the new facility, even if 30 days have elapsed since FDA's receipt of the submission, unless IRB approval has been obtained and FDA has received the certification of IRB approval. A certification of IRB approval is received on the date the certification is postmarked or hand-delivered to FDA.

The Commissioner of Food and Drugs finds for good cause that notice, public procedure, and delayed effective date are unnecessary in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)) and 21 CFR 10.40(c)(4)(ii), because the amendments to §812.35 (a) and (b) are merely clarifying amendments that conform these paragraphs to section 520(g)(4)(A) of the act. The agency, nevertheless, is providing a 30-day period during which it will accept comments on the amendments. If FDA decides on the basis of the comments received that any change to the amendments is necessary, it will publish the change in the **Federal Register**.

Interested persons may, on or before July 24, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further changes to the amendments are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

A regulatory impact analysis in not required because the amendments merely clarify an existing regulation so that it conforms to the act. The ambiguity in the present regulation is resolved in a manner that could have only a beneficial economic effect on those subject to the regulation.

Because these amendments are issued as a final rule without being preceded by a notice of proposed rulemaking, a regulatory flexibility analysis under section 604 of the Regulatory Flexibility Act (Pub. L. 96-354) is not required. In any event, the rule will not have a significant economic impact on a substantial number of small entities for the reasons explained above.

List of Subjects in 21 CFR Part 812

Health records, Investigational device exemptions, Medical devices, Medical device research, Reporting and record keeping requirements.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 812 is amended as follows:

1. The authority citation for 21 CFR Part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 520, 701(a), 702, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended 1055, 1056-1058 as amended, 67 Stat. 476-477 as amended, 90 Stat. 565-574 (21 U.S.C. 331, 351, 352, 360j, 371(a), 372, 374, 381); 21 CFR 5.10.

2. In Part 812, § 812.35 is revised to read as follows:

§ 812.35 Supplemental applications.

(a) *Changes in investigational plan.* A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan that may affect its scientific soundness or the rights, safety, or welfare of subjects, and (2) obtain FDA approval under § 812.30(a) of any such change, and IRB approval when the change involves the rights,

safety, or welfare of subjects (see §§ 56.110 and 56.111), before implementation. These requirements do not apply in the case of a deviation from the investigational plan to protect the life or physical will-being of a subject in an emergency, which deviation shall be reported to FDA within 5 working days after the sponsor learns of it (see § 812.150(a)(4)).

(b) *IRB approval for new facilities.* A sponsor shall submit to FDA a certification of any IRB approval of an investigation or a part of an investigation not included in the IDE application. If the investigation is otherwise unchanged, the supplemental application shall consist of an updating of the information required by § 812.20(b) and (c) and a description of any modifications in the investigational plan required by the IRB as a condition of approval. A certification of IRB approval need not be included in the initial submission of the supplemental application, and such certification is not a precondition for agency consideration of the application. Nevertheless, a sponsor may not begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the cerification of IRB approval, and FDA, under § 812.30(a), has approved the supplemental application relating to that part of the investigation (see § 56.103(a)).

Dated: June 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15069 Filed 6-21-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 222, 234

[Docket No. R-85-0722; FR-1028]

Prepayment Privileges and Application of Monthly Payments Toward Late Charges on FHA-Insured Single Family Mortgages

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule: (1) Eliminates the 30-day written notice requirement for prepayment of single family mortgages and the requirement that prepayments be made on an interest payment date; (2) permits prepayments (in whole or in part), other than those received on an installment due date, to be credited on the next installment due date; (3) requires that lenders fully disclose in writing the lender's policies on collection of prepayment interest; and (4) imposes sanctions, including forfeiture of prepayment interest, on lenders who violate the disclosure requirements. This rule also permits mortgagees to apply a portion of a mortgagor's total monthly payment to a late charges.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410-5000, Telephone: (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

For many years, HUD's policies on single family prepayments generated a significant number of complaints from mortgagors, members of Congress and consumer interest groups. Current regulations require that a mortgagor: (1) Give the mortgagee a 30-day written notice of intention to prepay the mortgage, in whole or in part, and (2) make such payment on the installment due date (established by § 203.17 as the first of the month), unless the mortgagee elects to waive the requirements. If a mortgagor fails to meet both conditions for prepayment, the mortgagee may refuse to accept prepayment until the first day of the month following expiration of the notice period, unless the mortgagor agrees to pay interest to such later date. Thus, if a mortgagor gives a 30-day notice on September 15, the mortgagee may refuse to accept the prepayment until November 1, unless the mortgagor agrees to pay interest to November 1. The effect is two-fold: a notice period much longer than 30 days, and increased costs for the mortgagor.

When originally adopted, the requirement for a 30-day notice period was justified as giving lenders adequate time to anticipate prepayments, to develop close-out balances, and to arrange for reinvestment of prepayment funds. The advent of computers and other advanced equipment, combined with a greater degree of sophistication among money managers and immediate access to numerous short- and long-term investment alternatives, has obviated the need for a 30-day notice.

Prepayments are now usually initiated in connection with the sale of the property and involve new financing. Problems arise, however, because many mortgagors and real estate brokers are unfamiliar with the FHA regulations on prepayment privileges, and schedule the settlement date on the new home to take place as early as possible after financing is secured. The pressure for an early settlement date and the lack of familiarity with the regulations generally override serious consideration by the mortgagor of the prepayment penalty and, in effect, deny the mortgagor a reasonable opportunity to postpone the date of settlement to coincide with the date of prepayment set by the mortgagee. Instead, the mortgagor pays the extra interest in order to complete the sale as scheduled.

The current regulations result in mortgagees receiving significant amounts of unearned interest from prepaying mortgagors. Departmental data, gathered from HUD's Management Information System, indicated that approximately 108,000 FHA-insured mortgages were prepaid in 1981. From an analysis of the prepayment data, HUD constructed a general composite picture of the Department's average annual single family mortgage prepayment activity. That composite indicated that the typical mortgage: (1) Was prepaid in the 6th year of the 30-year term, (2) had an average outstanding balance of $55,000 at time of prepayment, and (3) was financed at a 12 percent interest rate. HUD estimated that an average amount of $804, representing one and one-half months of extra interest, was paid by 75 percent of all prepaying mortgagors. Based on this estimate, the average annual number of prepaying mortgagors paying extra interest was estimated to be about 81,000 (75 percent of 108,000), and the total amount of extra interest paid by such mortgagors was estimated to be $65,124,000 (81,000 times $804).

II. The 1979 and 1984 Proposed Rules

On October 31, 1979 (at 44 FR 62531), the Department published a proposed rule to amend 24 CFR 203.558 to provide that, with respect to single family mortgages insured on or after the effective date of the rule, a mortgagee: (1) Could not require a 30-day written notice of the mortgagor's intention to prepay the mortgage; (2) must credit a prepayment in full as of the date the payment was received; and (3) need not credit a partial prepayment (other than one received on an installment due date) until the following installment due date. The rule also proposed to amend § 203.608 to require the mortgagee to permit reinstatement of a mortgage

under certain circumstances, including after the institution of foreclosure proceedings.

Comments received in response to the October 31, 1979 proposed rule were generally opposed to the provisions relating to crediting of a prepayment as of the date it was received and to the reinstatement of a mortgage. The main arguments against the proposed rule were that: (1) Crediting prepayments in full as of the date payment was received would act to the severe detriment of mortgagees participating in the Government National Mortgage Association (GNMA) mortgage-backed securities program, since GNMA requires that mortgagees pass through interest through the last day of the month in which the payment is received; and (2) requiring reinstatement of the mortgage would serve to protect chronically delinquent mortgagors.

Early in 1984, the Department decided to republish for public comment that portion of the 1979 proposed rule dealing with prepayment privileges, because HUD continued to believe that, under the current regulations, prepaying mortgagors are subject to inequitable treatment by mortgagees with regard to the imposition of extra interest. The Department also believed that republication as a proposed rule was appropriate because of the significant period of time that had elapsed since the initial publication of the proposed rule. It was decided, however, that the portion of the 1979 proposed rule that would have required reinstatement of mortgages should, in response to the critical public comments, be withdrawn. (HUD reserved the right to repropose a similar amendment or to consider another course of action at some future time on the matter of reinstatement of a mortgage.)

On May 18, 1984 (at 49 FR 21079), the Department republished the proposed rule to amend sections in 24 CFR Parts 203, 213, and 234 which deal with prepayment privileges. The proposed rule provided that, with respect to mortgages insured on or after the effective date of the (final) rule, a mortgagee: (1) Could not require a 30-day written notice of the mortgagor's intention to prepay the mortgage; (2) must credit a prepayment in full as of the date the payment was received; and (3) need not credit a partial prepayment, other than one received on an installment due date, until the next following installment due date.

For those mortgages that were insured before the effective date of the rule, mortgagees could continue to exercise the option permitted by 24 CFR 203.558 and collect interest until the first day of the month following expiration of the 30-day notice of prepayment.

The rule also added proposed amendments to sections in 24 CFR Parts 203, 213 and 222 relating to application of monthly payments on single family mortgages. The proposed amendments to §§ 203.24, 213.515 and 222.6 would add late charges to the list of items to which the mortgagee may apply a portion of a total monthly payment. Section 203.554 already permits mortgagees to deduct late charges from the monthly payment, subject to notice requirements, if such deduction is not inconsistent with the terms of the mortgage. The amendments would clarify that such deductions are permitted and would codify late charge collection procedure set out HUD Handbook 4330.1, Chapter 4, paragraph 63.

The proposed amendments would continue safeguards relative to late charges by: (1) Requiring the mortgagee to give notice to the mortgagor of its intention to impose a late charge, (2) prohibiting a mortgagee from adding previously uncollected late charges to the monthly payment for purposes of calculating the present late charge, (3) subjecting the collection of late charges to the law of the State in which the mortgage is serviced and to the terms of the mortgage, and (4) prohibiting initiation of foreclosure proceedings when the only delinquency under the mortgage is a late charge that is due but unpaid.

The proposed amendments would be reflected in HUD's new security instruments, in order to further the objective of section 905 of the Housing and Community Development Amendments of 1978. Section 905 requires that, insofar as it is practicable and to the extent permitted by law, HUD, the Department of Agriculture, and the Veterans Administration should use uniform note and mortgage forms and other documents to reduce the paperwork and regulatory burden on homeowners and homebuyers.

III. Discussion of Comments

The Department received eleven comments in response to the May 18, 1984 proposed rule. The commenters included eight mortgagees, two mortgage banking associations, and one national organization representing home builders. All of the commenters were critical of the portion of the proposed rule dealing with prepayments, and raised arguments similar to those made in response to the October 31, 1979 proposed rule. No comments were submitted regarding the proposed amendments dealing with late payments.

The following discussion represents the scope and nature of the comments.

A. Elimination of the 30-day Written Notice Requirement

Of the ten comments dealing with the proposed elimination of the 30-day written notice requirement, five commenters agreed that the notice was no longer necessary for the purpose of developing close-out balances or as an aid to reinvestment of prepayment funds. Five commenters expressed opposition to its elimination, but only two of those commenters advanced any reasons in support of their postion. Those reasons were: (1) The initial justifications for the requirement are still valid, and (2) mortgagors should be held to the terms of the mortgage.

B. Crediting Prepayments in Full as of the Date Payment Is Received.

The commenters were unanimous in opposing the proposed change that would require lenders to credit prepayments in full as of the date payment is received. Their basic arguments can be summarized as follows:

(1) The change would impose serious burdens on mortgagees who place many of their FHA-insured mortgages in the GNMA mortgage-backed securities (MBS) program;

(2) HUD's estimates are inaccurate regarding the percentages of FHA-insured mortgages that are placed in GNMA-MBS pools and or prepaying mortgagors who are charged extra interest;

(3) HUD and GNMA already require mortgagees to absorb other expenses relating to foreclosures, interest on advances to GNMA pools, and interest and penalty charges if MIP premiums are not received by HUD on a timely basis, even where the delay was not caused by the mortgagee;

(4) The rule would increase the cost of housing for all buyers, and would have the most serious impact on first-time homebuyers and low- and moderate-income families, because of higher up-front costs and other charges that would be needed; and

(5) HUD's arguments (A) that the amendments are needed to conform HUD's practices to those of the VA and (B) that there is little evidence that mortgagees have voiced significant opposition to the VA practices are invalid and inappropriate.

1. *The changes impose serious burdens on GNMA-MBS participants.* GNMA requires issuers/servicers

participating in the MBS program to pass through interest to certificate holders through the last day of the month of a prepayment in full, regardless of the date of the prepayment. For example, if prepayment is made on September 5, the participating issuer/servicer is required to pass through interest to the security holder through September 30, even though, under the proposed rule, the issuer/servicer would receive interest from the mortgagor only until September 5. The proposed rule would force issuers/servicers to absorb the difference between the amount of interest collected and the amount of interest due GNMA.

Statistics supporting the May 18, 1984 proposed rule indicated that at least 70 percent of all FHA-insured single family mortgages are placed in GNMA-MBS pools. Based on the estimated 108,000 FHA-insured mortgages that are prepaid in full annually, mortgagees would have to absorb, on the average, pass-through interest fees to GNMA on about 75,600 mortgages annually. HUD estimated that the annual costs to MBS issuers resulting from GNMA requirements could ultimately exceed $20 million dollars. Current statistics indicate that about 90 to 95 percent of all such mortgages are now placed in GNMA-MBS pools; thus, the costs that mortgagees would be required to absorb would be significantly higher than indicated in the proposed rule.

HUD noted in the proposed rule that, because the rule would only apply prospectively, the projected costs for MBS issuers (and savings for prepaying mortgagors) would not be entirely realized until the rule was adopted and in effect for six years. Accordingly, the annual cost to the MBS issuers, based on the figures used in the proposed rule and assuming that the number of prepayments in full increase in an even amount every year, would be about $3.4 million the first year, with a $3.4 million increase every year until the $20.3 million level was reached in the sixth year. Based on the same assumptions, the net savings to mortgagors would approximate $10.8 million the first year and increase by a like amount annually until the projected $65 million level was reached in the sixth year. These projections assumed that *all* prepayments in full occur by the end of the sixth year of the mortgage term. More realistically, the projected costs and savings would be at a lower annual rate and extend over a longer period of time, since many prepayments in full do not occur until after the sixth year of the mortgage term.

2. *HUD's estimates of the problem are inaccurate.* The commenters challenged the accuracy of the percentages ascribed by HUD to the number of FHA-insured mortgages placed in GNMA-MBS pools and to the number of prepaying mortgagors charged extra interest. HUD set forth, in extensive detail, the methodology it followed in developing its estimates. HUD was careful not to suggest that the figures were precise, stating several times that the figures represented an *average* drawn from the Department's analysis of data reflecting single family mortgage activity. Although current estimates indicate that a higher percentage of FHA-insured mortgages are placed in GNMA-MBS pools than was indicated in the proposed rule, HUD believes that its estimates are reasonable and sufficient to show that prepaying mortgagors are currently being treated in an inequitable manner with regard to the collection of extra interest for the month following the GNMA pass-through period.

3. *HUD and GNMA require mortgagees to absorb other costs.* Several of the commenters asserted that HUD and GNMA already require mortgagees to absorb other expenses relating to foreclosures, interest on advances to GNMA pools, and interest and penalties on MIP premiums, if HUD does not receive them on a timely basis. Some commenters also argued that the current regulations are appropriate, because they permit mortgagees to subsidize losses caused by the VA requirements. The Department believes that the costs of doing business should not be absorbed by prepaying mortgagors, but is a burden best carried by the lending industry itself. Moreover, HUD experience suggests that mortgagees are granted sufficient financial inducement to make their operations profitable without having individual prepaying mortgagors subsidize their operations.

4. *The rule would impact adversely on first-time and low- and moderate-income buyers.* A number of commenters suggested that the proposed rule would have an adverse effect on the cost of housing, most particularly on first-time and on low- and moderate-income buyers. They pointed out that mortgagees, in anticipation of placing the mortgages in the GNMA-MBS program, establish interest rates and related costs at levels lower than would otherwise be the case, a factor that is most helpful to homebuyers on the lower end of the income scale. The commenters stated that the proposed rule could result in fewer mortgages being placed in the GNMA-MBS pool, because the MBS yield is already 75-100 basis points below the FNMA yield. Such a move away from GNMA could lead to higher financing costs for homebuyers.

HUD acknowledged in the proposed rule that it was likely that interest costs absorbed by GNMA issuers would be passed on to new mortgagors through points, fees, or similar devices. HUD indicated that, since most prepayments occur in connection with the purchase of another home, a sizable portion of such interest cost would be borne by mortgagors who had accomplished a "savings" in prepaying their FHA-insured mortgages, and that such mortgagors could better assume the extra costs in financing new mortgages going into a GNMA-MBS pool.

However, in light of the strong arguments made by the commenters, HUD has amended the proposed rule to permit the mortgagee, in the case of prepayment in full on other than an installment due date, to collect interest through the last day of the month in which the prepayment is made, if the mortgagee has advised the mortgagor in writing of its prepayment policies. Consequently, mortgagees will not be required to absorb the cost of GNMA pass-through interest or to pass on such extra costs to prepaying mortgagors in other ways.

5. *Mortgagees have objected to VA's prepayment policies.* HUD had noted in the proposed rule that, for many years, MBS pools have included about 50 percent of all VA-guaranteed mortgages and that such VA mortgages include the prepayment rule that HUD was seeking to adopt. HUD suggested that mortgagees placing VA-guaranteed mortgages in MBS pools have borne any interest-penalty risks attendant upon the prepayment of VA mortgages, without any apparent serious effort to change the VA rule. Consequently, HUD suggested that there was little basis for such mortgagees to object to HUD's efforts to adopt the same rule.

Special exception was taken to HUD's statements that mortgagees have taken little, if any, action, to have the VA amend its rules regarding prepayment policies and the requirement that payments be credited as of the date that they are recevied. The commenters stated that, on the contrary, numerous efforts had been made by individual mortgagees and the mortgage bankers' association to influence the VA to change its policies. The commenters noted that many mortgagees experienced significant losses on their VA mortgages in 1983 because of the high number of mortgages that were

refinanced, and some noted that they were able to offset VA losses because of HUD regulations that permit them to require prepaying mortgagors to pay the extra interest.

Several of the commenters took issue with the HUD assertion that the rule was needed in order to conform its policies with those of the VA. The commenters also pointed out that there are a number of current HUD practices that do not conform with the VA, and that it was unfair for HUD to focus on a single issue.

HUD regrets its apparently incorrect suggestion that mortgagees had acquiesced in VA policies that were the same as the policies HUD was proposing. However, the major basis for HUD's proposing the rule was not in fact the VA issue; it was the inequity of the burden placed on prepaying mortgagors. Therefore, HUD does not accept the comments that maintenance of HUD's current procedure is necessary, *so that mortgagees can offset VA losses by imposing extra interest costs on mortgagors who prepay FHA-insured mortgages.* The inappropriateness of such an argument is obvious. Mortgagees should find other, more valid, vehicles for dealing with VA losses than by imposing extra costs on prepaying mortgagors who, by the commenters' own description (first-time, low- and moderate-income homebuyers), are least able financially to subsidize the mortgagees' losses.

After careful consideration of all of the comments, as well as an analysis of the effect of the current prepayment policy on mortgagors and mortgagees, HUD has decided to implement a change in the regulations to eliminate the inequitable interest burden currently placed upon mortgagors who prepay their mortgages in full.

IV. HUD's Disposition of the Issues Raised by the Commenters

A. Elimination of the 30-Day Written Notice Requirement

In the absence of more substantive arguments, HUD believes that changed conditions permit lenders to determine close-out balances and to develop reinvestment strategies in a very short time, and, thus, have negated the need for the 30-day notice. The Department notes also that the 30-day notice requirement is not common practice or policy in the conventional mortgage market. This suggests that mortgagees themselves recognize the lack of need for such a notice. HUD has, therefore, decided to eliminate the 30-day notice requirement in the final rule.

B. Crediting Prepayments in Full as of the Date Payment Is Received

The commenters raised some valid points relative to mortgages placed in MBS pools, but failed to address the amount of unearned interest that mortgagees retain and do not pass through to GNMA. HUD data indicates that most prepaying mortgagors are now charged one and one-half months of extra interest (estimated to equal $804 for each prepaying mortgagor). Mortgagees participating in the GNMA-MBS program pass through only a portion of this unearned interest. MBS issuers retain at least a month's portion of the extra interest, or approximately $30.3 million annually (based upon the average monthly interest cost of $536 times the average number of prepaid mortgages in GNMA MBS pools). The amount of extra interest retained by mortgagees on mortgages that were not placed in the GNMA-MBS program is even higher.

To address the valid issues raised by the commenters and the legitimate interests of prepaying mortgagors, HUD has decided to make the following changes from the proposed rule: (1) Permit a mortgagee, with regard to a mortgagor making prepayment in full on other than an installment due date, to collect interest through the last day of the month in which the payment is made; (2) require a mortgagee to disclose, in a form approved by the Commissioner, its policies regarding prepayments at the time the mortgagor indicates an intention to prepay the mortgage; and (3) subject a mortgagee who violates the full disclosure requirements to forfeiture of interest received for the period after the date of prepayment in full, and to other sanctions permitted under Part 25 of this title. The disclosure provisions will clarify existing HUD policy and practice.

These changes benefit both mortgagees and prepaying mortgagors by: (1) Preventing mortgagees from having to absorb the pass-through interest costs imposed by GNMA for participation in the MBS program; and (2) freeing prepaying mortgagors from the burdens of having to pay interest for the month following the month in which the prepayment is made.

V. Summary of Changes in the Final Rule

For ease of identification, the principal changes in the final rule are listed below.

1. In the case of prepayments of mortgages insured after the effective date of this rule, if prepayment is offered on other than an installment due date, mortgagees may refuse to accept the payment until the next installment due date, or require payment of interest to that date, but only if the mortgagee meets disclosure requirements. The mortgagee may no longer require payment of interest for the month after the month in which prepayment is made.

2. New provisions are added to § 203.558 to (a) require full disclosure, in a form approved by the Commissioner, by the mortgagee of its prepayment policies at the time the mortgagor indicates an intention to prepay the mortgage in full, and (b) subject mortgagees who violate the disclosure requirements to (i) forfeiture of that portion of the interest collected for the period beyond the date of prepayment in full, and (ii) such other administrative actions as are authorized against mortgagees by the Mortgagee Review Board under 24 CFR Part 25. The current regulations require that the mortgagor be advised of the mortgagor's prepayment policy. The amendment is intended to clarify how the mortgagor must be advised of the mortgagor's prepayment policy and what actions the Department may take if the mortgagee fails to provide the required disclosure.

3. Section 234.39 is amended to conform to changes made with regard to application of a monthly payment to late charges made in Parts 203, 213 and 222. The amendment was inadvertently left out of the proposed rule.

VI. Findings and Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is estimated that an average of 9,000 FHA-insured single family mortgages are prepaid each month, and that 75 percent of these mortgages are currently subjected to 1½ months of extra interest. HUD data also indicates that the largest number of FHA-insured single family mortgages are prepaid in the 6th year of their term. A typical 30-year mortgage having a principal balance of $55,000 and an interest rate

of 12 percent costs the mortgagor approximately $536 per month in interest costs in the sixth year of the mortgage term. Under this rule, mortgagors will be required to pay interest only through the end of the month in which prepayment is made (to cover GNMA pass-through requirements), and, thus, will save one month's extra interest that mortgagees may now collect. In a 12-month period, it is estimated that the total savings on such prepaid mortgages would be about $43,416,000, an amount which is well below the $100 million threshold.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular hours in the office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410-5000.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant impact on a substantial number of small entities, because adequate means exist for mortgagees, including small mortgagees, to adjust their procedures to account for any economic impacts of this rule in advance of its effect on their business obligations.

Paperwork Reduction Act. The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

This rule was listed as sequence number 39 (H-9-79; FR 1028) in the Department's Semiannual Agenda of Regulations, published on April 29, 1985 (50 FR 17286, 17301) under Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by the regulatory changes: 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.130, 14.132, 14.133, 14.140, 14.159, 14.161, 14.163, 14.165, 14.166, 14.172, and 14.175.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, 24 CFR Parts 203, 213, 222 and 234 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By revising § 203.22, paragraph (b), to read as follows:

§ 203.22 Payment of insurance premiums or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment.

3. By revising § 203.24, paragraphs (a)(1) through (a)(4), to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time mortgage insurance premium paid in accordance with § 203.280), charges for open-end advances, ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

* * * * *

4. By revising § 203.558 to read as follows:

§ 203.558 Handling prepayments.

(a) Notwithstanding the terms of the mortgage, the mortgagee may accept a prepayment at any time and in any amount. Except as set out below, monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan.

(b) With respect to mortgages insured before August 2, 1985, if a prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the first day of the month following expiration of the 30-day notice period as provided in the mortgage, or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(c) With respect to mortgages insured on or after August 2, 1985, the mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. If the prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the next installment due date (the first day of the month), or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(d) If the installment due date (the first day of the month) falls on a nonworking day, the mortgagor's notice of intention to prepay under paragraph (b) or the prepayment shall be timely if received on the next working day.

(e) If the mortgagee fails to meet the full disclosure requirements of subparagraphs (b) and (c) of this section, the mortgagee may be subject to forfeiture of that portion of the interest collected for the period beyond the date that prepayment in full was received and to such other actions as are provided in Part 25 of this title.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

5. The authority citation for 24 CFR Part 213 continues to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. By revising § 213.513, paragraph (b), to read as follows:

§ 213.513 Payment of insurance premiums or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment.

7. By revising § 213.515 to read as follows:

§ 213.515 Payments, how applied.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount of the payment shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the monthly payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance (including insurance charges for open-end advances), ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) Any deficiency in the amount of any such monthly payment, unless made good by the mortgagor on or before the due date of the next monthly payment, shall constitute an event of default under the mortgage.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

8. The authority citation for 24 CFR Part 222 is revised to read as set forth below and any authority citation following any section in Part 222 is removed.

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. By revising § 222.6, by removing the word "and" after the semicolon at the end of paragraph (a)(3), removing the period at the end of paragraph (a)(4) and adding in its place a semicolon and the word "and" and by adding a new paragraph (a)(5), to read as follows:

§ 222.6 Application of payments.

(a) * * *

(5) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

10. The authority citation for 24 CFR Part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. By revising § 234.37, paragraph (b), to read as follows:

§ 234.37 Prepayment of insurance premium or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgage to prepay the mortgage in whole or in part on any installment due date, but shall not provide for the payment of any charge on account of such prepayment. Prepayments offered or made on other than an installment due date shall be subject to the provisions of § 203.558.

12. By revising § 234.39 to read as follows:

§ 234.39 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount of the payment shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the monthly payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance (including insurance charges for open-end advances), ground rents, taxes, special assessments, and such fire and hazard insurance premiums as may be required by the mortgagee;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

(b) Any deficiency in the amount of the monthly payment, unless made good by the mortgagor on or before the due date of the next monthly payment, shall constitute an event of default under the mortgage.

Authority: (Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715).)

Dated: June 14, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

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24 CFR Parts 207 and 255

[Docket No. R-85-0953; FR-1391]

Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule promulgates, in the form of a final rule, the numerous interim revisions to 24 CFR Part 255 which have been made since its original publication on July 2, 1980. Part 255 deals with Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects. A companion rule, 24 CFR Part 251, dealing with Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects, was promulgated as a final rule on August 9, 1984. In addition to setting forth the various substantive revisions that have been made to Part 255 since its inception, this final rule also reflects the organization and structure of its companion Part 251 rule. The two rules are designed to work in tandem as parts of a coordinated multifamily coinsurance program.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Office of Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 25, 1983, the Department published, in the form of an interim rule (48 FR 23386), a major revision of 24 CFR Part 255 entitled "Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects". Changes contained in that revision included (1) further extension of program eligibility to State Housing Agencies, (2) provisions for reinsurance of a lender's coinsurance risk, (3) revision of the maximum repair limits permitted under the program, (4)

tightening of the "sound capital resources" requirement, and (5) changes in the procedures and methods of calculating insurance benefits under the program. A discussion of the public comments received concerning this interim rule and a complete section-by-section description of the changes this final rule makes in the interim rule are set forth below.

Further amendments to Part 255 were published, at 49 FR 24634, on June 14, 1984. These amendments added new provisions to Part 255 to implement section 303 of the Housing and Urban-Rural Recovery Act of 1983. Section 303 contains special provisions governing the use of section 233(f) mortgage insurance and coinsurance for existing multifamily projects in connection with properties to be rehabilitated under the Housing Development Grant Program set forth in 24 CFR Part 850 and the Rental Rehabilitation Program set forth in 24 CFR Part 511. No public comments were received concerning these amendments to Part 255.

Finally, technical revisions to Part 255 were published on May 8, 1984 (49 FR 19454) and on July 5, 1984 (49 FR 27489). The May 8, 1984 revision implemented section 404 of the Housing and Urban-Rural Recovery Act of 1983, eliminating HUD's authority to set maximum interest rates for FHA-insured mortgages and providing that the obligation to be insured will bear interest at a rate agreed upon by the borrower and lender. The July 5, 1984 revisions contain a number of program amendments that (1) delete a requirement that, with respect to purchase transactions, all repairs be completed before loan closing; (2) permit coinsured lenders under Part 255 to extend commitments during a temporary lapse in the Secretary's authority to coinsure; (3) remove a special exception for the purchase of fire safety equipment and certain replacement items (such as ranges and refrigerators), thereby requiring these expenses to be counted against the "substantial rehabilitation" threshold; and (4) modify the term "major building components" for purposes of determining what constitutes "substantial rehabilitation" to exclude elevators as a major component. This final rule reflects each of these revisions which are, where necessary, discussed in more detail in the section-by-section description set forth below. No public comments relating to Part 255 were received in connection with any of these published revisions.

Public Comments Received on May 25, 1983 Interim Rule (48 FR 23399)

Eleven public comments were received concerning this interim rule. Five were from national organizations (National Association of Homebuilders, Mortgage Bankers Association, National Leased Housing Association, Federal National Mortgage Association, and the Council of State Housing Agencies). The remaining six were from private mortgages or developers and a law firm.

The following is a listing of the major recommendations or objections raised. The Department's disposition of these issues, as well as its actions on a number of other, more "technical" questions raised by the commenters, are either addressed in the listing or are set forth later in this preamble in the section-by-section "Description of Part 255—Final Rule".

1. Extension of Program to State Housing Agencies

Two comments expressed concern over State Housing Agency participation in the coinsurance program, urging that such agencies limit their activities to meeting the needs of the Nation's disadvantaged, specifically the elderly, the handicapped and low-income families. One of the comments strongly urged that "the opportunity for such agencies to participate be limited to instances where an agency can demonstrate that private lenders were unwilling or unable to make coinsured loans for the projects that the agency wishes to undertake." The Department believes that the extension of the coinsurance program to State Housing Agencies is consistent with their general eligibility to be approved mortgagees under HUD's general regulations (see Subpart A of 24 CFR Part 203) and sees no reason to exclude them where they meet the requirements for approval under § 255.102. We believe participation by State Housing Agencies will significantly broaden the potential benefits of the coinsurance program.

2. Requirement that Repairs be Completed Before Loan Closing.

Five comments stated that this requirement in the interim rule creates a serious impairment in the use of the program and could serve to undermine the security of both HUD and the coinsuring lender. The comments urge a revision of the interim rule to authorize completion of repairs subsequent to endorsement. The interim rule published on July 5, 1984 (49 FR 27489) authorized repairs subsequent to endorsement with respect to purchase transactions. HUD's experience with the Part 255 program demonstrates that continuing the restriction on repairs after endorsement with respect to refinancing is unnecessary and undesirable. Thus, this final rule authorizes repairs after endorsement with respect to both purchase and refinancing transactions.

3. Designation of Reinsurer as "Licensed Mortgage Guarantee Insurer"

One comment objected that the language in § 255.106(b) of the interim rule providing that a coinsuring lender may obtain reinsurance from "a licensed mortgage guarantee insurer" may, because of various State laws, unduly limit the type of insurer qualified to provide such insurance. The Department believes there is a basis for such concern and the term "licensed mortgage guarantee insurer" is deleted in this final rule (see § 255.107).

4. Assignment of Coinsured Mortgage as Security.

One comment urged that the regulations make clear that the lender is authorized to transfer a coinsured mortgage to a reinsurer as part of a pledge or other security arrangement. The final rule contains a new § 255.108 substantially the same as § 251.108, which allows the pledging of beneficial interests as security.

5. One Year Delay Before Lender Fee Chargeable to Mortgagor.

Three comments urged that coinsuring lenders be allowed to collect a 0.25 percent lender fee starting at the date of loan closing or endorsement, rather than one year after first payment to principal as is required in § 255.402(b) of the interim rule. The Department believes that authorizing any such earlier collection of the lender fee would violate section 203(c) of the National Housing Act, 12 U.S.C. 1709(c), which restricts mortgage insurance premiums under title II programs to one percent per year of the amount of the principal obligation of the mortgage outstanding at any time. Since the lender fee serves to compensate the lender for its risk of loss, it is, in essence, a mortgage insurance premium. If this reinsurance fee were permitted during the first year following endorsement, then that "premium", when combined with the regular mortgage insurance premium provided for in § 255.801(a) of the final rule, would exceed the one percent limit imposed by section 203(c) of the National Housing Act. For this reason, the restriction in the interim rule is retained in this final rule. There is, however, a reduction in the final rule of the amount of MIP which must be paid

to HUD by the coinsuring lender to cover the period from endorsement to the anniversary date of first payment to principal from a full one percent per year to 0.65 percent per year (see § 255.801(b) of final rule). The effect of this reduction is to make available for the lender's account, during this initial start-up period, .35 percent of the amount of MIP collected from the mortgagor.

6. Adequacy of Fees and Charges

Two comments claimed that the currently allowable lender fees and charges under § 255.202 of the interim rule are inadequate. The Department has this question under continuous review and believes that the current allowable fees and charges cover the reasonable costs of doing business under the coinsurance program.

7. Secondary Obligations

One comment recommended that the mortgagor, at or after loan closing, be permitted to incur unlimited additional obligations for any purpose, provided that (1) the additional obligations are represented by Surplus Cash Notes (FHA Form 2223), (2) the notes are secured by liens on the property which are inferior to the coinsured mortgage, and (3) in a purchase transaction, the purchaser makes a cash downpayment of 7½ percent of either acquisition cost or project value, whichever is less. The Department does not agree with this recommendation. To allow unlimited secondary obligations in connection with a coinsured project could adversely affect its disposition (sales potential) thereby increasing HUD's risk exposure. The current limitations on secondary financing, found in § 255.210 of the interim rule, are, therefore, retained in this final rule.

8. Loan Interest Rate

One comment recommended deletion of HUD's authority to set maximum loan interest under § 255.214 of the interim rule. This section was revised at 49 FR 19459 on May 8, 1984 in response to statutory changes to provide that coinsured loans will bear interest at a rate agreed upon by the mortgagor and coinsuring lender with no FHA-imposed maximum to apply. This final rule, in § 255.204, reflects this revision in interest rate requirements.

9. Prepayment of Coinsured Loans

Section 255.220(a)(3) of the interim rule permits prepayment (generally within 5 years of endorsement) of a coinsured mortgage if the Commissioner determines that continuation of the project as rental housing is unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community. One comment recommended that this provision be revised to permit a coinsuring lender to accept prepayments within five years if the lender finds that the project's rentals equal or exceed 125 percent of the Section 8 Existing Fair Market Rents for the same location, type and size of units. The Department does not believe that this automatic type of exemption would accurately reflect the statutory requirements contained in section 223(f) of the National Housing Act upon which paragraph § 255.220(a)(3) is based. More flexible criteria for use in applying paragraph § 255.220(a)(3) are contained in HUD handbooks and administrative instructions.

10. Accelerated Payment of Insurance Claims

One comment proposed that the regulations be revised to allow HUD to pay the entire insurance claim after default and then be reimbursed later by the lender for its share of any coinsurance loss. It is asserted that such a procedure would enhance bond ratings for projects utilizing tax-exempt financing.

We believe such a procedure is unnecessary and that it tends to run counter to some of the premises upon which the coinsurance programs are based. To ensure that coinsuring lenders have sufficient funds to pay their obligations in a timely manner, the regulations require each participating lender to maintain at least $1,500,000 in sound capital resources and to increase these resources by one dollar for each $300 of outstanding principal indebtedness on mortgages it has coinsured. HUD also gives coinsuring lenders the option of reinsuring part or all of their coinsurance risk on individual loans. Coinsuring lenders can use this reinsurance to strengthen the bond ratings for projects using tax-exempt financing. The combination of Sound Capital Resources and the ability to reinsure should ensure adequate bond ratings for projects utilizing tax-exempt financing.

11. Required Fire and Hazard Insurance

One Comment noted, in discussing § 255.216(a) of the interim rule, that:

> The requirement that the Commissioner be included in the loss-payable clause appears to be a carry-over from regulations governing all other HUD programs. However, unlike all other HUD programs, under co-insurance, the lender does not have the option of assigning a loan to HUD in the event of a default. The Commissioner, therefore, will not become a mortgagee by assignment and it would appear that the naming of the Commissioner in the mortgagee loss payable clause, given such circumstances, would be inappropriate.

The Department does not completely agree with this recommendation. For example, while a coinsuring lender does not have the option of assigning a coinsured loan to HUD in the event of a default, GNMA has this option (§ 255.826), if a coinsuring lender defaults on its obligations to holders of GNMA Mortgage-Backed Securities and GNMA perfects an assignment of the coinsured mortgage to itself. Section 255.503(l) of the final rule therefore contains a requirement that a standard mortgagee clause making losses payable to the lender and the Commissioner as their interests may appear be included in the mortgage.

12. Federal National Mortgage Association (FNMA) Participation in Program on Same Basis as Government National Mortgage Association (GNMA)

We disagree with FNMA's comment that HUD should provide FNMA the same remedies as those available to GNMA in the event of a default by a lender-issuer of GNMA securities. HUD provides these remedies with respect to GNMA-Backed Securities because GNMA is an instrumentality of the Department. Since FNMA is now a privately owned company, HUD has no similar obligation to the holders of FNMA securities. Also, we question whether the Department could provide such backing for any non-Federal securities without specific statutory authority.

13. Targeted Preservation Area Loans

One comment on the interim rule noted that:

> The language in Section 255.208 (Refinancing of Mortgages in Portfolio) allows discretion by the Commissioner to permit a lender to exceed the limit of one-fourth of the total loans from the lender's portfolio only if the proposed new loan meets the eligibility requirements of Section 207.32. The language should be revised so that previously approved loans from portfolio meeting this (sic) eligibility criteria would also permit the Commissioner's discretion if that were the cause of exceeding the limit.

We believe that the exemption, in this final rule, of HUD-insured portfolio loans from the 25 percent limitation adequately meets this concern.

Description of Part 255—Final Rule

The most obvious difference between this rule and the earlier interim rule is the reorganization of the sequence of sections comprising Part 255 in the final

rule. The part has been radically reorganized in a effort to have its structure and sectional sequence conform as closely as possible to the companion Part 251 coinsuring authority for newly constructed or substantially rehabilitated properties. The similarity of structure in each of the parts is intended to highlight the fact that the basic policies behind each of these coinsurance programs are the same, and that nearly all the substantive differences between the texts can be attributed to the fact that Part 255 relates to existing multifamily structures, whereas Part 251 deals with newly constructed or substantially rehabilitated properties. The table below compares the new sectional structure of Part 255 (which is identical to that found in Part 251) with the Part 255 sectional structure found in the interim rule. There then follows a description, by section, of the changes this final rule makes in the interim rule and, where appropriate, its differences from its companion Part 251.

RESTRUCTING OF TEXT OF PART 255 TO CONFORM TO ORGANIZATION OF PART 251

New Part 255—Final Rule, Section No.	Heading	Old Part 255—Interim Rule, Section No.
	Subpart A—General Provisions	
255.1	Purpose and scope	255.1-255.6(a)
255.2	Coinsurance contract	255.8(e)
255.3	Definitions	255.8, 255.228(c)
255.4	Effect of amendments	255.429
	Subpart B—Lender Requirements	
255.101	Eligible lender	255.7, 255.101
255.102	Review and approval as Coinsuring lender.	255.102
255.103	Duration of approval	255.103
255.104	Withdrawal of approval	255.104-255.105
255.105	Delegation of servicing	255.106(a)
255.106	Assignment and participation in coinsured mortgages.	255.403
255.107	Reinsurance	255.106(b)
255.108	Pledging and other security arrangements.	
	Subpart C—Program Requirements	
255.201	Eligible project	255.228—255.229, 255.430
255.202	Eligible Mortgagor	255.223(a)
255.203	Maximum mortgage limitations.	255.211
255.204	Maximum interest rate	255.214
255.205	Term of the Mortgage	255.212
255.206	Lender's fees and premiums.	255.202, 255.402(b)
255.207	Coinsurance of Mortgages in lender's portfolio.	255.208
255.208	Nondiscrimination in housing and employment.	255 224-255.225
255.209	Labor standards and prevailing wage requirements.	255.225a
	Subpart D—Processing and Commitment	
255.301	Processing responsibilities	255.6(b), (c), 255.201, 255.203

RESTRUCTING OF TEXT OF PART 255 TO CONFORM TO ORGANIZATION OF PART 251—Continued

New Part 255—Final Rule, Section No.	Heading	Old Part 255—Interim Rule, Section No.
255.302	Processing and commitment.	255.201, 255.203
	Subpart E—Cost Certification and Endorsement by the Commissioner	
255.401	Agreement to certify cost requirements.	255.232
255.402	Certificate of actual costs—contents in general.	255.235
255.403	Effect of certification of actual costs.	255.240-255.241
255.404	Lender's review of Mortgage amount.	255.239
255.405	Endorsement by the Commissioner.	255.401
	Subpart F—Mortgage and Closing Requirements	
255.501	Mortgage requirements-real estate.	255.215, 255.217, 255.227
255.502	Title	255.230-255.231
255.503	Mortgage provisions	255.209, 255.213, 255.216, 255.218-255.221, 255.226
255.504	Mortgage lien and other obligations.	255.210
255.505	Regulatory agreement	255.107
255.506	Other closing documents	
	Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest	
255.601	Requirements applicable to all projects.	
	Subpart H—Program Requirements Relating to Project Operation	
255.701	General	255.222
255.702	Reserve for replacements and general operating reserve.	255.223(d)(2), 255.223(e)
255.703	Rents and charges	255.223(c)
255.704	Use of project funds	255.223(b)
255.705	Distributions and Residual Receipts.	255.223(b)
255.706	Project management	255.223(d), 225.224(d)
	Subpart I—Contract Rights and Obligations—Mortgage Insurance Premiums	
255.801	Payment of MIP by mortgagor and lender.	255.402(a), 255.404
255.802	Duration and method of payment of MIP.	255.403, 255.405
255.803	Pro-rata refund of annual MIP.	255.406
255.804	Late charges—MIP	255.407
	Delinquency and Default Under the Mortgage	
255.805	Notice of delinquency	
255 806	Definition of default	255.410
255.807	Date of default	255.411
255.808	Notice of default	255.412
255.809	Financial relief to cure a default.	255.414
255.810	Reinstatement of a defaulted Mortgage.	255.413
	Termination	
255.811	Termination of Coinsurance Contract.	255.415, 255.417
255.812	Notice and date of termination by Commissioner.	255.416

RESTRUCTING OF TEXT OF PART 255 TO CONFORM TO ORGANIZATION OF PART 251—Continued

New Part 255—Final Rule, Section No.	Heading	Old Part 255—Interim Rule, Section No.
	Claim Procedure and Payment of Insurance Benefits	
255.813	Notice of election to acquire property and file a claim.	255.422
255.814	Acquisition of property	255.420
255.815	Deed in lieu of foreclosure	255.421
255.816	Disposition of property and application for insurance benefits.	255.424
255.817	Method of payment	255.423
255.818	Amount of payment	255.425
255.819	Items included in payment	255.426
255.820	Items deducted from payment.	255.427
255.821	Amount of payment for certain mortgagors covering property rehabilitated with assistance under 24 CFR Part 511 or Part 850.	
255.822	[Reserved]	
	Remedies for Default by a Lender—Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program	
255.823	Indemnification of GNMA	255.428(a)
255.824	Withdrawal of lender approval.	255.428(b)
255.825	HUD recourse against lender-issuer.	255.428(c)
255.826	GNMA right to assignment	255.428(d)
255.827	GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.	

Subpart A—General Provisions

Section 255.1 Purpose and scope.

Paragraphs (a) through (g) of this section track corresponding paragraphs in 24 CFR Part 251, except that references are made to existing, rather than newly constructed or substantially rehabilitated projects. A change from the interim rule is the deletion of interim rule § 225.1 (e) and (f), which are nonspecific references to the extent of delegation to the lender, lender authority to assign loans, and the protections afforded GNMA in the rule. These paragraphs are redundant and unnecessary as the final rule is now drafted. Another change from the interim rule is the substitution of a new paragraph (f) from § 251.1. This paragraph, in effect, is an expanded version of §§ 255.2 and 255.5 of the interim rule. It provides for the modification, discontinuance or suspension of coinsurance activities where the Commissioner finds they are having an adverse effect on mortgage credit in older and declining neighborhoods, in specific housing market areas, or on other Federally-insured projects. A further change from

the interim rule is found in paragraph (g)(1) relating to standards and criteria to be applied in conducting physical inspections of the project. The language of the final rule closely tracks the statutory language of section 244(b) of the National Housing Act.

Section 255.2 Coinsurance contract.

This section is substantially the same as its corresponding section in Part 251 and is similar to the definition contained in paragraph 255.8(e) of the interim rule.

Section 255.3 Definitions.

This section tracks its corresponding section in Part 251, except that the definitions of Builder and Sponsor's Profit and Risk Allowance, Builder-Seller Mortgagor, Firm Commitment, Investor-Sponsor Mortgagor, and Sponsor's Profit and Risk Allowance are deleted as not necessary for purposes of this regulation. The section differs from § 255.8 of the interim rule in that definitions of Cooperative Mortgagor, Distribution, General Mortgagor, Limited Distribution Mortgagor, Nonprofit Mortgagor, Residual Receipts, Substantial Rehabilitation, and Surplus Cash are added from Part 251. These additions make clear that, though in practice almost all mortgagors receiving the benefits of insurance under section 207 of National Housing Act have been profit motivated, there is no legal restriction to this category of mortgagor.

The definition of Substantial Rehabilitation in this final rule is the same as that found in § 255.228(c) of the interim rule (as revised by interim rules published on June 14, 1984 (49 FR 24655) and July 5, 1984 (49 FR 27492)). The definition of Sound Capital Resources corresponds to that found in the Part 251 rule, the language of which clarifies, but does not change the substance of, the definition found in the Part 255 interim rule.

Section 255.4 Effect of amendments.

This section is substantially the same as its corresponding section in Part 251. It is similar to § 255.429 of the interim rule except that the provision in Part 251, requiring that mortgages to be coinsured or on which the lender has made a commitment to coinsure, be endorsed for coinsurance within 60 days to assure against any amendment's adverse effect upon a lender is added. Also the section deals specifically with the effect of an amendment on extensions, amendments or reissuances of a lender's commitment.

Subpart B—Lender Requirements

Section 255.101 Eligible lender.

This section is substantially the same as its corresponding section in Part 251 and § 255.7 of the interim rule.

Section 255.102 Review and approval as coinsuring lender.

This section is substantially the same as its corresponding sections in Parts 251 and 255, except that new paragraph (10) is added. The new paragraph requires the lender to submit, as part of the approval process, a statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required in paragraph (2). In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets that would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party to any transfer not made in accordance with these requirements. The intent of this new paragraph is to help ensure what is already required under paragraph (2): *i.e.*, that the Sound Capital Resources required under § 255.102(b)(2) are maintained by the coinsuring lender throughout the life of the Coinsurance Contract.

While substantially the same as § 255.102 of the interim rule, some language and structural changes are made to clarify its provisions and a paragraph 255.102(i) in the interim rule (relating to education requirements for appraisers) is deleted as redundant.

Section 255.103 Duration of approval.

This section is substantially the same as its corresponding section in Part 251 and § 255.103 of the interim rule as it was revised on July 5, 1984 (49 FR 27489). A prohibition against lender approval of mortgage modifications during a temporary lapse in the Secretary's authority to coinsure, which is contained in the interim rule, is deleted because it is not required by law and is undesirable in situations where a timely work-out arrangement would prove beneficial to all parties.

Section 255.104 Probation, suspension, or withdrawal of approval.

This section is based upon its corresponding section in Part 251. Comparable sections in the interim rule are §§ 255.104 and 255.105. Differences from the § 251.104 model are for the purpose of (1) adding probation to the corrective actions the Commissioner may take, (2) specifying the procedure to be followed when a probation or suspension or withdrawal of approval action is taken and (3) clearly establishing that actions under this section are independent of any other actions that may be taken under 24 CFR Part 24 (Debarment and other Administrative Sanctions) or action by the Mortgagee Review Board under 24 CFR Part 25. The revisions reflect administrative policies under the Parts 251 and 255 coinsurance programs.

Section 255.105 Delegation of servicing.

This section is substantially the same as its corresponding section in Part 251. It is also substantially the same as § 255.106(a) of the Part 255 interim rule, except that the lender is required (by regulation rather than as provided in a contract) to directly service all loans in GNMA security pools. It also differs from the interim rule in that a paragraph (c) is included authorizing HUD to require the lender to cancel the servicing arrangement upon receipt of a 30-day written notice.

Section 255.106 Assignment of coinsured mortgages.

This section is substantially the same as the corresponding §§ 251.106 (a), (b), (c), and (d)(1) of Part 251. It is similar to § 255.408 of the interim rule, except that requirements for lender notification to the Commissioner (§ 255.106(b)), for the transfer of a partial interest in a coinsured mortgage (§ 255.106(c)), and for GNMA approval for assignment of any coinsured mortgage used to back GNMA securities (§ 255.106(d)), are added in this final rule. Provisions relating to GNMA Project Loan Certificates (§ 251.106(d)(2)), are not contained in this final rule since they are generally not applicable to mortgages covering completed projects.

Section 255.107 Reinsurance.

This section is based upon its corresponding section in Part 251. It is substantially the same as § 255.106(b) of the interim rule as revised on June 14, 1984 (49 FR 19454), except that in response to the public comment noted above, the term "licensed mortgage

guarantee insurer" used in that rule has been deleted.

Section 255.108 Pledging and other security arrangements.

This section is substantially the same as its corresponding section in Part 251. Both public comment on the Part 255 interim rule and a continuing assessment of the coinsurance process during development of the Part 251 program led to inclusion of this section in this final rule.

Subpart C—Program Requirements

Section 255.201 Eligible project.

This section is the same as its corresponding section in Part 251, except (1) paragraph (a) sets forth specifications for an existing structure, rather than one newly constructed or substantially rehabilitated; (2) a paragraph (a)(6) (relating to sustaining occupancy or provision for an operating deficit fund before endorsement) is carried over from § 255.228(g) of the interim rule; (3) the requirement that the property be *designed* in accordance with HUD minimum property standards is deleted as inapplicable to existing structures (in lieu thereof, § 225.1(g) of the final rule requires review of properties and physical inspections of dwelling units to be conducted in accordance with the standards used by HUD personnel in the full FHA insurance program); and (4) provisions limiting the amount of commercial space in a project track the provisions of the interim rule, rather than the language in § 251.201(a)(5).

The section is substantially similar to §§ 255.228, 255.229 and 255.430 of the interim rule except that paragraph 228(c) of the interim rule (defining "substantial rehabilitation") is contained in § 255.3 of this final rule.

Section 255.202 Eligible mortgagors.

As in the corresponding section in Part 251, mortgagors are approved by the coinsuring lender in accordance with standards established by the Commissioner. The interim Part 255 rule did not contain a section corresponding to this § 255.202.

Section 255.203 Maximum mortgage limitations.

This section is, in substance, the same as § 255.211 of the interim rule (as revised on June 14, 1984 at 49 FR 24655) with the addition of a provision allowing properties meeting the requirements of § 207.32a(1) (Targeted Preservation Areas) or properties covering cooperatives to secure mortgages up to an amount of 90 (rather than 85) percent of value. The provision is consistent with current administrative policy with respect to the Targeted Preservation Area (TAPs) program and the insurance of mortgages covering existing cooperatives under programs other than 24 CFR Part 213—the basic cooperative program. The section differs somewhat from § 255.211 in paragraph format and language. These format and editorial changes conform the section to its corresponding section in Part 251.

Section 255.204 Maximum interest rate.

This section is similar to its corresponding section in Part 251 and is substantially the same as § 255.214 of the interim rule as revised on May 8, 1984 at 49 FR 19459. Language in the interim rule regarding the interest rate to be applied to mortgage increases is not continued, since no mortgage increases are permitted under the Part 255 program.

Section 255.205 Term of the mortgage.

This section is substantially the same as § 255.212 of the interim rule.

Section 255.206 Lender's fees and premiums.

This section is substantially the same (except for reference to section 207 rather than 221 of the National Housing Act) as its corresponding section in Part 251 and to §§ 255.202 and 255.402(b) (as revised on June 14, 1984 at 49 FR 24655) of the Interim rule. A provision is added in the final rule expressly allowing the lender to collect fees in addition to those specified where they are approved by the Commissioner, paid from sources other than mortgage proceeds, and are disclosed at endorsement. This conforms with current administrative policy and practice of the Department.

Section 255.207 Coinsurance of mortgages in lender's portfolio.

This section is substantially the same as its corresponding section in Part 251. It is also substantially the same as § 255.208 of the interim rule, except that a paragraph (b) is added exempting from the one-fourth limitation in paragraph (a), both portfolio loans already insured under the full insurance program and mortgages in which the lender's sole involvement is servicing.

Section 255.208 Nondiscrimination in housing and employment.

This section is the same as its corresponding section in Part 251 except that two paragraphs (relating the use of projects for hotel purposes and a requirement that the purchaser of a coinsured project agree to comply with the requirements of this section) are carried over from the interim rule. The section is substantially the same as § 255.224 and 255.225 of the interim rule, the only significant difference being that, in the final rule, the mortgagor must certify its compliance with nondiscrimination requirements. These requirements are also, as a factual matter, incorporated in the regulatory agreement.

Section 255.209 Labor standards and prevailing wage requirements.

This section is substantially the same as § 255.225a of the interim rule as revised on June 14, 1984 (49 FR 24655). It applies Davis-Bacon requirements if the project involves assistance under Part 511 or Part 850 of Title 24 and the cost of repairs, replacements and improvements exceeds $6,500 per dwelling unit, adjusted for any high-cost area factor under §255.203(a).

Subpart D—Processing and Commitment

Section 255.30 Processing responsibilities.

This section is similar to its corresponding section in Part 251. The main difference is the inclusion of provisions specifying that among the processing functions retained by the Commissioner, and not delegated to the lender, are (1) the labor standards and prevailing wage requirements under § 255.209 and (2) assessment of environmental impact under environment-related laws (but not NEPA), as set forth in 24 CFR Part 50. NEPA is not included since the purchase or refinancing of multifamily projects under section 223(f) of the National Housing Act is categorically excluded from the Act's requirements by 24 CFR 50.20(j).

Also, there is a substitution, in paragraph 301(c), of a more inclusive requirement that a lender submit "any information required by the Commissioner for tracking or monitoring purposes" for the more limited listing of types of information that could be required that is set forth in § 251.301(c). Experience under the Part 255 program shows that the Department may need a broader range of information from lenders than that specified in § 251.301(c). For example, in addition to the information required for assessing housing market impact in § 251.301(c), the Department may also require information relating to program operations.

In substance, the section also reflects provisions relating to processing responsibilities promulgated under the

interim rule (see chart comparing provisions of final rule to Part 255 interim rule, *supra*).

Section 255.302 Processing and commitment.

This section is substantially the same as its corresponding section in Part 251, except that there are additional paragraphs (d) and (e) carrying over certain provisions of Part 255. Paragraph (d) contains a provision permitting repairs to be carried out after loan closing in connection with both purchase and refinancing transactions. The interim rule published on July 5, 1984 (49 FR 27489) permitted such repairs in connection with purchase transactions alone. However, as noted above (see item 2 in the summary of public comments *supra*), based on both public comments and HUD's own program experience, HUD has decided to extend the benefit of this provision to refinancing transactions as well.

Paragraph (e) continues the provisions of § 255.203(a) of the interim rule as amended on June 14, 1984 (49 FR 24655). Section 203(a) requires lenders, in order to be eligible for special insurance benefits in connection with projects rehabilitated with assistance under Parts 511 or 850, to obtain approval of the Commissioner before issuance of an insurance commitment.

The section also reflects provisions relating to processing requirements promulgated under the interim rule (see chart comparing provisions of final rule to Part 255 interim rule, *supra*).

Subpart E—Cost Certification and Endorsement by the Commissioner

Section 255.401 Agreement to certify cost requirements.

With one addition, this section is substantially the same as § 255.232 of the interim rule. Analogous provisions in Part 251 can be found at § 251.404(c).

A paragraph is added, based on provisions in §§ 255.201 and 255.401 of the interim rule, as revised on July 5, 1984 (49 FR 27489). The provisions are more specific than those in the July 5 revision in requiring lenders, where repairs are to be made after endorsement, to establish escrows and disburse mortgage proceeds in accordance with standards established by the Commissioner and, wherever applicable, reduce the mortgage by the amount estimated costs exceed actual certified costs. These specific provisions reflect more precisely HUD's administrative procedures and practices.

Section 255.402 Certificate of actual costs—contents in general.

This section is substantially the same as § 255.235 of the interim rule. Analogous provisions in Part 251 can be found at § 251.404 (c) through (g).

Section 255.403 Effect of certification of actual costs.

This section is substantially the same as §§ 255.240 and 255.241 of the interim rule. Analagous provisions in Part 251 can be found at § 251.404(b) and (i).

Section 255.404 Lender's review of mortgage amount.

This section is substantially the same as § 255.239 of the interim rule. Analagous provisions in Part 251 can be found at § 251.405.

Section 255.405 Endorsement by the Commissioner.

This section is similar to § 251.407 of Part 251 and is, in substance, the same as § 255.401 of the interim rule.

Subpart F—Mortgage and Closing Requirements

Section 255.501 Mortgage requirements—real estate.

The provisions of this section are substantially the same as those found in §§ 255.215, 255.217, and 255.227 of the interim rule, except that a provision is added expressly listing the political jurisdictions within which a property covered by a coinsured mortgage must be located. Analogous provisions in Part 251 are at § 251.501.

Section 255.502 Title.

This section is the same as the corresponding section in Part 251. It is substantially the same as the provisions of §§ 255.230 and 255.231 of the interim rule.

Section 255.503 Mortgage provisions.

This section is substantially the same as its corresponding section in Part 251, except that a provision similar to § 255.220 of the interim rule replaces paragraph (i) of § 251.503. Section 255.220 of the interim rule relates to the prepayment of a coinsured mortgage secured by a rental property and implements the specific statutory provisions of section 223(f) of the National Housing Act. These provisions are carried over in this final rule and, in addition, provisions are added subjecting any prepayment restrictions or penalties imposed in connection with subsidized mortgages, mortgages which may be purchased by GNMA, or bond financed mortgages to standards and restrictions established by the Commissioner. The added provisions indicate the types of mortgages of which HUD has specific prepayment policies.

The section is also in substance the same as §§ 255.209, 255.213, 255.216, 255.218, 255.219, 255.220, 255.221 and 255.226 of the interim rule.

Section 255.504 Mortgage lien and other obligations.

This section is substantially the same as § 255.210 of the interim rule. (Note that § 255.210 (a), (e), and (f) were revised by the interim rule published on June 14, 1984 (49 FR 24655.) Provisions comparable to those contained in paragraphs (a) (b) and (f) of this section are contained in § 251.504.

Section 255.505 Regulatory agreement.

This section is the same as its corresponding section in Part 251 and is substantially similar to § 255.107 of the interim rule.

Section 255.506 Other Closing Documents.

This section is the same as its corresponding section in Part 251 and conforms with administrative requirements of the Commissoner that have been promulgated under the interim rule. There is no specific corresponding section in the interim rule.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

Section 255.601 Requirements applicable to all projects.

This section is substantially the same as its corresponding section in Part 251 and conforms with administrative requirements of the Commissioner that have been promulgated under the interim rule. There is no specific corresponding section in the interim rule.

Subpart H—Program Requirements Relating to Project Operation

Section 255.701 General.

This section is the same as its corresponding section in Part 251 and is substantially the same as § 255.222 of the interim rule.

Section 255.702 Reserve for replacements and general operating reserve.

This section is the same as its corresponding section in Part 251. Analogous provisions in the interim rule may be found at § 255.223(d)(2) and (e).

Section 255.703 Rents and charges.

This section is same as § 255.223(c) of the interim rule. Section 431 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved November 30, 1983, amended section 207(b)(2) of the National Housing Act to grant the Secretary discretion on whether to regulate rents on projects insured under that authority on or after November 30, 1983. A proposed rule was published on October 10, 1984 (49 FR 39690) indicating that the Secretary of HUD would exercise this statutory authority and deregulate rents on section 207 projects insured after November 30, 1983. Since Part 255 projects are technically insured under section 207 of the National Housing Act, a revision to the Part 255 rents and charges provisions was included in the proposed rule. The Department is currently in the process of evaluating public comments on its proposed rule and preparing a final rule. The final rule will be promulgated in the near future and will contain an appropriate revision to this section 703.

Section 255.704 Use of project funds.

This section is substantially the same as its corresponding section in Part 251 and conforms with analogous provisions in § 255.223 and adminstrative requirements of the Commissioner that have been promulgated under the interim rule.

Section 255.705 Distributions and residual receipts.

This section is substantially the same as its corresponding section in Part 251, except that reference is made to completion of repairs rather than completion of construction in paragraph (a)(2). Its provisions are more detailed, but are substantially the same as those in § 255.223(b) of the interim rule.

Section 255.706 Project management.

This section is substantially the same as its corresponding section in Part 251. One provision, § 251.706(j), which requires the mortgagor to give a preference to displaced families and disaster victims, is deleted as not strictly applicable to mortgages insured under section 207 of the National Housing Act. Section 255.706 conforms with administrative requirements promulgated under §§ 255.223(d), 255.224(d), and other provisions in the interim rule.

Subpart I—Contract Rights and Obligations Mortgage Insurance Premiums

Section 255.801 Payment of MIP by mortgagor and lender.

Paragraph (a) of this section (payment by mortgagor) is substantially similar to § 255.402(a) of the interim rule. Paragraph (b) (payment by lender) is substantially similar to § 251.802(b). The significant difference between this paragraph (b) and the interim rule (§ 255.404(a)) is that, rather than a full one percent of initial MIP being payable to HUD, the lender may retain .35 percent of the initial MIP. Section 251.801(b)(3) of the Part 251 rule provides for a somewhat similar sharing of initial MIP with the lender.

Section 255.802 Duration and method of payment of MIP.

This section is the same as § 251.803 and is substantially similar to §§ 255.403 and 255.405 of the interim rule.

Section 255.803 Pro-rata refund of annual MIP.

This section is the same as § 251.804 and is substantially similar to § 255.406 of the interim rule.

Section 255.804 Late charges—MIP.

This section is the same as § 251.805 and is substantially the same as § 255.407 of the interim rule.

Delinquency and Default Under the Mortgage

Section 255.805 Notice of delinquency.

This section is substantially the same as § 251.807. It conforms to administrative requirements promulgated by the Commissioner under the interim rule. There is no specific corresponding section in the interim rule.

Section 255.806 Definition of default.

This section is the same as § 251.808 and is substantially the same as § 255.410 of the interim rule.

Section 255.807 Date of default.

This section is the same as § 251.809 and is substantially the same as § 255.411 of the interim rule.

Section 255.808 Notice of default.

This section is the same as § 251.810 and is substantially the same as § 255.412 of the interim rule, except that a requirement is added providing for subsequent monthly notices after the initial notice.

Section 255.809 Financial relief to cure a default.

This section is substantially the same as § 251.811 and conforms with administrative requirements that have been promulgated under § 255.414 and other provisions of the interim rule.

Section 255.810 Reinstatement of a defaulted mortgage.

The section is the same as § 251.812 and is substantially the same as § 255.413 of the interim rule.

Termination

Section 255.811 Termination of coinsurance contract.

This section is the same as § 251.813. The section is substantially similar to § 255.415 and § 255.417 of the interim rule with additional provisions from Part 251 relating to (1) termination for improper assignment or fraud with respect to the coinsurance contract. These additional provisions conform to current administrative requirements under the interim rule.

A provision terminating the coinsurance contract where a claim for insurance is not filed within 15 days of a mortgagee's acquisition of title was added to Part 255 by interim rule on June 14, 1984 (49 FR 24641). The provision is not contained in this final rule. The Department has determined that termination of coinsurance is too severe a penalty. Instead, the final rule provides, in § 255.819(b), for a curtailment of the mortgagee's interest allowance where there is a late filing.

Section 255.812 Notice and date of termination by Commissioner.

This section is the same as § 251.814 and is substantially the same as § 255.416 of the interim rule.

Claim Procedure and Payment of Insurance Benefits

Section 255.813 Notice of election to acquire property and file a claim.

This section is the same as § 251.815. It is similar to § 255.422 of the interim rule, except that a specific 75-day deadline after default is provided for in the final rule.

Section 255.814 Acquisition of property.

This section is the same as § 251.816. It differs from § 255.420 of the interim rule in that (1) a specific deadline of 30 days after submission of notice of election to file an insurance claim is set for the lender's initiation of foreclosure proceedings or efforts to acquire title through deed in lieu of foreclosure; (2)

the lender is required to pursue acquisition diligently and to report to the Commissioner any delays; and (3) the lender is required to follow HUD's project management requirements while it controls the property.

Section 255.815 Deed in lieu of foreclosure.

This section is the same as § 251.817 and substantially the same as § 255.421 of the interim rule.

Section 255.816 Disposition of property and application for insurance benefits.

This section is the same as § 251.818 and is substantially the same as § 255.424 of the interim rule, except that the penalty for the late filing of a claim is curtailment of interest otherwise due, rather than termination of the coinsurance contract.

Section 255.817 Method of payment.

This section is the same as § 251.819 and substantially the same as § 255.423 of the interim rule.

Section 255.818 Amount of payment.

This section is the same as § 251.820, except that reference is made to the special payment provisions set forth in § 255.821 which apply to properties rehabilitated with assistance under Part 511 or Part 850. It is substantially similar to § 255.425 of the interim rule, except that (1) a special provision is included, dealing with the payment of insurance benefits for a State agency that obtains reinsurance from a public mortgage insurer with whom it has an identity of interest; and (2) a paragraph (d), relating to the effect of changes in the amount of reinsurance held by the lender, is added.

Section 255.819 Items included in payment.

This section is the same as § 251.821. It is substantially the same as § 255.426 of the interim rule, except that a provision is added requiring curtailment of the accrual of interest allowance where the lender fails to meet certain specified notice requirements.

Section 255.820 Items deducted from payment.

This section is the same as § 251.822. It is substantially the same as § 255.427 of the interim rule, except that a provision is added exempting from deduction funds required by a GNMA Deposit Agreement relating to lender-issuer loss exposure during the GNMA Indemnity Period.

Section 255.821 Amount of payment for certain mortgages covering property rehabilitated with assistance under 24 CFR Part 511 or Part 850.

There is no comparable section in Part 251. The section is substantially the same as § 255.427a of the interim rule, except (1) paragraph (b) is revised to provide that the penalty for failure to file an insurance claim within 15 days of acquisition of title will be a curtailment of the interest allowance under § 255.819(b) rather than a termination of the coinsurance contract, and (2) paragraph (d) is revised to provide for a specific period (30 days) within which a lender must remit net proceeds from a property to the Commissioner.

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

Section 255.823 Indemnification of GNMA.

This section is the same as its corresponding section in Part 251, except that special provisions relating to mortgages for which insurance benefits are payable under § 255.821 are carried over from the interim rule. The section is substantially the same as § 255.428(a) of the interim rule.

Section 255.824 Withdrawal of lender approval.

This section is the same as its corresponding section in Part 251 and is substantially the same as § 255.428(b) of the interim rule.

Section 255.825 HUD recourse against lender-issuer.

This section is the same as its corresponding section in Part 251 and is substantially the same as § 255.428(c) of the interim rule.

Section 255.826 GNMA right to assignment.

This section is the same as its corresponding section in Part 251 and is substantially the same as § 255.428(d) of the interim rule.

Section 255.827 GNMA right to claim coinsurance benefits after lender-issuer's acquistion of title.

This section is the same as its corresponding section in Part 251. There is no similar section in the interim rule.

Conforming Amendments to Part 207

Part 255 is a program that combines a number of basic authorities found in the National Housing Act. The authority to insure mortgages pursuant to a coinsurance contract is found in section 244 of the Act, the authority to insure existing multifamily properties comes under section 223(f) of the Act, and the basic authority (under which all Part 255 mortgages are insured) to insure multifamily housing is contained in section 207 of the Act.

Under section 207, a cooperative can be an eligible mortgagor entity but, except in 24 CFR 207.32a(k)(6), cooperatives are not expressly dealt with in § 207.32a, which is HUD's regulation governing the full insurance of mortgages covering existing multifamily properties. This rule adds to § 207.32a a number of provisions dealing with cooperatives. These provisions are designed to (1) reflect current administrative policy with respect to the insurance of mortgages covering cooperative projects and (2) conform and coordinate the provisions in § 207.32a with provisions relating to cooperatives contained in Part 255.

The rule also deletes a requirement that any repairs carried out in connection with a refinancing transaction be completed before loan closing. Both lenders and HUD have found this requirement particularly cumbersome to administer and of minimal effectiveness as a safeguard against program abuse. In an earlier interim rule published on July 5, 1984 (49 FR 27489) purchase transactions were exempted from this completion of repairs requirement for the same reasons.

Accordingly, paragraph (a) of § 207.32a is revised to permit repairs to be carried out in connection with a refinancing transaction subsequent to loan closing.

Paragraphs (b) and (c) of § 207.32a are revised to permit the maximum amount of a mortgage covering a cooperative to be 90 percent of the Commissioner's appraised value for continued use as a cooperative or 90 percent of acquisition cost, rather than 85 percent. This is consistent with HUD policy to allow higher percentage loans for cooperatives than other profit-motivated rental projects.

Paragraph (g) of § 207.32a is revised to preclude cooperatives, in a refinancing situation, from obtaining an insured mortgage in an amount of 70 percent of value, (even though there is minimal indebtedness) and then use whatever cash is thus realized for any purpose. The Department can find no justification for a single purpose ownership entity such as a cooperative taking cash out of a refinancing transaction to use for other purposes.

A provision is added to paragraph (h) (occupancy requirements) stating that

with respect to a cooperative project, at least 70 percent of the total units in the project must be subscribed to on a cooperative basis before endorsement of the mortgage for insurance by the Commissioner. These requirements reflect general HUD policy with respect to section 213(i) existing cooperatives.

Finally, a new paragraph (m) is added to § 207.32a which states general HUD policy that cooperative mortgagors (1) be regulated or supervised under State law and (2) establish and maintain a General Operating Reserve in accordance with standards established by the Commissioner. Paragraph (m) also requires the FHA Commissioner to make a determination that either (1) conversion of the property to cooperative ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project; (2) continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low and moderate people in the community; or (3) continuation of the property as rental housing would have an undesirable or deleterious effect on the surrounding neighborhood. These restrictions on insuring section 223(f) mortgages that *finance* conversions to cooperative ownership parallel restrictions contained in § 207.32a(e)(2) which apply to the *prepayment* of a section 223(f) mortgage where a conversion to cooperative ownership is involved.

Technical Conforming Amendment

A conforming amendment is also made to § 207.27(a). A provision limiting repairs after endorsement § 223(f) purchase transactions is removed. This has the effect of allowing repairs after endorsement for both purchase and refinancing transactions. While other amendments to part 207 have been made by interim rule in conjunction with the part 255 coinsurance program (see 48 FR 23386 published May 25, 1983, 49 FR 24634 published June 14, 1984 and 49 FR 27489 published July 5, 1984), none of these amendments require language revisions to conform them to this final rule. These miscellaneous amendments to Part 207 will be published in final form in a subsequent rule making and are not contained in this final rule.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW. 20410.

This rule was listed as item H-53-81 (Sequence Number 97) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17312) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.137.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. While some small mortgagees may not be able to participate in the coinsurance program because of its asset requirements, their access to HUD's full insurance program under section 207 of the National Housing Act remains unaffected by this proposal.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects

24 CFR Part 207

Mobile homes, Mortgage insurance, Solar energy.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 255 and 207 are amended as follows:

1. Part 255 is revised to read as follows:

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

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255.2 Coinsurance contract.
255.3 Definitions.
255.4 Effect of amendments.

Subpart B—Lender Requirements

255.101 Eligible lender.
255.102 Review and approval as coinsuring lender.
255.103 Duration of approval.
255.104 Probation, suspension or withdrawal of approval.
255.105 Delegation of servicing.
255.106 Assignment of coinsured mortgages.
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255.201 Eligible project.
255.202 Eligible mortgagors.
255.203 Maximum mortgage limitations.
255.204 Maximum interest rate.
255.205 Term of the Mortgage.
255.206 Lender's fees and premiums.
255.207 Coinsurance of mortgages in lender's portfolio.
255.208 Nondiscrimination in housing and employment.
255.209 Labor Standards and prevailing wage requirements.

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255.301 Processing responsibilities.
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255.821 Amount of payment for certain mortgages covering property rehabilitated with assistance under 24 CFR Part 511 or Part 850.

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

255.823 Indemnification of GNMA.
255.824 Withdrawal of lender approval.
255.825 HUD recourse against lender-issuer.
255.826 GNMA right to assignment.
255.827 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), Sec. 211, National Housing Act, 12 U.S.C. 1715(b), and sec. 244, National Housing Act, 12 U.S.C. 1715z(9).

Subpart A—General Provisions

§ 255.1 Purpose and scope.

(a)(1) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approved lender (i) assume a portion of any loss and (ii) carry out (subject to monitoring) underwriting, commitment, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(2) Section 311 of the Housing and Community Development Act of 1974 also added a new section 223(f) to the Act. Section 223(f) authorizes the Secretary to insure a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under coinsurance will reduce processing time and staff burden, and increase lender involvement in all phases of the HUD mortgage insurance process. In carrying out such a program in connection with the insured financing or refinancing of existing multifamily housing, HUD expects to assist significantly in the conservation of neighborhoods and existing housing resources.

(c) Section 244(c) of the National Housing Act permits the Secretary to coinsure Mortgages only if the Secretary determines, after due consultation with the Mortgage lending industry, that coinsurance will not disrupt the Mortgage market or reduce the availability of Mortgage credit to borrowers who depend upon full Mortgage insurance provided under the Act. HUD has invited and will continue to invite, through formal public comment procedures and otherwise, the Mortgage lending industry and other interested parties to make their views known on these issues. Issuance of this Part 255 (and any later amendment to it) for effect will mean that no adverse effects are reasonably predictable at the time of issuance. However, the Department will continue to monitor the effects of coinsurance and will welcome the submission of evidence that shows that disruptions of the Mortgage market or reductions in Mortgage credit are occurring (or will occur) as a result of the coinsurance program.

(d) This part provides for the coinsurance of Mortgages under Section 207 of the National Housing Act (pursuant to sections 223(f) and 244 of the Act) which cover existing multifamily projects meeting the requirements of this part.

(e) No full insurance authorized under any provision of the National Housing Act will be withdrawn, denied, or delayed because of the availability of coinsurance under this part.

(f)(1) If the Commissioner determines that coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice. In such a case, no further coinsurance applications will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the housing or Mortgage market in a market area or is adversely impacting (or will adversely impact) other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(g)(1) Section 244(b) of the Act also provides that, in delegating mortgage insurance processing duties to lenders, physical inspection of dwelling units be conducted in accordance with at least the minimum standards and criteria used by HUD personnel under the full FHA insurance programs. Both the review of projects for eligibility under the program and the inspection of repairs and improvements on projects approved for coinsurance will be conducted in accordance with such standards and criteria.

(2) Insurance authorized by this part will not be available for mortgages on properties that are eligible to be insured solely under the authority of section 223(e) of the National Housing Act. Neither the coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

§ 255.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized departmental representative, and includes the terms, conditions, and provisions of this part and of the National Housing Act.

§ 255.3 Definitions.

(a) "Coinsured Mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by endorsement of the Mortgage note by the Commissioner or by the Commissioner's authorized departmental representative.

(b) "Cooperative Mortgage" means a nonprofit cooperative ownership

housing corporation, regulated under State law and by the lender under a regulatory agreement, that restricts permanent occupancy of the project to members of the corporation, and requires membership eligibility and transfer of membership in a manner approved by the Commissioner.

(c) "Distribution" means the withdrawal of any cash or assets of the project excluding outlays for:

(1) Mortgage payments;

(2) Reasonable expenses necessary for the proper operation and maintenance of the project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(d) "General Mortgagor" means any Mortgagor approved by the lender that does not meet any of the definitions in paragraphs (b), (e), or (i) of this section and that is regulated by the lender by means of a regulatory agreement.

(e) "Limited Distribution Mortgagor" means an entity restricted by Federal or State law, and by the lender by means of a regulatory agreement, as to its rate of return and other aspects of its operation.

(f) "Mortgage" means a first lien on real estate and other property commonly given to secure either advance on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(g) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under §§ 255.801 and 255.802 of this part.

(i) "Nonprofit Mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operations of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(j) "Residual Receipts" means (1) for projects owned by Nonprofit Mortgagors, all Surplus Cash and (2) for projects owned by Limited Distribution Mortgagors, any Surplus Cash remaining after allowable Distributions have been made or funds have been set aside for their payment.

(k) "Sound Capital Resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus, reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound Capital Resources may include (up to the limit specified in § 255.102(b)(2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purposes of determining "sound capital resources", a loss reserve, established to cover coinsurance liability under this part that is treated as a liability in the lender's balance sheets, may be deemed a capital item rather than a liability.

(l) "Substantial Rehabilitation" consists of repairs, replacements, and improvements:

(1) The cost of which exceeds the greater of:

(i) 15 percent of the property's value after completion of all repairs, replacements, and improvements, or

(ii) $6,500 per dwelling unit, adjusted by any applicable high-cost area factor under § 255.203(a) (or in the case of any purchase or refinancing involving property to be rehabilitated under Part 511 or Part 850 of this title, $20,000 per dwelling unit, except that in these cases the Commissioner may increase this amount by not to exceed 25 percent for specific properties where the Commissioner determines that cost levels so require); or

(2) That involves the replacement of more than one major building component. For purposes of this definition, the term "major building component" includes roof structures; ceiling, wall or floor structures; foundations; and plumbing, heating/air conditioning, or electrical systems.

(m) "Surplus Cash" means any unrestricted cash remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any Mortgage or note coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the project, unless funds for payment are set aside, or deferral of payment has been approved by the lender; and

(2) The escrow of an amount equal to:

(i) The aggregate of any special fund required to be maintained by the project; and

(ii) The project's total liability for tenant security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 255.4 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time, in whole or in part. Any amendments will not adversely affect the interests of a lender under the Contract of Coinsurance on any mortgage already coinsured. Amendments will not adversely affect the interest of a lender on any mortgage to be coinsured or which the lender has made a commitment to insure, provided the Mortgage is endorsed for coinsurance within 60 days after issuance of the commitment. The 60 days will run from the date of the original issuance of the commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment to the regulation.

Subpart B—Lender Requirements

§ 255.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or 203.8(b); and (b) meets the requirements of § 255.102.

§ 255.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, including an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, including liquid funds of at least $500,000. An unconditional and irrevocable firm letter of credit of not more than $500,000 from a supervised financial institution with asset of not less than $100,000,000 may be used to meet up to $500,000 of this Sound Capital Resources requirement and up to

$500,000 of the included liquidity requirement. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement and an additional one dollar of Sound Capital Resources for each 300 dollars of outstanding principal indebtedness on Mortgages it has coinsured under this part.

(3) Evidence acceptable to the Commissioner that the lender has the operating procedures, internal management controls, and technical staff (under contract or in its own employ) necessary to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions. It must agree to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(4) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(5) A statement agreeing to file annual audits similar to those described in paragraph (a)(4) of this section, and annual reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(6) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial and other records of the lender.

(7) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Executive Order 11063 as amended, and other Federal laws and regulations issued under these authorities with respect to the lending, investing, or coinsuring of funds in real estate Mortgages.

(8) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 255.105.

(9) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing its functions under this part.

(10) A statement agreeing to notify HUD immediately whenever the lender's Sound Capital Resources fall below the level required by paragraph (a)(2) of this section. In addition, the lender must agree that it will request and receive approval from HUD before implementing any voluntary transfer or series of transfers of the lender's assets which would cause the lender's Sound Capital Resources to fall below the required level. Finally, the lender must agree that if such transfer does take place without prior HUD approval, the remaining assets of the lender and any assets disbursed without such approval will be deemed to be held in trust for the benefit of HUD, and consequently, HUD would have a cause of action against any of the original principals of the lender or any other party for any transfer not made in accordance with these requirements.

(The information collection requirements contained in paragraphs (b)(2), (b)(3) and (b)(4) were approved by the Office of Management and Budget under control number 2502-0273).

§ 255.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate lenders' approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders may not, during any such lapse, issue or amend commitments or reopen expired commitments.

(b) Suspension or withdrawal of approval under § 255.104.

§ 255.104 Probation, suspension or withdrawal of approval.

(a) A coinsuring lender may be placed on probation, be temporarily suspended, or have its approval as a coinsuring lender withdrawn by the Commissioner, or designee, for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources.

(2) Failure to operate the program in a prudent manner or to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures issued by the Commissioner under this part.

(3) Payment or receipt, by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to or from any person who has received any consideration from another person for services related to the transaction: however, compensation may be paid for the actual performance of services approved by the Commissioner.

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect.

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan.

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender.

(7) Any other cause determined by the Commissioner or designee to be appropriate.

(b) HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the coinsurance program. During the probation period the mortgagee may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action is taken. The notice will specifically state the cause, effect, and duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result

in action against coinsuring lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 255.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.4, 203.6, or § 203.8(b) of this chapter, and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may, after giving the lender a 30-day written notice, require the lender to cancel the servicing arrangement.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0273)

§ 255.106 Assignment of Coinsured Mortgages.

(a) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(1) The assignee is a HUD-approved coinsuring lender;

(2) The lender shows good cause for the assignment;

(3) The Commissioner finds that the assignment is for good cause and that these will be no disadvantage to the Federal Housing Administration (FHA); and

(4) The Commissioner gives prior written approval for the assignment and any risk allocation between the assignor and assignee.

(b) The lender must inform HUD in a form prescribed by the Commissioner after the assignment of any Coinsured Mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(c)(1) A partial interest in a Coinsured Mortgage may be transferred without obtaining the approval of the Commissioner under a participation agreement or arrangement, if the following conditions are met:

(i) The Coinsured Mortgage shall be held by an approved coinsuring lender, which shall (for purposes of this paragraph) be referred to as the "principal lender;"

(ii) The principal lender shall at all times retain at least a ten percent beneficial interest in the Coinsured Mortgage up to the time of endorsement, and at least a five percent beneficial interest thereafter;

(iii) A participation or partial interest in a Coinsured Mortgage shall be issued to and held by: (A) A lender approved by the Commissioner or (B) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which the principal lender determines has lawful authority to acquire a partial interest in a Coinsured Mortgage under the conditions set forth in this paragraph; and

(iv) The participation agreement or arrangement shall provide that the principal lender shall remain the lender of record under the Contract of Coinsurance and that the Commissioner shall have no obligation to recognize or do business with any other party except the lender of record with respect to the rights, benefits, and obligations of the lender under the Contract of Coinsurance.

(2) No notice of any sale or transfer of a participating or partial interest is required unless the Coinsured Mortgage is transferred in its entirety to a new principal lender on the public records.

(d) If the Mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is also required for the assignment of the pooled Mortgage.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2535-0087)

§ 255.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular project. Reinsurance may be obtained for:

(1) 50 percent of its risk;

(2) 100 percent of its risk;

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure; or

(4) 10 percent of the amount of a Mortgage approved for coinsurance with respect to property to be rehabilitated with assistance under Part 511 or Part 850 of this title.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is covered in § 255.818.

(c) Subject to the ceilings provided in § 255.823, any reinsurance policy must name the Commissioner as contingent beneficiary in the event that default by the lender compels the Commissioner to reimbures the Government National Mortgage Association for the amount that the Association had to pay securities holders as a result of the lender's default.

§ 255.108 Pledging and other security arrangements.

A lender may pledge, subject to standards established by the Commissioner, the beneficial interest in a Coinsured Mortgage as security under the terms of a reinsurance contract, trust indenture, third party guarantee agreement or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 255.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record or any approved successor to the lender's title to the Mortgage with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage, or with another person or entity servicing the Mortgage loan under § 255.105, except that the Mortgagor may be directed to make payments under the Mortgage to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interest of Coninsured Mortgages backing Government National Mortgage Association (GNMA) Project Loan Certificates except as authorized by GNMA.

Subpart C—Program Requirements

§255.201 Eligible project.

(a) Existing housing projects (with such repairs and improvements as are determined by the lender to be necessary) are eligible under this part. The property must not require Substantial Rehabilitation as defined in § 255.3, and three year must have elapsed from the date of completion of construction or Substantial Rehabilitation of the project, or from the beginning of occupancy, whichever is later, to the date of application for mortgage insurance. In addition, a project:

(1) Must have five or more units;

(2) may be detached, semi-detached, row houses, or multifamily structures;

(3) Must comply with all applicable zoning or deed restrictions, and applicable building and other governmental regulations;

(4) Must be primarily for residential use, and may include only such commerical and community facilities as the lender determines will be adequate and appropriate to serve the occupants. The net rentable commercial area must not exceed 20 percent of the total net rentable area, but this limitation may be waived, for good cause, by the Commissioner.

(5) Must have attained sustaining occupancy (occupancy that would produce rental income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the lender, before endorsement of the project for insurance; alternatively, the Mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the lender in accordance with standards established by the Commissioner.

(b) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (1) the jurisdiction in which the project is located is participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59–79; or (2) less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(c) No insurance will be made available under this part with respect a property within the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(d) Wherever applicable, projects insured under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

(e) Involuntary displacement of tenants must be minimized under a plan developed by the Mortgagor, in any case where it is anticipated that repairs and improvements will cause such displacement.

§ 255.202 Eligible Mortgagors.

Mortgagors approved by the lender in accordance with standards established by the Commissioner are eligible under this part.

§ 255.203 Maximum Mortgage limitations.

The maximum Mortgage coinsurable under this part is the lowest of the amounts determined under the following limits:

(a) *Statutory cost limits.* Congress has established maximum per-unit dollar amounts for costs attributable to dwelling use. These limitations vary by number of bedrooms, structure type (elevator or non-elevator), Mortgagor type, and section of the National Housing Act, and are changed from time to time by statute. In addition, to compensate for geographic differences in construction costs, the Commissioner may establish, where appropriate, high-cost area factors. These are percentage increases over the otherwise applicable basic dollar limits. The factor for any geographic area may not exceed 175 percent of the basic limit. The factor applicable to a particular project may be obtained from the appropriate HUD field office. On an individual project basis in high cost areas, the Commissioner may approve the use of a factor of up to 240 percent of the basic limit where costs justify it, except that for projects to be purchased by the Government National Mortgage Association under Section 305 of the National Housing Act (Tandem programs), the Commissioner may not approve a factor of more than 190 percent. In the unusually high-cost areas of Alaska, Guam and Hawaii, the Commissioner may approve the use of a factor of up to 360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the Act) or certain residential energy conservation measures (as defined in section 210(11) (A)–(G) and (I) of Pub. L. 95–619). The maximum coinsurable amount cannot exceed the sum of the project's total calculated statutory cost limit plus the applicable percentage below of estimated cost not attributable to dwelling use:

(1) Cooperative project loans—90 percent;

(2) Project loans insured under § 207.32a(*1*)—90 percent;

(3) All other project loans—85 percent.

(b) *Value limit.* An amount not exceeding 85 percent (90 percent if the property is a cooperative project or meets the eligibility requirements contained in § 207.32a(l) of this chapter) of the lender's estimate of value of the project.

(1) The final estimate of value for the purpose of this section results from consideration of three indicators of value:

(i) The estimated market value of the project by capitalization. Capitalization will use net income which results from market rents estimated by comparison with unsubsidized projects, capitalized at rates extracted from market transactions involving comparable properties. Because of the presence of units with below-market rents in projects rehabilitated with assistance under Part 850, the Commissioner will issue guidelines for the calculation of capitalization and market value under this paragraph where such properties are involved.

(ii) The estimated market value by direct sales comparison. Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two other properties for the comparison.

(iii) The total estimated replacement cost of the project (without deducting depreciation). The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must be between that indicated by capitalization and that indicated by direct sales comparison, but may not exceed the total estimated replacement cost of the project.

(2) In the event the Mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the Mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(c) *Debt service limits.* The net projected project income available for payment of debt service is determined by reducing the estimated gross income of the project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes. In determining net projected project income for cooperative projects, a 3 percent operating reserve and a 2 percent vacancy reserve will be used in lieu of the vacancy and collection loss factor applicable to rental projects. The maximum Coinsurable Mortgage cannot exceed the amount that could be amortized by 85 percent (90 percent for cooperatives or if the project meets the eligibility requirements contained in § 207.32a(l) of this chapter) of net projected project income.

(d) *Property to be refinanced—additional limit.* If the property is to be refinanced by the Coinsured Mortgage (i.e., without a change of ownership) or, if property is sold to a purchaser who

has an identity of interest (as defined by the Commissioner) with the seller and the purchase is to be financed with the Coinsured Mortgage, then the maximum Mortgage amount must not exceed:

(1) In the case of a rental project, the greater of

(i) 70 percent of the lender's estimate of value of the project, or

(ii) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the lender:

(A) The amount required to pay off the existing indebtedness;

(B) The amount of the initial deposit for the reserve fund for replacements;

(C) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 255.206;

(D) The estimated repair costs, if any;

(E) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In the case of a cooperative project, the cost to refinance the existing indebtedness as defined in paragraph (d)(1)(B) of this section.

(e) *Property to be acquired—additional limit.* If the project is to be acquired by the Mortgagor and the purchase price is to be financed with the coinsured Mortgage, the maximum amount must not exceed 85 percent (90 percent if the project is a cooperative project or meets the eligibility requirements contained in § 207.32a(l) of this chapter) of the cost of acquisition as determined by the lender. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of those items must be determined by the lender in accordance with standards established by the Commissioner:

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 255.206;

(4) The estimated repair cost if any, as defined by the Commissioner, in the project;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 255.204 Maximum interest rate.

The interest rate in a commitment to coinsure will be at the rate agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment.

§ 255.205 Term of the Mortgage.

The mortgage must have a maturity satisfactory to the lender, which is not less than 10 years, nor more than the lesser of 35 years (40 years if the project meets the eligibility requirements contained in § 207.32a(l) of this chapter) or 75 percent of the estimated remaining economic life of the physical improvements (100 percent if the project meets the eligibility requirements contained in § 207.32a(l) of this chapter). The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

§ 255.206 Lender's fees and premium.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, and application fee, financing fee, permanent placement fee, and, if applicable, inspection fee. These fees may not exceed maximums approved by the Commissioner. In addition, the lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under § 207.32a of this chapter.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent (0.10 percent in the case of a Mortgage approved for coinsurance benefits under § 255.821) per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments), beginning not earlier than 12 months after the date of the first payment to principal.

§ 255.207 Coinsurance of Mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding submission of the application to the lender;

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period (except that the Commissioner may permit lenders to exceed this limit if the additional refinancing relates to projects that meet the eligibility requirements of § 207.32a(l) of this this section; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole involvement is servicing.

§ 255.208 Nondiscrimination in housing and employment.

The Mortgagor must certify to the lender and to the Commissioner that so long as the mortgage is coinsured under this part it will:

(a) Not use tenant selection procedures that discriminate against families with children;

(b) Not discriminate against any family because of the sex of the head of the household;

(c) Comply with title VIII of the Civil Rights Act of 1968 as amended and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion, sex, or national origin; administer the project and related activities in an affirmative manner to further fair housing, and comply with State and local fair housing laws;

(d) Comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex or national origin in housing and related facilities provided with Federal assistance;

(e) Not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 11246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements;

(f) Not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by the Mortgage, for transient or hotel purposes. The term "rental for transient or hotel purposes" means (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel sevices, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellhop service; and

(g) Not sell the project as long as the Mortgage is coinsured under this part,

unless the purchaser agrees to comply with the requirements of this section and with applicable transfer of physical assets requirements.

§ 255.209 Labor standards and prevailing wage requirements

The requirements of § 207.19(d) apply to Mortgage coinsured under this part where the property is to be rehabilitated under Part 511 or Part 850 of this Title and the cost of repairs, replacements and improvement exceeds $6,500 per dwelling unit (adjusted for any high-cost area factor under § 255.203(a)).

Subpart D—Processing and Commitment

§ 255.301 Processing responsibilities.

(a) Unless otherwise specified, the lender is responsible for the performance of all functions under this part including acceptance and review of applications, issuance of commitments, inspections, and closings, except those functions specified in paragraphs (b), (d), and (e) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgage, the general contractor, if any, and the management agent, in accordance with the Previous Participation and Clearance Review Procedures of §§ 200.210 through 200.218 of this chapter.

(2) Equal opportunity considerations in the development and operation of the proposed project.

(3) The intergovernmental review procedures of 24 CFR Part 52. These procedures apply to cases involving 200 or more units in urbanized areas, or 50 or more units in non-urbanized areas; and

(4) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(5) Environmental impact under environment-related laws and authorities set forth in 24 CFR Part 50.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized departmental representative must endorse the Mortgage for coinsurance.

(e) The Commissioner is responsible for the enforcement of any labor standards and prevailing wage requirements applicable to a project under § 255.209 and will preform all functions required under § 255.209.

(Information collection requirements contained in paragraph (b) and (c) were approved by the Office of Management and Budget under control number 2502-0272)

§ 255.302 Processing and commitment.

(a) After acceptance of an application for a commitments to coinsure, the lender will determine the maximum coinsurable Mortgage, review any list of repairs for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a firm commitment to coinsure after completion of its review and after receipt of written evidence from HUD of (1) the acceptability of the project in the areas of responsibility retained by the Commissioner under § 255.301(b); (2) a waiver, where needed, of the approved highcost factor under § 255.203(a); and (3) completion of any case review requirements of the Commissioner that are part of the lender approval process.

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments, assuring that commitments are updated when appropriate and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

(d) An application may be made for a commitment that provides for the coinsurance of the mortgage after completion of repairs and improvements or for a commitment that provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

(e) With respect to mortgages to cover properties rehabilitated with assistance under Part 511 of Part 850 of this title, the lender must obtain the approval of the Commissioner before issuance of any commitment under this part. The Commissioner will grant such approval only where the lender demonstrates to the Commissioner's satisfaction that no other feasible financing alternatives are available for the proposed project.

Subpart E—Cost Certification and Endorsement by the Commissioner

§ 255.401 Agreement to certify cost requirements.

Before the start of repairs and endorsement of the loan, the lender must enter into an Agreement and Certification with the Mortgagor in a form and content satisfactory to the Commissioner for the purpose of precluding any excess of Mortgage proceeds over statutory and regulatory limitations. Under this Agreement, the Mortgage must agree:

(a) To execute a certificate of actual costs, upon completion of all physical improvements on the mortgaged property, in accordance with § 255.402.

(b) To accept the mortgage loan, reduced by the amount (if any) required under § 255.404.

(c) In cases where specified repairs are to be made after endorsement as provided in §255.302(d), the lender must (1) establish escrows at endorsement as required by the Commissioner; (2) disburse mortgage proceeds attributable to repairs in accordance with standards and procedures established by the Commissioner and only upon satisfactory completion and inspection of the repairs; and (3) whenever applicable, reduce the mortgage by the amount by which estimated costs of repairs exceed actual costs as certified under §255.402.

§ 255.402 Certificate of actual costs—contents in general.

(a) Submission of certificate. The Mortgagor's certificate of actual cost, in a form approved by the Commissioner, must be submitted to the lender upon completion of the improvements to the satisfaction of the lender. In the case of a transaction where the commitment provides for the completion of specified repairs after endorsement as provided in § 255.302(d), a supplemental certificate of actual cost must be submitted covering such repairs. Cost certification is not required in those refinancing transactions where 70 percent of value is the controlling Mortgage limitation.

(b) The certificate must show the actual cost to the Mortgagor of acquiring the property or refinancing property that secures an existing indebtedness. Items that may be included if paid by the Mortgagor in acquiring property are listed in § 255.203(e). Items that may be included if paid by the Mortgagor in refinancing property are listed in § 255.203(d).

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 2502-0272)

§ 255.403 Effect of certification of actual costs.

Any certification required by § 255.402 must state specifically that it has been made, presented, and delivered for the

purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as a true statement of the facts contained therein. Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable, except for fraud or material misrepresentation on the part of the Mortgagor.

§ 255.404 Lender's review of mortgage amount.

When the cost certifications submitted under § 255.403 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary.

§ 255.405 Endorsement by the Commissioner.

Under the terms of its commitment, the lender will hold a closing and submit required documentation to the Commissioner or to the Commissioner's authorized departmental representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the Act and the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, *i.e.*, the date of HUD endorsement of the project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 255.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 255.501 Mortgage requirements—real estate.

(a) To be eligible for insurance, the Mortgage must cover property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The Mortgage must be on real estate held:

(1) In fee simple;

(2) Under a renewable lease for not less than 99 years;

(3) Under a lease running at least 75 years from the date the Mortgage is executed; or

(4) Under a lease executed by a governmental agency, or other lessor approved by the Commissioner, for up to the maximum term the agency or lessor may enter into, but not less than 50 years from the date the Mortgage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 255.504.

(c) The Mortgage must cover the entire property included in the housing project.

(d) No Mortgage may be accepted for insurance unless the lender finds that the property or project with respect to which the mortgage is executed is economically sound, except that as to mortgages covering property located in Alaska, or in Guam, or in Hawaii, no mortgage may be accepted for insurance unless the lender, with prior notice to the Commissioner, finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska, or in Guam, or in Hawaii.

§ 255.502 Title.

(a) *Eligibility of title.* Title to the mortgaged property must be vested in the Mortgagor on the date the Mortgage is filed for record.

(b) *Title evidence.* Before coinsurance of the Mortgage, the Mortgagor must furnish the lender with a survey, satisfactory to the lender, of the mortgaged property and a title insurance policy covering the property. If, for reasons that are satisfactory to the lender, title insurance cannot be furnished, the Mortgagor must furnish evidence of title in accordance with paragraph (b)(2) of this section. The type of title evidence are:

(1) A title insurance policy issued by a company, and in a form, satisfactory to the lender. The policy must name the lender and the Commissioner as the insured, as their interests may appear. The policy must also provide that, upon acquisition of title by the lender, it will become an owner's policy running to the lender.

(2) An abstract of title satisfactory to the lender, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the lender as to the quality of the title, signed by an attorney experienced in the examination of titles.

§ 255.503 Mortgage and note provisions.

(a) The Mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without the prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be a first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments on interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by the Mortgagor and lender and acceptable to the Commissioner.

(e) Commencement of amortization shall be on the first day of the second month following the date of endorsement of the Mortgage for coinsurance.

(f)(1) The Mortgage must provide that all amounts due monthly from the Mortgagor of the lender be added together into a single payment to be made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgator or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under the Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i)(1) With respect to a Mortgage secured by rental housing, the note must provide that prepayment of the indebtedness is prohibited (except as required by the Commissioner) for a period of five years from the date of endorsement of the Mortgage (or for a

period of twenty years where the mortgage was purchased by GNMA under Chapter II of Subtitle B of Title 24) except where, at the time of prepayment:

(i) The Mortgagor has entered into an agreement with the Commissioner to maintain the property as rental housing for the remainder of the specified five-year (or twenty-year) period;

(ii) The Commissioner has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(iii) The Commissioner has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or

(iv) The Commissioner has determined that continuation of the property as rental housing would have an undersirable and deleterious effect on the surrounding neighborhood.

(2) Subject to the requirements of paragraph (l) of this section, partial of full prepayment of the Mortgage is permitted except that:

(A) Mortgages which cover projects in which units are subsidized under section 8 of the United States Housing Act of 1937 or other Federal law; or Mortgages which may be purchased, assigned, or otherwise transferred to the Government National Mortgage Association (GNMA) may be subject to prepayment standards and restrictions established by the Commissioner; and

(B) Mortgages given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipatory notes, or both, may contain a prepayment penalty charge acceptable to the Commissioner as to term, amount and conditions.

(j) The note may provide for the collection by the lender of a late charge not to exceed four percent of each payment to interest and principal that is more than 15 days late, or such other charges as may be agreed to by the lender and the Commissioner, to cover the extra expense of handling delinquent payments. Late charges must be separately charged to and collected from the Mortgagor and may not be deducted from any total monthly payment.

(k) The Mortgage must contain a convenant prohibiting the use of property for any purpose other than the residential purpose intended on the day the Mortgage was executed.

(l) The Mortgage must contain a convenant, acceptable to the Commissioner, that binds the Mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with any coinsurance clause in the policy applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be based on the amount of insurable improvements estimated by the lender after completion of the project. A standard Mortgagee clause making losses payable to the lender and the Commissioner as their interests may appear must be included in the Mortgage. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and by the Mortgage. If the Mortgagor does not obtain the required insurance, the lender must do so and assess the Mortgage for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 255.504 Mortgage lien and other obligations.

A Mortgagor shall certify at endorsement of the loan for insurance, and the lender shall determine that:

(a) The property covered by the Mortgage is free and clear of all liens other than the coinsured Mortgage and such other liens as may be approved by the lender, in accordance with standards established by the Commissioner. The lender may approve subordinated liens securing up to the full amount of mortgage financing provided by State or local governments (or agencies thereof) in connection with the rehabilitation of a property assisted under Part 511 or Part 850 of this title, in accordance with standards established by the Commissioner. Liens other than the insured Mortgage that may be approved (other than liens of taxes and assessments of the State or subdivisions of the State not yet due and payable, or ground rents) may not have, under applicable law, a priority equal or superior to the insured Mortgage.

(b) There do not exist outstanding unpaid obligations contracted for in connection with the Mortgage transaction, the purchase of the Mortgage property, or the repairs and improvements to the project, except obligations approved by the lender in accordance with standards established by the Commissioner. Obligations of the Mortgagor may be approved by the lender under this section only if such obligations are determined by the lender to be of a lesser priority for payment than the obligation of the insured Mortgage.

(c) Except were otherwise provided in paragraph (e) of this section, when a loan is made to finance the purchase of an existing multifamily housing project, the Mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(1) Seven and one-half percent of the lender's estimate of value as defined in §255.203(b), or

(2) Seven and one-half percent of the cost of acquisition as defined in § 255.203(e).

(d) Except where otherwise provided in paragraph (e) of this section, when a loan is made to refinance an existing multifamily housing project, the Mortgagor may not have any additional obligations in connection with the transaction that exceed the lesser of:

(1) Seven and one-half percent of the lender's estimate of value as defined in § 255.203(b), or

(2) Fifty percent of the difference between the cost to refinance as defined in § 255.203(d) and the maximum mortgage amount as determined by the lender.

(e)(1) For projects that meet the eligibility requirements of § 207.32a(a)(1) of this chapter, the provisions of § 207.32a(j)(4) shall apply.

(2) For projects to be rehabilitated with assistance under Part 511 or Part 850 of this title, the provisions of § 207.32a(j)(5) shall apply.

(f) The additional obligations provided for in paragraphs (c), (d) or (e)(2) of this section shall be represented by promissory notes on forms approved by the Commissioner. These notes shall not be due and payable until the maturity date of the Mortgage to be coinsured under this part, but may be prepaid from Surplus Cash and in accordance with the conditions prescribed in the regulatory agreement between the lender and the Mortgagor.

§ 255.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner and the lender are coinsurers of the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines

that the additional lender controls or requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 255.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements relating to structure of Mortgagor Entity and Transfers of Ownership Interest

§ 255.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only in the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfer of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits;

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The Mortgagor may not abandon the project until the lender has approved a substitute Mortgagor.

Subpart H—Program Requirements relating to Project Operation

§ 255.701 General.

In order to be eligible for the benefit of insured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 255.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements which will be held and administered by the lender. The Mortgagor must accumulate, maintain and use this reserve, and the lender must administer this reserve, only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(b) In addition to the reserve for replacements required by paragraph (a) of this section, a Cooperative Mortgagor must establish with the lender a general operating reserve in an amount required by the Commissioner's administrative procedures. The Cooperative Mortgagor must accumulate, maintain and use this reserve only as provided in the regulatory agreement and the Commissioner's administrative instructions.

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements (and, in the case of Cooperatives, in a general operating reserve) must be invested in United States Treasury securities, securities issued by a Federal agency, deposits that are insured by an agency of the Federal government, or other forms of investment as may be allowed in the Commissioner's administrative procedures.

§ 255.703 Rents and charges.

No charge shall be made by the Mortgagor for the accommodations, facilities, or services offered by a project in excess of those approved by the lender. In approving such charges and in passing upon application for changes, the lender shall be subject to standards established by the Commissioner, which standards shall give consideration to the following and similar factors:

(a) Rental income necessary to maintain the economic soundness of the project.

(b) Rental income necessary to provide a reasonable return on the investment, consistent with providing reasonable rentals to tenants.

§ 255.704 Use of project funds.

(a) The Mortgagor must deposit, in the name of the project, all rents and other receipts of the project in accounts that are fully insured as to principal by an agency of the Federal government. Project funds in excess of those needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may expend project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operation and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Distributions of Surplus Cash permitted under § 255.705;

(5) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(c) The Mortgagor may not use project funds to liquidate liabilities related to the project, other than the Coinsured Mortgage, unless the lender authorizes this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the project. This trust account must be held in the name of the project and the balance in the account must at all times equal or exceed the project's liability for residents' security deposits. The owner must comply with any State of local laws regarding investment of security deposits and the distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the project or the project residents.

§ 255.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(1) Distributions may be paid only from Surplus Cash that exists as of the end of a semi-annual or annual fiscal period.

(2) Initial Distributions may be paid only after repairs and improvements have been completed and the Mortgagor has submitted the cost certifications required by § 255.402.

(3) No Distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(b) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so:

(1) The Mortgagor has not satisfactorily responded to any lender on HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(2) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiences; or

(3) there is a covenant, default (as defined in § 255.806(b)) under the provisions of the Mortgage or the regulatory agreement.

(c) The Mortgagor must limit Distributions in any one fiscal period to the amount specified in this paragraph (c), and must calculate Distributions in accordance with the administrative requirements of the Commissioner.

(1) Cooperative projects not receiving assistance under Part 886 of this title, Section 8 Housing Assistance Payments Program—Special Allocations, may distribute all Surplus Cash to members. Cooperatives receiving assistance under Part 886 may distribute only the portion of Surplus Cash attributable to unsubsidized units. Surplus cash must be prorated to subsidized and unsubsidized units in accordance with the Commissioner's administrative procedures.

(2) No Distributions are permitted on nonprofit rental projects.

(3) On projects owned by Limited Distribution Mortgagors, Distributions may not exceed the lesser of Surplus Cash on the amount allowable by the lender as of the end of the period covered by the Surplus Cash computation. Distributions are cumulative. If the project receives subsidy payments for HUD, Distributions will be earned at a rate prescribed in the regulations and administrative procedures applicable to that subsidy program. If the project does not receive subsidy payments from HUD, Distributions will be earned annually or semiannually at a rate prescribed by the lender consistent with State or local law.

(4) On projects owned by General Mortgagors, all Surplus Cash generated during the fiscal period covered by the Surplus Cash computation may be distributed to the Mortgagor.

(d) Nonprofit and Cooperative Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each fiscal year in which Surplus Cash is generated. Limited Distribution Mortgagors must deposit Residual Receipts with the lender within 60 days after the end of each annual or semiannual fiscal period in which Surplus Cash is generated.

(e) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(1) If the project contains units that are occupied by assisted tenants and are subject to a Section 8 Housing Assistance Payments Contract under Part 880, Part 881, Part 883 or Part 886, the lender may release Residual Receipts only after obtaining the Commissioner's written approval and only in accordance with the Commissioner's administrative requirements.

(2) The Mortgagor may use Residual Receipts only for such purposes as the Commissioner or the lender authorize.

(f) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(g) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the Commissioner's administrative requirements.

§ 255.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligations to pay) fees for management services.

(e) Establish and maintain the project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner agrees to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports, properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity, and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In renting units, adhere to the civil rights and equal opportunity requirements set forth in § 255.208.

(j) Permit occupancy of:

(1) Unsubsidized units only under a lease or occupancy agreement that meets the requirements of this part and any requirements established by the lender; and

(2) Subsidized units only under a lease or occupancy agreement approved by the Commissioner.

(k) Adhere to the Commissioner's occupancy requirements for any units assisted under a project-based Section 8 Housing Assistance Payments Contract.

(l) Not permit any part of the project to be rented for transient or hotel purposes. The term "rental for transient or hotel purposes" means (1) rental for any period less than 30 days or (2) any rental, if the occupants of the housing accommodation are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellhop service.

(The information collection requirements contained in paragraphs (g) and (h) of this section were approved by the Office of Management and Budget under control numbers 2502-0314 and 2502-0108, respectively)

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 255.801 Payment of MIP by Mortgagor and lender.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor an initial MIP which shall not exceed the sum of one percent per year of the average outstanding principal balance of the Coinsured Mortgage, calculated from the date of endorsement for Coinsurance to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments, on the Mortgage, except as provided in § 255.803.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.65 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.65 percent per year of the average outstanding balance of the Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.4 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments, except as provided in § 255.803.

§ 255.802 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 255.803 Pro rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 255.804 Late charges—MIP.

(a) If the Commissioner receives an MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives an MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in comformity with the Treasury Fiscal Requirements Manual.

Delinquency and Default Under the Mortgage

§ 255.805 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The Lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0041)

§ 255.806 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a convenant default into a monetary default.

§ 255.807 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a Mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 255.808 Notice of default.

If a default (as defined in § 255.806) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0041)

§ 255.809 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 255.819(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 255.808 and 255.813. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) Temporary adjustment of Mortgage payments. Without obtaining the

Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) Withdrawal from the reserve for replacements. If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) Suspension of deposits to the reserve for replacements. The lender may suspend up to six months reserve deposits during any 36-month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) Recasting the Mortgage. The lender may recast delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

(The information collection requirements contained in paragraph (a)(iv) of this section were approved by the Office of Management and Budget under control number 2502-0108).

§ 255.810 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The Mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

Termination

§255.811 Termination of Coinsurance Contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage;

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage that does not meet the requirements of § 255.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 255.812 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the Contract of Coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 255.811 occurs.

Claim Procedure and Payment of Insurance Benefits

§ 255.813 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that (a) the lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and (b) reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2502-0041)

§ 255.814 Acquisition of property.

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 255.813, the lender must start action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 255.815 Deed-in-lieu of foreclosure.

In lieu of starting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a covenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 255.816 Disposition of property and application for insurance benefits.

(a) After acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraised values shall be deemed the appraised value for purposes of this subpart.

(b) After the lender sells the property, or at the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 255.818. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period (whichever is applicable), or Mortgage interest will be curtailed in accordance with § 255.819(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sale price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of when the lender requests payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales prices.

(The information collection requirements contained in paragraph (c) of this section were approved by the Office of Management and Budget under control number 2535–0074)

§ 255.817 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. If the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply.

§ 255.818 Amount of payment.

(a) Except as otherwise provided in § 255.821, the basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 255.819;

(3) Less all items set forth in § 255.820.

(b) The Commissioner will pay insurance benefits equal to 85 percent of the amount computed under paragraph (a) of this section if the lender (1) has obtained no insurance of its coinsurance risk, (2) has insured 50 percent of its coinsurance risk or (3) is a State Housing Agency eligible as a lender under § 203.8(b) of this chapter that obtained insurance from an authorized public Mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public Mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 72.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either 100 percent of its coinsurance risk or for that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

§ 255.819 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 255.818(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default.

However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 255.808, 255.813, 255.814, 255.816(b), or 255.821(b) within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs of acquiring the property actually paid by the lender and approved by the Commissioner. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Expenses in connection with the sale of the property.

§ 255.820 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 255.818(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure.

(b) All amounts received by the lender on account of the mortgage after the institution of foreclosure proceedings or after acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract.

(c) All cash or funds related to the Mortgaged property that the lender holds (or to which it is entitled), including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral which fund a GNMA Deposit Agreement relating to the lender-issuer's loss exposure during the GNMA Indemnity Period.

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project, or the appraised value of the project as provided in § 255.816, as follows:

(1) If the lender disposes of the project through a negotiated sale, the amount deducted will be the higher of the sales price or the appraised value.

(2) If the lender disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted will be the sale price, even if it is lower than the appraised value.

(3) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value.

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include, but are not limited to, returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

§ 255.821 Amount of payment for certain mortgages covering property rehabilitated with assistance under 24 CFR Part 511 or Part 850.

(a) The provisions of this section apply to Mortgages covering properties rehabilitated with assistance under Part 511 or Part 850 of this title which the Commissioner has coinsured under this part.

(b) Insurance benefits under this section shall be payable on the date of acquisition of marketable title to the property securing a defaulted Mortgage, in accordance with § 255.814. The benefits shall equal the sum of (1) 90 percent of the unpaid principal balance of the Mortgage on the date of the institution of foreclosure proceedings or on the date of acquisition of the property through deed-in-lieu of foreclosure and (2) 90 percent of the interest arrears under the Mortgage on the date insurance benefits under this section are paid. The lender must file with the Commissioner a claim for benefits under this section no later than 15 days after acquisition of title, or mortgage interest will be curtailed in accordance with Section 255.819(b).

(c) Upon acquisition of title, the lender must obtain two appraisals of the property, as provided in § 255.816(a).

(d) Within 30 days after the earlier of the date of sale of the property or the expiration of 12 months from the date of acquisition of title, the lender shall remit to the Commissioner for the credit of the General Insurance Fund:

(1) 90 percent of the net proceeds of the property determined in accordance with this paragraph after the lender sells the property or after the expiration of 12 months from the date of acquisition of title, whichever comes first. For purposes of this paragraph, the net proceeds of the property will be determined by adding the items referred to in §255.820 except that (A) the item referred to in § 255.820(a) will not be added, and (B) references in § 255.420(f) to amounts to be deducted and appraisals under § 255.816(a) will mean amounts to be added and appraisals under paragraph (c) of this section, and by subtracting the item referred to in § 255.819 (except that the full amount of the costs of acquiring the property, instead of two-thirds as specified in § 255.819(c), will be subtracted). The lender must furnish information with respect to the net proceeds of the property under this paragraph on a form approved by the Commissioner; and

(2) Interest on the amount required to be remitted under paragraph (d)(1) of this section, calculated for the period from the date of payment of insurance benefits under this section to the date of remittance, at a rate that is two percentage points above the rate of the current value of funds to the United States Treasury (set in conformity with the Treasury Fiscal Requirements Manual).

(e) Any remittance required under this section that is paid to the Commissioner more than 30 days after the earlier of the date of the sale of the property or the expiration of 12 months from the date of acquisition of title: (1) Must include a late charge of four percent of the amount of the remittance due; and

(2) will be subject to interest from the appropriate due date at a rate that is two percentage points above the rate of the current value of funds to the United States Treasury (set in conformity with the Treasury Fiscal Requirements Manual).

(The information collection requirements contained in paragraph (d)(1) of this section were approved by the Office of Management and Budget under control number 2535-0074)

§ 255.822 [Reserved]

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

§ 255.823 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a Coinsured Mortgage, the Commissioner will reimburse GNMA for the amounts GNMA must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 15 percent or 27.75 percent (whichever is appropriate) of the amount computed under § 255.818, plus the amount computed under § 255.820(a), except that, in the case of mortgages for which insurance benefits are payable under § 255.821, the amount will not exceed 10 percent of the unpaid principal balance and 10 percent of the interest arrears under the mortgage determined under § 255.821(b). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 255.824 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the Commissioner may request that the Mortgagee Review Board withdraw approval of the lender-issuer as a HUD-approved mortgagee, under the provisions of Part 25 of this title.

§ 255.825 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

§ 255.826 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities (MBS) Program, GNMA will have the right, notwithstanding the requirements of § 255.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 207. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 207, except that any payment will be made in cash instead of debentures.

§ 255.827 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issurer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA, as substitute lender-issuer, shall be entitled to file a claim for, and to receive, coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if (1) the defaulting lender-issuer has acquired legal title to property previously covered by a Coinsured Mortgage ("coinsured property"), but has not received coinsurance benefits under this subpart, and (2) the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. GNMA may file such a claim, notwithstanding the requirements of § 255.816(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment made under this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, the Commissioner shall reimburse GNMA for such additional amount in accordance with § 255.823(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsured property on behalf of securities holders and GNMA. Such assigment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to the property. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner, in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a), if the Commissioner is required to pay coinsurance proceeds under this subpart to any part other than GNMA with respect to the Coinsured Mortgage.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

2. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, of the National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

3. The introductory text of § 207.27 (a) is revised to read as follows:

§ 207.27 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of a transaction under § 207.32a, where the commitment provides for completion of specified repairs after endorsement as provided in § 207.32a(a), a supplemental certificate of actual cost will be submitted covering any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

* * * * *

4. Section 207.32a is amended by revising paragraphs (a)(1), (b)(1), (c), (g), and (h), and by adding a new paragraph (m), to read as follows (b) introductory, text is set out for the purpose of clarity:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(a) *Application, commitment, inspection and required fees—*

(1) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of the improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

* * * * *

(b) *Maximum mortgage amounts—general.* In addition to the limitations in paragraphs (c) and (d) of this section, a mortgage may not involve a prinicipal obligation in excess of the lesser of the following:

(1) 85 percent of the Commissioner's estimate of the value of the project, except that (i) with respect to a cooperative project, a mortgage may not involve a principal obligation in excess of 90 percent of the Commissioner's appraised value of the project for continued use as a cooperative and (ii) with respect to a project that meets the eligibility requirements of paragraph (k) or paragraph (l) of this section, a mortgage may not involve a principal obligation in excess of 90 percent of the

Commissioner's estimate of the value of the project;

* * * * *

(c) *Maximum mortgage amounts—property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum mortgage amount shall not exceed 85 percent (90 percent for a cooperative project or a project that meets the eligibility requirements contained in paragraph (k) or paragraph (l) of this section) of the cost of acquisition as determined by the Commissioner. The cost of acquisition shall consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the Reserve Fund for Replacements;

(3) Reasonable and customary legal, organization, title and recording expenses, cooperative marketing fees, and allowable fees including discounts charged by the mortgagee;

(4) The estimated repair cost, if any; and

(5) Architect's, municipal inspection and engineering fees.

* * * * *

(g) *Eligible property in older declining urban areas and cooperative projects.* In addition to meeting the requirement in paragraph (f)(5) and other applicable requirements of this section, the maximum mortgage amount for an existing project to be purchased or refinanced in an older, declining urban area, or for a cooperative project, shall be limited by the lowest of paragraphs (b)(1), (b)(2), (c) or (d)(2) of this section.

(h) *Occupancy requirements.* (1) The requirements contained in § 207.20(a) shall not apply to a mortgage insured pursuant to a commitment issued in accordance with this section if the Commissioner determines that the project is intended primarily for occupancy by the elderly or handicapped and is not compatible with occupancy by families with children.

(2) With respect to a cooperative project, at least 70 percent of the total units in the project must be subscribed to on a cooperative basis before endorsement of the mortgage for insurance by the Commissioner.

* * * * *

(m) *Additional eligibility requirements for cooperative projects.* For those projects in which the mortgagor is a nonprofit cooperative ownership housing corporation or nonprofit cooperative ownership housing trust, where permanent occupancy of the dwellings is restricted to members of such corporation or to beneficiaries of such trust: (1) The mortgagor must be regulated or supervised under State laws or by a political subdivision of a State, or agencies thereof; (2) a General Operating Reserve must be established and maintained, in accordance with standards establishd by the Commissioner, throughout the period that the mortgage insurance is in force; and (3) the mortgage will be accepted for insurance only where the Commissioner determines that:

(i) The conversion of the property to cooperative ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;

(ii) Continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low and moderate income people in the community; or

(iii) Continuation of the property as rental housing would have an undersirable and deleterious effect on the surrounding neighborhood.

Dated: June 14, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-15016 Filed 6-21-85; 8:45 am]

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Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

[Docket No. R-85-1177; FR 1624]

Urban Homesteading Program; Deregulation and Implementation of 1983 Statutory Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule revises procedures governing the Urban Homesteading Program to: (1) Eliminate or reduce burdensome requirements; (2) strengthen controls on fraud, waste and mismanagement; and (3) implement amendments required by the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181 (the 1983 Act).

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Burk, Director, Urban Homesteading Program, Department of Housing and Urban Development, Room 7168, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-5324. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 810 of the Housing and Community Development Act of 1974 authorizes HUD to reimburse the appropriate agency's housing loan fund for properties acquired from HUD's, VA's or FmHA's inventory of single family housing for use by States or units of general local government in the Urban Homesteading Program. On July 5, 1984, HUD published in the **Federal Register** (49 FR 27572) a Notice of Proposed Rulemaking to amend 24 CFR Part 590, Urban Homesteading, to: (1) Eliminate or reduce burdensome requirements; (2) strengthen controls on fraud, waste and mismanagement; and (3) implement amendments required by the 1983 Act. (This part is not applicable to either the Multifamily Urban Homesteading Demonstration or the Local Property Urban Homesteading Demonstration.)

As a result of public comment and HUD's own review of the proposed rule, this final rule makes two substantive modifications to the proposed rule that are intended further to simplify program administration. This preamble also includes some HUD suggestions aimed at reducing the administrative burden of several new provisions required by the 1983 Act. The specific changes and suggestions are discussed in the Discussion of Comments section.

The Proposed Rule

The proposed rule suggested simplifying the process of designating an urban homesteading neighborhood and provided for streamlined applications featuring certifications of compliance with certain responsibilities, rather than excessive paperwork submissions and time-consuming HUD front-end reviews. These and numerous technical changes eliminated duplicative and burdensome requirements.

The rule also proposed stronger HUD monitoring and compliance efforts to enable the Department quickly to detect and correct instances of fraud, waste and mismanagement.

As required by the Housing and Urban-Rural Recovery Act of 1983, the proposed rule provided for a priority in favor of those prospective homesteaders: (1) Whose current housing fails to meet applicable local health and safety standards, including overcrowding; (2) who currently pay in excess of 30 percent of adjusted income (as determined by application of

standards employed in the section 8 program at 24 CFR Part 813) for rent, including reasonable utilities as reflected in the schedule of utility allowances for the Section 8 Existing Housing Program; and (3) who have little prospect of obtaining improved housing within the foreseeable future through means other than homesteading. The proposed rule also included the implementation of 1983 amendments that preclude current homeowners from being prospective homesteaders and extend from 18 months to three years the time permitted for homesteaders to make all repairs necessary for the property to meet all applicable local standards for decent, safe, and sanitary housing. In addition, the proposed rule raised the waivable limitation on the value of properties transferable with section 810 reimbursement from $15,000 per single family property to $20,000.

Discussion of Comments

HUD received seven comments: Five from cities, one from a county, and one from a HUD Field Office. The principal issues raised are summarized below, together with HUD's response.

A. Special Priority (§ 590.7(b)(2)(iii))

Four of the commenters stated that implementation of the special priority would dramatically increase the administrative burden of the program. One commenter stated that staff time to conduct the homesteader selection process has more than doubled since the city implemented priority screening.

The special priority is a new feature of the Urban Homesteading Program added by the 1983 Act. In the following discussion of specific points raised in various comments, the Department has tried to suggest methods of reducing the administrative burden.

1. Lotteries

One commenter stated that the priority provisions could present a problem for Local Urban Homesteading Agencies (LUHAs) that hold lotteries to select homesteaders. Under this commenter's lottery system, prescreening can be kept to a minimum until a number of potential homesteaders are drawn; then in-depth eligibility screening is required only for those selected.

Although special priority is required by section 810(b)(7)(A) of the authorizing legislation, the statute does not require LUHAs to use lotteries in their equitable procedures for homesteader selection. For LUHAs that use lotteries, the Department notes that a lottery need not be limited to candidates who are finally determined to meet all eligibility and special priority criteria. A LUHA could, for example, devise a prescreening checklist to eliminate candidates that clearly do not meet the priority, hold a lottery in which the names of a number of potential homesteaders are drawn in order, and then do an in-depth review of the winners' qualifications (following the order of the lottery drawing) until a sufficient number of priority candidates for the properties available is obtained.

2. Substandard Housing

Two commenters stated that the priority criterion concerning whether prospective homesteaders are occupying substandard housing imposes an enormous administrative burden on local resources. One local agency said that the rule would require pre-qualifying inspections for dozens of dwellings, when present staff is barely sufficient for a limited "on complaint only" program of inspection.

The Department suggests LUHA's may want to develop a questionnaire for use by prospective homesteaders who believe they meet the priority. The questionnaire could contain a checkoff list of defects that would have to exist before a determination could be made that the housing is substandard. By developing this prescreening device, LUHAs may be able to avoid an excessive number of actual inspections, and only inspect those properties the checklist indicates may qualify.

3. Income

Two commenters opposed the priority provision's exclusion of prospective homesteaders who are receiving section 8 assistance, based on the fact that they are paying 30 percent of income for shelter—but not more— and thus fall just outside of the statute's requirement that the prospective homesteader pay in excess of 30 percent of adjusted income for shelter. Both commenters expressed the concern that the inability of these families to participate locks them into subsidized housing, rather than allowing them the opportunity to break out of the welfare cycle and enter the economic mainstream.

The Department acknowledges that the statutory priority makes it difficult for section 8 recipients to become homesteaders. However, establishment of the priority does not totally exclude section 8 applicants. While anyone entitled to the priority must be given the option to homestead before other prospective homesteaders, there may be times when a locality does not receive an application from a prospective homesteader who qualifies for the priority, or when prospective homesteaders reject properties currently in the inventory. While this situation may be rare, in the absence of a qualified priority candiate for a particular property, the State or locality could award the property to an eligible section 8 assisted prospective homesteader. (Under section 8 requirements, a section 8 homesteader would then lose his or her section 8 benefits.)

One commenter suggested that prospective homesteaders meeting all three elements of the priority could not meet underwriting standards for the necessary rehabilitation loans. One city stated that the number of prospective homesteaders disqualified at the underwriting stage was twice as great as the number that usually had been disqualified before the priority was adopted. It was alleged in the comment that ninety percent of all prospective homesteaders who did *not* meet the three priority qualifications had incomes below 80 percent of median and had never been homeowners. Many of these were from two of the commenting city's target groups—female heads of households and minorities. To eliminate these families from participation in the program, the city argued, is to eliminate groups that are often targeted for other social welfare programs—programs that do not go nearly so far as the Urban Homesteading Program in improving the social and economic status of lower income persons.

Since a priority candidate should be needier than one who does not qualify for the priority (even though an individual who does not qualify may still be needy), the priority assures that scarce resources go to the neediest first. As indicated earlier, if there is no eligible priority candidate, the State or locality may award the property to another, non-priority candidate.

4. Prospects for Housing Within the Foreseeable Future

One commenter suggested considering such personal factors as the prospective homesteader's past income history, future income potential, and family size in determining his or her chances of obtaining standard housing in the foreseeable future without homesteading. The commenter advocated use of these factors in lieu of factors that affect everyone equally, such as vacancy rates, rent rates, or the prevalence of substandard housing in the local housing market.

HUD agrees that long-term factors specific to the particular individual or family, such as the one suggested by the commenter, are appropriate for

consideration in determining a prospective homesteader's ability to obtain standard housing within the foreseeable future without homesteading. However, this determination must be made in relation to the housing market in the particular locality, and therefore factors such as vacancy rates, availability of standard housing of a size suitable for the individual or family, and area rent levels are also indispensable elements of this determination.

5. Combined Effect of the Three Priority Elements

One commenter suggested that the statutory language leaves open the possible interpretation that a prospective homesteader need only meet any one of the three criteria. Limiting the program to prospective homesteaders whose incomes do not exceed 80 percent of median, it was suggested, would be a more expedient and fairer guideline for targeting the Urban Homesteading Program than is the proposed special priority. Furthermore, another commenter complained that the difficulty of finding an eligible priority candidate was compounded by the interaction of the "income requirement" with the requirement that the prospective homesteader be living in substandard housing. The commenter claimed that if a prospective homesteader was paying in excess of 30 percent of income for housing, the housing tended to be standard, at least in the commenter's area.

The Department believes the correct interpretation of the statute is that the conditions are to be read together, even though this may result in difficulties for some communities. We note that in the rare case where there is no available priority candidate for a particular property, the Department encourages States and localities to use one or more of the priority standards in selecting the homesteader.

B. $20,000 Maximum on As-Is Value of Property (§ 590.17(b)(4)(i))

Four commenters believed the proposed rule's guideline of $20,000 on the as-is fair market value of single-unit properties transferred with section 810 funds is inadequate. This was seen as especially true when considering properties for large families.

The Department raised the as-is fair market value guideline for properties from $15,000 to $20,000 in the proposed rule. HUD's own review of current housing stock shows a significant number of properties in its inventory that fall within this guideline. Where suitable properties for large families exist that exceed this limit, the Field Office Manager may make a determination that the limit should be waived. The Department, therefore, believes the rule has enough flexibility to address the commenters' concern and is not changing the rule further. (The final rule does, however, technically conform the waiver language regarding VA and FmHA properties to track the language regarding HUD's own properties.)

C. Sweat Equity (§ 590.7(b)(2)(ii))

One commenter complained about the increased administrative cost of monitoring, for timeliness and quality, the work performed as "sweat equity." This commenter also felt that providing a "priority" in favor of sweat equity is inequitable to single-parent households and to families working in excess of 40 hours a week. Another commenter believed this provision to be unfair to the aged, infirm, and handicapped, who cannot contribute a "substantial amount of labor to the rehabilitation process."

There is no priority given to prospective homsteaders wishing to contribute resources through their own labor. The rule merely states that the ability to provide labor must be taken into account in assessing the prospective homesteader's ability to make or cause to be made the necessary repairs. Thus, sweat equity is simply one of several options to be considered in assessing a homesteader's capacity to rehabilitate the property. The 1983 Act requires LUHAs to consider this factor in selecting homesteaders.

D. Opening Program to Owners of Other Residential Property (§ 590.7(b)(2)(i))

One commenter felt that opening the program up to include residential property owners in hardship situations would increase dramatically the number of phone inquiries received, increase the number of applications to be processed, lengthen the time needed for processing, and require considerably more staff time. The commenter stated that it has never heard of an owner's hardship case that homestading would alleviate.

In administering the statute's prohibition against current "homeowners", the Department intended to insure the the prohibition included those who owned other residential property in which they could live but chose not to live. However, the Department agrees that the exception may unduly increase the local administrative burden and has therefore decided to drop the exception and make all owners of residential property ineligible for the Program.

E. Repairs (§ 590.7(b)(5)(ii))

One commenter suggested that the extension, from 18 months to three years, of the time limit to make repairs to meet applicable local standards for decent, safe, and sanitary housing may cause resentment in some communities that were willing to support the program as long as eyesores were quickly repaired. The same commenter asked if section 312 funds would be permitted to be used for a three-year rehabilitation program. Currently, a section 312 borrower does not usually commence making payments on the loan until rehabilitation is completed. While there is no regulatory time period in which to complete such activity, the loan note usually specifies a period not to exceed six months. Time limits of 60 to 90 days are the usual practice for loans on 1–4 unit properties. This commenter also felt that monitoring homesteaders for three years to assure compliance with this requirement was administratively burdensome.

First, the extension of time from 18 months to three years is required by statute. States and localities have substantial discretion with reference to determining what poses a substantial danger to health and safety, both to the prospective homesteader and to the community. Any defect that poses such a hazard must be repaired within one year. Second, no amendments or changes in administration are proposed for the section 312 program. Anyone undertaking repairs financed under that program must comply with its terms.

F. Miscellaneous

One commenter supported the extension from three to five years of homesteader occupancy before conveyance of title. (§ 590.7(b)(5)(iii))

One commenter was confused by a reference to closing costs in § 590.17(b)(3). Would a LUHA's property taxes which accrued after conveyance of the property from HUD to the LUHA be a cost chargeable against the section 810 fund?

Under the laws of the various States, real property taxes are the responsibility of the owner of the property, and under the National Housing Act, HUD's Federal Housing Administration pays State and local ad valorem taxes on real property it owns. After the date of conveyance of a property to a LUHA, the FHA is no longer legally responsible for, and has no authority to pay, such taxes on the conveyed property. Section 810(k) authorizes appropriations for the Urban Homesteading Program "to reimburse the housing loan funds for

properities transferred pursuant to this section. . . ." Since the FHA mortgage insurance fund is not responsible for property taxes on property it no longer owns, section 810 funds may not be used to reimburse the fund for such taxes. In effect, there is nothing to reimburse. Although HUD believes it would not be feasible further to define the term "closing costs" in § 590.17(b)(3) (and elsewhere in Part 590), we have added the words "as approved by HUD" following the words "closing costs" in § 590.17(b)(3), to make clear that the nature of the closing costs reimbursable by HUD is a decision within HUD's discretion. In addition, we have added the words "plus approved closing costs" in the introduction to § 590.18 to signal the fact that in the case of VA or FmHA properties, the closing costs reimbursable from section 810 funds must be acceptable to HUD and VA or FmHA.

One commenter praised the Department's relaxation of the criteria for selecting homesteading neighborhoods (§ 590.7(a)). Another commenter felt that HUD's evaluation of the Urban Homesteading Program showed that the program was meeting its objectives and, therefore, that the 1983 Act amendments were not needed.

The Department on its own initiative has amended the abbreviated application process for current participants to clarify that such provision does not become effective until the time for Fiscal Year 1987 applications.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50. A copy of this finding is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section (b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because changes made to previous procedures by this rule will not affect a substantial number of small entities.

This rule, except such portions as relate to the requirements of OMB Circular A-123 (fraud, waste and mismanagement), is listed as item number 185 (Agenda No. CPD-41-81) in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17328), under Executive Order 12291 and the Regulatory Flexibility Act. The portions of this rule pertaining to the fraud, waste and mismanagement concerns contained in OMB Circular A-123 were not listed in the Semiannual Agenda.

The Catalog of Federal Domestic Assistance program number and title is 14.222—Urban Homesteading.

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 4321-4347, the reporting provisions in this regulation have been approved by the Office of Management and Budget (OMB). They have been assigned OMB control number 2506-0042. The record keeping requirements of §§ 590.11(d)(9) and 590.25 were not included in the previous OMB submission. The initial request for review is being amended to include these elements.

List of Subjects in 24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations.

Accordingly, HUD revises 24 CFR Part 590 to read as follows:

PART 590—URBAN HOMESTEADING

Sec.
590.1 Scope and purpose of regulation.
590.3 Waiver authority.
590.5 Definitions.
590.7 Program requirements.
590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.
590.11 Applications.
590.13 Standards for HUD review and approval of a local urban homesteading program.
590.15 Urban homesteading agreement.
590.17 Transfer of HUD-owned property.
590.18 Reimbursement to FmHA and VA.
590.19 Use of section 810 funds.
590.21 Reservation and reduction of funds.
590.23 Program close-out.
590.25 Retention of records.
590.27 Audit.
590.29 HUD review of LUHA performance.
590.31 Corrective and remedial actions.

Authority: Section 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 590.1 Scope and purpose of regulation.

(a) *Scope.* This part applies to the Urban Homesteading Program authorized under section 810(b) of the Housing and Community Development Act of 1974.

(b) *Purpose.* The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program provides for the transfer without payment to a local urban homesteading agency (LUHA) of federally-owned properties requested by the LUHA for use in a HUD-approved local urban homesteading program.

§ 590.3 Waiver authority.

HUD may waive any requirement of this part not required by law whenever it determines that undue hardship would result from applying the requirement, or where applying the requirement would adversely affect achievement of the purposes of the program.

§ 590.5 Definitions.

"Act" means section 810 of the Housing and Community Development Act of 1974.

"Applicant" means any State or unit of general local government that applies for HUD approval of a local urban homesteading program under these regulations.

"Federally owned property" means any real property to which the Secretary of HUD, the Secretary of Agriculture or the Administrator of Veterans Affairs holds title and which is:

(1) Improved with a one- to four-family residence;

(2) Unrepaired and not the subject of an outstanding repair or sales contract; and

(3) Not occupied by an individual or family under a lease. (Property of this nature is also referred to as "HUD-owned property", "FmHA-owned property", or "VA-owned property" when the context requires identification of the particular agency.)

"FmHA" means the Farmers Home Administration, an agency within the U.S. Department of Agriculture.

"Homesteader" means an individual or family that participates in a local urban homesteading program by agreeing to rehabilitate and occupy a property in accordance with § 590.7(b)(5).

"HUD" means the U.S. Department of Housing and Urban Development.

"Local urban homesteading agency" (LUHA) means a State, a unit of general local government, or a public agency designated by a State or a unit of general local government. The LUHA must have legal authority to carry out a local urban homesteading program as described in this part.

"Local urban homesteading program" means the operating procedures and requirements developed by a LUHA, in accordance with this part, for selecting and conveying Federally owned properties to qualified homesteaders.

"Locally owned property" means any one- to four-family property located in an urban homesteading neighborhood, which was not obtained from HUD, VA, or FmHA and to which the LUHA holds title.

"Section 810 funds" means funds available to reimburse HUD, FmHA, or VA (as applicable) for federally owned property transferred to LUHAs in accordance with this part.

"State" means any State of the United States, any instrumentality of a State approved by the Governor, and the Commonwealth of Puerto Rico.

"Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, or American Samoa, or any general purpose political subdivision thereof; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

"Urban homesteading neighborhood" means any geographic area approved by HUD for the conduct of a local urban homesteading program that meets the requirements of this part.

"VA" means the Veterans Administration.

§ 590.7 Program requirements.

(a) *Designation of urban homesteading neighborhood; coordinated approach toward neighborhood improvements.* The applicant shall designate the neighborhood or neighborhoods for carrying out urban homesteading, and shall develop a plan that provides for the improvement of these neighborhoods through the homesteading program and the upgrading of community services and facilities, in combination with any other public or private revitalization efforts affecting the neighborhood.

(b) *Development of local urban homesteading program.* The applicant shall develop, in compliance with this part, a local urban homesteading program containing the following major elements:

(1) *Selection and management of properties.* The program shall provide procedures for selecting federally owned properties suitable for homesteading, and for managing the properties before conditional conveyance to homesteaders. The program shall also provide that, by accepting title to a property under this part, the LUHA assumes liability for injury or damage to persons or property by reason of a defect in the dwelling, its equipment or appurtenances, or for any other reason related to ownership of the property.

(2) *Homesteader selection.* The program shall provide equitable procedures for homesteader selection which:

(i) Exclude prospective homesteaders who own other residential property;

(ii) Take into account a prospective homesteader's capacity to make or cause to be made the repairs and improvements required under the homesteader agreement, including the capacity to contribute a substantial amount of labor to the rehabilitation process, or to obtain assistance from private sources; community organizations, or other sources; and

(iii) Provide that before offering properties to others who are eligible, properties will be offered to those otherwise eligible who apply for a property and meet all of the following criteria:

(A) Prospective homesteaders whose current housing fails to meet applicable local health and safety standards, including overcrowding;

(B) Prospective homesteaders who currently pay in excess of 30 percent of adjusted income (as determined by standards applicable to the Section 8 program at CFR Part 813) for rent, including amounts paid for reasonable utilities as reflected in the schedule of utility allowances for the Section 8 Existing Housing Program; and

(C) Prospective homesteaders who have little prospect of obtaining improved housing within the foreseeable future through means other than homesteading.

(3) *Conditional conveyance.* The progam shall provide for the conditional conveyance of federally owned property to homesteaders without any substantial consideration.

(4) *Financing.* The program shall provide procedures for the LUHA to undertake, or to assist the homesteader in arranging, financing for the rehabilitation required under the homesteader agreement.

(5) *Homesteader Agreement.* The program shall provide for the execution. concurrent with or as a part of the conditional conveyance, of a homesteader agreement between the LUHA and the homesteader which shall require the homesteader:

(i) To repair, within one year from the date of conditional conveyance of the property to the homesteader, and defects that pose a substantial danger to health and safety:

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within three years from the date of conditional conveyance of the property to the homesteader, and to comply with any energy conservation measures designated by the LUHA as part of the repairs;

(iii) To occupy the property as his or her principal residence for not less than five consecutive years from the date of initial occupancy, expect as otherwise approved in writing by HUD on a case-by-case basis when emergency conditions make compliance with this requirement infeasible;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the LUHA to determine compliance with the agreement; and

(v) To surrender possession of, and any interest in, the property upon material breach of the homesteader agreement (including default on any rehabilitation financing secured by the property), as determined by the LUHA in accordance with this part.

(6) *Monitoring and selecting successor homesteaders.* The program shall provide that the LUHA will monitor the homesteader's compliance with the homesteader agreement, will revoke the conditional conveyance and homesteader agreement upon any material breach by the homesteader, and, to the extent necessary and practicable, will select one or more successor homesteaders for the property. If the LUHA selects a successor homesteader, it shall execute a new homesteader agreement and conditional conveyance with the successor homesteader in compliance with this part, including the requirement for occupancy of the property by the successor homesteader for at least five consecutive years.

(7) *Fee simple title.* The program shall provide for the conveyance of fee simple title to the property from the LUHA to the homesteader, without consideration, upon compliance with the terms of the

homesteader agreement and conditional conveyance.

(c) *Homesteading infeasible; alternative use.* If completion of homesteading proves, in the judgment of HUD, to be infeasible for any reason after a LUHA has accepted title to a federally owned property, the LUHA shall not demolish, dispose of, rent or otherwise convert the property to its own use until HUD approves an alternative use consistent with the coordinated approach to neighborhood improvement.

§ 590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.

In order to facilitate planning for local urban homesteading programs, HUD, FmHA, and VA, upon request by a LUHA, each shall provide the LUHA with a listing of all residential properties in the LUHA's jurisdiction to which they hold title and which are not subject to executed repair or sale contracts or leases. The LUHA shall give the public access to the list during ordinary business hours at the offices of the LUHA.

§ 590.11 Applications.

(a) *Initial application requirements.* Applicants may submit an initial application under this part to the responsible HUD Field Office at any time during the year. Applications shall consist of:

(1) Standard Form-424, prescribed by OMB Circular A-102;

(2) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown;

(3) A statement of the local goals for the homesteading program for each neighborhood selected;

(4) An estimate of the amount of section 810 funds to be used during the current Federal fiscal year and a statement concerning the basis for the estimate;

(5) Identification of the entity that will administer the Urban Homesteading Program for the applicant;

(6) The certifications required by paragraph (d) of this section; and

(7) Any additional documentation HUD requests.

(b) *Annual Request for Program Participation.* For fiscal year 1986 or thereafter, an applicant previously approved by HUD to participate in the Urban Homesteading Program shall notify the HUD Field Office in writing on or before August 1 of each succeeding year if it wishes to continue in the program. At the same time, the applicant shall notify HUD of its estimate of the section 810 funds to be used during the upcoming Federal fiscal year, along with an explanation of the basis for the estimate.

(c) *Amendments.* If the applicant wishes to change any element of its local urban homesteading program that is specifically described in the HUD-approved application (such as the identification of urban homesteading neighborhoods or the designation of the public agency to carry out the program), the applicant shall submit its proposal to the HUD Field Office for approval before making any such change. The proposal shall identify specifically the elements to be changed, and shall set forth the proposed amendment. Proposed amendments may be submitted with an annual request for program participation or at any other time during the program year.

(d) *Certification.* As part of its application, the applicant shall certify that:

(1) Except for States, the applicant's governing body has duly adopted or passed an official act, resolution, motion, or similar action authorizing the filing of the application, including all understandings and assurances contained in these certifications.

(2) The applicant or its designated public agency possesses the legal authority to carry out the local urban homesteading program described in its application in accordance with this part, including the specific program requirements described in § 590.7(b).

(3) The applicant or its designated public agency has:

(i) An adequate administrative organization capable of carrying out the program in a timely and cost effective manner;

(ii) Procedures for selecting and accepting property suitable for homesteading and rehabilitation as required by § 590.7(b)(1);

(iii) Equitable procedures for selecting homesteaders as required by § 590.7(b)(2);

(iv) A form for conditional conveyance as required by § 590.7(b)(3);

(v) A homesteader agreement as required by § 5907.(b)(5);

(vi) Procedures for monitoring the homesteader agreement and for revoking a conditional conveyance upon material breach of the agreement, as required by § 590.7(b)(5); and

(vii) Procedures for conveying fee simple title to the residential property received from HUD, FmHA or VA without substantial consideration to the homesteader upon his or her full compliance with the agreement required in § 590.7(b)(5).

(4) The applicant or its designated public agency has, before submission of its application:

(i) Developed a plan for a coordinated approach toward neighborhood improvement as required by § 590.7(a); and

(ii) Provided citizens an adequate opportunity to express preferences about the proposed location of the urban homesteading neighborhood or neighborhoods, and to comment on the plan for a coordinated approach toward neighborhood improvement.

(5) The applicant and its designated public agency will:

(i) Comply with the requirements of Title VI of the Civil Rights Act of 1964, Executive Order 11063; Title VIII of the Civil Rights Act of 1968; section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, which prohibit discrimination on the basis of sex, race, creed, religion, color, national origin, handicap, or age in any program or activity under this part; and

(ii) Employ affirmative marketing procedures in the advertising of homesteading properties.

(6) The applicant or its designated public agency will comply with the lead-based paint procedures set forth in 24 CFR Part 35, agreeding to:

(i) Assure the elimination of immediate lead-based paint hazards in federally owned property transferred under this part; and

(ii) Notify potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed before 1950.

(7) The applicant and its designated public agency will submit any information HUD requests for the purpose of meeting HUD's responsibilities under the National Environmental Policy Act of 1969; Executive Order 11988 on Flood Plain Management; Executive Order 11990 on Protection of Wetlands; the Flood Disaster Protection Act of 1973, the National Historic Preservation Act of 1966; and the Preservation of Historic and Archaeological Data Act of 1974, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(8) The applicant and its designated public agency will give HUD and the Comptroller General, through their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the local urban homesteading program.

(9) The applicant or its designated public agency will maintain in writing and on file a description of its approved local urban homesteading program for public information and review.

(10) The applicant or its designated public agency will assist in arranging, or will itself undertake, rehabilitation financing for residential property conveyed to homesteaders.

§ 590.13 Standards for HUD review and approval of a local urban homesteading program.

(a) *Applications.* The appropriate HUD Field Office will review an applicant's initial application and the Field Office Manager will approve the proposed local urban homesteading program, unless the Field Office Manager determines that the program does not comply with the requirements of the Act, this part or other applicable laws and regulations, or that it is plainly inappropriate or plainly inconsistent with available facts and data. If the program is disapproved, HUD shall notify the applicant in writing of the specific reasons.

(b) *Annual requests for program participation and program amendments.* The HUD Field Office will review any proposed application amendments and an applicant's annual request for program participation and will approve the applicant's submission unless the Field Office Manager determines that the proposal is plainly inappropriate or plainly inconsistent with available facts and data, or that the applicant's past performance does not meet the standards of § 590.29(a). HUD will notify the LUHA in writing of the specific reasons for any disapproval. Program amendments will be considered approved as of the date of HUD's written notification of approval to the applicant. Annual requests for program participation will be considered approved as of the date of HUD's written notification to the applicant of a fund reservation, or notice of satisfaction of any approval conditions, whichever is later.

§ 590.15 Urban homesteading agreement.

Upon approval of an application, HUD, the State or unit of general local government, and the designated public agency, if any, will execute an urban homesteading agreement in the form prescribed by HUD, and HUD will reserve section 810 funds for the LUHA for the remainder of the Federal fiscal year in which the agreement is executed. The agreement authorizes the LUHA to request HUD, VA, and FmHA to transfer properties to the LUHA, to the extent that the funds reserved are sufficient to reimburse the Federal agency for the properties. The agreement also obligates the LUHA to use the properties in accordance with the Act, this part, and other applicable laws and regulations. However, neither a fund reservation nor the agreement obligates HUD, FmHA or VA to transfer a specific number of properties or particular properties identified in a program application, an annual request for program participation, or a program amendment. The agreement shall specify procedures for its amendment or termination.

§ 590.17 Transfer of HUD-owned property.

(a) *Property disposition assistance.* HUD's property disposition activity shall support the urban homesteading program as follows:

(1) After execution of its initial urban homesteading agreement, but before the initial selection of any HUD-owned property, a LUHA may request HUD to suspend its routine property disposition activity for up to 45 days for HUD-owned properties listed under § 590.9 and identified by the LUHA as located in a HUD-approved urban homesteading neighborhood. Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all such identified HUD-owned properties.

(2) With respect to properties coming into HUD's inventory later, the HUD Field Offices shall develop and implement property disposition plans for HUD-owned properties located in HUD-approved urban homesteading neighborhoods. These plans shall include the following procedures:

(i) As soon as feasible, but in no event later than ten days after HUD receives a notice of property transfer and application for insurance benefits for a HUD-owned property located in a HUD-approved urban homesteading neighborhood, the HUD Field Office shall notify the LUHA in writing of the potential availability of the property for homesteading;

(ii) The HUD Field Office shall not approve a property disposition program for a property until the LUHA has informed the Field Office, in writing, whether or not it intends to use the property in the local urban homesteading program, or until 30 days from the date of HUD's notice, whichever comes first. The Field Office Manager may extend the 30-day deadline if the Field Office Manager makes a written determination that notification by the LUHA within 30 days is impracticable.

(b) *Conditions for transferring HUD-owned properties.* Except as provided in paragraph (c) of this section, HUD shall offer to transfer the title of a HUD-owned property to a LUHA, without payment, if:

(1) The property is located in a HUD-approved urban homesteading neighborhood;

(2) The LUHA has notified the HUD Field Office, within the applicable period specified in paragraph (a)(1) or (a)(2)(ii), that it intends to use the property in the local homesteading program;

(3) The LUHA's approved reservation of section 810 funds is sufficient to reimburse HUD's applicable housing loan or mortgage insurance accounts for the estimated as-is fair market value of the property plus closing costs as approved by HUD; and

(4) The HUD Field Office determines that the requested property is suitable for the approved local urban homesteading program, as follows:

(i) The estimated as-is fair market value of the property does not exceed $20,000 (excluding closing costs) for a one-unit single family residence and an additional $5,000 for each additional unit of two- to four-family residences; or

(ii) The Field Office Manager authorizes, on a property-by-property or program-by-program basis, the transfer of HUD-owned property where the estimated fair market value exceeds the preceding limitations if the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal government.

(c) *Exceptions.* (1) If a LUHA fails to accept title within 30 days of HUD's offer of a property for a specific price in accordance with paragraphs (b)(1)–(4) of this section, HUD may approve an alternative disposition plan for the property. The HUD Field Office Manager may extend, for a reasonable period of time, this 30-day deadline if the HUD Field Office Manager makes a written determination that acceptance of title by the LUHA within 30 days of property selection is impracticable.

(2) A property otherwise eligible for transfer to a LUHA may be used to meet higher priority needs if the Field Office Manager makes a determination in writing that the property is essential to meet an existing legal obligation such as:

(i) Settlement of a sales warranty claim;

(ii) Settlement of a claim under section 518 of the National Housing Act

for critical structural defects in certain one- to four-family dwellings;

(iii) Emergency housing needs (disaster housing and urgent public housing needs);

(iv) Reconveyance for noncompliance with 24 CFR 203.363;

(v) Reconveyance pursuant to a Civil Frauds Act settlement;

(vi) Reconveyance where the mortgage was never insured; and

(vii) Other legal obligations as determined by HUD.

§ 590.18 Reimbursement to FmHA and VA.

The Secretary shall reimburse FmHA or VA from a LUHA's section 810 funds in an amount agreed to between the LUHA and FmHA or VA for FmHA- or VA-owned property plus approved closing costs, under the following conditions:

(a) The property is located in a HUD-approved urban homesteading neighborhood;

(b) The LUHA's approved reservation of section 810 funds is sufficient to support the agreed reimbursement, including closing costs;

(c) The reimbursement (excluding closing costs) does not exceed the lesser of the amounts specified in paragraphs (1) or (2), below:

(1)(i) $20,000 for a one-unit single family residence, plus $5,000 for each additional unit of a two- to four-family residence; or

(ii) An amount greater than the amount in paragraph (c)(1)(i), above, if authorized by the HUD Field Office Manager on a property-by-property or program-by-program basis, where the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of similar property, warrant the additional cost to the Federal government; or

(2) The amount certified by FmHA or VA to be a fair value for the property based on the lesser of the market value or the amount of FmHA's or VA's claim plus the expenses connected with Federal ownership; and

(d) The property has been conveyed to a LUHA for use in a HUD-approved local urban homesteading program.

§ 590.19 Use of section 810 funds.

Section 810 funds may be used to reimburse HUD, VA or FmHA for federally owned properties. Funds may not be used to reimburse LUHAs for administrative costs, nor may they be used to acquire property other than through reimbursement for federally owned property.

§ 590.21 Reservation and reduction of funds.

Initially, HUD will reserve funds for LUHAs at the time of execution of the urban homesteading agreement. Thereafter, HUD will reserve funds and notify the applicant of approval of the annual request for program participation. At any time during a fiscal year, HUD may reduce (including reductions to zero) the amount of any section 810 fund reservation, when in HUD's judgment the LUHA's performance does not meet the standards set out in § 590.29(a). Otherwise, fund reservations will remain outstanding until the end of the Federal fiscal year for which they are made.

§ 590.23 Program close-out.

(a) *Initiation of close-out.* This section prescribes procedures for program close-out when continuing a program is no longer feasible or where the beneficial results are not commensurate with the further expenditure of section 810 funds in a locality's designated urban homesteading neighborhoods. The LUHA will institute close-out procedures when one or more of the following occurs:

(1) The LUHA determines that it does not have the capacity to continue administering the program in a timely and cost-effective manner;

(2) The LUHA did not transfer any property in the previous Federal fiscal year; or

(3) HUD terminates the LUHA's program because the LUHA's performance does not meet the standards specified in § 590.29(a).

(b) *Audit.* When HUD notifies a LUHA to initiate close-out procedures, the LUHA will engage the services of an independent public accountant to audit its local urban homesteading program in accordance with § 590.27.

(c) *Letter of Completion.* Upon completion of the final audit or HUD review, as appropriate, HUD will send the LUHA a letter of completion, which HUD may condition. Conditions may reflect unmet obligations, deadlines to meet them, and a statement of any required interim reporting procedures.

(d) *Monitoring of closed-out programs.* HUD shall monitor close-out programs to determine compliance with any conditions imposed under paragraph (c), the certifications under § 590.11(d), the Act, this part and other applicable Federal laws and regulations until the LUHA transfers fee simple title to all federally owned properties to the homesteaders, or until HUD approves an alternative use and the LUHA implements it under § 590.7(c).

§ 590.25 Retention of records.

The LUHA shall maintain adequate financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the local urban homesteading program until the period for HUD monitoring under § 590.23(d) has expired.

§ 590.27 Audit.

(a) *Access to records.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of LUHAs pertaining to funds or property transferred under this part, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *Audit.* The LUHA's financial management system shall provide for audits in accordance with 24 CFR Part 44.

§ 590.29 HUD review of LUHA performance.

(a) HUD shall review the performance of each LUHA that has a homesteading agreement and section 810 fund reservation at least once each Federal fiscal year to determine whether:

(1) The program complies with the homesteading agreement and certifications, the Act, this part, and other applicable Federal laws and regulations;

(2) The LUHA is carrying out its program substantially as approved by HUD;

(3) The federally owned properties the LUHA selects are suitable for homesteading and rehabilitation;

(4) The LUHA is making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance, and is not making an unreasonable number of requests for extension of the time periods specified in §§ 590.17(a)(2)(ii) or (c)(1);

(5) The improvements in neighborhood public facilities and services provided for in the coordinated approach toward neighborhood improvement are occurring on a timely basis; and

(6) The LUHA has a continuing administrative and legal capacity to carry out the approved program in a cost-effective and timely manner.

(b) In reviewing a LUHA's performance, HUD will consider all available evidence, which may include, but need not be limited to, the following:

(1) Records maintained by the LUHA;

(2) Results of HUD's monitoring of the LUHA's performance;

(3) Audit reports, whether conducted by the LUHA or by HUD auditors;

(4) Records of comments and complaints by citizens and organizations; and

(5) Litigation history.

(c) LUHAs shall supply data and make available records necessary for HUD's annual evaluation of the LUHA's local urban homesteading program.

§ 590.31 Corrective and remedial action.

When HUD determines on the basis of its review that the LUHA's performance does not meet the standards specified in § 590.29(a), HUD shall take one or more of the following corrective or remedial actions, as appropriate in the circumstances:

(a) Issue a letter of warning that advises the LUHA of the deficiency and puts it on notice that HUD will take more serious corrective and remedial action if the LUHA does not correct the deficiency, or if it is repeated;

(b) Advise the LUHA to suspend, discontinue or not incur costs for identified defective aspects of the local program;

(c) Condition the approval of the annual request for program participation if there is substantial evidence of a lack of progress, noncompliance, or a lack of a continuing capacity. In such cases, HUD shall specify the reasons for the conditional approval and the actions necessary to remove the condition;

(d) In cases of continued substantial noncompliance, terminate the urban homesteading agreement, close out the program and advise the LUHA of the reasons for such action; or

(e) Where a LUHA has converted a property received under this part to its own use contrary to § 590.7(b)(7), or has received excessive consideration for its conveyance, HUD shall direct the LUHA to repay to HUD either the amount of compensation HUD finds that the LUHA has received for the property or the amount of section 810 funds expended for the property, as HUD determines appropriate.

Dated: June 11, 1985.

Alfred Moran,

Assistant Secretary for Community, Planning and Development.

[FR Doc. 85-15072 Filed 6-21-85; 8:45 am]

BILLING CODE 4210-29-M

24 CFR Parts 813 and 913

[Docket No. R-85-1216; FR-2042]

Revision to Definition of Income Resulting From Consultation With Farmers Home Administration

AGENCY: Offices of the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Section 501(b)(5) of the Housing Act of 1949, as amended by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983), requires the Farmers Home Administration to use, for certain loan programs, the definitions of income and adjusted income that are prescribed by HUD under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a. Section 3 was amended by the Housing and Community Development Technical Amendments Act of 1984 (Pub. L. 98-479, approved October 17, 1984), to require that the definition of income prescribed by the Secretary of HUD be made in consultation with the Secretary of Agriculture.

The issues raised in the Department's discussions with the Department of Agriculture have resulted in a determination by the Secretary of HUD that certain changes are warranted in the rules published in May 1984 in the **Federal Register**, to be codified at 24 CFR Part 813 (see 49 FR 19925, May 10, 1984; 49 FR 26718, June 29, 1984, and 49 FR 37749, September 26, 1984) and 24 CFR Part 913 (see 49 FR 21475, May 21, 1984; 49 FR 26719, June 29, 1984; 49 FR 28705, July 16, 1984; and 50 FR 9269, March 7, 1985). The changes are: (1) To permit, in the determination of net income from a business, and allowance for straight line depreciation on depreciable property that is part of a business or profession (including a farming operation); and (2) to require that certain withdrawals of cash or assets from the operation of a business or profession be included in income.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Policy Development, Office of Housing, Room 9220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6454; or Edward Whipple, Rental and Occupancy Branch, Office of Public and Indian Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh St., SW., Washington, D.C. 20410, (202) 426-0744. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Consultation by the Secretary of HUD with the Secretary of Agriculture and with the component that operates that Department's rural housing programs, the Farmers Home Administration (FmHA), has revealed that several aspects of HUD's May 1984 definition of annual income would have a negative impact on approximately 29,580 rural housing loans on farm tracts. Under that loan program, farmers must have their incomes recertified each year, and their subsidies are recomputed based on current income. The HUD definition of income, when applied to these farmers, could reduce or eliminate their subsidies, which in most cases are necessary to avoid default. When applied to new applicants, the HUD definition would have made it extremely difficult to qualify for rural housing loans on farms. These problems with the May 1984 rules would also have a negative effect on owners of other businesses. Although HUD believes there are few business owners (including farmers) participating in its programs, the Department believes these problems should be resolved.

The issues addressed in this rule are: (1) The applicability of the depreciation allowance to farmers and other business owners; (2) the treatment of withdrawal of cash or assets from operation of a business or profession; (3) clarification of the distinction between business assets and net family assets (on which income may be imputed); and (4) clarification that the provision on disposition of assets for less than fair market value applies to both business and family assets.

FmHA indicated that allowances for depreciation have been permitted in its programs administered under sections 501-504 of the Housing Act of 1949. In HUD's programs, the question of whether to permit an allowance for depreciation was not directly addressed until the May 1984 rules were published (see §§ 813.106(b)(2) and 913.106(b)(2)). Previously, the section 8 Programs had been governed by 24 CFR Part 889, which included in income the net income from a business, excluded consideration of expenses for business expansion or amortization of capital indebtedness, and did not mention a depreciation allowance. (See former § 889.104(a)(2)). The Public and Indian Housing Programs had been governed by 24 CFR Part 960, which had a nearly indentical provision (see § 960.403(o)). Depreciation is routinely shown in the operation of a business for accounting

purposes as well as for tax purposes. Therefore, it is possible that in the past under HUD programs, particularly the section 8 Programs, a depreciation allowance has been used in determining net business income.

The prohibition against a depreciation allowance was first embodied in HUD's policy in the May 1984 rules, which have not yet been fully implemented. This prohibition was adopted in response to isolated abuses of depreciation that had permitted HUD program tenants to pay nearly zero rents.

FmHA has indicated that the failure to consider depreciation when calculating the income of a farmer would ignore a fact of farm operation—the necessity of owning very expensive farm equipment and depreciable property which has a limited useful life, in order to produce any farm product. This reasoning would apply as well to other business concerns, such as fishermen who own expensive boats or long-haul truckers who own tractor-trailer trucks.

HUD has determined that an allowance for depreciation is justified, so long as it does not unduly distort income. Therefore, HUD is placing two limits on this change in policy. First, the depreciation allowance permitted by the revised §§ 813.106(b)(2) and 913.106(b)(2) in determining net business income for all businesses, including farms, is limited to an allowance based on the straight line method of depreciation, as permitted for tax purposes under the Internal Revenue Code and Internal Revenue Service regulations. This net business income is then added to other sources of income to determine a family's total annual income. Second, any cash or asset withdrawn from the operation of a business or profession will be counted as income except to the extent it is a reimbursement of cash or assets invested in the operation by the family. Similarly, such withdrawals from investments in real and personal property will be treated as dividends under the revised §§ 813.106(b)(3) and 913.106(b)(3) and will be included in the family's Annual Income.

HUD's rules published in May 1984 require that, if net family assets exceed $5,000, the income generated by those assets must be compared with the amount that would have been generated if the assets had been invested at the current passbook savings rate. See §§ 813.106(b)(3) and 913.106(b)(3). FmHA evidenced concern about whether farm assets would be classified as net family assets for this purpose.

These imputation of income provisions were designed to require that participants in assisted housing programs pay rents that take into consideration the availability of substantial assets. Since family assets can safely be invested to attain a rate of return at the standard passbook rate of interest, the Department decided to impute income on net family assets at that rate. The imputation of income provisions were never intended to be applied to business assets, which produce business income and are the subject of different subsections, §§ 813.106(b)(2) and 913.106(b)(2). Accordingly, HUD does not classify business assets (including farm assets) as net family assets that are subject to the imputation of income under §§ 813.106(b)(3) and 913.106(b)(3).

The definition of net family assets in §§ 813.102 and 913.102 contains a provision requiring the inclusion of the value of assets disposed of within the previous two years for less than fair market value, to the extent that value exceeds the consideration received. This rule clarifies that the word "assets" refers to disposition of both family assets and business assets. Thus, if a business asset is disposed of for less than fair market value, the difference between the fair market value and the consideration received for the asset will be considered as a net family asset, on which income may be imputed.

This rule is being published as a final rule for effect at the earliest date possible, because HUD has determined that notice and public procedure before its effectiveness is impracticable and contrary to the public interest. From HUD's perspective, the rule is not expected to have any significant impact, since the Department believes there are few farm or business owners (including farmers) who are participants in or eligible to participate in assisted housing programs. To the extent HUD program participants *are* affected, this change will uniformly benefit them. For the Section 8 programs, immediate effectiveness will prevent the implementation of conflicting provisions contained in the May 1984 income definition rule, for which procedures have not yet been issued. This coordination of implementation of HUD's income definition rule is important, since all changes in the way income is calculated that are mandated by Federal statute or regulation must be considered in the application of a ten percent per year cap on increases in (income-based) rent. (For the Public and Indian Housing programs, for which implementation of the new income definitions started in October 1984, immediate implementation of this change will benefit affected participants at their next reexamination.)

From FmHA's perspective, this rule will prevent hardship and preserve the *status quo*. It will avoid disqualification of loan recipients and the imposition of more stringent eligibility requirements for applicants.

Proceeding from a proposed rule published for comment, through a 60-day public comment period, and then through development of a final rule, including delays required by congressional review, would postpone the effectiveness of this rule by several months. In the meantime, FmHA's programs would be governed by rules that would be detrimental, contrary to the intent of both FmHA and HUD, and contrary to the interest of farmers and business owners participating in FmHA's home loan program. To avoid this unintentional effect on FmHA programs, and to coordinate implementation of the income definition rules for its own programs, HUD is omitting the publication of a proposed rule for comment and is publishing this rule as a final rule.

Findings and Certifications

Findings of No Significant Impact with respect to the environment have been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Findings of No Significant Impact are available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it essentially preserves the *status quo* for small farmers and owners of rural businesses and is likely to have

only a minimal (but beneficial) effect on participants in HUD programs.

This rule was listed as sequence number 104 under the Office of Housing in the HUD Semiannual Regulatory Agenda published on April 29, 1985 (50 FR 17285, 17289) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Domestic Assistance Number is 14.156, Lower Income Housing Assistance Program (Public Housing and section 8).

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 913

Public housing.

Accordingly, 24 CFR Parts 813 and 913 are amended as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM AND RELATED PROGRAMS

1. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8, and 16, United States Housing Act of 1937, (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 813.102 [Amended]

2. The definition of Net Family Assets in § 813.102 is amended by adding the phrase "business or family" after the words "value of any."

3. Paragraphs (b)(2) and (b)(3) of § 813.106 are revised to read as follows:

§ 813.106 Annual Income.

* * * * *

(b) * * *

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME, FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

4. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6, and 16, United States Housing Act of 1937, (42 U.S.C. 1437a, 1437d, and 1437n); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 913.102 [Amended]

5. The definition of Net Family Assets in § 913.102 is amended by adding the phrase "business or family" after the words "value of any."

6. Paragraphs (b)(2) and (b)(3) of § 913.106 are revised to read as follows:

§ 913.106 Annual Income.

* * * * *

(b) * * *

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. All allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

* * * * *

Dated: June 14, 1985.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 85-15071 Filed 6-21-85; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R-85-1126; FR-1775]

Annual Contributions for Operating Subsidy-Performance Funding System; Determination of Operating Subsidy

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

ACTION: Interim rule.

SUMMARY: This interim rule establishes new conditions under which a Public Housing Agency (including an Indian Housing Authority) may use a Projected Occupancy Percentage of less than 97% in computing its per-unit Operating Income Level under the Performance Funding System. A PHA that is defined as a low occupancy PHA is required to have a HUD-approved Comprehensive Occupancy Plan which sets out strategies for increasing its occupancy rate to 97%. The Plan includes yearly, PHA-wide occupancy goals. A low occupancy PHA with such a Plan may use its yearly, PHA-wide occupancy goal, rather than 97%, to compute its Operating Income Level. A PHA with a high occupancy rate (equal to or greater than 97%) may use 97% as its Projected Occupancy Percentage in computing its per-unit Operating Income Level. These changes enable a PHA to maximize its total income by reducing its vacancies. They eliminate provisions in the existing rule that created disincentives for reducing vacancy rates.

DATES: Effective date: August 2, 1985.

Comment due date: August 23, 1985.

ADDRESS: Interested persons are invited to submit written comments regarding this rule on or before the due date to the Rules Docket Clerk, Office of General Counsel, Department of Housing and

Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Financial Management and Occupancy Division, Room 4212, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426-1872. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On May 31, 1984, the Department published a proposed rule (49 FR 22663) which would have permitted the payment of full operating subsidies to PHAs only for occupied units and to those vacant units that fell within an Allowable Vacancy Rate, as defined in the proposed rule. The Department published that proposed rule because it was concerned that the existing Performance Funding System regulation provided little incentive to PHAs to minimize vacancies.

After further consideration of the issues, including concerns raised by the public comments received in response to the proposed rule, the Department has developed this interim rule which it believes creates an incentive to reduce high vacancy rates while avoiding the problems in the proposed rule that have been identified by the public commenters. The Department would like to acknowledge the participation of many members of Congress and their staffs in developing this interim rule. Their thorough analysis of the proposed rule and recommendations of alternative strategies to resolve PHA vacancy problems greatly assisted the Department.

The Department is publishing this rule as an interim rule with a sixty-day comment period. Usually when the Department publishes an interim rule, it does so based on a determination that good cause exists for making the rule effective without prior public comment because prior public comment is unnecessary, impracticable or contrary to the public interest. In this instance there has been prior public comment that has been fully considered in developing the interim rule. While there are substantial changes in the interim rule from the proposed rule, the Department believes that the public has had a fair opportunity to comment on the major issues involved in this rule making and that the interim rule is the logical outgrowth of that notice and comment. While the Department is legally entitled to publish this rule as a final rule, it is publishing an interim rule because public comment focused on the methodology that the Department has adopted will assist us in effecting further refinements of the procedures set out in this rule making.

In order to aid the reader, this preamble first provides a comparison of the relevant features of: (1) The existing rule, (2) the proposed rule, and (3) this interim rule. For the sake of clarity this comparison is limited to salient differences. Other differences and a more detailed description of the rule changes are provided below in the discussion of the public comments and in the section-by-section description of the changes effected by this interim rule. (This section-by-section description also includes a discussion of those sections that were proposed to be revised by the proposed rule, but have not been revised in this interim rule).

Existing Regulation

Under the existing regulation, a PHA's operating subsidy is determined by taking the difference between the Allowable Expense Level plus the Utilities Expense Level and the Operating Income Level. Since these levels are pre-unit averages, this computation provides a per-unit operating subsidy which is then multiplied by the total Unit Months Available to obtain the total operating subsidy for the project. (A unit is considered available for occupancy, under the current regulation, from the time the project reaches the end of the initial occupancy period until the time it is approved by HUD for nondwelling use or is deprogrammed with HUD approval.) The project average per-unit monthly dwelling income, a major component of projected operating income, is computed, under the existing regulation, by multiplying the projected average monthly dwelling charge per unit by the average percentage of occupancy.

The average percentage of occupancy may not be less than 97% unless HUD approves a lower percentage based upon the number of units that cannot be expected to be occupied because of: (1) Lack of demand, (2) removal from the rent roll pending rehabilitation, (3) uninhabitability because of lack of funds for rehabilitation, or (4) removal from the rent roll pending approval for deprogramming.

Under the existing regulation, projected expenses are based upon all units, occupied as well as vacant, while operating income is only based on occupied units. Since under the existing regulation the operating subsidy is equal to the difference between projected expenses and projected operating income, any decrease in operating income resulting from a lower average percentage of occupancy from which to compute the Operating Income Level is offset by a commensurate increase in operating subsidy. Therefore, there is no financial incentive to decrease vacancies. It is this problem that both the proposed and this interim rules seek to remedy.

Proposed Rule

Other than requiring the use of actual occupancy levels rather than an estimated percentage of occupancy, the proposed rule would not have altered the method for computing the per-unit Operating Income Level. The proposed rule addressed the vacancy problem by altering the way in which the total operating subsidy is derived once the per-unit operating subsidy has been determined. The major change set out in the proposed rule was that the per-unit operating subsidy would not be multiplied by the total Unit Months Available to determine the amount of operating subsidy to be provided to the PHA.

Under the proposed rule, the vacant Unit Months Available in excess of the Allowable Vacancy Rate (97%) would have been subtracted from the total Unit Months Available. A more limited operating subsidy for vacant units in excess of the Allowable Vacancy Rate then would have been computed separately. The operating subsidy for vacant units, in excess of the Allowable Vacancy Rate, that have been approved for modernization would have been equal to the actual operating cost, but could not have exceeded the total expense level (allowable expenses plus utilities). Operating subsidy for this category of vacant units would have been provided for a limited number of years: (1) For projects approved for modernization *before* the effective date of a final rule, the shorter of five years from the approval of the latest award of modernization funds or three years from the effective date of the final rule; (2) for projects approved for modernization after the effective date of a final rule for three years from the date of approval of the final application for modernization funds. After the applicable period had expired, the operating subsidy for any of these units remaining vacant would have been computed as described below.

For all vacant units (other than those approved for modernization) in excess of the Allowable Vacancy Rate, the operating subsidy would have been limited to only the amount necessary to pay for essential utilities and security costs. However, the number of the units eligible for this subsidy in the PHA's Fiscal Year 1985 (the base year) would have been reduced each calendar year starting with calendar year 1986 as follows: In 1986, 75% of the units; in 1987, 50% of the units; and in 1988, 25% of the units, otherwise qualifying for this reduced subsidy, would be eligible. After 1988, units in excess of the Allowable Vacancy Rate that were not funded for modernization would not have received operating subsidy.

Interim Rule

This interim rule is closer in structure to the existing regulation than to the proposed rule. It uses the same methodology as the existing regulation to compute total operating subsidy, once the per-unit operating subsidy is determined. As in the existing regulation, total operating subsidy is computed by multiplying the per-unit operating subsidy by the total Unit Months Available. There is no separate computation of operating subsidy for vacant units.

The fundamental difference between the existing regulation and this interim rule is the nature of the conditions under which a PHA can use an occupancy percentage of less than 97% to compute its per-unit Operating Income Level. The grounds for using a lower percentage under the existing regulation are static, while those in the interim rule are dynamic. Under the existing regulation, it is sufficient to justify using a lower percentage if the units fall within a certain status, such as, lack of demand, or removal from the rent role for rehabilitation. Nothing in the existing regulation creates an incentive to return these units to occupied status. Under this interim rule, lower occupancy percentages may only be used in conjunction with a HUD-approved Comprehensive Occupancy Plan to return vacant units to occupancy or in cases where vacant units are in projects that are on schedule in carrying out modernization.

This interim rule establishes three categories of PHAs for the purpose of determining a PHA's Projected Occupancy Percentage. (Projected Occupancy Percentage in this interim rule is analogous to average percentage of occupancy in the existing regulation; it is multiplied by the projected average monthly dwelling charge per unit to obtain projected average per-unit monthly dwelling income.) The three categories are:

1. High Occupancy PHAs

PHAs that have an Actual Occupancy Percentage that is equal to or greater than 97%.

2. High Occupancy PHAs but for On-schedule Modernization

PHAs that have an Actual Occupancy Percentage that is less than 97% solely because of vacant units in projects undergoing modernization funded by HUD or by other sources, and that are on schedule in carrying out the modernization. PHAs that have five or fewer vacant units, other than vacant units in projects undergoing modernization that is proceeding on a HUD-approved schedule, are also included in this category. (This five-unit exception is aimed primarily at PHAs with a low number of total units, where even a few vacancies would make it difficult to reach the 97% standard.)

3. Low Occupancy PHAs

PHAs that have an Actual Occupancy Percentage that is less than 97% (and have more than five vacant units) for reasons other than those described in paragraph 2 above.

A high occupancy PHA uses 97% as its Projected Occupancy Percentage in computing its per-unit Operating Income Level. Such a PHA may use 97% for its Projected Occupancy Percentage even though its Actual Occupancy Percentage is greater than 97%. Thus even a PHA with a high occupancy rate has an incentive to reduce vacancies as much as possible since the PHA's increase in rental income is not offset by a decrease in subsidy.

A "high occupancy PHA but for on-schedule modernization" uses its Actual Occupancy Percentage as its Projected Occupancy Percentage in computing its per-unit Operating Income Level. Such a PHA may use a Projected Occupancy Percentage lower than 97% if the lower percentage is caused solely by vacant units that are expected to be occupied upon completion of the funded modernization, the PHA has a schedule acceptable to HUD, and the modernization work is on schedule.

A low occupancy PHA must use 97% as its Projected Occupancy Percentage unless it has a HUD-approved Comprehensive Occupancy Plan. This Plan sets out both PHA-wide and project-specific strategies to increase the PHA's occupancy percentage to 97% by returning to occupancy or deprogramming all vacant units. The Plan includes yearly, PHA-wide occupancy goals aimed at achieving a 97% occupancy percentage by the end of the Plan period. The Plan period may not exceed five years for a PHA that is required to submit a plan with its budget submission for its first Requested Budget Year beginning on or after July 1, 1986 and may not exceed two years for a PHA required to submit a plan with its budget submission for a Subsequent Requested Budget Year. The Plan, including the yearly goals and term, must be approved by HUD. A PHA with an approved Plan, in general, uses the yearly, PHA-wide occupancy goal as its Projected Occupancy Percentage in computing its per-unit Operating Income Level. However, if a PHA exceeds its yearly goal, then it would use its Actual Occupancy Percentage. For example, a PHA that starts with an 82% occupancy rate and with yearly, PHA-wide occupancy goals of 85, 88, 91, 94 and 97%, respectively, would, in the third year of its Plan, compute its Operating Income Level using a 91% Projected Occupancy Percentage even though its Actual Occupancy Percentage may have fallen short of its goal. However, if its Actual Occupancy Percentage, in the third year of its plan, were 93%, then it would use 93% in the computation. Such a PHA has an incentive to reduce vacancies, since meeting its yearly, PHA-wide occupancy goal maximizes its total income (rental plus subsidy income).

This interim rule does not provide for revising the Comprehensive Occupancy Plan in subsequent years. However, a PHA may reduce its yearly, PHA-wide occupancy goal to adjust for units that are vacant for reasons beyond its control. Units are considered vacant for reasons beyond the PHAs control if: (1) The vacant units are in projects for which the PHA has sought modernization but HUD cannot fund because of lack of funds, provided the vacant units are expected (taking into consideration the demand for such units) to be occupied after modernization; (2) the units are vacant, on schedule modernization units as described in § 990.109(b)(3)(v); or (3) the units are vacant as a result of a natural disaster or as a result of litigation that precludes the units from being occupied. An adjustment to yearly, PHA-wide occupancy goals is made initially in the year that the percentage occupancy would have been affected by the reoccupancy or removal of the units. In order for a PHA to adjust its occupancy goal, one of the above-listed conditions must exist in the year in which the PHA is making the adjustment.

Discussion of Public Comments

The Department received 43 public comments in response to the proposed rule. All of these comments objected to the proposed revisions. Most of the commenters were Public Housing Agencies or associations representing PHAs. Other commenters included several legal assistance organizations representing public housing tenants. A summary of the comments and the Department's response follows.

Objections to any rulemaking that would alter the existing regulations's treatment of vacant units

Many public commenters argued that the proposed rule contravened a commitment made by Office of Management and Budget Director David Stockman to Senator Jake Garn and Congressman Fernand St Germain to the effect that there would have been no major changes initiated in the Performance Funding System until Congress had the opportunity to draft a new authorization bill.

A related objection was that the proposed rule constituted an attempted piecemeal revision to the Performance Funding System and that if any revisions were to be made, they should be made as part of a comprehensive revision of the entire System. One commenter stated that the rule should also address the following among other problems with the Performance Funding System: Retrospective adjustments due PHAs for previous years; inequities in the System identified in the HUD-funded study by Abt Associates; and the fact that funding for costs beyond a PHA's control has not been provided in most years under the System.

Several commenters argued that the rule should be deferred pending completion of a study of the Comprehensive Improvement Assistance Program (CIAP). Other commenters stated that there should be joint study of the problem by HUD and PHAs.

The commitment made by OMB Director Stockman in his November 16, 1983 letters to Senator Garn and Representative St Germain was that the Administration "would seek authorizing legislation for any fundamental changes or structural program reforms" sought in 1985. This commitment has been honored. At the time the commitment was made, the Department had several such changes and reforms under consideration, including: A fair market rent operating subsidy proposal that had been in the President's 1984 Budget; eliminating separate funding for moderization and operations; providing vouchers to public housing tenants; and allocating public housing grants to local governments. The Department has not sought to make any fundamental changes or structural program reforms without authorizing legislation. The commitment was not intended to prevent administrative action, such as this rule making, that is designed to correct identified deficiencies in existing regulations.

The Department does not believe that it is advisable to delay publication of this rule by broadening its scope to cover other areas of concern in the Performance Funding System or by waiting for completion of the pending CIAP study. The rule addresses a discrete problem that does not need to be merged with other issues. The Department believes that the public interest is best served by implementing this rule quickly.

Many commenters objected to establishing penalties for vacancies in public housing projects, on the ground that certain HUD policies or statutory provisions were a major cause of the vacancy problems. The specific HUD policies referred to included the following: Permitting the overbuilding of section 8 and section 202 projects that compete with public housing projects; eliminating ceiling rents; failing to provide adequate CIAP funding and overemphasizing Special Purpose and Emergency Modernization at the expense of Comprehensive Modernization; increasing rent to income ratios; and the structure of the Performance Funding System, itself, which encourages deferred maintenance.

Although vacancies result from a wide variety of factors which affect the quality and marketability of units, the Department expects that PHAs will take all actions within their power to reduce vacancies, such as requesting HUD approval to expand their market to include single non-elderly persons, efficient management of vacancies at turnover, expeditious implementation of approved comprehensive modernization, and elimination of non-viable projects. The rule is directed at remedying the vacancy problem and not at assessing blame.

Disagreement With the Method for Solving the Vacancy Problem

Many commenters recognized the existence of a vacancy problem and acknowledged the need to address that problem. However, they believed that methods, other than those proposed, should be used to address the problem. In particular, they recommended that the problem of high vacancies be dealt with on a PHA-by-PHA basis not through rules that affect all PHAs. Other commenters agreed with limited subsidy for long-term vacant units or argued that operating subsidy for such vacant units should be conditioned on a plan to bring the units back into occupied status. Others contended that instead of reducing operating subsidy, HUD should be taking actions to make vacant units marketable.

These comments have been largely adopted in this interim rule. The rule provides a mechanism for low occupancy PHAs to deal with their individual vacancy problems, namely, the Comprehensive Occupancy Plan that will help both the PHA and HUD to focus on actions required to reduce vacancies.

Disagreement With the Assumptions Underlying the Proposed Rule

Commenters questioned HUD's contention that the existing regulation induces a PHA to keep a unit vacant. Some stated that, contrary to HUD's assertion, projects with large numbers of vacant units actually cost more to maintain than do fully-occupied projects because high vacancy projects typically have severe management problems, require more security, and experience significant vandalism.

While we recognize that there are instances in which projects with substantial numbers of vacant units are more costly to maintain, we still believe that, particularly in regard to empty buildings or structures, maintaining vacant units is less costly. As noted below, several commenters claimed that their base year costs underestimated true operating costs of a fully-occupied project because they had high vacancies when their Allowable Expense Levels were first determined. The thrust of these commenters' argument is that costs for a fully-occupied project unit would have been underestimated because vacant units are less costly.

Other commenters questioned whether the loss of subsidy alone was an adequate incentive to reduce vacancies—particularly for a PHA with poor management practices. The commenters argued that a reduction in operating subsidy would, itself, cause increased vacancies because the reduction in funds would make it more difficult for a PHA to take the actions needed to reduce the causes of vacancies.

The Department believes that this interim rule addresses these concerns. The rule focuses primarily on low occupancy PHAs. It requires these PHAs to develop their own Comprehensive

Occupancy Plans to describe the actions to be taken to reduce vacancies. Among other matters, such PHAs must specify the PHA-wide management actions they are taking or plan to take to reduce vacancies. The rule does not necessarily cause a reduction in total income to any PHA. A low occupancy PHA can avoid a reduction in income by developing an approved Comprehensive Occupancy Plan and by meeting its yearly, PHA-wide occupancy goal.

Several commenters questioned the assumption that PHAs with large numbers of vacant units are supporting occupied units with subsidy from vacant units. The commenters contended that for many of these PHAs their Base Year costs underestimated the true costs of operating a fully-occupied program because they had high vacancies when their Allowable Expense Levels were first determined.

PHAs that claim that high vacancies in the Base Year underestimate the true costs of operating a fully-occupied project had an opportunity to appeal their Allowable Expense Level in the first budget year under PFS. These commenters are saying that vacant units have lower expenses in their case than occupied units. Under a system that funds vacant units at the same expense level as occupied units, any PHA that increases its vacancy rate after the base year and has a lower expense level for vacant units can use the excess funding to support occupied units. Other commenters state that, in their case, expenses for vacant units are higher than for occupied units. The administrative burden of maintaining actual expense data at the unit level was recognized by many commenters. In the absence of such data the Department has decided, in general, not to make any adjustments to expense levels to reflect vacancy rates.

One commenter questioned the assumption on which the phase-out of operating subsidy for excessive vacant units was based, namely, that excessive vacancies is a one-time-only problem that will disappear by 1989. This commenter claimed that the proposed rule would not prevent the recurrence of high vacancy rates caused by bad management or physical deterioration.

This interim rule is designed to address vacancy problems that occur in the future. Under this interim rule every PHA that is a low occupancy PHA based on its Actual Occupancy Percentage as of September 30, 1984 must submit a Comprehensive Occupancy Plan for HUD approval with its budget submission for its first Requested Budget Year beginning on or after July 1, 1986. Any PHA that becomes a low occupancy PHA based on its Actual Occupancy Percentage as of a date after September 30, 1984 must submit a Comprehensive Occupancy Plan with its budget submission for its next Requested Budget Year. The rule provides a shorter maximum term for Comprehensive Occupancy Plans for these PHAs (two years instead of five years), because their vacancy problems should not be as severe.

Objections to Specific Provisions of the Proposed Rule

1. Adequacy of 97% as the Standard for Determining Excessive Vacancies

Some commenters suggested using a 94% standard which, they noted, is already used by HUD as a gross indicator for identifying operationally and financially troubled PHAs. One commenter noted that a 95% standard was the norm in the private market. This commenter added, however, that developing a realistic standard would require examining vacancy data for PHAs based on size categories. Another commenter contended that a lower percentage should be used because the "aggregate" method for calculating vacancies set out in the proposed rule over-emphasized vacancies caused by normal turnover. Other commenters suggested dealing with this problem by determining excessive vacancies, in part, by the duration of the vacancy. One commenter suggested that only units vacant for 60 days or more be counted as excessive. Others suggested a 90-day standard.

In response to these comments this interim rule permits a PHA to reduce the 97% standard by the number of vacant units in projects that have funded modernization if: (1) It is expected that the units will be occupied on completion of the modernization work, (2) the PHA has a schedule for completing the modernization work that is acceptable to HUD, and (3) the work is on schedule. The use, in this interim rule, of a "snap shot" method of determining vacancies existing on a date certain instead of the "aggregate" method should eliminate concerns about over-emphasizing vacancies caused by normal turnover and the need for determining the length of the vacancy.

The 97% standard was also criticized on the grounds that HUD presented no data to establish its reasonableness and that the standard did not distinguish between various types of vacant units. The commenters identified several categories of vacant units that they recommended not be considered excessive vacant units. These included: Vacant units in projects being modernized under CIAP; vacant units in projects eligible for funding under CIAP but not funded by HUD because of a lack of funds; units kept vacant for sound management reasons (e.g., to permit transfer of tenants to more appropriate size units, for use by tenant groups or as offices, or to provide social services). One commenter asked if units converted to nondwelling use with HUD approval were "deprogrammed" units.

This interim rule permits a low occupancy PHA to adjust its yearly PHA-wide occupancy goal to exclude units that are vacant for reasons beyond the PHA's control (§ 990.118(f)). These reasons include several recommended by the commenters, namely, vacant units in projects being modernized (the modernization work must be on schedule and the units must be expected to be occupied on completion of the work) and vacant units eligible for CIAP funding but not funded by HUD because of lack of funds. The rule also permits exclusion of vacant units in a project that are vacant because of litigation or natural disaster. There is no need for an exclusion in § 990.118(f) for units approved by HUD for nondwelling use. These units are not part of a PHA's Unit Months Available as defined in §990.102(q) and, therefore, do not affect a PHA's occupancy percentage.

One commenter objected to the proposed removal of § 990.109(b)(3), which permitted PHAs to establish a projected occupancy percentage lower than 97% for certain reasons. The commenter objected in particular to the removal of "lack of marketability" as a justification for reducing the projected occupancy percentage.

As discussed in greater detail above, the proposed rule would have required the use of actual occupancy levels in determining the rental income component of the Operating Income Level. The proposed rule would not have provided for adjustments to the occupancy percentage to account for certain categories of vacant units, because operating subsidy for excess vacant units would have been separately computed. This interim rule does adjust the projected occupancy percentage to account for vacant units. It does not, however, permit a reduction of the percentage based on the fact that units are unmarketable for lack of demand. HUD believes that such units are most appropriate for inclusion in a PHA's Comprehensive Occupancy Plan.

2. Administrative Burden

A major source of complaint with the proposed rule was the administrative burden that PHAs claimed it imposed.

The two primary areas of concern were the recordkeeping needed to compute the Allowable Vacancy Rate and to determine actual expenses for excess vacant units approved for modernization.

Under the proposed rule, PHAs would have been required to keep track of the number of days in a fiscal year that each unit was under lease. Many commenters simply objected to the recordkeeping burden this requirement would create. PHAs with very low vacancy rates, in particular, questioned the reasonableness of imposing such a burden on them. Other commenters pointed out that there was no reason to determine the vacancy rate with such precision. They noted that the data was only used to compute an aggregate Allowable Vacancy Rate which, itself, was used to make only a generalized determination of units in excess of the Allowable Vacancy Rate. One commenter noted that the daily data on vacancies might be helpful in managing a hotel, but served no purpose in managing a public housing project. A number of commenters suggested that the Allowable Vacancy Rate could be accurately calculated using monthly vacancy data.

Commenters raised similar objections to having to keep data on the actual costs of maintaining vacant units. They noted that these costs would also have to be computed on a daily basis, since if a unit was occupied at some point it would receive full subsidy. They also contended that this direct cost approach would probably result in indirect costs that should be attributed to all units being disallowed for vacant units.

The commenters noted that actual costs would vary depending on the size and type of the vacant units, but that the rule provided no guidance as to which particular vacant units were to be considered excessive vacant units and which were to be considered as falling within the 97% standard. Thus, PHAs would not know for which vacant units to maintain actual cost information.

This interim rule substantially decreases the administrative burden. First, it eliminates the need to determine vacancies on a daily basis. Instead, a PHA need only determine its Actual Occupancy Percentage once a year as of a specific date. Second, this interim rule eliminates the requirement for determining actual expenses for excess vacant units approved for modernization. Under this rule there is no administrative burden on PHAs that are categorized as high occupancy PHAs or on PHAs that would have been high occupancy PHAs, but for vacant, on-schedule modernization units. Only low occupancy PHAs are required to develop and implement Comprehensive Occupancy Plans, and these should not impose any unreasonable burden.

3. Overemphasis on Demolition and Disposal of Projects

Section 990.108 of the proposed rule would have provided more operating subsidy for excess vacant units approved for modernization than for other vacant units in excess of the Allowable Vacancy Rate. Many commenters argued that the subsidy for other units in excess of the Allowable Vacancy Rate is so low that PHAs would have been forced to demolish or otherwise dispose of many of these units. They also pointed out that, since HUD controlled the availability of modernization funds, HUD would in effect have the discretion to determine what projects must be demolished or otherwise disposed of.

The proposed phase-out of operating subsidy for vacant modernization units (in § 990.108(b)(1)) and for other vacant units in excess of the Allowable Vacancy Rate (in § 990.108(b)(2)) was also criticized as forcing PHAs to demolish or otherwise dispose of projects with units that should be maintained. The phase-out was also criticized as exacerbating tight fiscal problems for the few large PHAs with high vacancy rates. One commenter that was opposed to any penalty for high vacancies argued that if a penalty were to be imposed, it should not be through a phase-out of subsidy but, rather, should be imposed only when measurable progress was not being made to reduce vacancies.

The proposed rule was not intended to overemphasize demolition and disposal of projects. The reduction in subsidy in the proposed rule was intended to induce PHAs to reduce vacancies not to eliminate projects. However, several changes in this interim rule should significantly reduce the concerns that these commenters expressed. First, this interim rule requires a low occupancy PHA to develop a Comprehensive Occupancy Plan which should cause all practicable options to be considered in determining how to eliminate vacancies. Second, the rule permits a low occupancy PHA to adjust its PHA-wide occupancy goals to exclude certain modernization-related vacant units, namely, units in projects with on-schedule modernization and units in projects for which modernization funds are unavailable if it is expected that the units would have been occupied, once modernized. This interim rule, however, established a cut off of subsidy for one category of vacant units, namely, for units in vacant buildings in any PHA Requested Budget Year starting on or after July 1, 1991 if the project has been determined, by HUD, to be non-viable. These units clearly are not providing housing, and will not be available for occupancy, to lower income families and should not be receiving subsidy.

PHAs with low vacancy rates also argued that proposed § 990.108 would force PHAs and HUD to give too much emphasis to vacancies in carrying out the Comprehensive Improvement Assistance Program (CIAP)—to the possible detriment of high occupancy projects with pressing modernization needs.

This interim rule should not adversely affect the ability of PHAs with high occupancy rates to obtain CIAP funding. This rule does not change the funding preferences for CIAP. These funding preferences are and have been to provide funding first for emergencies and second for PHAs with a significant number of vacant, uninhabitable units. However, the revised CIAP Handbook (dated January 2, 1985) strengthened the existing viability and cost effectiveness requirements and, as a result, CIAP will not fund modernization of non-viable projects. It is in the best interest of the Department to support and encourage low vacancy PHAs so that they will maintain and, if possible, increase their high occupancy rates and continue to provide housing for lower income families.

4. Year-end Adjustment to the Allowable Vacancy Rate

Proposed § 990.110(c) would have required PHAs to submit year-end adjustments of the projection of Unit Months Occupied, and noted that the adjustment might affect the computation of the Allowable Vacancy Rate. Certain commenters characterized this adjustment to the vacancy rate as a back-door method, end-of-year income adjustment. Several commenters claimed that if their income was to be adjusted, they should also be allowed to adjust their expenses.

This year-end adjustment, the commenters claimed, would remove a major incentive to reduce vacancies below levels set out in budget projections since there would have been a dollar-for-dollar reduction in subsidy for the additional rental income resulting from the lower-than-planned vacancy rate. PHAs with vacancy rates below 3% were especially concerned about the year-end adjustment for this reason.

This interim rule does not adopt the concept of Allowable Vacancy Rate

and, therefore, does not contain a year-end adjustment to the Allowable Vacancy Rate. This rule, however, contains a related adjustment feature. Under the current rule a PHA determines its average projected occupancy for the requested budget year, taking into account events it expects to occur during the budget year. If the PHA projected a lower occupancy than what actually occurred it would have additional income derived from the rental of units projected to be vacant. If the PHA's average projected occupancy were higher than what actually occurred, it would have less total income than anticipated. The incentive these commenters refer to only exists to the extent a PHA underestimates its average percentage of occupancy. Under this interim rule (§ 990.117) a PHA determines its Actual Occupancy Percentage as of a date certain adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy rate throughout the year. However, § 990.117 also provides that if there is a further change in the actual occupancy percentage, as adjusted, because of modernization, new development, demolition or disposition, the PHA shall submit a budget revision to reflect the additional change in occupancy due to these actions.

5. Utility Expense Level-Related Comments

One commenter objected to the proposed revision in § 990.107 that would exclude projects that have one or more vacant buildings from the current calculation of a PHA's Allowable Utility Expense Level. The commenter claimed that the proposed revision would have an immediate short-term impact on PHAs with high numbers of vacant buildings, but only a short-term impact on reducing operating subsidies. Commenters also argued that certain vacant buildings were already accounted for in the PFS rolling base years, and that the rolling base must be fully adjusted when a vacant building is reoccupied. Another commenter objected to the application of the vacant building exclusion to projects composed of single family scattered-site homes, because of the administrative burden in documenting actual utility costs for the individual units.

Because this interim rule adjusts for vacancies by adjusting the computation of the per-unit Operating Income Level and not by making a separate operating subsidy computation for vacant units, this rule does not implement the proposed revisions to the calculation of a PHA's Allowable Utility Expense Level.

Section-by-Section Summary of Changes

The technical revision to § 990.101(c)(4) in the proposed rule is not needed in this interim rule. The only change made to the existing paragraph is to replace "estimated percentage of occupancy" with "Projected Occupancy Percentage".

This interim rule at § 990.102(q) adopts the proposed definition of "Unit Months Available", which makes clear that a unit is available for occupancy "until the time it is approved by HUD for deprogramming and is vacated or is approved for nondwelling use." This interim rule provides that, for PHA Requested Budget Years starting on or after July 1, 1991, a unit in a vacant building that is in a project determined by HUD to be non-viable is not considered available for occupancy.

Proposed § 990.102(w) would have added a cross reference to the section for computing the Utilities Expense Level for the rolling period to the definition of Allowable Utilities Consumption Level (AUCL). This interim rule does not adopt this revision since the final rule does not make the Utility Expense Level revisions set out in the proposed rule.

This rule (§ 990.102(x)) adopts the proposed rule definition of "Unit approved for deprogramming."

Proposed § 990.102(y), the definition of Allowable Vacancy Rate, is not adopted in this interim rule since there is no separate computation of operating subsidy for vacant units.

Proposed § 990.102(z) also is not adopted in this interim rule since this rule provides a less burdensome method for determining occupancy than ascertaining Unit Months Occupied.

Section 990.104 is unchanged from the current rule. The proposed rule would have added new paragraphs (c) and (d). These proposed revisions would have implemented provisions related to determining operating subsidy for vacant Unit Months Available that exceed the Allowable Vacancy Rate.

Proposed revisions to § 990.107(c)(3)(i), (f) and (g), which concern the computation of the Allowable Utilities Consumption Level, have not been adopted in this interim rule.

The proposed revisions to § 990.108(b), which concern how to determine operating subsidy for excess vacant units approved for modernization and for all other vacant units in excess of the Allowable Vacancy Rate, including vacant units approved for deprogramming, have not been adopted in this interim rule. This interim rule amends § 990.108(b) to conform to the revised definition of "unit approved for deprogramming."

The proposed rule would have made conforming technical changes to § 990.109(a) and (b)(2) and would have removed § 990.109(b)(3) and (4). This interim rule inserts the term "Projected Occupancy Percentage" into § 990.109(a). No other change from the current rule is made to § 990.109(a) or (b)(2). Section 990.109(b)(3) is retained in this rule but is revised, as discussed above, to set out how to determine the Projected Occupancy Percentage for: (1) High occupancy PHAs, (2) high occupancy PHAs but for on schedule modernization, and (3) low occupancy PHAs. A conforming change is made to § 990.109(b)(4) to insert the term "Projected Occupancy Percentage".

This interim rule does not adopt the year-end adjustment of Unit Months Available revision that the proposed rule would have made to § 990.110.

This interim rule adds new §§ 990.117 and 990.118—not contained in the proposed rule. The former sets out the requirements for determining Actual Occupancy Percentage and the latter contains the Comprehensive Occupancy Plan Requirements. These changes are discussed above.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because a significant number of very small PHAs that have high vacancies are currently using a 97% Projected Occupancy Percentage to compute their Operating Expense Level. Accordingly, the funds available to these PHAs should not be significantly affected.

This rule was listed as Sequence Number 95 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17287 at page 17311), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The Catalog of Federal Domestic Assistance program numbers are 14.146 and 14.156.

List of Subjects in 24 CFR Part 990

Housing and community development, Lower-income housing, Public housing.

PART 990—[AMENDED]

Accordingly, the Department amends 24 CFR Part 990 as follows:

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

Authority: Sec. 9, United States Housing Act of 1937, 42 U.S.C. 1737g; Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

§ 990.101 [Amended]

2. Section 990.101(c)(4) is amended by removing the words "estimated percentage of occupancy" and inserting, in their place, the words "Projected Occupancy Percentage."

3. In § 990.102, paragraph (q) is revised and a new paragraph (x) is added, to read as follows:

§ 990.102 Definitions.

* * * * *

(q) *Unit Months Available.* Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the End of the Initial Operating Period (EIOP) for the project is established until the time it is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any PHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is non-viable.

* * * * *

(x) *Unit approved for deprogramming.* (1) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, *i.e.*, deprogramming, has not yet been completed or (2) a nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and for which HUD has approved removal from the PHA's inventory and Annual Contributions Contract.

4. In § 990.108, paragraph (b) is revised to read as follows:

§ 990.108 Other costs.

* * * * *

(b) Costs attributable to units approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because they are utilized for PHA related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Units Months Available. Units approved for deprogramming shall be listed by the PHA and supporting documentation regarding direct costs attributable to such units shall be included as a part of the operating budget in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the HUD Field Office should be contacted.

* * * * *

5. Section 990.109(a) is amended by removing the words "average number of Project Units expected to be occupied during" and inserting, in their place, the words "Projected Occupancy Percentage for".

6. In § 990.109, paragraph (b)(3) is revised to read as follows:

§ 990.109 Projected Operating Income Level.

* * * * *

(b) * * *

(3) *Projected Occupancy Percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *High occupancy PHAs.* If the PHA's Actual Occupancy Percentage (see § 990.117) is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%.

(ii) *High occupancy PHAs but for on schedule modernization.* If the PHA's Actual Occupancy Percentage (see § 990.117) is less than 97% solely because of vacant, on-schedule modernization units described in paragraph (v) below, the PHA's Projected Occupancy Percentage is its Actual Occupancy Percentage. A PHA may also use its Actual Occupancy Percentage as its Projected Occupancy Percentage if the PHA has five or fewer vacant units other than vacant, on-schedule modernization units described in paragraph (v) below.

(iii) *Low occupancy PHAs with an approved Comprehensive Occupancy Plan.* If the PHA has an Actual Occupancy Percentage (see § 990.117) less than 97% and more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (v) below and if the PHA has a HUD-approved Comprehensive Occupancy Plan, the PHA's Projected Occupancy Percentage is determined under § 990.118(f).

(iv) *Low occupancy PHAs without an approved Comprehensive Occupancy Plan.* If the PHA has an Actual Occupancy Percentage (see § 990.117) less than 97% and has more than five vacant units, not solely because of vacant, on-schedule modernization units described in paragraph (v) below but the PHA does not have a HUD-approved Comprehensive Occupancy Plan, the PHAs shall use 97% as its Projected Occupancy Percentage.

(v) *Vacant, on-schedule modernization units.* Vacant, on-schedule modernization units are vacant units in an otherwise occupiable project that has received funding for modernization through the Comprehensive Improvement Assistance Program (24 CFR Part 968) or other sources; and for which

(A) It is expected that the vacant units will be occupied on completion of modernization work;

(B) The PHA has a schedule for carrying out the modernization which is acceptable to HUD; and

(C) The modernization work is on schedule.

* * * * *

7. Section 990.109(b)(4) is amended by removing the words "estimated average percentage of occupancy" and inserting, in their place, the words "Projected Occupancy Percentage."

8. A new § 990.117 is added to read as follows:

§ 990.117 Determining Actual Occupancy Percentage.

For the first Requested Budget Year beginning on or after July 1, 1986, the PHA shall determine the percentage of occupancy for all Project Units included in the Unit Months Available (Actual Occupancy Percentage) as of September 30, 1984. For subsequent Requested Budget Years, the PHA shall determine the Actual Occupancy Percentage for the first day of the month that is six months before the beginning of the Requested Budget Year. The Actual Occupancy Percentage shall be adjusted to reflect expected changes in occupancy because of modernization, new development, demolition, or disposition in order to reflect the expected average occupancy rate throughout the year. If, after that date, there are changes, up or down, in occupancy because of modernization, new development, demolition or disposition not reflected in the adjustment, the PHA shall submit a budget revision to reflect the actual change in occupancy due to these actions.

9. A new § 990.118 is added to read as follows:

§ 990.118 Comprehensive Occupancy Plan requirements.

(a) *PHAs required to submit a Comprehensive Occupancy Plan.* If the PHA has an Actual Occupancy Percentage (see § 990.117) less than 97% and has more than five vacant units, not solely because of vacant, on schedule modernization units described in § 990.109(b)(3)(v), the PHA shall prepare and submit a Comprehensive Occupancy Plan to HUD and otherwise comply with the requirements of this section.

(b) *Comprehensive Occupancy Plan content.* A Comprehensive Occupancy Plan shall provide a general PHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming vacant units for each project that has an occupancy percentage of less than 97%.

(1) The general PHA-wide strategy for returning to occupancy or deprogramming all vacant units shall specify management actions the PHA is taking or intends to take to eliminate vacancies, such as revised occupancy policies, actions to reduce time to return vacated units to occupancy, and identification of the need to use the exception for nonelderly tenants in elderly projects, and shall include a schedule for completing these actions.

(2) The specific strategy shall:

(i) Identify each project that has a percentage of occupancy less than 97%;

(ii) State the specific actions the PHA is taking or intends to take to eliminate vacancies, such as: (A) Modernization, (B) demolition, (C) disposition, (D) change in occupancy policy, or (E) physical or management improvements; and

(iii) For each project identified, include a schedule for completing these actions and returning the units to occupancy.

(3) The Comprehensive Occupancy Plan shall also include yearly PHA-wide occupancy goals and yearly occupancy goals for each project with an occupancy rate below 97% stated for each year until there is a projected PHA-wide occupancy rate of at least 97%. These goals should reflect the average occupancy pecentage for each year. The yearly occupancy goals (both PHA-wide and project specific) for the first year of a Comprehensive Occupancy Plan that is required under paragraph (c)(1) below to be submitted with a PHA's budget for its first Requested Budget and Year beginning on or after July 1, 1986 shall take into account actions taken by the PHA from August 2, 1985 to reduce vacancies.

(c) *Time for submitting a Comprehensive Occupancy Plan and maximum term.* (1) A PHA that is required to submit a Comprehensive Occupancy Plan based on its Actual Occupancy Percentage as of September 30, 1984 shall submit to HUD for its approval the PHA's Comprehensive Occupancy Plan with its budget for its first Requested Budget Year beginning on or after July 1, 1986. The Comprehensive Occupancy Plan submitted in accordance with this paragraph (c)(1) shall be for a period approved by HUD as reasonable which, except as provided under paragraph (c)(3) below, shall not exceed five years.

(2) A PHA that is required to submit a Comprehensive Occupancy Plan based on its Actual Occupancy Percentage as of a date after September 30, 1984, shall submit to HUD for its approval the PHA's Comprehensive Occupancy Plan with its budget for its next Requested Budget Year. Except as provided under paragraph (c)(3) below, a Comprehensive Occupancy Plan submitted in accordance with this paragraph (c)(2) shall be for a period of one or two years, as approved by HUD.

(3) A Comprehensive Occupancy Plan may exceed the maximum period provided in paragraphs (c) (1) and (2) of this section only with the written approval of the Assistant Secretary for Public and Indian Housing.

(d) *Local governing body review.* The PHA shall have the Comprehensive Occupancy Plan reviewed by the local governing body for comment and shall submit any comments from the local governing body to HUD with the Comprehensive Occupancy Plan.

(e) *Financially or Operationally Troubled PHA.* If a PHA is a Financially or an Operationally Troubled PHA (see HUD Handbook 7475.14 (April 1984), Chapter 3), and has an approved Workout Plan, the Comprehensive Occupancy Plan shall be made an addendum to the Workout Plan.

(f) *Projected Occupancy Percentage (Comprehensive Occupancy Plan PHA).* A PHA that has a HUD-approved Comprehensive Occupancy Plan shall use as its Projected Occupancy Percentage for computing its projected operating income level under § 990.109 the greater of: (1) Its Actual Occupancy Percentage, as determined under § 990.117 or (2) its approved, yearly PHA-wide occupancy goal, adjusted, as necessary, to discount units that are vacant for reasons beyond the PHA's control, as provided in paragraph (g) of this section.

(g) *Units vacant for reasons beyond a PHA's control.* A vacant unit is considered vacant for reasons beyond a PHA's control only if the unit is located in a project that meets one of the following conditions:

(1) The PHA has applied for moderization, HUD cannot fund the project because of lack of sufficient funding, and it is expected that the units will be occupied when the units are modernized.

(2) The vacant units are vacant, on schedule modernization units as described in § 990.109(b)(3)(v).

(3) The units are vacant because of natural disasters or litigation that precludes units from being occupied.

Dated: May 21, 1985.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 85-15074 Filed 6-21-85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 5-85-04]

Special Local Regulations; Marine Event; Elizabeth River Independence Day Celebration

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Elizabeth River Independence Day Celebration. This event will be held on the Elizabeth River, adjacent to "Waterside" between the Norfolk and Portsmouth downtown areas. It will consist of a fireworks display from barges commencing at 7:00 pm and ending at 11:30 pm on 4 July 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 7:00 pm, 4 July 1985 and terminate at 11:30 pm, 4 July 1985. In case of inclement weather causing the event to be postponed, these regulations become effective at 7:00 pm, 5 July 1985 and terminate at 11:30 pm, 5 July 1985. If the event is postponed, the Patrol Commander will issue a broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804-398-6202).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 30 May 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and LCDR Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The City of Portsmouth and Norfolk Festevents, Inc. are sponsors of this event. Norfolk Ship Company tugs will maneuver two barges used for shooting fireworks. Closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

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

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

Authority: 33 U.S.C. 1233; 46 CFR 1.46 and 33 CFR 100.35.

2. A temporary paragraph is added to § 100.35-503 to read as follows:

§ 100.35-503 Elizabeth River, Norfolk, Virginia.

(a) *Regulated area.* The waters of the Elizabeth River and its branches from shore to shore, bound by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) *Special local regulations.* Except for participants in the Elizabeth River Independence Day Celebration, or persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(d) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed on the patrol vessel.

(e) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

Dated: June 17, 1985.

James C. Irwin,

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

[FR Doc. 85-15106 Filed 6-21-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD13 85-10]

Drawbridge Operation Regulations; Snohomish River, Steamboat Slough, and Ebey Slough, Near Everett, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations governing the Washington State Department of Transportation's highway drawbridges across the Snohomish River, Steamboat Slough and Ebey Slough between Everett and Marysville, Washington. This change is being made to correct errors in highway designations, to change the advanced notice requirement for two bridges, and to delete reference to a bridge that has been replaced with a fixed span structure. Also, this change is being made because current operating regulations, as published in 33 CFR Part 117, do not reflect either common usage operation or the desired operation of the bridges. Past amendments to Part 117 include unintended changes to the regulations governing the operation of these bridges. Since these changes were neither intended, nor anticipated, they were not adopted by the owner of the bridges or waterway users. These discrepancies were recently brought to the attention of the Coast Guard.

EFFECTIVE DATE: This rule becomes effective on July 24, 1985.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. The comments will be available for inspection and copying in room 3564 at this address. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures was considered unnecessary and contrary to the public interest, because the changes merely correct minor errors in existing regulations which occurred as a result of administrative oversight.

Although these regulations are published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to

insure that the regulations are both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Receipt of comments will be acknowledged if a self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Regulations

At an undisclosed time in the past, Washington State Highway SR 99 was redesignated SR 529. This change correctly identifies the affected highway bridges.

The old Washington State highway swing span bridge across the Snohomish River, mile 15.0, at Snohomish, was recently replaced with a fixed bridge. Reference to the old bridge has been deleted from the regulations.

The twin SR 529 highway bridges across Steamboat Slough, miles 1.1 and 1.2, are upstream from the Burlington Northern railroad bridge at mile 1.0. The railroad bridge requires four-hours advance notice for openings and the adjacent highway bridges require one-hour advance notice. This change increases the advance notice requirement for the highway bridges to four hours to be consistent with the adjacent railroad bridge.

Individual, distinctive sound signals for Washington State highway bridges across the Snohomish River, Steamboat Slough, and Ebey Slough were deleted in a previous general change to the regulations. A subsequent change to the regulations inadvertently reintroduced the distinctive signals. The change was neither requested nor desired and was never implemented by the owner of the bridges or waterway users. Common practice by both waterway users and bridge owners has been to use the one prolonged, one short blast signal provided in Subpart A—General Requirements, Section 117.15. This change deletes the individual signals for the identified Washington State highway bridges to conform with the actual and desired operating procedure.

Some minor editorial changes also have been made to accommodate the revised sections.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations have no appreciable economic consequences. They merely correct previous minor errors and omissions and modify unimplemented operating procedures to conform with standard practice. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—[AMENDED]

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Sections 117.1059 (c), (e), (g), and (h) are revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

* * * * *

(c) The draws of the twin, SR 529, highway bridges across the Snohomish River, mile 3.6, at Everett shall open on signal if at least one-hour notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR 529 highway bridge across Ebey Slough, at Marysville, and at all other times to the drawtender at the twin SR 529 bridges at Everett. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(d) * * *

(e) The draw of the Burlington Northern railroad bridge across the Snohomish River, mile 15.5, at Snohomish, need not be opened for the passage of vessels.

(f) * * *

(g) The draws of the twin, SR 529, highway bridges across Steamboat Slough, miles 1.1 and 1.2, near Marysville, shall open on signal if at least four-hours notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR 529 highway bridge across Ebey Slough, at Marysville, and at all other times to the drawtender at the twin SR 529 bridges at Everett. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(h) The draws of the SR 529, highway bridge, across Ebey Slough, mile 1.6, at Marysville, shall open on signal if at least one-hour notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means, to the drawtender at this bridge, and at all other times to the drawtender at the SR 529 bridges across the Snohomish River at Everett. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

Dated: June 10, 1985.

R. R. Garrett,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 85-15107 Filed 6-21-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 85-01]

COTP Detroit, MI, Regulation 85-01, Safety Zone Regulations; Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Detroit River, East Rockwood, Michigan. This zone is needed to protect watercraft from possible damage during blasting operations in the Detroit River. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0700 a.m., Eastern Daylight Time, 12 June 1985. It terminates at 1900 p.m., Eastern Daylight Time, 1 September 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) R.C. Davis, Port and Environmental Safety Officer, Coast

Guard Marine Safety Office, Detroit, Michigan, 48207–4418, (313) 226–7777.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than thirty (30) days after **Federal Register** Publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard watercraft and their occupants from the associated dangers involved. Notice of the blasting operations was not received from the contractor until 15 May 1985, and therefore, there was insufficient time to publish a NPRM. Although the establishment of this safety zone is a final ruling, comments concerning the establishment or scope of this zone are welcome. Such comments can be forwarded to Commanding Officer, Coast Guard Marine Safety Office, 2660 E. Atwater, Detroit, Michigan, 48207–4418, (313) 226–7777.

Drafting Information

The drafters of this regulation are Lieutenant (jg) R.C. Davis, project officer for the Captain of the Port, and Lieutenant Commander Leone, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The hazard requiring this regulation will begin on 12 June 1985 and terminate on 1 September 1985. No watercraft will be permitted to remain in, enter, moor in, anchor in, or transit this safety zone unless specifically authorized by the Captain of the Port, Detroit, Michigan.

Drilling and blasting operations by Murray D. Black Co., Inc. are necessary to remove limestone bedrock and overburden to accommodate the installation of a sewage outfall structure at Detroit River Mile 3.9. On one designated day per week during the above stated time period, 505 pounds of Class A explosives will be loaded from the end of Lee Road, East Rockwood Michigan, Detroit River Mile 3.9 to a designated tug and then shipped to the SPUD Barge Minnesota in the Detroit River. The barge will store the weekly supply of explosives to be used during that weeks blasting operations. United States Coast Guard personnel will be on scene during the weekly loading operations to ensure proper establishment and enforcement of the safety zone, and will conduct periodic safety checks during the blasting operations as a part of the Daily Harbor Patrol. This action is designed to prevent damage to watercraft and possible injury to their occupants should any mishap occur during these operations. This rule is intended to accomplish this purpose by preventing all unauthorized water traffic from entering the safety zone.

List of Subjects in 33 CFR Part 165

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

PART 165—[AMENDED]

Regulation

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

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

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

2. A temporary § 165.T901 is added to read as follows:

§ 165.T901 Safety Zone: Detroit River, East Rockwood, MI.

(a) *Location.* The following area is a safety zone: All waters within 250 feet of loading area of Class A Explosives at the end of Lee Road, Rockwood, Michigan, Detroit River Mile 3.9; all waters within 250 feet of tug used to transship the explosives to the SPUD Barge Minnesota; all waters within 250 feet of the SPUD Barge Minnesota at which times Class A explosives are stored on board and all waters within 250 feet of the daily blasting site. This safety zone affects the area from the end of Lee Road, Rockwood, Michigan, Detroit River Mile 3.9 to a point in the Detroit River at approximately 42 3'8.1"N 83 9'48.8"W. Warning signs and buoys will be posted at all points of access to the blasting area. Only authorized personnel will be permitted within the immediate blasting area.

(b) *Effective Dates.* 12 June 1985 to 1 September 1985.

(c) *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.

Dated: June 11, 1985.

R.M. Larrabee,

Commander, U.S. Coast Guard, Captain of the Port, Detroit, Michigan.

[FR Doc. 85–15108 Filed 6–21–85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 750

Excellence in Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (the Secretary) issues regulations for the implementation of the Excellence in Education Program. The Excellence in Education Program provides assistance for projects in individual public elementary or secondary schools designed to achieve excellence in education through activities that are consistent with the purposes of the Excellence in Education Act.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjourments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Patricia Alexander, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4181, Washington, D.C. 20202. Telephone: (202) 472–1762.

SUPPLEMENTARY INFORMATION: .

Background

The Excellence in Education Act (EEA) was enacted as Title VI of the Education for Economic Security Act (EESA), Pub. L. 98–377 (20 U.S.C. 4031 *et seq.*). The Excellence in Education Act was designed to help maintain the momentum for achieving educational excellence that was fostered by the report of the National Commission on Excellence in Education, "A Nation At Risk: The Imperative for Educational Reform," and other national reports on the status of American education. In "A Nation At Risk," the Commission detailed the need to reverse the decline in educational quality in this Nation and made specific recommendations for achieving the goal of excellence.

The Excellence in Education Program is intended to provide grant assistance for individual public schools across the country that are implementing the recommendations of the Commission or otherwise striving to improve the quality of elementary or secondary education.

Section 602 of the EEA authorizes the Secretary to make awards to local educational agencies to carry out projects of excellence in individual public schools through activities that: (1) Demonstrate successful techniques for improving the quality of education, (2) can be disseminated and replicated, and (3) are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality of the school.

Section 607 of the EEA authorizes the Secretary to make special school awards for those schools which obtain contributions of funds from the private sector in order to support the activities proposed for Federal assistance under the EEA. In addition to the financial contribution required for eligibility under this category, schools may also accept in-kind contributions, such as volunteer services and donated equipment or supplies, in support of the activities proposed for assistance.

Both the school excellence awards and the special school awards support school improvement activities.

The Congress has appropriated $5 million for this program in Fiscal Year 1985. Four million dollars are available for the school improvement activities authorized under sections 602 and 607 of the EEA. The remaining $1 million is reserved for the Secretary to conduct research, evaluation, and dissemination activities, as authorized by section 608 of the EEA.

Comments and Responses

A summary of the comments received on the Notice of Proposed Rulemaking (NPRM) and the Secretary's responses to those comments can be found in the Appendix to these final regulations.

Significant Differences Between the NPRM and these Final Regulations

On November 28, 1984, the Secretary published in the **Federal Register** (49 FR 46755) the NPRM for the Excellence in Education Program. During the comment period, eight letters were received.

The provisions of these final regulations are substantially the same as those of the NPRM. However, after careful consideration of the public comments on the proposed regulations, the Secretary has made some changes.

The definitions of chief State school officer and chief educational officer in § 750.4(c) have been revised to indicate that the chief State school officers and the chief educational officers are the individuals responsible for elementary and secondary education in each State and outlying area.

The language in § 750.21(b)(1) has been revised to clarify that any public elementary or secondary school is eligible for an award under this program, provided that the school is operated by a local educational agency. This could include, for example, a special school serving the handicapped or the gifted and talented, in addition to the other types of schools listed.

The language in § 750.31(a)(2)(vi) has been revised to reflect more fully the language in section 605(a)(2)(B) of the EEA. Section 605(a)(2)(B) requires that the criteria used in selecting schools for awards include standards for each local educational agency to nominate schools "which show promise of demonstrating that the school will carry out well-planned, creative, or innovative activities designed to carry out the purposes of [the program] in a successful manner."

Section 750.32 has been revised to include the provisions of section 605(c)(1) of the EEA requiring the Secretary to select no more than 500 schools from the nominations submitted by the chief State school officers and chief educational officers after an impartial review panel has considered each submission.

Summary of Major Provisions

(1) Types of Grants

Section 750.10 implements the provisions of sections 604, 605, and 607 of the EEA, establishing two types of awards under this program: (1) School excellence grants and (2) special school grants. Special school grants require the assurance of contributions of funds from the private sector as part of the application, as described in § 750.20(b)(6)(ii).

(2) Eligibility

Consistent will section 605(a)(1) of the EEA, § 750.2(a) states that a local educational agency (LEA) is eligible for a grant under this program if a specific school or specific schools of that LEA were nominated by the chief State school officer or chief educational officer in accordance with § 750.21. Section 750.2(b) implements the requirement of section 606(b) of the EEA that no individual school is eligible to receive more than one grant under this program.

(3) Establishing Priorities

Section 750.11 of the regulations allows the Secretary to establish priorities for this program consistent with section 605(c)(2) of the EEA. Section 750.11(a) implements the requirement of section 605(c)(2) of the EEA that the Secretary give priority to applications that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated. Under § 750.11(b), the Secretary also gives priority to applications that have as their purposes one or more (or combinations) of those purposes listed in section 605(c)(2)(A)-(G) of the EEA. Additionally, § 750.11(c) permits the Secretary to select as a priority other types of projects as announced in the **Federal Register.** The Secretary may establish a separate competition for each priority selected pursuant to § 750.11(d).

In addition to establishing funding priorities under paragraphs (a) and (b) of § 750.11, the Secretary may invite applicants to propose projects in any area of education consistent with the purpose of the EEA, which is to provide funds to individual public schools to implement projects designed to achieve excellence and to disseminate information about the design and successes of those projects.

(4) The Application and Selection Process

Sections 750.20 and 750.21 implement the application procedures required by section 605 (a) and (b) of the EEA. Under § 750.20, a local educational agency is required to submit to the chief State school officer or to the chief educational officer an application for each school for which the local educational agency is applying for a grant. Under § 750.21, the chief State school officer selects up to twenty-five applications for submission to the Secretary. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands, the chief educational officer selects up to five applications for submission to the Secretary. Section 750.21 establishes the process for use by the chief State school officer or the chief educational officer in selecting schools to nominate to the Secretary.

(5) Selection Criteria

Section 750.31 implements the requirement of section 605(c)(1) of the EEA that applications be selected for funding under this program based on uniform criteria. Section 750.31 of these regulations establishes selection criteria for use by the Secretary in evaluating applications nominated by the chief State school officers or chief educational officer for both school excellence school grants and special grants. In addition to the points indicated in parentheses following each criterion in § 750.31, § 750.30 permits the Secretary to distribute a reserved 15 points among the applicable criteria. The Secretary announces, in a notice published in the **Federal Register**, how the reserved points will be distributed for each competition.

(6) Funding Limitations

Section 750.33 implements the requirement of section 606 of the EEA that the Secretary base the amount of a grant to an individual school on the size

of the school, specifically, the number of students enrolled in the school and the number of teachers teaching in the school.

For school excellence grants, schools with fewer than 1,000 students and teachers combined are eligible to receive up to $15,000 for a one-year project or up to $30,000 for a two-year project under § 750.33(b). Schools with 1,000 or more students and teachers combined are eligible to receive up to $20,000 for a one-year project or up to $35,000 for a two-year project.

For special school grants, schools with fewer than 1,000 students and teachers combined are eligible to receive up to $20,000 for a one-year project or up to $35,000 for a two-year project under § 750.33(c). Schools with 1,000 or more students and teachers combined are eligible to receive up to $25,000 for a one-year project or up to $40,000 for a two-year project.

Section 750.33(d), which implements section 606(b) of the EEA, limits the length of a grant under this program to a project period no longer than two years.

(7) Cost Sharing

Cost sharing is a required post-award condition for a grantee receiving a special school grant. The private sector must contribute some funds to the project. Section 750.40 implements the requirement of section 607(b) of the EEA that the Federal share for each year of the grant be not less than 67⅔ percent nor more than 90 percent of the total cost of the project. The Secretary announces, in a notice published in the **Federal Register**, the Federal share for each category of special school grants. Section 750.40(c) implements section 607(b) of the EEA, requiring the Secretary to base the Federal share for each category of special school grants upon uniform selection criteria. Under § 750.40(c), the Secretary bases the Federal share for each competition established in any year on the following criteria: (1) If the Secretary has selected a priority for the competition, the extent to which contributions of funds from the private sector will enhance the implementation of projects under that priority, and (2) the amount of funds appropriated (or likely to be appropriated) for this program in a particular year. For example, the Secretary may select as a priority demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education. Since projects addressing this priority would require private sector support, the Secretary could establish the Federal share as 67⅔ percent. By requiring a large non-Federal share, the Secretary would make it necessary for local schools to seek maximum private sector financial contributions. As defined in the Education Department General Administrative Regulations (EDGAR), 34 CFR 77.1, "project" means only the activity described in an application. Accordingly, a special school project could be part of one or more larger programs conducted at the local level.

Although § 750.20(b)(6)(ii) requires an assurance that some private funds will be contributed to meet the costs of a special school project, the non-Federal share of the project costs does not have to be borne entirely by the private sector.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on States and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 750

Education, Grant program—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.171 Excellence in Education Program.)

Dated: June 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 750 to read as follows:

PART 750—EXCELLENCE IN EDUCATION PROGRAM

Subpart A—General

Sec.
750.1 What is the Excellence in Education Program?
750.2 What parties are eligible for a grant under the Excellence in Education Program?
750.3 What regulations apply to this program?
750.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Progam?

750.10 What types of grants does the Secretary award under this program?
750.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

750.20 How does a local educational agency apply for a grant under this program?
750.21 How does a State educational agency nominate a school for a grant under this program?

Subpart D—How Does the Secretary Make a Grant?

750.30 How does the Secretary evaluate an application?
750.31 What selection criteria does the Secretary use?
750.32 How does the Secretary consider fair and equitable distribution of projects?
750.33 What funding limitations apply to grants under this program?

Subpart E—What Conditions Must be Met by the Grantee?

750.40 Is cost sharing required for grants under this program?
750.41 Are there restrictions on the use of funds for equipment under this program?

Authority: Excellence in Education Act (the EEA), Title VI of the Education for Economic Security Act (the EESA), Pub. L. 98-377, 98 Stat. 1267 (20 U.S.C. 4031 *et seq.*), unless otherwise noted.

Subpart A—General

§ 750.1 What is the Excellence in Education Program?

The Excellence in Education Program assists local educational agencies to carry out, in individual public schools of those agencies, projects designed to achieve excellence in elementary and secondary education that—

(a) Demonstrate successful techniques for improving the quality of education;

(b) Can be disseminated and replicated; and

(c) Are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality.

(20 U.S.C. 4031)

§ 750.2 What parties are eligible for a grant under the Excellence in Education Program?

(a) Subject to the limitation in paragraph (b) of this section, a local educational agency is eligible to receive a grant under the exellence in Education Program if a specific school or schools of that local educational agency have been nominated in accordance with § 750.21.

(b) A local educational agency may not receive more than one grant under this program for each individual school of the local educational agency.

(20 U.S.C. 4033, 4034, and 4035)

§ 750.3 What regulations apply to this program?

(a) The following regulations apply to grants under the Excellence in Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs).

(2) The regulations in this Part 750.

(b) The regulations in this Part 750 do not apply to contracts awarded under the Excellence in Education Program.

(20 U.S.C. 4033)

§ 750.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in sections 3 and 603 of the Education for Economic Security Act:

Elementary school
Local educational agency
Secondary school
Secretary
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grant period
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Chief educational officer" means the chief officer for elementary and secondary education of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"Chief State school officer" means the chief officer for elementary and secondary education of each State other than the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"EEA" means the Excellence in Education Act, Title VI of Public Law 98–377.

"EESA" means the Education for Economic Security Act, Public Law 98–377.

(20 U.S.C. 3902, 4032)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 750.10 What types of grants does the Secretary award under the program?

The Secretary awards two types of grants under this program:

(a) *Schools excellence grants.* The Secretary awards school excellence grants to carry out the purposes of this program described in § 750.1.

(b) *Special school grants.* The Secretary awards special school grants to encourage contributions of funds from the private sector to carry out further the purposes of this program.

(20 U.S.C. 4034, 4036)

§ 750.11 How does the Secretary establish priorities for this program?

(a) The Secretary gives priority to applications proposing projects that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated.

(b) The Secretary also gives priority to applications that have as their purposes one or more (or combinations) of the following—

(1) Modernization and improvement of secondary school curricula to improve student achievement in academic or vocational subjects, or both, and competency in basic functional skills;

(2) Elimination of excessive electives and the establishment of increased graduation requirements in basic subjects;

(3) Improvement in student attendance and discipline through the demonstration of innovative student motivation techniques and attendance policies with clear sanctions to reduce student absenteeism and tardiness;

(4) Demonstrations to increase learning time for students;

(5) Experimentation providing incentives to teachers and teams of teachers for outstanding performance, includint financial rewards, administrative relief such as the removal of paperwork and extra duties, and professional development;

(6) Demonstrations to increase student motivation and achievement through creative combinations of independent study, team teaching, laboratory experience, technology utilization, and improved career guidance and counseling; or

(7) Demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment.

(c) In addition to establishing priorities for this program pursuant to paragraphs (a) and (b) of this section, the Secretary may also give priority to other types of projects as announced in the **Federal Register**.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to the priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(20 U.S.C. 4034)

Subpart C—How Does One Apply for a Grant?

§ 750.20 How does a local educational agency apply for a grant under this program?

(a) A local educational agency shall submit to the chief State school officer (or chief educational officer) of the State in which the local educational agency is located a separate application for each school with respect to which the local educational agency is applying for a grant. In any fiscal year in which the Secretary establishes separate grant competitions within this program, a local educational agency may apply for more than one grant for an individual school by submitting separate applications to each or any of the grant competitions. Pursuant to § 750.2(b), a local educational agency may receive only one grant under this program for each individual school.

(b) In addition to the information required in EDGAR, 34 CFR 75.107, the local educational agency must include in its application the following information:

(1) The type of grant under § 750.10 for which the local educational agency is applying.

(2) The name and location of the school.

(3) School size in terms of the number of students enrolled and the number of teachers teaching in the school.

(4) The size, socioeconomic conditions, location of the community in which the school is located, and the local governmental arrangements between the government and the local educational agency submitting the application.

(5) A description of the activities, including information designed to meet the selection criteria listed in § 750.31, that will be conducted in the school nominated.

(6) Assurances that—

(i) The school nominated for a grant will carry out the activities proposed in the application; and

(ii) If a school is nominated for a special school grant as described in § 750.10(b), it will receive contributions of funds from the private sector to help carry out the activities proposed in the application.

(7) An assessment of the potential for the proposed project to successfully demonstrate techniques for improving the quality of education that can be disseminated and replicated.

(20 U.S.C. 4034)

(Approved by the Office of Management and Budget under control number 1880-0510.

§ 750.21 How does a State educational agency nominate a school for a grant under this program?

(a) In each fiscal year, the chief State school officer of each State may select for nomination to the Secretary up to twenty-five applications from those submitted in accordance with § 750.20(a). In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer may select up to five applications.

(b) In selecting schools to nominate under this section, the chief State school officer or chief educational officer shall assure a fair and equitable distribution of schools within the State after considering—

(1) All categories of public elementary and secondary schools within the State, including, but not limited to, elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions of the State;

(3) Geographic distribution within the State;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application;

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education in ways that can be disseminated and replicated; and

(8) Other relevant information provided by the local educational agency in its application, including information that addresses each selection criterion in § 750.31.

(c) In order to nominate individual schools in local educational agencies for grants under this program, each chief State school officer or chief educational officer shall send to the Secretary the following information regarding each individual school to be nominated to the Secretary:

(1) The application submitted by the local educational agency that nominated the school.

(2) Any additional information considered under paragraph (b) of this section that is not included in the application and that is needed to enable the Secretary to make a determination under § 750.32.

(3) Any additional information that the chief State school officer (or chief educational officer) and local educational agency consider appropriate.

(20 U.S.C. 4034)

(Approved by the Office of Management and Budget under control number 1880-0510.)

Subpart D—How Does the Secretary Make a Grant?

§ 750.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 750.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 750.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 750.31.

(20 U.S.C. 4034)

§ 750.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the school's need and to the purposes of this program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives in a successful manner; and

(vii) The participation of school principals, school-teachers, parents, and business concerns in the locality.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows the methods of assessing and reporting the outcomes of the project are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows reporting methods that enhance the potential for disseminating and replicating the project.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improving elementary or secondary education.* (15 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement of the quality of elementary or secondary education in the applicant's school through activities designed to implement recommendations from the Report of the National Commission on Excellence in Education, other national reports on the status of American education, or current research findings on approaches to making schooling more effective.

(2) The Secretary looks for information such as—

(i) The extent to which the project's objectives apply to the school's particular circumstances and needs, current recommendations and findings concerning ways to improve the quality of education;

(ii) The process by which the applicant identified its needs;

(iii) The manner in which those objectives form the basis of the activities designed to demonstrate successful techniques improving the quality of education in the applicant's school;

(iv) The extent to which the project provides potential to experiment with standards of quality; and

(v) The benefit to the applicant from meeting the project's objectives.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American schools, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The potential benefit to other schools in the Nation from successfully addressing the needs;

(C) The extent to which the project involves creative or innovative techniques to improve educational quality in the school;

(D) The extent to which the project builds upon and adds to current educational information or research; and

(E) The extent to which the project is designed to yield outcomes that can be readily disseminated and replicated in other school settings, such as products, materials, processes or techniques.

(h) *Applicant's commitment and capacity.* (5 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its efforts to generate community support for the project, and the likelihood that it will build on the project when Federal assistance ends.

(20 U.S.C. 4031, 4034)

(Approved by the Office of Management and Budget under control number 1880-0510)

§ 750.32 How does the Secretary consider fair and equitable distribution of projects?

(a) After evaluating the applications according to the criteria contained in § 750.31 of these regulations, the Secretary determines whether the most highly rated applications are fairly and equitably distributed throughout the Nation and throughout each State. In determining whether the most highly rated applications are fairly and equitably distributed, the Secretary considers—

(1) All categories of public elementary and secondary schools within each State and within the Nation, including, but not limited to, elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions within the State and the Nation;

(3) Geographical distribution within the State and the Nation;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application; and

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education that can be disseminated and replicated.

(b) The Secretary selects not more than 500 schools from the nominations submitted by the chief State school officers and chief educational officers after an impartial review panel has considered each submission.

(c) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under a particular competition or under this program.

(20 U.S.C. 4034)

§ 750.33 What funding limitations apply to grants under this program?

(a) The amount of a grant awarded to a local educational agency for an individual school must be based on the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school.

(b) With respect to school excellence grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $15,000 for a one-year project and $30,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(c) With respect to special school grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(2) For school with a size of 1000 or more students and teachers combined, $25,000 for a one-year project and $40,000 for a two-year project.

(d) A grant under this program may not be made for a project period longer than two years.

(20 U.S.C. 4035, 4036)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 750.40 Is cost sharing required for grants under this program?

(a) The Secretary requires cost sharing only for grantees that receive special school grants.

(b) The Federal share for each year of the grant may not be less than 67⅔ percent nor more than 90 percent of the total cost of the project for which a special school grant is awarded.

(c) The Secretary announces, in a notice published in the **Federal Register**, the Federal share for each competition established for special school grants. The Secretary bases the Federal share for each competition on the following criteria:

(1) If the Secretary has selected a priority for the competition, the extent to which contributions of funds from the private sector will enhance the implementation of projects under that priority; and

(2) The amount of funds appropriated (or likely to be appropriated) for this program in a particular year.

Note.—EDGAR establishes the rules governing cost sharing. See 34 CFR 74.50–74.57.

(20 U.S.C. 4036)

§ 750.41 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used to purchase equipment.

(20 U.S.C. 4034)

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

Eight letters were received during the 45-day public comment period. The commenters generally sought clarification of specific provisions of the regulations.

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on November 28, 1984 (49 FR 46755), and the Secretary's responses to those comments, including any changes. The comments are arranged according to the order in which the provisions they address appear in the final regulations.

Subpart A—General

Section 750.2 What parties are eligible for a grant under the Excellence in Education Program?

Comment. One commenter requested clarification on whether nonpublic schools are eligible to participate in the Excellence in Education Program. The commenter contended that since nonpublic schools are referenced in several of the other programs authorized in the Education for Economic Security Act (EESA), nonpublic schools should be considered in the Excellence in Education Program.

Response. No change has been made. While other Titles of the EESA provide for the equitable participation of children and teachers in nonpublic schools, Title VI, the Excellence in Education Act (EEA), does not. Section 602 of the EEA states explicitly that the purpose of the program "is . . . to make awards to local educational agencies . . . to carry out programs of excellence in individual schools. . . ." For the purposes of this Act, section 603 states that the term "local educational agency" has the same meaning given the term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (ESEA). Section 198(a)(10) of the ESEA states ". . . local educational agency means a *public* board of education or other *public* authority legally constituted within a State for either administrative control or direction of . . . *public* elementary or secondary schools. . . . Such term includes any other *public* institution or agency having administrative control and direction of a *public* elementary or secondary school." (Emphasis added).

Comment. Two commenters questioned the language in proposed § 750.2(b) prohibiting an individual school from receiving more than one award under this program. Both commenters questioned whether an individual school could receive multiple awards for different projects.

Response. No change has been made. Section 606(b) of the EEA states that "no individual school may be eligible for any additional award under this title."

Section 750.4 What definitions apply to this program?

Comment. One commenter recommended that the language in proposed § 750.4(c), defining chief State school officer and chief educational officer be revised to specify that both terms mean chief officer for elementary and secondary education.

Response. A change has been made. The language in § 750.4(c) has been revised to indicate that the chief State school officer and the chief educational officer are the individuals responsible for elementary and secondary education of each State and outlying area.

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

Section 750.10 What types of grants does the Secretary award under this program?

Comment. One commenter recommended that the language in proposed § 750.10(b) be changed to clarify the role of the private sector in the special school grants category. The commenter felt that private sector support should supplement adequate funding for public education. Further, the commenter suggested that the Secretary base the level of funding for a special school grant solely on the quality of the project rather than on the participation of business and industry.

Response. No change has been made. Section 607(a) of the EEA authorizes the Secretary to make special school awards for those schools that obtain contributions of funds from the private sector to carry out their proposed activities. The Secretary bases the Federal share for each competition on the extent to which contributions of funds from the private sector will enhance the implementation of the projects. Private sector participation is a specific requirement under section 607(a) the EEA, to encourage further public/private partnerships in public education. Furthermore, Congress had directed the Secretary, in section 604(b)(2) of the EEA, to reserve $3 million of the total appropriation for the Excellence in Education Program for special school grants.

The overall purpose of the Excellence program is to provide assistance to local

educational agencies to carry out projects in individual public schools through activities that demonstrate successful techniques for improving the quality of education; that can be disseminated and replicated; and that are conducted with the participation of school principals, teachers, parents, and local business concerns. Under § 750.11, the Secretary is required to give priority to applications proposing projects that have the highest potential for successfully demonstrating techniques to improve the quality of education. The selection criteria used by the Secretary to evaluate each application reinforce this.

Section 750.11 How does the Secretary establish priorities for this program?

Comment. One commenter suggested deleting two of the priorities listed in proposed § 750.11(b). Specifically, the commenter objected to proposed § 750.11(b)(2), the elimination of excessive electives, suggesting that it is wrong to undermine vital elective courses for the purpose of encouraging students to take courses in mathematics and science; and proposed § 750.11(b)(5), experimentation for teacher incentives, suggesting that the method used for teacher incentives may be inconsistent with the principles demonstrated by research on effective schools.

Response. No change has been made. The seven priorities listed in § 750.11 are required by section 605(c)(2) of the EEA. The regulations allow the Secretary to choose from among those priorities in a given grant competition, and to select additional priorities. Before selecting additional priorities for a particular year or grant competition, the Secretary publishes proposed annual priorities in the **Federal Register** for public comment.

Comment. One commenter questioned the language in proposed § 750.11(c) regarding the Secretary's authority to announce additional priorities through a notice published in the **Federal Register.**

Response. No change has been made. The language in § 750.11(c) provides the Secretary with the flexibility to establish and limit priorities for selection of applications in a particular year. Prior to establishing priorities for a particular year, the Secretary publishes in the **Federal Register** proposed annual priorities for public comment if the proposed priorities are not listed in the regulations. Part 75 of the Education Department General Adminstrative Regulations (EDGAR) describes the process for establishing priorities.

Subpart C—How Does One Apply for a Grant?

Section 750.20 How does a local educational agency apply for a grant under this program?

Comment. One commenter asked why proposed § 750.20(a) requires a local educational agency to submit a separate application for each school of that agency wishing to apply for a grant.

Response. No change has been made. Section 605(a)(1) of the EEA requires that "each local educational agency desiring to participate in the awards program . . . shall submit a proposal nominating each specific school of that agency for school improvement activities. . . ."

Comment. One commenter suggested that the language in proposed § 750.20 be changed. Based on the large number of school districts in some States and other variables such as busing, density, and sparsity, the commenter suggested that each local educational agency (LEA), rather than each school of that LEA, should be eligible to receive only one award.

Response. No change has been made. Section 606(b) of the EEA states that no individual school is eligible to receive more than one award. The EEA does not restrict the number of schools within an LEA that can receive awards. However, in selecting schools from the proposed nominations submitted by an LEA, the chief State school officer is required by section 605(b)(2) aof the EEA to assure fair and equitable distribution of schools within the State. The chief State school officer must consider eight different factors, including categories of schools, socioeconomic conditions of the State, geographic distribution within the State, and the size and location of the community in which the school is located. These factors are elaborated on in § 750.21 of the regulations. Furthermore, § 750.32 provides that the Secretary also consider fair and equitable distribution of projects after evaluating the applications according to the selection criteria contained in § 750.31 of the regulations. The Secretary believes that further restrictions are not necessary.

Comment. One commenter suggested that proposed § 750.20 be amended to include a provision indicating that the chief State school officer will determine the application format that will be accepted from LEAs within the State. The commenter contended that since the EEA requires the chief State school officer to review the applications submitted by an LEA and make nominations to the Secretary, this provision would reduce the burden on the chief State school officer in reviewing unnecessarily lengthy applications.

Response. No change has been made. The chief State school officers and chief educational officers are responsible for establishing the process and procedures for soliciting, receiving, reviewing, and selecting nominations for school awards. The process may need to differ from State to State. The Secretary believes it is inappropriate for the Federal Government to regulate how the chief State school officers and chief educational officers choose to carry out their responsibilities under the EEA. However, the regulations do not preclude the chief State school officers or chief educational officers from determining the application format that will be accepted from LEAs within a State.

Section 750.21 How does a State educational agency nominate a school for a grant under this program?

Comment. One commenter questioned why the language in proposed § 750.21(a), which states that the chief State school officer may select *up to* twenty-five schools, or in the case of the outlying areas, *up to* five schools, differs from the language in sections 605(b)(1)(A) and (B) of the EEA.

Response. No change has been made. Sections 605(b)(1) (A) and (B) of the EEA provide that the chief State school officer shall select twenty-five schools for submission to the Secretary, or in the case of the outlying areas, the chief educational officer shall select five schools. Given the relatively small size of the awards and the provision in section 606(b) that no individual school shall be eligible for any additional award, the Secretary believes that the language in sections 605(b)(1)(A) and (B) was meant as a cap on the number of applications, rather than a required number of applications. In considering the provisions of section 605(b), the Secretary wanted to provide the chief State school officer and chief educational officer with maximum flexibility in selecting quality applications to nominate for awards. The term "up to" provides that flexibility. It is conceivable that some chief State school officers or chief educational officers may not receive either a sufficient number of applications or a sufficient number of high quality applications to select twenty-five or five schools, respectively. In that circumstance, a State would be precluded from participating in the program if it were required to submit that number of applications.

Comment. One commenter recommended that the language in proposed § 750.21(b)(1) be revised to include publicly operated special schools for the handicapped and gifted and talented. The commenter contended that the list of schools used as examples of "all categories of public elementary and secondary schools within the State" precluded certain schools from eligibility under this program.

Response. A change has been made. The categories of schools in proposed § 750.21(b)(1) was taken from section 605(b)(2)(A) of the EEA. However, the Secretary believes that the list used in the EEA to define categories of public elementary and secondary schools within the State was not intended to be an exclusive list. Therefore, the Secretary has modified the language in § 750.21(b)(1) by adding "but not limited to." This change should make it clear that any school that is operated by a local educational agency, including a special school serving the handicapped or the gifted and talented, is eligible under this program.

Subpart D—How Does the Secretary Make a Grant?

Section 750.31 What selection criteria does the Secretary use?

Comment. One commenter recommended that the language in proposed § 750.31(a)(2)(v) be revised to require applicants to include a description of how appropriate instruction will be provided to handicapped persons. The commenter contended that equal access and treatment are not sufficient to assure their meaningful participation.

Response. No change has been made. The Secretary believes that the language contained in § 750.31(a)(2)(v), which requires a description of how the applicant will provide equal access and treatment, is sufficient to safeguard the needs of all prospective participants who are members of traditionally underrepresented groups. Further clarification is unnecessary.

Comment. One commenter objected to the number of points assigned under proposed § 750.31(a)(2)(vi) and (f)(2)(iv) of the selection criteria. The commenter suggested that since both § 750.31(a)(2)(vi), "[t]he quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives," and § 750.31(f)(2)(iv), "[t]he extent to which the project provides potential to experiment with standards of quality," were mentioned specifically in section 605(a)(2) of the EEA, those section should be more heavily weighted.

Response. No change has been made. Section 605(a)(1) of the EEA states that the Secretary is authorized to establish criteria for the selection of schools to receive awards under this program. Section 605(a)(2) of the EEA requires that these criteria include standards for each local educational agency to nominate schools "which have the potential to experiment with standards of quality . . ." and ". . . which show promise of demonstrating that the school will carry out well-planned, creative, or innovative activities. . . ." These standards are incorporated in the selection criteria. Twenty points (20) have been given to the criterion for plan of operation § 750.31(a). The Secretary believes that (20) twenty points is appropriate and adequate. The criterion for improving elementary or secondary education in § 750.31(f) relates to the purposes of the program as defined by section 602 of the EEA. Again, the Secretary believes that the fifteen (15) points assigned to this criterion is sufficient.

Comment. One commenter suggested that the language in proposed § 750.31(a)(2)(vi) be revised to reflect more fully the language contained in section 605(a)(2)(B) of the EEA. Section 605(a)(2)(B) requires that the criteria used in selecting schools for awards include standards for each local educational agency to nominate schools "which show promise of demonstrating that the school will carry out well-planned, creative, or innovative activities designed to carry out the purposes of (the program) in a successful manner."

Response. A change has been made. The Secretary has revised § 750.31(a)(2)(vi) to read "The quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives *in a successful manner*. . . ."

Comment. One commenter questioned the statutory authority for the criterion listed in § 750.31(f), relating to improving elementary or secondary education.

Response. No change has been made. The Secretary establishes selection criteria to evaluate applications submitted for grants under this program. Criteria are tailored to the scope and purpose of the program. The purpose of the program is to provide assistance for projects in individual public schools designed to achieve excellence in elementary or secondary education. The legislative history makes it clear that funds for this program are to be used to implement the recommendations of the Report of the National Commission on Excellence in Education and other recent reports for improving educational standards and instruction. See e.g., Cong. Rec. S9506 (daily ed. June 29, 1983). The Secretary believes that the criterion in § 750.31(f) is consistent with legislative intent and furthers the purposes of the authorizing statute.

Comment. One commenter questioned why the priorities listed in section 605(c)(2) of the EEA and again in § 750.11 of the proposed regulations were not included in the selection criteria under proposed § 750.31.

Response. No change has been made. There are a number of ways the Secretary can give priority to applications other than through assigned points in the selection criteria. The Secretary establishes annual priorities for selection of applications by publishing those priorities in a notice in the **Federal Register.** When the priorities chosen are from those listed in the regulations, the priorities are published in the program application notice. Before selecting other priorities, the Secretary publishes proposed priorities for public comment in the **Federal Register.**

The Secretary may give absolute priority to applications that meet a priority for a program. The Secretary establishes an absolute priority by reserving all or part of a program's funds solely for applications that meet the priority. Also, in a program using weighted selection criteria, the Secretary may award additional points to an application that meets the priority. These points are in addition to any points the applicant earns under the selection criteria. The application notice states the number of additional points the Secretary will award to applications that meet the selected priority in a particularly effective way.

Comment. One commenter suggested that the Secretary consider awarding additional points under proposed § 750.31(d) for evaluation.

Response. No change has been made. The Secretary evaluates each application submitted under this program on the basis of the applicable selection criteria. The Secretary awards up to 100 points, including a reserved 15 points to be distributed among those criteria. For each competition, the Secretary announces through a notice published in the **Federal Register** how those reserved points will be distributed. The Secretary may choose to give additional points for evaluation according to the priority chosen, as announced in the **Federal Register.**

Section 750.32 How does the Secretary consider fair and equitable distribution of projects?

Comment. One commenter questioned why proposed § 750.32 did not elaborate on the provisions for an impartial review panel and the number of schools the Secretary may select for awards, as contained in section 605(c)(1) of the EEA.

Response. A change has been made. The Department already has regulations governing the use of panels to review grant applications (*see* 34 CFR 75.217). However, § 750.32 has been revised to include the provisions of section 605(c)(1) of the EEA.

Section 750.33 What funding limitations apply to grants under this program?

Comment. One commenter reiterated the concerns raised in the comment on proposed § 750.10(b) relating to the role of the business community under the special school grants category. Again, the commenter suggested that the secretary base the level of funding for a special school grant under proposed § 750.33(c) solely on the quality of the project, rather than on the participation of business and industry.

Response. No change has been made. The language in § 750.33 is consistent with the purposes of sections 606(a)(2) and 607(a) of the EEA. (*See also* the response to the comment on § 750.10).

Comment. One commenter recommended that language be added to proposed § 750.33 to provide special consideration for small, rural, or semi-rural school districts. The commenter contended that small school districts have greater needs that urban school districts, particularly because they are isolated from resources and are not affluent.

Response. No change has been made. Under the provisions of § 750.21(b) of the regulations, the chief State school officer or chief educational officer is required to consider school size, socioeconomic conditions, and geographic distribution in determining a fair and equitable distribution of schools within the State. Similarly, under the provisions of § 750.32, the Secretary considers these factors in determining a fair and equitable distribution of projects. Further, §§ 750.33(b)(1) and (c)(1), which describe the funding ranges for grants under this program, take into consideration small schools. The Secretary believes that further provisions are unnecessary.

Comment. One commenter questioned having a different range for each category of award, rather than applying the range of $25,000 to $40,000 to the entire program.

Response. No change has been made. Section 606(a)(1) of the EEA states that "[A] school award made to a local educational agency . . . may not exceed $25,000 in any fiscal year or a total of $40,000." Further, section 606(a)(2) of the EEA requires the Secretary to determine the amount of each individual school award based upon the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school. Taking these factors into consideration, the Secretary has developed a range for each category of awards. As an incentive for schools to obtain contributions of funds from the private sector, the range for special school grants is higher.

Subpart E—What Conditions Must Be Met by the Grantee?

Section 750.40 Is cost sharing required for grants under this program?

Comment. One commenter suggested that the language in proposed § 750.40 clarify how the private sector cost will be determined.

Response. No change has been made. The Secretary does not regulate the private sector share. Section 607(b) of the EEA requires only that the Federal share be not less than 67⅔ percent nor more than 90 percent of the total cost of the project and that the Secretary set the Federal share based upon uniform criteria established by the Secretary.

Comment. One commenter suggested that the language in § 750.40 elaborate upon what would qualify as a contribution from the private sector. The commenter contended that proposed § 750.40 does not specify whether contributions can be in-kind, such as volunteer services and donated equipment or supplies, or whether they must be monetary.

Response. No change has been made. Section 607(a) of the EEA states that ". . . the Secretary is authorized to make awards to schools . . . if the local educational agency provides further assurances that *funds* from the private sector will be contributed for carrying out the activities for which assistance is sought." (Emphasis added). Further, §§ 750.10(b) and 750.20(b)(6)(ii) of the regulations reiterate that, in order to be eligible for funding under the special school grant category, the school must receive financial contributions from the private sector for carrying out the activities proposed in its application. However, this does not preclude a school from accepting in-kind contributions, such as volunteer services and donated equipment or supplies, *in addition to* the financial contribution required for eligibility under this category.

Comment. One commenter questioned why the Secretary will announce the standards for determining the Federal share in a notice published in the **Federal Register**, rather than including those standards in the regulations.

Response. No change has been made. The standards, or criteria, for determining the Federal share are contained in § 750.40(c) of the regulations. Under § 750.40(c), the Secretary will announce in a notice published in the **Federal Register** the specific percentage that will be the Federal share for each special school grant competition.

Section 750.41 Are there restrictions on the use of funds for equipment under this program?

Comment. Two commenters questioned the language in proposed § 750.41 regarding the authority of the Secretary to restrict the amount of funds used under this program to purchase equipment. One commenter recommended that the language in proposed § 750.41 be more direct in discouraging grantees from using these funds for equipment.

Response. No change has been made. The purpose of the Excellence in Education Program is to provide assistance for individual public schools for projects designed to improve the quality of elementary or secondary education. Given the limited funds available under this program, and the average size of the awards, the Secretary does not believe that the Congress intended a disproportionate share of these funds to be spent on equipment. The language in § 750.41 provides the Secretary with the flexibility to determine the amount of funds that may be spent on equipment. The Secretary believes that further clarification is unnecessary.

Other

Comment. One commenter asked why the proposed regulations failed to mention the provisions of section 602(3) of the EEA relating to the participation of school principals, teachers, parents, and business concerns in the locality.

Response. No change has been made. The provisions of section 602(3) of the EEA are stated in § 750.1(c) of the regulations.

[FR Doc. 85-15154 Filed 6-21-85; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 755

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Secretary of Education (the Secretary) issues regulations for the implementation of the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages. This program provides assistance for projects of national significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages. The program is designed to improve the skills of teachers and instruction in these areas, to improve and expand instruction in critical foreign languages, and to increase the access of all students to this instruction, consistent with the purposes of the Education for Economic Security Act.

DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to known the effective date of these regulations, write or call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Patricia Alexander, Office of the Secretary, 400 Maryland Avenue, SW., Room 4181, Washington, D.C. 20202. Telephone: (202) 472-1762.

SUPPLEMENTARY INFORMATION:

Background

The Education for Economic Security Act (EESA), Pub. L. 98-377, was signed into law on August 11, 1984. The EESA was enacted to help meet the needs identified in "A Nation At Risk: The Imperative for Educational Reform," the report of the National Commission on Excellence in Education, and other national reports on American education. Specifically, "A Nation at Risk" detailed the need to reverse the decline in mathematics, science, and foreign language competency in this country. This educational decline results in part from a shortage of teachers qualified to teach mathematics, science, computer technology, and foreign languages, as well as a reduction in the number of students taking these courses. Mathematics, science, computer technology, and foreign languages have a special importance in this country because continuing development in these areas is vital to the economic security of the Nation. In order to maintain our economic strength, the skills of citizens in these fields must not be permitted to decline further. Title II of the EESA is designed to improve the quality of teaching and instruction in these four subject areas.

Section 212 of Title II of the EESA authorizes the Secretary to make discretionary awards for projects of national significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages. The Congress has appropriated $9.9 million for this program in Fiscal Year 1985.

Section 212(b) of the EESA requires the Secretary to reserve seventy-five percent of the total amount appropriated for this program for (a) awards to State and local educational agencies, institutions of higher education, and nonprofit organizations for projects of national significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages, and (b) evaluation and research activities. Section 212(c) requires the Secretary to reserve the remaining twenty-five percent of the funds appropriated for this program for awards to institutions of higher education for the improvement and expansion of instruction in critical foreign languages.

Title II of the EESA also authorizes the Secretary to make financial assistance available to States to improve the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning, and to increase the access of all students to that instruction.

The regulations governing the State grant program authorized by Title II will be codified in 34 CFR Part 208. A Notice of Proposed Rulemaking (NPRM) for Part 208 was published in the **Federal Register** on November 20, 1984 (49 FR 45834). The regulations in this Part 755 apply only to the Secretary's Discretionary Program authorized by section 212 of the EESA.

Comments and Responses

A summary of the comments received on the NPRM and the Secretary's responses to those comments can be found in the Appendix to these final regulations.

Significant Differences Between the NPRM and These Final Regulations

On November 28, 1984, the Secretary published in the **Federal Register** (49 FR 46761) the NPRM for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages. During the comment period, nine letters and one informal response were received.

The provisions of these final regulations are substantially the same as those of the NPRM. However, after careful consideration of the public comments on the proposed regulations, the Secretary has made some changes.

The language in § 755.2(a) has been revised to extend eligibility to both public and private nonprofit organizations. This change resolves the many inconsistencies in the statute regarding the public or private status of nonprofit organizations and now provides for the involvement of both public and private museums, libraries, educational television stations, and other appropriate organizations.

The definition of "gifted and talented student" in § 755.4(c) has been revised to reflect that this definition applies solely to the programs authorized under Title II of the EESA. This change will avoid any confusion with other more inclusive definitions of gifted and talented students.

Section 755.4(c) of the regulations has been amended to include a definition of "historically underserved and underrepresented populations," as it is proposed to be defined in 34 CFR Part 208 implementing the State grant program.

The language in § 755.13(a)(1) has been revised to permit local educational agencies to establish or improve magnet school *programs* for gifted and talented students. Based on the comments received and the limited funds available for this program, it would be unlikely that LEAs could establish magnet schools for gifted and talented students. This change permits the establishment of a program within an existing school.

Summary of Major Provisions

(1) Types of Grants

Section 755.10 of the regulations authorizes the Secretary to award two types of grants under this program: (1) Nationally significant project grants, as described in § 755.11, and (2) critical foreign language grants, as described in § 755.12. State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations may apply for nationally significant project grants under § 755.2(a). Only institutions of higher education may apply for critical foreign language grants under § 755.2(b).

(2) Establishing Priorities

Under § 755.13(a), with respect to nationally significant project grants, the Secretary gives priority to (1) LEAs, or consortia thereof, proposing to establish or improve magnet school programs for gifted and talented students in the areas of mathematics, science, computer learning, or critical foreign languages, and (2) applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science. Section 755.13(a) implements the requirement of section 212(b)(1) of the EESA that the Secretary give "special consideration" to these types of projects. For the purposes of Title II of the EESA, magnet school programs for gifted and talented students means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. Assistance under this program may also include, but is not limited to, the provision of funds to those schools capable of attracting substantial numbers of students of different racial backgrounds.

In addition, under § 755.13(b), the Secretary may give priority to other types of projects listed in §§ 755.11 and 755.12 or announced in the **Federal Register**. Section 755.13(b) also permits the Secretary to limit a priority to particular critical areas (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination. Levels of education may include, for example, preschool, elementary, secondary, or postsecondary education. The Secretary may establish a separate competition for each priority selected. Pursuant to § 755.4, the Secretary has published a list of proposed critical foreign languages in the **Federal Register** on April 15, 1985 (50 FR 14743). The list will be published in final after consideration of public comments.

Sections 755.11 through 755.13 of the regulations incorporate the statutorily broad discretion of the Secretary to exercise leadership in education by focusing national attention on national needs within the scope of section 212 of the EESA. Under § 755.13(b), the Secretary may invite applicants to propose projects in any area of education within the purpose of section 212 of the EESA. The purpose of section 212 of the EESA is to fund projects designed to have nationwide impact in mathematics, science, computer learning, or critical foreign languages. Section 755.11(c) and 755.12(d) make clear that the Secretary does not provide general operating revenue to any applicant, including an LEA, an institution of higher education, or any other agency that needs or wishes additional resources to meet its own local needs.

(3) Participation of Children and Teachers from Private Schools

Section 755.20 implements the requirements in section 211 of the EESA for the equitable participation of private school children and teachers in the purposes and benefits of Title II of the EESA. As indicated in § 755.20(a), the requirement for the equitable participation of children applies to States (including SEAs and State agencies for higher education) and LEAs. To make the requirements for the equitable participation of teachers in section 211(b) of the EESA consistent with other statutory provisions, § 755.20 makes that requirement applicable to LEAs as well as to States (including SEAs and State agencies for higher education).

Section 755.20(b) requires an applicant that is a State (including an SEA or a State agency for higher education) or an LEA to provide an assurance in its application that it will comply with the requirements of section 211 of the EESA, governing the equitable participation of private school children and teachers, if such an applicant proposes to provide benefits under the EESA to public school children and teachers. Specific requirements are established in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.650. Applicants other than those described above are not subject to the equitable participation requirements in section 211 of the EESA or in EDGAR.

(4) Selection Criteria

Sections 755.31 and 755.32 of the regulations establish selection criteria for use by the Secretary in evaluating applications for nationally significant project grants and for critical foreign language grants, respectively. In addition to the points indicated in parentheses following each criterion in §§ 755.31 and 755.32, § 755.30 permits the Secretary to distribute a reserved 15 points among the applicable criteria for each grant competition. The Secretary announces, in a notice published in the **Federal Register**, how the reserved points will be distributed for each competition.

(5) Funding Considerations

Under § 755.33(a) and (b), the Secretary may fund applications other than the most highly rated applications if doing so would improve the geographical distribution of projects receiving funding in a particular competition or under this program. Section 755.33(a) and (b) implements the requirement of section 212 of the EESA that projects assisted under this program have national significance by permitting the Secretary to assist projects that are best located to serve as resources for solving nationwide educational problems. Under § 755.33(c), the Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program. Section 755.33(d) specifies that the Secretary does not fund a project that receives Federal funds for the same project activities under Title II of the EESA.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

In the NPRM, the Secretary requested comments on the proposed exclusion of this program from the requirements of Executive Order 12372, entitled "Intergovernmental Review of Federal Programs," as implemented by 34 CFR Part 79 (48 FR 29158; June 24, 1983).

Based on the response to the proposed rules and its own review, the Department has determined that this program is excluded from the requirements of Executive Order 12372, because its purpose is not to support services to particular State or local jurisdictions, nor is it directly relevant to the governmental responsibilities of a State or local government. Rather, this program assists nationally significant projects that are designed to have nationwide impact.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Education, Grants program-education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.168, Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages)

Dated: June 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 755 to read as follows:

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

Subpart A—General

Sec.
755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?
755.2 What parties are eligible for a grant under this program?
755.3 What regulations apply to this program?
755.4 What Definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

755.10 What types of grants does the Secretary award under this program?
755.11 What types of projects does the Secretary assist under a nationally significant project grant?
755.12 What types of projects does the Secretary assist under a critical foreign language grant?
755.13 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

755.20 What assurance must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

755.30 How does the Secretary evaluate an application?
755.31 What are the selection criteria for nationally significant project grants?
755.32 What are the selection criteria for critical foreign language grants?
755.33 What special considerations may the Secretary use in selecting an application for funding?
755.34 Are there restrictions on the use of funds for equipment under this program?

Authority: Sec. 212, Title II of the Education for Economic Security Act (the EESA), Pub. L. 98-377, 98 Stat. 1281 (20 U.S.C. 3972), unless otherwise noted.

Subpart A—General

§ 755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?

The Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages assists projects of national significance in—

(a) Mathematics and science instruction, computer learning, and instruction in critical foreign languages, designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to this instruction; and

(b) Critical foreign languages, designed to improve and expand instruction in those languages.

(20 U.S.C. 3972)

§ 755.2 What parties are eligible for a grant under this program?

(a) The Secretary may award nationally significant project grants under § 755.11 to State educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

(b) The Secretary may award critical foreign language grants under § 755.12 to institutions of higher education only.

(20 U.S.C. 3972)

§ 755.3 What regulations apply to this program?

(a) The following regulations apply to grants made under this program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 755.

(b) The regulations in this Part 755 do not apply to contracts awarded under this program.

(20 U.S.C. 3972)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in section 3 of the Education for Economic Security Act:

Elementary school
Institution of higher education
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Nonprofit
Private
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Critical foreign languages" means languages designated by the Secretary in a notice published in the **Federal Register** as critical to national security, economic, or scientific needs.

"EESA" means the Education for Economic Security Act, Public Law 98-377.

"Gifted and talented student", for the purpose of Title II of the EESA, means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics, science, foreign languages, or computer learning.

"Historically underserved and underrepresented populations" includes females, minorities, handicapped persons, persons of limited-English proficiency, and migrants.

"Magnet school programs for gifted and talented students," as used in § 755.13(a)(1), means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. For the purpose of Title II, a magnet school is a school or education center that offers a special curriculum, including but not limited to schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

(20 U.S.C. 3972)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 755.10 What type of grants does the Secretary award under this program?

The Secretary awards two types of grants under this program:

(a) Nationally significant project grants, as described in § 755.11.

(b) Critical foreign language grants, as described in § 755.12

(20 U.S.C. 3972)

§ 755.11 What types of projects does the Secretary assist under a nationally significant project grant?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction, computer learning, and instruction in critical foreign languages.

(b) Projects funded under this section may include, but are not limited to, those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics, science, computer learning, and critical foreign languages;

(2) Improve teacher qualifications and skills in the fields of mathematics, science, computer learning, and critical foreign languages; and

(3) Improve curricula in mathematics, science, computer learning, and critical foreign languages, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(20 U.S.C. 3972)

§ 755.12 What types of projects does the Secretary assist under a critical foreign language grant?

(a) The Secretary funds applications proposing projects that are designed to improve or expand instruction in critical foreign languages.

(b) Projects to improve instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Provide short- or long-term advanced training to foreign language instructors;

(2) Provide training in new teaching methods and proficiency evaluation techniques; and

(3) Improve teaching methods through curriculum development, including the use of new technologies.

(c) Projects to expand instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Add to the curriculum languages not currently offered;

(2) Add to the curriculum advanced language courses;

(3) Devise instructional approaches suited to diverse student populations and learning needs; and

(4) Use technology to increase access to instruction in critical foreign languages.

(d) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(20 U.S.C. 3972)

§ 755.13 How does the Secretary establish priorities for this program?

(a) With respect to nationally significant project grants, the Secretary gives priority to—

(1) Local educational agencies, or consortia thereof, proposing to establish or improve magnet school programs for gifted and talented students; and

(2) Applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in § 755.11 or § 755.12, or other types of projects as announced in the **Federal Register**. The Secretary may limit any priority to particular critical subjects (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination.

(c) The Secretary selects priorities by taking into consideration the unmet national needs to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages and the unmet national needs to improve or expand instruction in critical foreign languages.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to that priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(20 U.S.C. 3972)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurance must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 211 of the EESA, governing the equitable participation of private school children and teachers in the purposes and benefits of the EESA.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 211 of the EESA, it will provide for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note.—EDGAR establishes requirements for participation of private school children. See 34 CFR 75.650.

(20 U.S.C. 3971)

(Approved by the Office of Management and Budget under control number 1880-0511.)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in § 755.31 or § 755.32.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.31 or § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.31 or § 755.32 is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the applicable criteria listed in § 755.31 or § 755.32.

(20 U.S.C. 3972)

§ 755.31 What are the selection criteria for nationally significant project grants?

The Secretary uses the following criteria in evaluating each application for a nationally significant project grant under § 755.11:

(a) *Plan of operation.* (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of how the applicant will provide that opportunity.

(b) *Quality of key personnel.* (10 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.* (20 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project will contribute to the improvement of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project; and

(ii) The manner in which the objectives of the project further the purpose of improving the qualify of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American education, or current research findings on ways to improve the effectiveness of schools.

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The benefits to be gained by meeting the objectives of the project; and

(C) The potential benefit to others from successfully addressing the needs;

(iii) The extent to which the project involves creative or innovative techniques to improve the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages;

(iv) The extent to which the project builds upon and adds to current educational information and research; and

(v) The extent to which the project will provide a model or other information that could be used by others to solve educational problems.

(h) *Applicant's commitment and capacity.* (10 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

20 U.S.C. 3972

(Approved by the Office of Management and Budget under control number 1880-0511.)

§ 755.32 What are the selection criteria for critical foreign language grants?

The Secretary uses the following criteria in evaluating each application for a critical foreign language grant under § 755.12:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project.

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of how the applicant will provide that opportunity.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for informaton that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable, including, for example, foreign language proficiency examinations of individual students.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities, such as language laboratories, that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improvement of expansion of instruction in critical foreign languages.* (20 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement or expansion of instruction in one or more critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project;

(ii) The manner in which the objectives of the project further the purpose of improving or expanding instruction in critical foreign languages;

(iii) The extent to which the project involves techniques that are innovative;

(iv) The extent to which the project builds upon and adds to current educational information and research on instruction in critical foreign languages; and

(v) The extent to which the project will provided a model or other information that could be used by others to solve education problems.

(g) *Applicant's commitment and capacity.* (15 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(20 U.S.C. 3972)

(Approved by the Office of Management and Budget under control number 1880-0511.)

§ 755.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.31 or § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds for the same project activities under Title II of the EESA.

(20 U.S.C. 3972)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under Part 755 to purchase equipment.

(20 U.S.C. 3972)

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

During the 45-day public comment period, nine letters and one informal response were received. In general, the commenters sought clarification of specific provisions of the regulations.

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on November 28, 1984 (49 FR 46761), and the Secretary's responses to those comments, including any changes. The comments are arranged according to the order in which the provisions they address appear in the final regulations.

Subpart A—General

Section 755.2 What parties are eligible for a grant under this progam?

Comment. Two commenters objected to the language contained in § 755.2(a) of the proposed regulations. Proposed § 755.2(a) stated that the "Secretary may award nationally significant project grants under § 755.11 to State educational agencies, local educational agencies, institutions of higher. education, and private nonprofit organizations, including museums, libraries, educational television stations. . . ." Both commenters urged clarification of the term "private nonprofit organization". Under proposed § 755.2(a) public museums, libraries, and educational television stations would be excluded from participating in the program.

Response. A change has been made. Title II of the EESA is internally inconsistent regarding the public or

private status of organizations eligible to participate in the programs authorized under Title II. For example, section 206(b)(1) of Title II refers to "nonprofit private organizations." Section 206(e) refers to "nonprofit organizations." Section 207(c)(1) refers to "private nonprofit organizations," whereas section 208(c)(1)(E) refers to "public organizations." Section 212(b)(1) refers again to "private nonprofit organizations." The references in the statute to these organizations are numerous and inconsistent. The legislative history is equally inconsistent. See, e.g., S. Rep. No. 151, 98th Cong., 1st Sess. 6–8, 16 (1983); 130 Cong. Rec. S6638, S6649 (daily ed. June 6, 1984). There is no evidence in either the statute or the legislative history that the Congress sought to preclude either public or private museums, libraries, educational television stations, or other appropriate organizations from participating in the programs authorized under Title II of the EESA. Therefore, to promote competition and to recognize the valuable contributions of both public and private nonprofit organizations toward excellence in education, the Secretary has revised the regulations, both in this Part 755 implementing the Secretary's Discretionary Program and in Part 208 implementing the State Grant Program, to refer to "nonprofit organizations," thereby permitting the involvement of both public and private organizations.

Comment. One commenter recommended that the language in proposed § 755.2(b) incorporate the provision of section 212(c) of the statute that requires the Secretary to reserve twenty-five percent of the funds available under this program for grants to institutions of higher education to improve and expand instruction in critical foreign languages.

Response. No change has been made. As clarified in the preamble to the regulations, twenty-five (25) percent of the funds appropriated for the Secretary's Discretionary Program is reserved for institutions of higher education to improve and expand instruction in criterial foreign languages.

§ 755.3 What regulations apply to this program?

Comment. One commenter questioned why the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages is not subject to 34 CFR Part 79, the regulations implementing Executive Order 12372 (Intergovernmental Review of Federal Programs). The commenter suggested that, in some cases, projects funded under the Secretary's Discretionary Program may be of special interest to States.

Response. No change has been made. This program is excluded from coverage under 34 CFR Part 79 because its purpose is not to support services to particular State or local jurisdictions, nor is it directly relevant to the governmental responsibilities of a State or local government. Rather, this program assists nationally significant projects that are designed to have nationwide impact.

Nevertheless, the Secretary may choose to notify the State single points of contact with respect to competitions that may be of special interest to States.

§ 755.4 What definitions apply to this program?

Comment. One commenter asked if the Secretary has consulted with the other Federal agencies, as required by section 212(d) of the statute, in determining which languages are critical to national security, economic, and scientific needs, and when a list of those languages will be published.

Response. The Secretary has consulted with the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, and the Director of the National Science Foundation in determining which languages are critical to our national security, economic, and scientific needs. The list was published for public comment in a notice in the **Federal Register** on April 15, 1985, at 50 FR 14743.

Comment. One commenter recommended that the language in § 755.4(c) defining "gifted and talented student" be revised to clarify that this definition applies only to this particular program.

Response. A change has been made. In order to avoid any unnecessary confusion with other more inclusive definitions of gifted and talented students, the Secretary has revised the definition for "gifted and talented student" to make it clear that this definition applies only to Title II of the EESA.

Comment. One commenter questioned why the definition for "gifted and talented student" contained in § 755.4(c) was limited to certain subject areas instead of the broader definition used in other Federal education programs.

Response. No change has been made. Section 212(b)(1) of the EESA requires that the Secretary give special consideration to magnet schools for gifted and talented students. The purpose of Title II, as stated in section 201 of the EESA, is to improve the skills of teachers and instruction in mathematics, science, computer learning, and foreign languages, and to increase the access of all students to such instruction. The Secretary has determined that the definition for "gifted and talented student," as it appears in these regulations, is consistent with the purposes of Title II of the EESA. Of course, all gifted and talented children, like other children, will benefit from improved teaching and instruction.

Comment. One commenter noted that, unlike the NPRM implementing the State grant program authorized by Title II of the EESA (34 CFR Part 208), the proposed regulations for the Secretary's Discretionary Program do not contain a definition for "historically underserved and underrepresented populations." The commenter suggested adding a definition to avoid any confusion about which groups are included in those populations.

Response. A change has been made. The Secretary has included in these regulations a definition of "historically underserved and underrepresented populations" as that term is defined in proposed 34 CFR Part 208 implementing the State grant program.

Comment. One commenter recommended that § 755.4 contain a separate definition of "handicapped," and suggested that the regulations incorporate the definition of "handicapped" in Part B of the Education of the Handicapped Act (EHA).

Response. No change has been made. The regulations have been revised to include a definition of "historically underserved and underrepresented populations," including handicapped persons. The Secretary believes that the definition of "historically underserved and underrepresented populations," which has been added to § 755.4(c), is sufficient and should provide adequate guidance to prospective applicants under this program.

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 755.11 What types of projects does the Secretary assist under a nationally significant project grant?

Comment. One commenter suggested that the language in proposed § 755.11(b)(1) be revised to specify that priority will be given to projects involving collaborative efforts with institutions of higher education, local school districts, and private industry.

Reponse. No change has been made. Section 755.13(b) of the regulations

allows the Secretary to select as priority one or more of the types of projects listed in § 755.11, or other types of projects announced by the Secretary. This provides the Secretary with the flexibility to establish and limit priorities for selection of applications in a particular year, taking into account the unmet national needs to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages. If the Secretary chooses additional priorities for a particular year or grant competition, the Secretary publishes those proposed priorities in the **Federal Register** for public comments.

Comment. One commenter recommended that the language in proposed §§ 755.11 and 755.12 be changed to include a provision that teachers must be involved in the planning, development, implementation, and evaluation of the project.

Response. No change has been made. Teachers do play a very critical role in the learning process. While the Secretary recogizes this, it is inappropriate for the Secretary to require applicants to privide assurances for teacher invovement in all phases of a project. Moreover, the Secretary believes that the selection criteria contained in §§ 755.31 and 755.32 provide more than adequate assurance of teacher involvement, where appropriate.

Comment. One commenter asked why the language contained in proposed §§755.11(c) and 755.12(d), which indicates that the Secretary does not provide operating revenue to meet local needs, was used rather than the supplement, not supplant language contained in section 209(b)(6) of the statute.

Response. No change has been made. On it's face, section 209(b)(6) does not apply to funds awarded under section 212 of the EESA.

Section 755.13 How does the Secretary establish priorities for this program?

Comment. Two commenters recommended that the language in proposed § 755.13(a)(1) be changed by deleting the term "magnet schools" and substituting "schools proposing to establish or improve gifted and talented programs." The commenters contended that the term "magnet school" had the potential to restrict eligibility to special public city schools and elite private schools, and special schools for gifted and talented were out of the reach of many local edcational agencies.

Response. A change has been made. The statute requires the Secretary to give special consideration to LEAs or consortia of LEAs to establish or improve magnet schools for gifted and talented students. Given the level of funding available under this program, and to address the concerns raised by the commenters, § 755.13(a)(1) has been revised to read ". . . magnet school *programs* for gifted and talented students." Thus, for the purpose of Title II of the EESA, "magnet school programs for gifted and talented students" means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. Assistance under this program may also include, but is not limited to, the provision of funds to those schools capable of attracting substantial numbers of students of different racial backgrounds.

Comment. One commenter objected to the language in proposed § 755.13(b) regarding the Secretary's authority to announce additional priorities through a notice in the **Federal Register.** The commenter contended that this could be construed as circumventing the regulatory and public comment process.

Response. No change has been made. The language in § 755.13(b) and (c) provides the Secretary with flexibility to establish and limit priorities for selection of applications in a particular year according to unmet national needs in the areas of mathematics, science, computer learning, and critical foreign languages. Prior to establishing final priorities for a particular year, the Secretary publishes in the **Federal Register** proposed annual priorities for public comment if the proposed priorities are not listed in the regulations. The Secretary considers all public comments and recommendations before establishing final priorities. For example, the Secretary published for comment on January 22, 1985 (50 FR 2848), a notice of proposed funding priorities for nationally significant project grants for fiscal year 1985. This process complies with the procedures required under section 431 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232). Rather than circumventing the public comment process, this procedure actually increases the opportunity for the public to comment on priorities.

Subpart C—How Does One Apply for a Grant?

Section 755.20 What assurance must an applicant make?

Comment. One commenter questioned why the proposed regulations did not elaborate on the provisions of section 211 of the EESA, governing the equitable participation of children and teachers from private schools.

Response. No change has been made. The Secretary believes that the language in § 755.20 and in 34 CFR 75.650 provides adequate guidance on participation and that further elaboration is unnecessary.

Subpart D—How Does the Secretary Make a Grant?

Section 755.31 What are the selection criteria for nationally significant project grants?

Comment. One commenter questioned the statutory authority for the criterion listed in § 755.31(g), relating to national significance. The commenter further questioned why only the National Commission on Excellence in Education was mentioned by name to the exclusion of other education reports.

Response. No change has been made. Because section 212 of the EESA does not contain any selection criteria for the Secretary to consider in making awards, it is necessary for the Secretary to issue regulations establishing selection criteria to be used in making competitive awards under the program. Criteria may be tailored to the scope of the program. Since the purpose of section 212 of the EESA is to fund projects of national significance, the criterion in § 755.31(g) is consistent with meeting the purposes of the authorizing statute.

The Report of the National Commission on Excellence in Education was specifically mentioned in the proposed regulations because it was specifically mentioned in the legislative history (*Congressional Record,* June 6, 1984, S6636–6682). In addition, given the volume of reports on the quality of education that have been released, the Secretary felt it was sufficient to mention that other reports were considered, rather than citing each report.

Comment. One commenter suggested that more than fifteen (15) points be given to the criterion for national significance in § 755.31(g), since the purpose of the program is to support projects of national significance.

Response. No change has been made. The Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria. The Secretary awards up to 100 points,

including a reserved 15 points to be distributed among those criteria. For each competition the Secretary announces, through a notice published in the **Federal Register**, how those reserved points will be distributed. This provides the Secretary with maximum flexibility to determine how best to distribute those reserved points, taking into consideration the priorities the Secretary has chosen for a particular year or grant competition. Additional points may be given for national significance at that time.

Comment. One commenter recommended that the language in proposed §§ 755.31(a)(2)(v) and 755.32(a)(2)(v) be revised to require applicants to include a description of how appropriate instruction will be provided to the handicapped. The commenter contended that equal access and treatment are not sufficient to assure meaningful participation for the handicapped.

Response. No change has been made. The Secretary believes that the language used in §§ 755.31(a)(2)(v) and 755.32(a)(2)(v), which requires a description of how the applicant will provide equal access and treatment, is sufficient to safeguard the needs of all prospective participants who are members of traditionally underrepresented groups.

Section 755.32 What are the selection criteria for critical foreign language grants?

Comment. One commenter questioned why there are no criteria related to the national significance of projects for critical foreign language grants, and why there is relatively little emphasis on the project's capacity to be used as a model, since these are among the primary purposes of the Secretary's Discretionary Program.

Response. No change has been made. Section 212(c) of the EESA requires that twenty-five percent of the funds appropriated for this program be reserved for awards to institutions of higher education to improve or expand instruction in critical foreign languages. Languages that have been determined to be critical, by definition, meet a critical national need and are nationally significant. To have a criterion for national significance would be redundant.

As to the concern that little emphasis is placed on the project's capacity to serve as a model, this is addressed specifically by § 755.32(f)(2)(v) under which the Secretary looks for information such as the "extent to which the project will provide a model or other information that could be used by others to solve education problems."

Section 755.33 What special considerations may the Secretary use in selecting an application for funding?

Comment. One commenter questioned the authority of the Secretary to decline to fund a project that is eligible for funding under another Department of Education program.

Response. No change has been made. Because of the limited resources available under the Discretionary Program, the Secretary believes it is necessary to limit the use of those funds to activities of national interest that cannot be assisted under other grant competitions.

Section 755.34 Are there restrictions on the use of funds for equipment under this program?

Comment. Three commenters questioned the authority of the Secretary to restrict the amount of funds used under Part 755 to purchase equipment. Two of the commenters contended that any stated formula for equipment purchases would pose significant problems for potential applicants where a reasonable expenditure for equipment is necessary.

Response. No change has been made. The purpose of the Secretary's Discretionary Program is to fund programs of national significance in mathematics, science, computer learning, and critical foreign languages. Even under section 206 of the EESA for the State grant program, a local educational agency must first use its Title II funds for the expansion and improvement of teacher retraining and inservice training in the fields of mathematics and science. Only after an LEA has met its needs in those areas may the LEA use Title II funds for the purchase of computers and computer-related instructional equipment. Further, the LEA may not use more than thirty (30) percent of the Title II funds it receives for such equipment. Similarly, given the limited resources available under the Secretary's Discretionary Program, it is the opinion of the Secretary that the Congress did not intend a disproportionate share of those funds to be spent on equipment. The language in § 775.34 provides the Secretary with the flexibility to determine the amount of funds that may be spent on equipment.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket 407 88-4181]

Practice Before the Patent and Trademark Office

Correction

In FR Doc. 85-2803 beginning on page 5158 in the issue of Wednesday, February 6, 1985, make the following correction: On page 5176, in the third column, in § 10.23(c)(18), in the fifth line, "committee" should read "committed".

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VETERANS ADMINISTRATION

38 CFR Part 3

Effective Dates of Disability and Death Pension Awards

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration is amending its adjudication regulations concerning effective dates of disability and death pension awards. These amendments are necessary because of a recent change in the law governing effective dates of awards. The effect of these amendments will be to limit the effective dates of disability and death pension awards to the date of receipt of a claimant's application unless certain specific conditions are satisfied.

DATES: These amendments are effective October 1, 1984, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 50742-50744 of the **Federal Register** of December 31, 1984, the Veterans Administration published proposed amendments to 38 CFR 3.151, 3.152, and 3.400. Interested persons were given until January 30, 1985, to submit comments, suggestions or objections to the proposed amendments. Since no comments, suggestions or objections were received, the amendments have been adopted as proposed.

The Administrator has certified that these regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility

analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulations are non-major for the following reasons:

(1) They will not have an effective on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105)

Approved: May 23, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended as follows:

1. Section 3.151 is revised to read as follows:

§ 3.151 Claims for disability benefits.

(a) *General.* A specific claim in the form prescribed by the Administrator must be filed in order for benefits to be paid to any individual under the laws administered by the VA. (38 U.S.C. 3001(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

(b) *Retroactive disability pension claims.* Where disability pension entitlement is established based on a claim received by the VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by the VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in § 3.400(b) of this chapter.

(38 U.S.C 3010(b)(3))

2. Section 3.152 is revised to read as follows:

§ 3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Administrator (or jointly with the Secretary of Health and Human Services, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by the VA. (See § 3.400(c) concerning effective dates of awards.) (38 U.S.C. 3001(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits. (38 U.S.C. 3001(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits. (38 U.S.C. 3001(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 3010(e).) (See paragraph (c)(4) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from the date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

3. Section 3.400 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 3.400 General.

* * * * *

(b) * * *

(1) *Disability pension (§ 3.3(c)).* An award of disability pension may not be effective prior to the date entitlement arose.

(i) *Claims received prior to October 1, 1984.* Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) *Claims received on or after October 1, 1984.* (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board

judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of § 3.342(a) do not apply.

* * * * *

(c) *Death benefits*—(1) *Death in service (38 U.S.C. 3010(j), Pub. L. 87–825) (§§ 3.4(c), 3.5(b)).* First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received with 1 year after the date the initial report of actual death or finding of presumed death was made; however benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) *Service-connected death after separation from service (38 U.S.C. 3010(d), Pub. L. 87–825) (§§3.4(c), 3.5(b)).* First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) *Nonservice-connected death after separation from service.* (i) For awards based on claims received prior to October 1, 1984, first day of the month in which the veteran's death occurred if claim is received within one year after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received on or after October 1, 1984, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim (38 U.S.C. 3010(d)) (October 1, 1984)

(4) *Dependency and indemnity compensation*—(i) *Deaths prior to January 1, 1957 (§ 3.702).* Date of receipt of election.

(ii) *Child (38 U.S.C. 3010(e), Pub. L. 87–835).* First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(iii) *Deaths on or after May 1, 1957 (in-service waiver cases) (§§ 3.5(b)(3) and 3.702).* Date of receipt of election. (See § 3.114(a))

* * * * *

(38 U.S.C. 210(c))

[FR Doc. 85–14697 Filed 6–21–85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 83–1145, Phase I; FCC 85–293]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Policy Statement.

SUMMARY: In this Order, the Commission finds the routing of all undesignated interLATA traffic to one particular interexchange carrier ("default") to be unreasonable and prescribes an allocation plan that must be implemented by local exchange carriers in all central office equal access conversions that take place after May 31, 1985. This action will enhance the customer's ability to make an informed choice in the presubscription process and encourage interexchange company competition.

EFFECTIVE DATE: May 31, 1985.

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

FOR FURTHER INFORMATION CONTACT: Joanne M. Salvatore, Tariff Division, Common Carrier Bureau (202) 632–7265.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 61

Tariffs.

Memorandum Opinion and Order

In the matter of investigation of access and divestiture related tariffs, CC Docket No. 83–1145 Phase I, FCC 85–293.

Adopted: May 31, 1985.

Released: June 12, 1985.

By the Commission.

I. Background

1. Pursuant to the Modification of Final Judgement,[1] the Bell Operating Companies (BOCs) were ordered to provide equal access [2] where technically feasible to their customers by September 1986. Equal access allows end users to access facilities of a designated interexchange carrier (IXC) by dialing "1" only. The end user has the additional capability of using other IXCs by dialing a five-digit access code (10XXX). Presubscription is the process that enables end users to select a primary IXC prior to a central office conversion to equal access. The District Court held that under the MFJ, the BOCs were permitted "to route to AT&T the calls of any customer who, by the time equal access is available, has failed to make a selection of an IXC either by predesignation or by dialing an access code." [3] The Court also found that the MFJ did not preclude a BOC "from employing either the allocation or the blocking option should it choose to do so." [4]

2. In the Commission's *ECA Tariff Order,*[5] we recognized that AT&T would enjoy a definite competitive advantage as the "default" carrier. We stated, however, that the MFJ requirements of BOC presubscription customer information and mandatory new subscriber presubscription "would mitigate and eventually eliminate AT&T's advantage without the inconvenience or expense of blocking or distributing calls by formula." [6] In order to give consumers a fair opportunity to evaluate competing carrier services during the equal access transition, we ordered that a subscriber be allowed to select an IXC without charge during the six-month period following the equal access conversion date.

3. As a result of the above decisions, most BOC's used the "default" procedure. The BOCs provided customers with presubscription information that told them of the opportunity to designate a primary IXC of their choice. The customers were also informed that they would have to make individual arrangements for service with the IXC. If no such arrangements were made, the customer was "defaulted" to AT&T. Northwestern Bell (NWB), however, decided not to default non-presubscribed customers to AT&T and

[1] *United States* v. *American Tel. & Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (MFJ).

[2] Equal access is defined as that which is "equal in type, quality, and price to that provided to AT&T and its affiliates." *Id.* at 227. Equal access has also been referred to as Feature Group D access, easy dialing and 1+ Service.

[3] *United States* v. *Western Electric*, 578 F. Supp. 668, 676 (D.D.C. 1983). This process has been referred to as "default" to the American Telephone and Telegraph Company (AT&T). The lawfulness of the "default" scheme under the Communications Act was not before the Court.

[4] *Id.* at 676 n.39. Allocation is a method by which non-presubscribed customers are assigned to IXCs in the same proportion as the presubscribed customers. For example, if Carrier A obtained 40 percent of the presubscribed customers, Carrier B obtained 30 percent and Carrier C obtained 30 percent, they would receive those percentages of non-presubscribed customers. Call blocking is another alternative to default. Using this method, a caller, who has neither presubscribed nor dialed a five-digit access code and who attempts to make a 1+ long distance call, is referred to a recorded message that instructs him how to presubscribe or to use the five-digit access codes.

[5] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, 97 FCC 2d 1082 (1984) (*ECA Tariff Order*).

[6] *Id.* at 13–8.

instead, devised a *pro rata* allocation plan.[7]

4. During this proceeding, several parties petitioned the Commission to reconsider the "default" procedure because they considered the routing of all undesignated traffic to AT&T to be anticompetitive. In our *Order on Reconsideration,*[8] we found that the record was insufficient to determine whether it is reasonable to route all undesignated traffic to one particular IXC. We requested comment on this issue and on reasonable and workable alternative methods to "default" and how these methods could be implemented without undue inconvenience to end users.[9]

5. The majority of commenters[10] responded in favor of replacing the existing "default" procedure with a *pro rata* allocation plan. After careful consideration of the record and for the reasons discussed below, we are prescribing a uniform *pro rata* allocation plan that all local exchange carriers, as defined herein, must put into effect by the date established in this Order.[11]

II. Comments

6. All commenting parties agreed that the customer's ability to make an informed choice of an IXC was essential to a successful equal access presubscription process. The commenters unanimously called for improvement in customer information and education,[12] and most parties agreed that a non-exclusive balloting system was the best means of ensuring affirmative customer choice.[13]

7. Commenters[14] in favor of a *pro rata* allocation plan such as the one currently used by NWB argued that default was preserving AT&T's monopoly power over the marketplace and that an allocation plan was not only workable but was stimulating at least a 20 percent increase in customer participation in the presubscription process.[15] Parties attributed the low presubscription levels associated with default to customer inertia. These parties argued that the default procedure gives customers no incentive to make an affirmative response to the presubscription process and that AT&T is receiving an unwarranted windfall. Many parties found fault with the practice of informing customers that failing to respond to the presubscription notices would result in uninterrupted easy dialing service with their current long distance carrier.

8. In its comments, which are representative of those parties in favor of the prescription of an allocation method, DOJ gave four reasons why the Commission should adopt an allocation plan such as NWB's. First, NWB's experience has proved that a viable and reasonable alternative to default exists. Second, the MFJ does not prohibit the Commission from mandating an alternative to default as long as the implementation of equal access is not delayed. Third, a ballot and allocation plan such as NWB's is more consistent with the requirements of the Communications Act that a common carrier is forbidden "to make or give any undue or unreasonable preference or advantage to any particular person."[16] Fourth, DOJ has concluded from its review of statistics submitted by the RHCs that allocation is, in fact, cheaper to implement than the current default procedures.[17]

9. Although most commenting parties supported implementation of the NWB Plan and urged its adoption because it has been successfully tested, several parties[18] suggested modifications to this plan. Most of the proposed modifications related to the type of customers the IXCs would be assigned through the allocation process. These proposals included: (1) allocating only business customers, (2) allowing IXCs to check the creditworthiness of their assigned customers before acceptance of them, (3) allowing IXCs to reject certain assigned customers for any reason, (4) allocating only customers that had a specified level of monthly toll bills, (5) allowing IXCs to limit the number of allocated customers they will accept, and (6) requiring the local exchange company (LEC) to provide specific end user inter-LATA traffic data to the IXC without additional charge.[19]

10. MCI urged the Commission to require the allocation procedure to take place after the conversion date instead of after the return of initial ballots as provided in NWB's Plan, in order to provide customers 90 days to determine their choice of carrier and to return their initial ballots. MCI stated that the allocation percentages would be more representative of customer choice if this extended period of time for the return of the initial ballot were given. For similar reasons, SBS, RCI and USTS also requested that customers be notified of the availability of equal access 120 days prior to the equal access conversion date rather than the 90 day period used by NWB. Contel suggested that a three-month rather than six-month period for non-presubscribed customers to select a primary IXC free of charge would

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[7] This plan, accompanied by a letter from J.E. Blair, was filed with the Commission for informational purposes on February 28, 1985 (NWB Plan). The NWB Plan consists of a two-ballot procedure. A customer is notified of equal access conversion 90 days prior to its occurrence and given a ballot on which to indicate a preference for a primary IXC. Customers who fail to return their ballots to NWB are sent a second ballot giving them another opportunity to choose an IXC and indicating which IXC they will be assigned to if no selection is made. Customers not returning their second ballot are assigned to the designated carriers and allowed six months after the conversion date to select different carriers without charge. The allocation method employed by NWB is random with respect to customers. The percentage of non-presubscribed customers assigned to any carrier is based on actual presubscription figures.

[8] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 85-69, 50 FR 9462 (Mar. 8, 1985) *(Order on Reconsideration).*

[9] *Id.* at para. 23.

[10] See Appendix A for a list of the 37 initial commenters and the 24 parties that replied. In addition to these comments, the Commission also received the following informal responses: 74 letters from citizens, a "default" auction proposal from a University of California—Los Angeles professor and letters from Congressman Edward Feighan of Ohio, Cincinnati Telecommunication for the Deaf, Inc., the City of New York Department of Consumer Affairs, and Sweeny-Old Ocean Telephone Company.

[11] See Appendix B for the actual text of the prescribed allocation plan. Paragraph 1 of this plan defines which carriers are responsible for implementation of this plan. *See also* para. 32, *infra.*

[12] Center/Checkbook stated that it was very difficult for customers to obtain the information necessary to make an informed choice of a primary IXC. It recommended that the BOCs be required to create an inexpensive way for customers to acquire objective comparative information on features and rates of long distance carriers.

[13] A non-exclusive balloting system allows a customer to designate his primary IXC either by ballot or by directly contacting the IXC for service. The BOCs and AT&T commented in favor of a non-exclusive balloting system. Each of the BOCs stated in its individual comments that it was either currently using a ballot system or in the process of converting to one.

[14] The commenters supporting the use of an allocation plan were: Allnet, Center/Checkbook, Comptel, Contel, DOJ, Empire, FPSC, GTE Sprint, Lexitel, MPSC, Microtel, MCI, MTN, NWB and PNB, NYNEX, RCI, SBS, Southland, SWBT TSI, Teltec/Satelco, TRAC, US Telecom, USTS and Western Union.

[15] DOJ is responsible for enforcing the MFJ and has exercised this responsibilty by requiring the BOCs to file compliance plans with respect to equal access conversions. On February 8, 1985, it asked the Regional Holding Companies (RHCs) to provide equal access conversion data. *See* DOJ Comments at 8. After reviewing the statistics received, DOJ stated in its comments summary that 65-70 percent of NWB's customers have affirmatively chosen a primary IXC while less than 50 percent of the customers of the other BOCs have done so.

[16] 47 U.S.C. 202(a). DOJ stated that default is preferential treatment of AT&T by the BOCs and that the BOCs cannot demonstrate that this discrimination is just and reasonable.

[17] This conclusion is based on the fact that NWB uses a computer tape to update the necessary systems rather than the more expensive service order process used by the other BOCs in implementing default.

[18] These parties were: Allnet, Center/Checkbook, Contel, Lexitel, MPSC, MCI, RCI, SBS, Southland, Teltec/Satelco, US Telecom, and USTS.

[19] NYNEX urged the Commission to reject the commenters' proposed modifications to the NWB Plan because they are not in the public interest.

reduce the industry's administrative burden. The City of New York Department of Consumer Affairs advocated that ballots contain a choice for no primary interexchange carrier which would indicate that the customer is opting to make all long distance calls by using a 10XXX access code. MCI also argued in favor of an allocation plan for public phones.

11. RCI argued that "equal" allocation of default traffic was preferable to an NWB-type allocation based on relative percentage of presubscribed customers. Allnet, GTE Sprint, Microtel, MCI and SWBT argued in favor of "retroactive" allocation where all non-presubscribed customers in equal access conversions prior to an allocation plan effective date should be recontacted and subject to a ballot and allocation process. Allnet proposed an alternative to "retroactive" allocation which would reduce all future allocations to AT&T by the percentage of end offices that had already converted prior to the implementation of an allocation plan.

12. Parties in favor of an allocation plan disagreed as to how the Commission should implement such a plan. Contel and Pacific stated that the Commission should adopt general guidelines requiring allocation rather than rigidly applied rules. NYNEX, BellSouth and GTE Sprint argued that because there were several forms of allocation plans being proposed by various LECs, the Commission should specifically define the allocation mechanisms to be used. MTN, NWB and PNB replied that the NWB Plan should not be adopted nationally because it was formulated to respond to the marketplace and that carriers need continued flexibility in order to adapt an allocation plan to changing market conditions. California, Pacific, SNET and USTA stated that the default issue should be decided at the state level with input from the LECs.

13. Most commenters that argued against allocation argued that it would cause undue customer inconvenience and confusion, and considered allocation an unnecessarily coercive and drastic measure.[20] Parties opposed to an allocation plan cited default as the most reasonable alternative because of its cost efficiency. AT&T argued that default is neither an unreasonable practice nor discriminatory. AT&T's cited the MFJ as the basis for this conclusion and stated: "As a matter of law and of fact, the customers involved here are already AT&T customers, and were intended under the Decree to remain so until they select another company as their primary interexchange carrier."[21]

14. AT&T further argued that the current default system was working well and that it should remain in place. Based on independent survey data,[22] AT&T provided the following conclusions. First, customers overwhelmingly understand the presubscription process and are aware of the selection they are being asked to make. Second, customers understand that if they do not make a selection and notify another interexchange carrier, they will continue to have service provided by AT&T. Finally, customers in both allocation and non-allocation areas overwhelmingly prefer that undesignated traffic be routed to AT&T rather than allocated among the IXCs.

15. NARUC argued against allocation, believing that it disadvantaged new entrants in the interexchange market that are in the process of developing a customer base. DOD was opposed to the implementation of the allocation process because of its interpretation that the Competition in Contracting Act requires that it not permit contracts with a new carrier on an allocated basis. Rochester argued against the prescription of allocation for small rural independent telephone companies because it would significantly increase costs and administrative responsibilities.

16. Alternatives to default and the allocation process were also suggested by commenting parties. The auctioning of the non-presubscribed customers to the highest IXC bidder together with the IXCs ability to resell these customers in a secondary market was suggested by Lexitel, MPSC and a U.C.L.A. professor. These parties believed that auctioning was the best alternative because it encouraged competition among IXCs and allowed the marketplace to determine which IXC was most capable of serving these customers. Parties opposing the auction method stated that this procedure would result in unnecessary customer confusion and high costs. FPSC stated that the cost of implementing an auction would be likely to exceed any revenue generated by the winning bid.

17. Lexitel, SBS, TSI, TRAC and Center/Checkbook argued in favor of call blocking as a viable alternative to default. They stated that call blocking is the most equitable way of administering the presubscription process because this method prohibits customers who have not preselected easy dialing carriers from making any 1+ long distance calls. Customers attempting to make such calls receive a recording that instructs them to dial a five-digit access code of the IXC they wish to use. The recording also suggests that the customer call the LEC Business Office to arrange for a primary IXC. Several parties opposed this method because it is too costly to implement and could cause extreme confusion and inconvenience to the customers. USTA argued that call blocking would indiscriminately block emergency calls or calls from disabled customers. Parties alleged also that this method would put a substantial burden on the LECs since they would most likely be contacted with customer complaints.[23]

III. Discussion

18. In our *Order on Reconsideration*, we stated that "the practice of routing all default traffic to AT&T can only be justified by a strong showing of necessity" and that "if, in fact, *pro rata* plans for distributing default traffic can be implemented without undue customer inconvenience, then the basis for the *ECA Tariff Order's* determination in this

[20] The majority of citizen letters received by the Commission argued against a LEC making a primary long distance carrier choice for them.

[21] AT&T Comments at 4.

[22] See Presubscription Market Study prepared by Marketing Viewpoints, Inc., a national market research organization, which AT&T filed with its comments.

[23] GTE Sprint filed a request for enlargement of issues in response to our request for comments on the default issue. GTE Sprint and other IXCs commented that the implementation of equal access and the transition of long distance service from a protected monopoly to a fully competitive marketplace required modification of Commission policies. The other interexchange carriers were Allnet, Comptel, Lexitel MCI, SBS, Teltec/Satelco, US Telecom, USTS, and Western Union. MPSC also addressed these other equal access issues and requested the Commission to ascertain the IXCs' ability to absorb allocated traffic and to compete without the 55 percent access charge discount.

Since we specifically focused our request for comments on the default issue, the extraneous issues raised by GTE Sprint will not be considered here. Furthermore, these issues do not appear to be within the scope of this proceeding. CC Docket No. 83-1145 is an investigation of the lawfulness of the filed access tariffs and their compliance with our access charge rules. Proposals to change or reconsider those rules should be submitted in a new rulemaking petition. We, therefore, deny GTE Sprint's request for enlargement of issues.

In addition, the following issues raised by KPSC, Rochester and SNET will not be considered in this Order. KPSC advocated that the Commission consider the proper level of service charge for changing a predesignated carrier. We believe that this issue was sufficiently dealt with in the *ECA Tariff Order*. The Phase III Order of the *MTS and WATS Market Structure Inquiry*, CC Docket No. 78-72 has addressed Rochester's concerns about implementation of equal access by the Independent Telephone Companies. SNET requested that the default decision recognize and resolve certain equal access and network reconfiguration (EANR) cost issues for Independents. These issues are being considered in the EANR Investigation, CC Docket No. 85-93, and by the Federal-State Joint Board in CC Docket No. 80-286.

matter is seriously undermined."[24] After reviewing the comments and the results of the NWB Plan implementation, we find that routing of all default traffic to AT&T cannot be justified by a strong showing of necessity. We believe our prior concerns that an allocation plan would cause undue customer burden and confusion have been dispelled by NWB's experience with its allocation plan. Customer participation under the NWB Plan is significantly greater than under the other BOC defau lt plans. There have been no complaints to the NWB area Public Service Commissions or to the company itself that the process is burdensome.[25] For the reasons discussed below, we find the current default procedure to be unreasonable. We are prescribing an allocation plan that is effective May 31, 1985.[26]

19. Although the District Court permitted the routing of undesignated long distance traffic to one IXC, it clearly refrained from making this procedure mandatory.[27] In addition, the Court did not find any basis in the decree to preclude any LEC "from employing either the allocation or blocking option should it choose to do so."[28] The Court's main reservations about the prescription of an allocation plan were whether such a plan could be implemented fairly and without undue customer inconvenience and confusion.

20. With the experience gained from implementation of the NWB plan, we believe that the Court's concerns have not been realized. NWB has encouraged competition in its area and has provided customers with an opportunity to make an affirmative and informed choice of a primary IXC. In contrast, the other BOCs that have implemented the default procedure by sending only a notice of equal access conversion have provided their customers with no incentive to take advantage of a competitive market. Customers have been told that they do not need to take any action to retain easy dialing. Default, in fact, has allowed the BOCs to give AT&T a distinct and artificial advantage that is unwarranted. By allowing customers to default to one IXC, the BOCs are appearing to endorse one IXC as the best choice.[29] In addition, default gives AT&T a powerful incentive to dissuade customers from affirmatively exercising their right to select a primary IXC.

21. NWB's method of conveying information, providing ballots and notifying customers of allocation in the event of no IXC selection, encouraged more than double the percentage of customers (60 to 70 percent versus 30 percent) to make an affirmative choice of an IXC compared with the rest of the BOCs. This increased customer participation, together with the lack of customer complaints, demonstrates that an allocation plan can promote the goals of the MFJ and competition without any of the drawbacks cited by the Court. DOJ which supported the Court's conclusion at the time, is now advocating that the Commission require all BOCs to employ a ballot and allocation process.[30] In its comments, DOJ stated:

> In our opinion, a ballot/allocation procedure is more consistent with protecting the competitive process than default, which automatically assigns customers to only one competitor. By increasing the incentives of all ICs to provide helpful information to consumers, thereby facilitating the ability of customers to make rational, informed choices among the ICs, a ballot/allocation system promotes efficient functioning of the market.[31]

22. We also find under sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. 201(b), 202(a),[32] that "default" is an unreasonable and discriminatory practice. The BOCs through their tariffs automatically presubscribe a customer to AT&T and only change that presubscription to another carrier upon request of the customer. As a result of this "default" procedure, AT&T's customers may acquire its services by doing nothing. The other IXCs must, however, aggressively advertise in order to get their potential customers to take an affirmative action and select an IXC. This practice clearly accords AT&T preferential treatment and gives it an advantage over its competitors. The marketing advantage that AT&T enjoys is not predicated on any quality or pricing difference but rather on its historical monopoly position. "Default" is, therefore, unreasonable and contrary to the public interest because it favors one carrier over others without a justified showing of necessity and denies the benefits of comptetition.

23. Since the BOCs charge all IXCs the same amount for Feature Group D access, this "default" practice is also discriminatory. Through this procedure, only AT&T obtains the benefit of receiving all undesignated traffic. The amount of this traffic is not insignificant. We have noted that as many as 70 percent of a central office's customers may be undesignated at the time of cutover. See para. 21, *supra*. Under Section 202(a), 47 U.S.C. 202(a), this discrimination is only permissible if the BOCs can demonstrate that it is just and reasonable. The BOCs have argued that "default" should remain because other alternatives presents undue inconvenience and confusion to the customer and are more costly. The implementation of the NWB Plan has provided sufficient evidence that a viable alternative to default exists. NWB's experience considerably weakens any arguments of undue customer inconvenience or confusion. As discussed in para. 24, *infra*, the BOCs are also not able to justify "default" on the basis of cost efficiency. The BOCs, therefore, have not met the burden of justifying why discrimination in favor of AT&T through the "default" process is reasonable and should be allowed to continue. We conclude that "default" of undesignated traffic to AT&T is unreasonable and under section 201(a) of the Communications Act, 47 U.S.C. 201(a), the Commission is exercising its authority to prescribe presubscription procedures that will better serve the public interest.[33]

[24] Order on Reconsideration at para. 22.

[25] See Letter from J.E. Blair at 2, n.7., *supra*. In addition, none of the citizen letters against allocation received by the Commission were from NWB cutomers. See n.20, *supra*. Most of the citizens were concerned about their choice of long distance carrier being taken from them. The NWB Plan and the plan we are prescribing today provide several opportunities for customers to choose a carrier. Customers can avoid the allocation process by affirmatively selecting a primary IXC.

[26] The allocation plan requirements and the designation of afffected carriers are described in this Order at paras. 31–37, *infra*. The complete plan is contained in Appendix B.

[27] See n.3, *supra*.

[28] United States v. Western Electric, 518 F. Supp. at 676 n.39. The Court also cited the Department of Justice Response which stated: "The Department of Justice has concluded that nothing in the decree prohibits an Operating Company from requiring predesignation or impairs the appropriate regulatory body from imposing such a requirement (Response of United States at 2)."

[29] We cannot agree with NARUC's argument that new competitors would be disadvantaged by allocation. On the contrary, new competitors by appearing on the ballot and participating in allocation, have a better chance to persuade customers to try their service than they would under the default procedure.

[30] DOJ's only proviso to this recommendation was that the implementation of an allocation process must not have an adverse impact on the BOC's ability to meet their obligations under the MFJ.

[31] DOJ Comments at 20–21.

[32] Section 201(b), 47 U.S.C. 201(b), provides that "any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." Section 202(a), 47 U.S.C. 202(a), states that "it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person."

[33] For the same reasons, we find that "default" to a non-AT&T IXC is equally unreasonable. In an

Continued

24. One of the main contentions of the commenting parties against allocation is that this plan is not cost efficient and is much more expensive to implement than default.[34] This argument has been disproved also by NWB's experience. NWB has estimated the cost of its ballot and allocation procedure, including the mailings, tabulation of ballots and orders, allocation of non-presubscribed lines and switching machine updates, to be $.75 a line. This process avoids the need for service orders which are priced substantially higher (approximately $5–6 per order). This service order cost is in addition to the cost of mailing, printing and preparing the customer notifications. We agree with DOJ, therefore, that the costs of allocation are not prohibitive and, in fact, make the allocation process a more viable alternative.[35]

25. We agree with the commenters that requested detailed guidelines for the allocation process. Because of the short time in which the majority of the remaining equal access conversions are to take place and because several carriers have proposed different allocation plans and modifications to the existing NWB Plan, we are requiring all carriers to follow our specific guidelines so that allocation will be implemented uniformly on a fair, reasonable and timely basis across the Nation. The modifications suggested by the commenters are untested and in many cases circumvent important aspects of the plan.[36] Limiting the IXC acceptance of allocated customers would allow some carriers to choose only attractive customers while other carriers would be allotted a greater portion of less attractive customers. In addition, IXCs who have agreed to participate in the allocation process have an obligation as common carriers to serve all customers allocated to them. Removing some or all of the eligibility criteria for IXCs would also be detrimental to customers because substantially equivalent service could not be assured. For these reasons and in order to ensure timely implementation of this Plan, we are not incorporating (with one exception discussed below) the proposed modifications to NWB Plan.[37]

26. The modification that we are adopting to the allocation plan pertains to the time period allowed for customer selection on the initial ballot. Several carriers requested that 30 days be added to the conversion schedule and MCI requested that allocation take place after the conversion date which would allow over 60 days for customer review of the initial ballot. See para. 10, *supra*. We will permit flexibility in this area of customer review of the initial ballot as long as it does not interfere with or delay the equal access conversion schedule. These time periods may be extended according to the following parameters. The LECs may send a second ballot with the allocated IXC designation to their customers as early as 40 days prior to the conversion date but no later than 90 days after that date.

27. Alternatives to allocation such as call blocking and auctions may not be substituted for the allocation process. We believe that call blocking, while theoretically the most equitable solution for treatment of non-presubscribed customers, is too costly, represents an administrative burden to the carriers, would require a lengthy implementation period and would cause the most confusion and inconvenience to customers.[38] For the same reasons, the planning and implementation of an auction of default customers is not an acceptable alternative to the prescribed allocation plan.

28. The argument that non-presubscribed customers should be allocated to all IXCs equally is without merit. There is no rationale for allowing IXCs a larger portion of customers than what they acquired through their own marketing efforts. To avoid customer confusion, unnecessary administrative burdens and expense, retroactive allocation will not be ordered for conversions prior to the effective date of this Order. In the *ECA Tariff Order*, we allowed the BOCs to route all undesignated traffic to one particular IXC. We are, therefore, aware that customers participating in euqal access conversions prior to May 31, 1985 were given AT&T as their IXC at the time of those conversions pursuant to the Court's ruling.[39] Equal access conversions taking place after May 31, 1985 will differ because customers will now have the capability of making an informed choice and have no IXC until they either select one or are allocated to one. We have rejected the notion that passive customers "belong" to a particular IXC on the date of equal access conversion. Those customers already assigned under plans which we have permitted to be effective do, however, have an "equal access relationship" with an IXC. In light of our previous decision, we believe that ordering retroactive allocation would be unfair and disruptive to those customers that now have an IXC because of "default". One-time balloting of customers previously defaulted to AT&T will be required, however, in order to ensure that these customers have a meaningful opportunity to make a selection among qualifying IXCs under a balloting procedure. We believe this balloting opportunity is essential both for reasoned consumer choice and for equity purposes. See para. 34, *infra*.

29. In order to assure uniform implementation of and compliance with the allocation plan, we are requiring that interstate access tariffs be revised to reflect the incorporation of this plan into the presubscription process. LECs must expand the current presubscription material located in their access tariffs to include the requirements of the allocation plan and its effects on the presubscription charges.[40] These revisions do not need to be in great detail. An outline of the information required is contained in the Ordering clause in para. 40, *infra*. In addition, the LECs must reference this Order and specifically Appendix B in the presubscription section of their tariff. The tariff must also state that this Order with all Appendices will be available for inspection in the Public Reference Room of the Tariff Division at the main building of the Commission and that it can also be obtained from the Commission's commercial contractor.

30. Finally, we agree with all commenting parties that improvement of customer education and information on the equal access presubscription process is of paramount importance. Each LEC and IXC should strive to develop clear and detailed information that promotes

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informal letter to the Commission, Sweeny-Old Ocean Telephone Company proposed "default" to a non-dominant IXC that would agree to provide a centrally located tandem switch for the implementation of equal access service for small independent telephone companies. This proposal will not be adopted.

[34] These parties did not provide data to substantiate their allegations that default was less costly than allocation.

[35] See DOJ Comments at 13–14.

[36] See paras. 9–10, *supra*, for a description of proposed modifications.

[37] The proposed modifications to the allocation plan that we are not adopting include Contel's three-month free charge period, the City of New York Department of Consumer Affairs' proposal for a "no primary IXC" ballot selection and MCI's proposal for allocation of public phones. We found that three months is not adequate time for customer evaluation of competing long distance services in the *ECA Tariff Order*, see n.5, *supra*. The "no primary IXC" option is similar to a call blocking feature which we find to be too burdensome. See para. 27, *infra*. Public phone allocation may be determined on a local basis. See Appendix B, section 24 of the allocation plan.

[38] This decision does not affect the use of call blocking for new customers.

[39] See n. 3, *supra*.

[40] For most LECs, this information is contained in Section 13 of their tariffs.

increased customer participation in the selection of primary IXC.[41] For example, NWB is using question and answer brochures and providing an 800 number for customer questions in addition to its regular presubscription process information.[42] In adddition, we are requiring in the second ballot mailing that the LECs include a detailed explanation of how allocation percentages and random customer assignments will be determined. By maximizing the customer's ability to make an informed choice, the regulatory intrusion of an allocation plan is decreased proportionately.

IV. Allocation Plan Requirements

31. The Commission has created an allocation plan that is modeled after the NWB Plan.[43] We have modified this plan to allow some implementation flexibility for the participating carriers.[44] For example, LECs may determine how many ballots are to be sent to their customers, whether the initial ballot will be sent out earlier than 90 days prior to conversion and whether allocation will take place prior to or after the equal access conversion date. We do require, however, that all carriers adhere to the fundamental plan requirements without deviation. Any carrier that finds itself unable to comply with one or more provisions of this plan or believes the goals of this Order can be served equally well by a modified approach must file a petition for waiver with the Commission.

32. Carriers that must implement this allocation plan are the BOCs subject to the MFJ,[45] GTE Corporation (GTE) pursuant to its Consent Decree[46] Independent Telephone Companies pursuant to the Commission's *Phase III Order*[47] and any local exchange company that provides equal access on a voluntary basis. These carriers are required to inform the IXCs of all local procedures and schedules.

33. The implementation of this Plan should take place as soon as possible in order to promote affirmative customer choice for the remaining period of the equal access conversions. Carriers are required to implement fully the allocation plan on a retroactive basis for all conversions that take place on or after the effective date of this Order, May 31, 1985. Because a large number of equal access conversions will take place between June and December of 1985, we believe it is important to implement the allocation plan as soon as possible. We are aware that some LECs will not be able to implement this plan immediately. We do not believe, however, that the allocation of nonpresubscribed customers after May 31, 1985 will cause any disruption to customers because they will be aware of the change in equal access conversion procedure and relatively few customers will be affected by this provision. To minimize any disruption to these customers, the affected LECs should inform these customers of their pending allocation and implement the allocation plan as quickly as possible so the fewest number of customers possible will be affected. LECs are permitted to continue to route calls of nonpresubscribed customers to AT&T during the transition period that occurs when an equal access conversion takes place after May 31, 1985 but prior to the implementation of the LEC's allocation plan.

34. For equal access conversions that have taken place prior to May 31, 1985, the carriers are responsible for sending a ballot to all non-presubscribed customers. The LEC should determine which customers have not presubscribed a short time before this balloting procedure is to take place. Customers who selected an IXC after their equal access conversion date but prior to the specified ballot date should not receive a ballot. This ballot will allow these customers an opportunity to make an affirmative selection of a primary IXC. If these customers do not return this ballot, the LEC is not required to send them a second ballot, and they may remain with their current long distance carrier. LECs should begin this retroactive balloting procedure within 90 days of the effective date of this Order and complete this process for all affected central offices no later than June 1, 1986.

35. The allocation plan consists of a two-ballot procedure whereby the customer is given two opportunities to select a carrier before being assigned to an IXC by the LEC.[48] The IXC must affirmatively notify the LEC of its intention to participate in the allocation process and the IXC must meet certain criteria to be eligible for participation. By requiring that these criteria be met by the IXCs, we are by no means returning to more stringent regulation of the IXCs designated as "forborne" under the Competitive Carrier Rulemaking, CC Docket No. 79-252. These eligibility criteria protect the non-presubscribed customers by ensuring them service that is substantially equivalent to their existing service. IXCs are voluntarily submitting to these eligibility requirements when they agree to participate in the allocation process.

36. The LEC must notify customers by an initial ballot and letter that equal access will be available to them approximately 90 days prior to the conversion date. The customer is instructed that he has 30 days to return the ballot with his primary IXC designated. The customer may also make direct service arrangements with the IXC. The IXC provides a list of customers that have directly contacted it to the LEC by the initial ballot deadline. The LEC processes the customers that have designated a primary IXC and determines which customers have not exercised their choice of IXC.[49] If a discrepancy occurs between a customer ballot and an IXC customer list, the ballot shall take precedence unless direct customer contact initiated by the LEC resolves this conflict.

37. Allocation takes place by determining the results of the initial balloting process and assigning non-presubscribed customers randomly to the IXCs in the same proportion as the presubscribed customers. We have granted the LECs flexibility regarding

[41] The "700" service issue asserted by Empire is not totally resolved by the institution of a mandatory allocation process. See Empire Comments at 2-5 for a discussion of this problem. Allocated customers will receive their respective IXC recordings which may indicate that they chose that IXC. AT&T will no longer be the only carrier to have this "advantage." The LECs may want to restrict these recordings to identification of the carrier only.

[42] *See* Appendix C for these examples.

[43] *See* Appendix B for the text of the Commission prescribed allocation plan.

[44] *See* Appendix C for examples of NWB material formats. Since these formats have proved to be workable and reasonable, plan participants are encouraged to follow these examples as closely as possible.

[45] See. N. 1, *supra*.

[46] United States v. GTE Corp., Civ. Action No. 83-1298 (D.D.C., *slip op.* Dec. 13, 1984) (Proposed Final Judgment). Pursuant to the Court's approval of this Proposed Final Judgment, GTE and the DOJ entered into a Consent Decree on December 21, 1984 which contained a phased-in implementation timetable for the provision of non-discriminatory equal access to interstate communications facilities by the subscribers of the GTE operating companies.

[47] MTS and WATS Market Structure Phase III, CC Docket No. 78-72, FCC 85-98, released Mar. 19, 1985 (*Phase III Order*). In this decision, the Commission extended equal access interconnection obligations to the Independent Telephone Companies recognizing certain limitations. These companies generally must provide equal access in their stored program control switching offices within three years of the receipt of a reasonable request for equal access in the area served by such facilities from any IXC.

[48] A minimum of two ballots is required. The LECs may opt to provide customers with additional ballot opportunities to select an IXC.

[49] All customers must select an IXC for 1+ dialing including those customers that are currently signed up with IXCs that now require them to dial additional digits prior to dialing the long distance telephone number.

the point at which this allocation may be made. See para. 26, *supra*. If customers do not return their initial ballots, they receive a second ballot indicating that they will be assigned to the IXC specified if they do not return the ballot by the due date. If customers return the second ballot, their selection is processed accordingly. Customers who do not return the second ballot by the specified due date will be connected to the IXC indicated on the ballot effective with the equal access conversion. Allocated customers have six months after the equal access conversion date to change to an IXC of their choice without charge. The LEC must process all customer ballots and carrier lists that are received 20 days prior to the conversion. LECs are urged to process customer ballots as close to the conversion date as possible. This capability will depend on the degree of sophistication of the allocation system used.

V. Conclusion; Ordering Clauses

38. We believe that our decision today to prescribe an allocation plan that increases consumer awareness of the presubscription process and the available range of service and carrier choices is beneficial to the public interest. This plan gives the IXCs added incentive to offer new and competitive services as a means of affirmatively attracting presubscriptions. The most important aspect of this plan is that customers will be better able to exercise their right to choose a primary long distance carrier.

39. Accordingly, it is ordered pursuant to section 205 of the Communications Act, 47 U.S.C. 205, that all local exchange carriers as defined herein must put into effect immediately the allocation plan prescribed by the Commission in Appendix B of this Order.

40. It is further ordered that the interstate access tariffs of the local exchange carriers must be revised to reflect the allocation plan within 15 days of the release date of this Order on 30 days' notice. These revisions must include language providing for (1) end user notification and non-exclusive balloting procedure, (2) allocation process, (3) interexchange carrier customer lists, (4) customer choice discrepancy, (5) retroactive balloting procedure, and (6) presubscription charge application.

41. It is further ordered that §§ 61.58 and 61.74 of the Commission's Rules, 47 CFR §§ 61.58, 61.74 are waived for the purposes of implementing this order.

42. It is further ordered that this order is effective upon adoption.[50]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Due to the continuing effort to minimize publishing costs, Appendices A (Default commenting parties) and C (NWB Plan Material Formats) will not be published herein. However, copies of the complete Memorandum Opinion and Order may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554, Tel.: (202) 857-3800. A copy is also available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both also located at 1919 M St., NW., Washington, D.C. The appendices are also filed with the original at the Office of the Federal Register.

Appendix B—Allocation Plan

1. *Application.* This Plan must be put into effect by all companies implementing equal access which include: Bell Operating Companies pursuant to the Modification of Final Judgment,[1] GTE pursuant to its Consent Decree,[2] Independent Companies pursuant to Commission Order [3] and all local exchange companies that provide equal access on a voluntary basis. These companies will be referred to as local exchange companies (LECs) throughout this Plan. The carriers participating in the equal access process and providing long distance service to customers will be referred to as interexchange companies (IXCs).

2. *Effective Date and Retroactivity Requirement.* The effective date of this Allocation Plan is May 31, 1985. The affected LECs are obligated to carry out this Plan for all customers that are subject to equal access conversions on or after May 31, 1985. For those customers subject to equal access conversions that take place from May 31, 1985 until the time that the LEC has its allocation procedure in place, the carrier is responsible for contacting those customers on a retroactive basis according to the provisions of this Plan. For those conversions taking place prior to May 31, 1985, the carriers are required to contact all non-presubscribed customers on a one-time ballot basis pursuant to the retroactive ballot procedures set forth in paragraph 25 *infra*.

3. *Plan Implementation.* The Allocation Plan must be implemented according to the specific provisions contained herein. If for any reason the LEC cannot implement this Plan as it is prescribed, the LEC must file an application for waiver with the Commission. The LECs and IXCs have been given flexibility to create their own systems and materials to effectuate this Plan. Examples of material formats used by Northwestern Bell (NWB) have been provided in Appendix C. Since these formats have proved to be workable and reasonable, Plan participants are encouraged to follow these examples as closely as possible.

4. *Presubscription Procedure.* Presubscription is the process by which end user customers may select (prior to a central office conversion to equal access) one primary interexchange carrier, from among several available carriers, to carry their "1+" interLATA long distance calls. Customers must be informed of the options available to them at least 90 days prior to their central office's equal access conversion date.[4] Customers are allowed one free selection of an IXC up to six months after their central office converts to equal access.

5. *End User Notification and Equal Access Balloting Process.* The LEC must notify end user customers of the availability of equal access in their particular area through the mailing of an Equal Access Ballot. This ballot will include the names of all the IXCs wishing to participate in the presubscription process and will be one means for customers to make their carrier selection known to the LEC. (See Letter of Agency Procedure, paras. 9–11, *infra*.) Using the ballot, a customer may either select a primary IXC for all of its

[50] The Commission finds that, because the prescription of an allocation plan relieves restrictions on competition and represents a statement of policy and because a great number of equal access conversions are scheduled to take place in the immediate future, the public will benefit from putting this plan into effect without delay. An immediate effective date is, therefore, in the public interest and has good cause pursuant to 5 U.S.C. § 553(d).

[1] *United States* v. *American Tel. & Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

[2] *United States* v. *GTE Corp.*, Civ. Action No. 83-1298 (D.D.C., Dec. 13, 1984) (Proposed Final Judgment). Pursuant to the Court's approval of this Proposed Final Judgment, GTE and the Department of Justice entered into a Consent Decree on December 21, 1984 which contained a phased-in implementation timetable for the provision of non-discriminatory equal access to interstate communications facilities by the subscribers of the GTE Operating Companies.

[3] MTS and WATS Market Structure, Phase III, CC Docket No. 78-72, FCC 85-98, released Mar. 19, 1985. In this decision, the Commission extended equal-access interconnection obligations to the Independent Telephone Companies recognizing certain limitations. The Independent Telephone Companies include Cincinnati Bell and Southern New England Telephone Company.

[4] This 90-day period was ordered pursuant to Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 49 FR 9174 (Mar. 12, 1984).

lines, or it may choose a different carrier for each of its lines. Only one carrier may be selected for each particular line. In the case of a multi-line hunt group, a customer may select only one carrier through the ballot process. Customers should be able to make special arrangements to split the multi-line hunt group terminals among several IXCs by contacting their LEC Business Office.

6. Mailing of the ballots for each office will occur approximately 90 days prior to the central office conversion date. LECs may cluster central office conversions and consolidate mailing dates according to the first central office conversion in the cluster. LECs may also stagger the mailing of ballots over a number of days for practical purposes but, in no case, may ballots be mailed out later than 85 days prior to the conversion date.

7. The LECs must devise a method to give IXCs an equal opportunity to appear first on the Equal Access Ballot. Methods to ensure an equitable order of placement of IXCs on the ballot may include: a random change in the order of IXCs on an equal percentage of the ballots or an alphabetical listing of the IXCs that is rotated the number of times equal to the number of participating IXCs on a corresponding percentage of the ballots.

8. *Initial Ballot.* The initial ballot must contain the following information:

8.1. Caption: Equal Access Ballot.

8.2. LEC Name and Customer's Name, Address and Telephone Number.

8.3. Instructions for use of the ballot.

8.4. Option One which allows customer to indicate one carrier for all lines.

8.5. Option Two which allows customer to indicate a different carrier for each line

8.6. List of IXCs appropriately identified and their business and residence customer contact numbers.

8.7. Equal access conversion date.

8.8. Ballot due date.

8.9. Signature and date line for customer's use.

8.10. Address where ballot should be mailed.

This initial ballot must be accompanied by a cover letter explaining presubscription and a self-addressed envelope. The cover letter should clearly inform the customer of all options in the presubscription process. See Appendix C for examples of an Equal Access Ballot and the accompanying letter. Customers should be asked to return the initial ballots within 30 days of their receipt. Although customer ballots will be accepted after this 30 day period, this initial deadline determines when the allocation percentages can be calculated. The LECs should make arrangements for the forwarding of any ballots that are mailed to a LEC location other than the one designated on the return envelope. For example, if the LEC has designated an outside vendor to tabulate the ballots and ballots are mistakenly sent to the LEC Business Office or included in customer bill payments, the LEC should immediately forward these ballots to the proper location.

9. *Letter of Agency Procedure.* A customer has the option of independently containing the IXC to make arrangements for long distance service. Since ballots contain all of the customer's lines, the IXC should encourage its customers to mail the IXC the ballots or mail them to the LEC. The return of the ballots will ensure the accuracy of the selection process for all customer lines and multi-line hunt groups.

10. All IXCs may seek customer commitments to use their services and designate them as their primary IXC. All such commitments must be supported by a statement signed by the customer, which at a minimum recognizes these conditions:

10.1. The customer designates the IXC to act as the customer's agent for the presubscription process.

10.2. The customer understands that only one IXC may be designated as the customer's primary IXC for any one telephone number and that selection of multiple carriers will invalidate all such selections.

10.3. The customer understands that any primary IXC selection after the initial one will involve a charge to the customer.

10.4. The specific telephone number(s) for which the primary IXC is being designated must be listed.

11. Any IXC providing the LEC with a list of customers (see para. 12, *infra*) who have selected that IXC as their primary carrier must accompany it by a document affirming that the IXC does, in fact, have signed letters of agency that comply with the conditions cited in para. 10, *supra*, or a ballot for each customer on the list. This list and accompanying document are due on or before the specified date indicated on the LEC schedule. The IXC must also agree to accept responsibility for any billing disputes arising from implementation of its customer list. All written documentation must be made available to the LEC in the event of a dispute. See Appendix C for an example of the letter NWB uses for these purposes.

12. *Interexchange Carrier Lists.* The LEC must accept IXC lists of customers that have made individual arrangements with a specific IXC to designate that IXC as their primary long distance carrier. To be included in the office conversion, all carrier lists must be provided to the LEC no later than the time specified on the LEC schedule. The form of this list is to be agreed upon by the LEC and IXC in advance of the due date. For example, NWB allows carrier lists in magnetic tape, paper list or ballot form but different timelines are provided for each format. Late customer lists or lists that are not within the guidelines agreed to by the LEC may be rejected. If an IXC accepts LEC ballots from end users, it may provide a list of these customers to the LEC in another agreed upon format. The IXC must, however, retain the actual ballots for inspection by the LEC for a period of one year after the conversion date.

13. IXC lists of customers must be processed by the LEC if they are received by the specified initial ballot deadline. Customer lists from the IXCs will also be honored from the initial ballot deadline to the second ballot deadline, but changes included on these lists will only affect allocated customers.

14. *Second Ballot.* Approximately 50 days before an office conversion, those customers who have not yet made a carrier selection, either through the Equal Access Ballot or directly to an IXC, must be sent a second ballot. This ballot must give the customer another opportunity to make a carrier selection. The customer must be notified that, if the ballot is not returned to the LEC by the date indicated, the customer line(s) will be assigned to the carrier indicated on the ballot. A customer wishing to select a carrier other than the one indicated may do so simply by indicating the preferred carrier on the second ballot and returning it in the enclosed envelope by the ballot deadline. The second ballot must contain the following information:

14.1. The same information as the initial ballot. (See para. 8, *supra*.)

14.2. A conspicuous notice that the customer will be assigned to the IXC indicated on the conversion date if the second ballot is not returned or if the customer does not make individual arrangements with another IXC.

14.3. The assigned IXC, with customer contact telephone numbers.

14.4. The ballot deadline.

This ballot should also be accompanied by a letter summarizing the above requirements and describing in detail how the allocation of customers will

take place. The LECs should make every effort to inform customers of their options in the equal access process and the importance of exercising their choice of a primary IXC. In addition to the second ballot and letter, NWB also encloses a brochure that contains questions and answers about the process. NWB also provides an 800 number for customers to ask questions that are not answered in the written information. See Appendix C for examples of NWB's second ballot, letter and brochure.

15. *Number of Ballots.* A minimum of two ballots is required. LECs may opt to provide their customers with more than two ballot opportunities to select an IXC if they find it beneficial to do so.

16. *Ballot and Carrier List Process Schedule.* The LEC must process all customer ballots and carrier lists that are received 20 days prior to the conversion. To the extent their processing system permit, the LECs are urged to process customer ballots as close to the conversion date as possible.

17. *Allocation Process.* The LEC must tabulate the initial ballots and the carrier lists received and determine the percentage of customers that selected each IXC. The LEC must also prepare a list of all customers who did not return an initial ballot. IXCs participating in the allocation process will then have non-presubscribed customers assigned to them, at random, in proportion to the results of the first ballot response for that particular central office. For example: Assume that Carriers A, B, and C appear on the initial ballot. After the ballots and carrier lists are returned, it is determined that Carrier A received 25 percent of all the customer line responses, Carrier B received 45 percent, and Carrier C received the remaining 30 percent. The LEC will then assign 25 percent of the non-responding customers (lines) to Carrier A, 45 percent to Carrier B, and 30 percent to Carrier C.

18. *Residence and Business Allocation.* Separate allocation processes will be used for residence and business lines. For example: If a carrier receives 20 percent of the business lines and 15 percent of the residence lines through the initial ballot and carrier list process, the carrier will be allocated the same percentages of business and residence customers on the second ballot.

19. *Allocated Customer Conversion Date Flexibility.* This Plan incorporates the 90-day schedule that NWB has implemented. According to this schedule, customers are allocated after the initial ballot deadline and if they do not return a ballot by the specified second ballot due date, they are converted to their assigned primary IXC on the equal access cutover date. The LECs are allowed to extend the period before which allocations are made and are permitted to convert allocated customers to their assigned IXC after the official central office equal access conversion date. The LEC may not, however, send second ballots to its customers any earlier than 40 days prior to the conversion date or any later than 90 days after that date.

20. *Allocation Process Where All IXCs Do Not Participate.* In central offices where one or more of the IXCs appearing on the first ballot have notified the LEC that they do not wish to participate in the allocation, the non-presubscribed customers are allotted in the following manner. The percentage of lines that the nonparticipating IXCs acquired through the initial process are allocated to the remaining IXCs according to their initial results. For example: The initial presubscription results show that Carrier A receives 30 percent of the lines, Carrier B, 30 percent, Carrier C, 15 percent, Carrier D, 15 percent and Carrier E, 10 percent. Carriers D and E have stated that they will not participate in allocation. The non-presubscribed customers will be allocated by giving both Carriers A an B 40 percent of the lines, and Carrier C, 20 percent.

21. *Late Ballots.* If a ballot or Letter of Agency is not received by the LEC by the second ballot deadline, the customer will be allocated to the IXC listed on the second ballot as the assigned carrier. Ballots received between the second ballot deadline and the conversion date must be honored as soon as possible by the LEC. Late ballots may be given to the LEC's Business Office and handled under normal procedures for changing an IXC selection. Allocated customers must also be allowed to make a free primary IXC choice during the six-month period after the conversion date by contacting the LEC Business Office.

22. *Customer Initiated Changes In Service.* If a customer moves or disconnects during the balloting process, he is handled by the LEC Business Office and normal service order procedures apply. If a customer only wishes to change his primary IXC, the Business Office will initiate the change and charge the customer the appropriate presubscription change fee. New customers are to be handled by the Business Office according to the LEC's new customer presubscription procedures. These procedures should provide new customers with an opportunity to obtain a ballot and make an interexchange carrier selection.

23. *Customer Choice Discrepancy.* When customers indicate more than one carrier choice per line on the ballot, or return an illegible ballot, the LEC must contact the customer for clarification. When both a ballot and Letter of Agency are received for one customer and the designated primary IXC does not match on both documents, the ballot takes precedence and the LEC must process the customer's choice shown on the ballot. In the event that two or more IXCs provide to the LEC a customer list indicating that a particular customer has designated them as the primary IXC, the customer in question must be allocated along with the non-respondents to the initial ballot. In this instance, the letter accompanying the second ballot for that particular customer must mention that the customer is involved in a conflict between two or more IXCs and that a selection must be made by the specified deadline unless the assigned carrier indicated on the ballot is the customer's choice. A list of these customers in conflict must be sent to the affected IXCs by the LEC. Those IXCs not involved in any customer conflicts should receive a zero conflict report from the LEC. See Appendix C for examples of documents used in conjunction with customer choice discrepancies.

24. *Special Handling of Certain Accounts.* In addition to providing major accounts with ballots, the LEC should contact those customers directly and encourage them to presubscribe when an initial ballot is not received. The LEC is responsible for defining a major account but must include large business customers, federal, local and state governments, and colleges and universities in this classification. The LECs must also determine presubscription procedures for special accounts such as WATS lines, public and semi-public coin telephones, charge-a-call telephones and customer-owned coin telephones and inform the IXCs of their decision.

25. *Retroactive Balloting Procedure.* LECs must provide another opportunity for non-presubscribed customers to select a primary IXC where end offices were converted to equal access prior to May 31, 1985. This provision only applies to LECs that were not using a balloting/allocation process prior to that date. The LECs must send a ballot to each non-presubscribed customer and allow 30 days for return. The LEC should determine which customers have not presubscribed a short time prior to the mailing out of the ballots. Customers who presubscribed after their equal access coversion date but prior to the

balloting procedure should not receive ballots. If the customer does not return the ballot and select a primary IXC by the ballot deadline, the LEC will take no action and allow the customer to remain with his current 1+ long distance carrier. If the customer does return the ballot within the 30 days, the LEC should process the change in the central office at no charge and notify the IXC. A letter should accompany this ballot explaining that the customer is being given the opportunity to select a primary carrier but that no change will occur unless the ballot is returned within the specified time. No second balloting or allocation is required for those customers that were subject to equal access conversion dates prior to May 31, 1985.

26. *Retroactive Balloting Schedule.* The LECs must begin this retroactive balloting procedure within 90 days of the effective date of this Order and complete this process for all affected central offices no later than June 1, 1986.

27. *Presubscription Charges.* Customers making carrier selections either by returning the ballot to the LEC or by contacting the IXC directly during the 90 day period prior to the equal access conversion date or during the six months following the conversion date are entitled to do so free of charge. These customers, however, will incur a presubscription change charge for any subsequent changes. Any allocated customer may use the second ballot or may contact the LEC Business Office to make a carrier selection even after allocation has taken place. There will be no charge for this selection, if it is done within six months after the office conversion. A customer will not incur a presubscription change charge if he selects a primary carrier as part of the retroactive balloting process.

28. *Local Exchange Company Responsibility.* The LEC must establish the necessary mechanisms in order to provide the following information to its customers and the interexchange carriers.

28.1. Inform IXCs of ordering procedures, terms and conditions for the provision of Feature Group D Switched Access Service and provide any necessary forms for this ordering process.

28.2. Provide IXCs with central office equal access conversion schedules six months prior to the cutover date.[5]

28.3. Provide documents for IXCs to confirm their participation in the allocation process.

28.4. Provide schedules to IXCs for the balloting and allocation process. These schedules should specify firm dates and times for all IXC and LEC activities. The LEC must promptly notify the IXCs of any changes that occur in these schedules.

28.5. Create ballots, accompanying explanatory letters and ballot return envelopes.

28.6. Provide necessary interim and final reports of allocated customers to IXCs. The LEC must provide a minimum of three reports to each IXC of its customers during the balloting process. All three reports will reflect customer designation of the IXC as its primary long distance carrier as indicated both by the ballot process and the Letter of Agency procedure. The first customer report must be made available to the IXC halfway between the initial ballot mailing date and the initial ballot deadline. The second report should be sent to the IXCs after the initial ballot deadline and the final report should be sent at the end of the process for a central office equal access conversion. The LEC may decide to provide additional reports as it deems necessary.

See Appendix C for examples of the above information.

29. *Interexchange Carrier Participation Requirements.* In order to be considered eligible to be on an Equal Access Ballot, an IXC must order Feature Group D Switched Access Service from the LEC. The IXC must comply with the Feature Group D ordering procedures of the LEC and a firm order for this service must be received no later than 120 days prior to the central office equal access conversion date. Any IXC that places an order after that time will not be included on that office's ballot. At the time of order placement, the IXC must provide the following information:

29.1. The IXC name exactly as it should appear on the ballot.

29.2. A customer contact number that will appear on the ballot. The IXC may provide two contact numbers if it wishes to divide business and residence calls.

29.3. The name of a person for the LEC to contact if questions arise.

29.4. Any other information that the LEC has allowed or required. (Some IXCs have put marketing or service information on the NWB ballot. See Appendix C.)

IXCs must strictly adhere to the schedules provided by the LEC in order to effect successful equal access conversions.

30. *Interexchange Carrier Allocation Choice.* IXCs choosing to be on the ballot may participate in the allocation process. These carriers must notify the LEC of their intention of participating in the allocation process 52 days prior to the conversion date. When IXCs notify the LEC of their participation in allocation, they must state whether they opt for allocation of either business or residential customers, or both. IXCs who wish to receive allocated traffic must meet the following criteria for a two-year period:

30.1. The IXC must appear on the initial ballot.

30.2. The IXC must have the capability of offering service to any point within the continental United States.

30.3. The IXC must not impose any fixed monthly or nonrecurring charges to assigned customers without their consent.

30.4. The IXC must provide service to the allocated end users that is equal to that provided to the IXC's presubscribed customers.

30.5. The IXC must not charge its assigned customers a rate for its service that will exceed the highest price in effect for MTS-type service without their consent.

30.6. If an IXC wishes to change any of the above criteria within a two-year period from the conversion date, it must notify its allocated customers of those changes 30 days before these changes are to take place. If the customer decides to change carriers because of the IXC's change in policy, the carrier must pay the charges associated with making that change.

An example of an IXC acceptance form of these criteria is included in Appendix C.

31. *Cancellation of IXC Participation.* If an IXC elects to discontinue its Features Group D Service offering prior to the conversion date of a central office, the IXC is obligated to notify the LEC of the cancellation. The IXC must contact all end users which selected that IXC and notify them that the IXC is cancelling their service and that they should contact the LEC to select a new primary long distance carrier. The IXC must notify the customer that it will pay the presubscription change charge. The cancelling carrier will then be billed by the LEC the appropriate charge for each end user.

32. *Exchange of Information Between IXCs and LECs.* The LEC should establish a standardized format to be used for the flow of information between the LEC and the IXCs during

[5] This requirement is a result of the Modification of Final Judgment. See n. 1 *supra*.

the equal access conversion and balloting process. Formats used by NWB include magnetic tape and paper reports. Report deadlines should be determined in order to insure the accurate and orderly exchange of information between the IXCs and the LEC.

33. *Tariff Update Requirements.* Interstate access tariffs of the local exchange carriers must be revised to reflect the general parameters of the allocation plan within 15 days of the release date of the Order, on 30 days' notice. These revisions must include language providing for:

33.1. End user notification and non-exclusive balloting procedure.

33.2. Allocation process.

33.3. Interexchange carrier customer lists.

33.4. Customer Choice Discrepancy.

33.5. Retroactive Balloting Procedure.

33.6. Presubscription Change Charge Application.

[FR Doc. 85-15125 Filed 6-21-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-752]

Changes in the AM Technical Rules To Reflect New International Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule; Partial stay.

SUMMARY: This action stays the effective date of the new metric AM curves in § 73.184, adopted by the Commission in MM Docket No. 84-752. This stay is necessary to permit distribution of the new curves and related materials in advance of the deadline for their use

EFFECTIVE DATE: Affected rule stayed indefinitely. This action is effective June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

partial stay

In the matter of changes in AM technical rules to reflect new international Agreements; MM Docket No. 84-752.

Adopted: May 30, 1985.

Released May 31, 1985.

By the Chief, Mass Media Bureau.

1. The Commission has before it a Motion for Stay of the Commission's March 28, 1985, *Report and Order* in the above-captioned proceeding,[1] filed by John B. Heffelfinger.[2] In this document the Commission adopted several changes in AM technical rules to reflect new international agreements which had been or were being negotiated. In his pleading, Mr. Heffelfinger questions whether it will be possible to put certain of the new rules into effect by the June 3, 1985, date specified in the *Report and Order.*

2. The motion is not directed to the principal changes made by the document, namely: (1) Allowing AM stations to use intermediate power levels instead of restricting them to certain fixed power levels and (2) allowing Class III AM stations in Alaska, Hawaii, Puerto Rico and the Virgin Islands to increase power above the current 5 kW limit. Rather, it is directed to the difficulties said to arise in connection with implementing use of the new metric curves in § 73.184 which were adopted by the Commission to replace the previous curves, (based on English units), when performing various AM calculations.

3. Although Heffelfinger agrees that there is a pressing need to convert to metric curves, he argues that it is neither necessary nor practical to implement these curves immediately. Rather, he asserts that several steps need to be taken before use of the new curves and the data on which they are based can take place. This is said to include release of a computer print-out of the date points used in plotting the groundwave curves as well as the production and distribution of the new graph paper which is to be used in AM field strength analysis. In addition, the Motion points out the problem that can arise if applications already on file need to be amended. If the new curves are to be used for the amendment, this means employing different curves than were used in preparation of the application originally.

4. To deal with this situation, the Motion suggests use of a transitional period until January 1, 1986, in which to phase in use of the new curves. During this period, use of the new curves could be implemented gradually and the old curves phased out, culminating in a complete transition for applications filed on or after January 1, 1986. This arrangement is designed to provide time for the needed materials to be distributed before their use becomes mandatory.

5. As the Motion correctly notes, the current effective date of June 3, 1985, does not allow enough time for the distribution of the new groundwave curves and related material in advance of the deadline for their use. As a result, a delay in the effective date for the new curves is required. However, providing a transitional period during which both sets of curves could be used would disrupt the orderly processing of applications. It is important to have applications filed and processed under a single, consistent standard, one defined by the date on which the application is filed.

6. Therefore, we will stay use of the new curves and will continue use of the existing curves pending completion of the work necessary to make the new curves available for use. After this has been completed, a new effective date can be established which will allow sufficient time for their use in the preparations of materials for filing. It is not now possible to establish this date, as efforts are continuing to determine the best format to use in making the new materials available to the industry. In addition, as the *Report and Order* noted, the Commission has adopted other new metric curves and will be releasing new Figures 5, 7, 8, 9, 10 and 11 of § 73.190 in the future.We anticipate having this material included when a new effective date is established for the groundwave curves.

7. Accordingly, it is ordered, that pursuant to authority contained in sections 4(i), 5(d)(1) and 303 of the Communications Act of 1934, as amended, and § 0.283 of the Commission's Rules, the above-referenced amendments to § 73.184 of the Commission's Rules are stayed.

8. It is further ordered, That the subject Motion for Stay is granted and That the subject Petition for Reconsideration is dismissed as moot.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85-15115 Filed 6-21-85; 8:45 am]

BILLING CODE 6712-01-M

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[1] The document was released by the Commission on April 24, 1985 (FCC 85-150) and was published in the **Federal Register** on May 2, 1985, (50 FR 18618).

[2] In addition, Heffelfinger has filed a Petition for Reconsideration of the Commission's decision insofar as it specifies an effective date for the newly adopted curves. However, in light of the action being taken on his Motion for Stay, the Petition for Reconsideration can be dismissed as moot.

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47 CFR Part 73

[MM Docket No. 83-1124; RM-4548]

FM Broadcast Station in Kerrville, TX; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On March 1, 1985, the Commission published a Final Rule (Report and Order) in this proceeding concerning the assignment of an FM broadcast station in Kerrville, TX (50 FR 8322). Inadvertently, the docket number of this proceeding was referred to as MM Docket No. 84–1124 in the preamble. The correct docket number, which appeared in the text of the document, is MM Docket No. 83–1124.

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634–6530.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–15124 Filed 6–21–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–166R; Amdt. Nos. 172–96, 173–185, 174–47, 176–21, 177–65, 178–83, and 179–37]

Shipment of Hazardous Materials; Miscellaneous Amendments

Correction

In FR Doc. 85–6030, beginning on page 11048 in the issue of Tuesday, March 19, 1985, make the following correction:

On page 11053, first column, the first line of § 173.119 (a) (17) (ii) should have read "(ii) Specification MC 310, MC 311 or".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 50, No. 121
Monday, June 24, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Reopening of Time for Receipt of Written Comments on Roadside Sales Exemptions and Disposition of Inedible Almonds

AGENCY: Agricultural Marketing Service USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of reopening the time period for filing written comments on proposals: (1) Clarifying the term "at retail at a roadside stand" used in § 981.13 of the almond marketing order; and (2) extending from July 31 to August 31, 1985, the date by which handlers must dispose of their inedible 1984 crop almonds. The reopening of the comment period will give interested persons additional time to analyze and submit written comments on the proposal.

DATES: The additional time for comments ends June 26, 1985.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed changes during the extended period. Comments should be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of the issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: Pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C 601-674) a notice of proposed rulemaking was published in May 29, 1985, issue of the **Federal Register** (50 FR 21853), regarding changes in the administrative rules and regulations under the Federal marketing agreement and order for California almonds (7 CFR Part 981). The proposal, recommended by the Almond Board of California which works with USDA in administering the order, pertained to a clarification of the phrase "at retail at a roadside stand" used in § 981.13. The purpose is to give the Board definitive standards in determining when roadside stand sales exemptions should be granted under that section of the order. Another proposal would extend the deadline date from July 31 to August 31, 1985, by which handlers must dispose of 1984 crop inedible almonds. This change is necessary to give handlers more time to process the record large 1984 crop.

The California Farm Bureau has requested that the comment period be reopened because it had insufficient time after it received notice of the proposals to analyze and submit written comments on them. Therefore, the period for receipt of written data, views, or arguments is reopened. Written comments must be received by June 26, 1985.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

Dated: June 18, 1985.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-15075 Filed 6-21-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 212

[A.G. Order No. 1096-85]

Executive Office for Immigration Review—Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed Regulation.

SUMMARY: The proposed revisions would eliminate the appeal to the Board of Immigration Appeals from a denial of a 212(c) application by an INS district director. The revision provides that a 212(c) application may be renewed before an immigration judge in exclusion or deportation proceedings and that an immigration judge's denial of 212(c) relief may be appealed to the Board.

The revision would also substitute the term "immigration judge" for the seldom used term "special inquiry officer" throughout the applicable sections.

DATE: Comments must be received on or before July 24, 1985

ADDRESS: Please submit written comments in duplicate to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 756-6470.

SUPPLEMENTARY INFORMATION: The proposed revisions would streamline the procedure for adjudication of 212(c) applications by eliminating an appeal to the Board in applications adjudicated by district directors. The appeal to the Board of an immigration judge's 212(c) denial is retained. This change is proposed to encourage speedy adjudication and economy of resources.

Under current regulations, the Board may review the same 212(c) application twice; once after the district director's denial and subsequently; in conjunction with an appeal of an exclusion or deportation proceeding. There appears to be no compelling reason to justify two separate appeals for the same application. This revision would eliminate one layer of appeal.

Further, the proposed rule brings adjudication of 212(c) applications into line with other applications such as asylum and adjustment of status to permanent residence, both of which permit only one appeal to the Board after a determination by an immigration judge.

Due process is protected in this revision since there may be an initial district director's determination

followed by a renewal of the 212(c) application before an immigration judge and finally a review before the Board. Only the duplicative Board review is removed.

Several technical changes are proposed. To modernize terminology, the seldom used term "special inquiry officer" is replaced by the modern equivalent "immigration judge" at the appropriate places. Also, 8 CFR 3.1(b)(3) is revised to conform to the modified procedure.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have significant economic impact on a substantial numbr of small entities. This rule, if promulgated, will not be a major rule within the meaning of section 1(b) of Executive Order 12291.

List of Subjects

8 CFR Part 3

Administrative practice and procedures

8 C.F.R. Part 212

Administrative practice and procedure, Aliens, Immigration.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

§ 3.1 [Amended]

2. 8 CFR 3.1(b)(3) would be revised to read as follows:

* * * * *

(b) * * * *

(3) Decisions of immigration judges on applications for the exercise of the discretionary authority contained in section 212(c) of the Act as provided in Part 212 of this chapter.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for Part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c.

4. 8 CFR 212.3 would be revised to read as follows:

§ 212.3 Applications for the exercise of discretion under section 212(c).

An application for the exercise of discretion under section 212(c) of the Act shall be submitted on Form I-191 to the district director in charge of the area in which the applicant's intended or actual place of residence in the United States is located prior to, at the time of, or at any time subsequent to the applicant's arrival in the United States.

The applicant shall be notified of the decision and if the application is denied, he/she shall be notified of the reasons for denial. No appeal shall lie from a denial. However, the application may be renewed during proceedings before an immigration judge under section 235, 236, and 242 of the Act and this Chapter. An application for the exercise of discretion under section 212(c) of the Act may be submitted by the applicant to an immigration judge in the course of proceedings before him/her under section 235, 236, and 242 of the Act and this chapter, and shall be adjudicated by the immigration judge in such proceedings, regardless of whether the applicant has made such application previously to the district director. When an appeal may not be taken from a decision of an immigration judge excluding an alien, but the alien has applied for the exercise of discretion under section 212(c) of the Act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of section 236.5(b) of this chapter.

Dated June 10, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-14919 Filed 6-21-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 660

[Docket No. 84N-0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Proposed Amendment of Additional Standards for Reagent Red Blood Cells.

Correction

In FR Doc. 85-13979 beginning on page 24542 in the issue of Tuedsay, June 11, 1985, make the following corrections: 1. On page 24545, in the first column, in § 660.33, in the second line from the bottom, "K̄," should read "K,".

2. On page 24545, in the second column, in § 660.34(e), in the fourteenth and fifteenth lines, "blood, when" should read "blood. When".

3. On page 24546, in the first column, in § 660.36(a)(1), in the sixth line, "in" should read "on".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231, 232, 241, and 242

[Docket No. R-85-1229; FR-1819]

Prepayment Limitation for Bond-Financed Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit a mortgage to contain a prepayment restriction and prepayment penalty charge where the mortgage funds were obtained from the proceeds of a bond offering.

DATE: Comments must be received by August 23, 1985.

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

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Many insured projects are financed from the proceeds of bonds or bond anticipation notes sold to the public. The typical indenture provides, as a protection to the bondholders, a ten-year period during which the bonds cannot be called except for extraordinary events such as a mortgage default (resulting in the payment of FHA mortgage benefits), or a casualty or condemnation proceeding (the proceeds of which will be used to retire the bonds). In the usual case,

therefore, there could be no prepayment, for at least ten years, of a mortgage loan financed by such a bond offering.

Although this rule would provide for a limitation on prepayment of bond-financed mortgages, it remains the policy of the Department, with respect to most types of unsubsidized mortgage transactions, to discourage restrictions or prohibitions on the prepayment of mortgage indebtedness. That policy is modified in this rule only because of the special nature of bond-financed mortgages.

Accordingly, the Department, under the rulemaking authority conferred on the Secretary under section 211 of the National Housing Act, 12 U.S.C. 1715b, proposes to adopt this rule to allow a mortgage to contain a prepayment prohibition and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions, where the mortgage loan is financed by the issuance of bonds.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(1)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would permit contracting parties to provide for limitations on prepayment, but does not impose any new requirements.

This rule was listed as Item 66 (H-54-83; FR-1819) in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17306) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.127, 14.134, 14.138, and 14.157.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 231

Aged, Mortgage insurance.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan Programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 241

Energy conservation, Mortgage insurance, Solar energy, Projects.

24 CFR Part 242

Hospitals, Mortgage insurance.

Accordingly, the Department proposes to amend 24 CFR Parts 207, 213, 220, 221, 231, 232, 241, and 242 to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 207.14 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 207.14 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (d) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

* * * * *

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR Part 213 continues to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 213.18 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 213.18 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (d) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

* * * * *

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount and conditions.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

5. The authority citation for 24 CFR Part 220 is revised to read as set forth below and any authority citation following any section in Part 220 is removed:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 220.590 is amended by revising paragraph (a)(1) and by adding a new paragraph (c) to read as follows:

§ 220.590 Prepayment privilege and prepayment charge.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (c) of this section, the security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days' advance written notice.

* * * * *

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bond or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for 24 CFR Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 221.524, paragraph (a)(1) and paragraph (d) are amended to read as follows:

§ 221.524 Prepayment privileges.

(a) *Prepayment in full*—(1) *Without prior Commissioner consent.* Except as otherwise provided in paragraph (d) of this section, a mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner in the following cases:

* * * * *

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

9. The authority citation for 24 CFR Part 231 is revised to read as set forth below and any authority citation following any section in Part 231 is removed.

Authority: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 231.12 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows. The introductory phrase to the section is shown for the convenience of the reader and remains unchanged.

§ 231.12 Private mortgagor-nonprofit; prepayment privilege and prepayment charges.

In the case of a private mortgagor—nonprofit:

(a) *Prepayment in full.* Except as otherwise provided in paragraph (d) of this section, the mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained and upon such terms and conditions as the Commissioner may prescribe.

* * * * *

(d) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

11. Section 231.13 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 231.13 Private mortgagor-profit; prepayment privileges and prepayment charges.

(a) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

* * * * *

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 232—NURSING HOME AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

12. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 232.37 is amended by revising paragraph (a)(1) and by adding a new paragraph (c) to read as follows:

§ 232.37 Prepayment privilege and prepayment charges.

(a) * * *

(1) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

* * * * *

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

14. The authority citation for 24 CFR Part 241 is revised to read as set forth below and any authority citation following any section in Part 241 is removed:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z-6); Sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 241.100 is amended by revising paragraph (a)(1) and by adding a new paragraph (c) to read as follows:

§ 241.100 Prepayment privilege and charge.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (c) of this section, the security instrument shall contain the following provisions:

* * * * *

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

16. The authority citation for 24 CFR Part 242 continues to read as follows:

Authority: Secs. 211, 242, National Housing Act (12 U.S.C. 1715b, 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

17. Section 242.51 is amended by revising paragraph (a)(1) and by adding a new paragraph (c) to read as follows:

§ 242.51 Prepayment privilege and prepayment charges.

(a) * * *

(1) *Prepayment privilege.* Except as otherwise provided in paragraph (c) of this section, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

* * * * *

(c) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the insurance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

Dated: June 14, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85-15157 Filed 6-21-85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 232 and 242

[Docket No. R-85-1234; FR-1806]

Refinancing of HUD-Insured Hospital Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its regulations governing the insurance of mortgages for hospitals. Under this proposal, HUD would be able to insure a mortgage given to refinance an existing HUD-insured mortgage covering a hospital. Insurance coverage would, however, be subject to limitations related to the new mortgage's principal amount, term and debt service provisions. The rule would also correct a technical defect in the refinancing provisions applicable to HUD-insured nursing homes and intermediate care facilities.

DATE: Comment Due Date: August 23, 1985.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410-5000. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James L. Hamernick, Director, Office of Insured Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410-5000, telephone (202) 755-5720. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Refinancing of Insured Hospital Mortgages

Section 242 of the National Housing Act (the Act), 12 U.S.C. 1715z-7, authorizes the Department to insure any mortgage that covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to express limitations. The Department's regulations governing the insurance of mortgages for hospitals are in 24 CFR Part 242.

Section 223(a)(7) of the Act, 12 U.S.C. 1715(a)(7), authorizes the Department to insure, under any section or title of the Act, a mortgage that is given to refinance an existing mortgage insured under the Act. Accordingly, the provisions of section 223(a)(7) can be made applicable to any hospital-related mortgage insured under section 242 of the Act. However, the insurance authority in section 223(a)(7) is subject to the following limitations.

(1) The principal amount of the refinancing mortgage cannot exceed the original principal amount of the existing mortgage.

(2) The interest rate charged on the new mortgage cannot exceed any maximum rate prescribed under the applicable section or title of the Act. [Notably, however, section 242 of the Act does not prescribe a maximum interest rate for mortgages for the financing of hospitals.]

(3) The term of the refinancing mortgage cannot exceed the unexpired term of the existing mortgage, *unless* the Secretary determines that an additional term would prove beneficial to the applicable insurance fund (here, the General Insurance Fund), taking into account the outstanding insurance liability under the existing mortgage. HUD can then extend the term by up to 12 years beyond the unexpired term of the existing mortgage.

Section 223(a)(7) is generally designed to allow a mortgagor to refinance an existing HUD-insured mortgage if refinancing would result in a reduced debt service payment without increasing the Department's insurance liability.

This proposed rule would add a new § 242.96, "Eligibility of refinancing transactions", which would prescribe the following limitations relating to the principal amount, debt service rate, and term of the refinancing mortgage:

(1) The principal amount of the mortgage could not exceed the lesser of (a) the original principal amount of the existing mortgage or (b) the sum of the unpaid principal balance of the existing mortgage and loan closing charges associated with the refinancing mortgage and costs of improvements, upgrading or additions required to be made to the property. These alternative loan amount limitations would serve to ensure that where the original principal amount of an existing mortgage has been substantially reduced over time, the refinancing could not result in a significant increase in HUD's insurance liability.

(2) The mortgagor's monthly debt service payment could not increase as a result of the refinancing.

(3) In appropriate circumstances, the new mortgage's term could exceed the unexpired balance of the existing mortgage by up to 12 years.

B. Technical Corrections to Part 232 Refinancing Provisions

The Department's regulations governing mortgage insurance related to nursing homes and intermediate care facilities are found at 24 CFR Part 232. Section 232.42, "Eligibility of refinanced mortgages", incorporates by reference the provisions of 24 CFR 207.32, "Eligibility of refinancing transactions." These sections implement the provisions of section 223(a)(7) of the Act for nursing homes and intermediate care facilities having 20 or more beds, and for multifamily housing projects having five or more rental units, respectively. The current incorporation by reference in § 232.42 is inaccurate insofar as it adopts the language in the opening paragraph of § 207.32 stating that "a mortgage given to refinance an existing mortgage *covering five or more rental units* may be insured under this subpart . . ." (emphasis added). To cure this technical defect, § 232.42 is proposed to

be revised to clearly indicate its application to nursing homes and intermediate care facilities, while continuing to incorporate by reference the substantive provisions at § 207.32 (a) through (c).

The same technical defect appears at 24 CFR 232.41, which incorporates by reference the provisions of 24 CFR 207.31. Both sections are entitled "Eligibility of miscellaneous type mortgages." Section 232.41 would be revised to make clear its application to nursing homes and intermediate care facilities, while continuing to incorporate by reference the substantive provisions contained in section 207.31 (b) and (c).

C. Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410–5000.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would generally be applicable to HUD-insured hospitals, most of whch are not small entities, and would make Federal mortgage insurance available to hospitals seeking to refinance existing insured mortgages.

This proposed rule was listed as item number 93 (H–50–83; FR–1806) in the Department's Semiannual agenda of Regulations published on April 29, 1985 (50 FR 17286, 17311), under Executive Order 12291 and the Regulatory Flexibility Act.

The hospital mortgage insurance program is listed in the Catalog of Federal Domestic Assistance as program number 14.128. The insurance program for nursing homes and intermediate care facilities is listed in the Catalog as program number 14.129.

List of Subjects

24 CFR Part 232

Fire prevention, health facilities, loan programs, health, loan programs; Housing and community development, mortgage insurance, nursing homes, intermediate care facilities.

24 CFR Part 242

Hospitals, mortgage insurance.

Accordingly, the Department proposes to amend 24 CFR Parts 232 and 242 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By revising § 232.41 to read as follows:

§ 232.41 Eligibility of miscellaneous type mortgages.

A mortgage covering a facility having 20 or more beds shall be eligible for insurance under this subpart if it meets the requirements of § 207.31 (b) and (c) of this chapter, as well as the requirement of this subpart.

3. By revising § 232.42 to read as follows:

§ 232.42 Eligibility of refinanced mortgages.

A mortgage given to refinance an existing insured mortgage covering a facility having 20 or more beds may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act if it meets the requirements of § 207.32 (a) through (c) of this chapter, as well as the requirements of this subpart.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

4. The authority citation for 24 CFR Part 242 is revised to read as set forth below and any authority citation following any section in Part 242 is removed:

Authority: Secs. 211, 223(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z–7); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. By adding a new § 242.96 to read as follows:

§ 242.96 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage covering a hospital may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(a) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of (1) the original principal amount of the existing insured mortgage, or (2) the unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(b) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(c) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the General Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

Dated: June 14, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–15159 Filed 6–21–85; 8:45 am]

BILLING CODE 4210–27–M

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-85-1228; FR-2016]

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Conflict of Interest

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to add regulations governing conflict of interest situation for the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaskan Native Villages. Currently, similar regulations in 24 CFR Part 570, Subpart K, are made applicable, by reference, to the Indian CDBG Program. This proposed rule would provide refinements in Part 571 that are more reflective of circumstances in Indian and Alaskan Native communities, and would supersede the cross reference to Part 570.

DATE: Comments must be received on or before August 23, 1985.

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

FOR FURTHER INFORMATION CONTACT: Marcia A.B. Brown, Room 7134, Office of Program Policy Development, Office of Communinty Planning and Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755-6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: For the most part, the conflict of interest in provisions in 24 CFR 570.611, applicable to the CDBG entitlement program, are also applicable to the Indian CDBG program, and major portions have been included without change in this proposed rule. However, there are certain conflict of interest situations that are unavoidable for grantees that are small Tribes and Villages.

In order to proceed with their funded projects, these grantees now must request exceptions from the responsible HUD field office. Exceptions are usually granted, because the person affected is of the same group or class as the beneficiaries of the project. To eliminate the delay in grantees' projects while exceptions are being considered by HUD, proposed §571.607(e) provides for circumstances under which the conflict prohibition would not apply. The grant recipient may make the exception under the described circumstances, provided that to do so would not result in a violation of Tribal or State laws on conflict of interest. This provision is not intended to allow recipients to violate their own Tribal conflict of interest laws. The exception cannot be granted if it violates such laws, or if it violates applicable State laws. Records showing the decisions reached by recipients on exceptions would have to be maintained for HUD review.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, NW., Washington D.C. 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President of February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would simplify and reduce the requirements for grant recipients with respect to potential conflict of interest situtations, but would impose no economic burden nor have a significant economic impact on these recipients.

This rule is listed as item number 182 (CPD-5-84; FR-2016) in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17328) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB number, when assigned, will be announced by separate notice in the **Federal Register**.

The Catalog of Federal Domestic Assistance number is 14.223.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs: Housing and community development, Grant programs: Indians, Indians.

Accordingly, the Department proposes to amend 24 CFR Part 571 as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

1. The authority citation for 24 CFR Part 571 is revised to read as set forth below and any authority citation following any section in Part 571 is removed:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Part 571, Subpart G would be amended by adding a new § 571.607, to read as follows:

§ 571.607 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients (including those

specified at § 570.204(c) of this title), the conflict of interest provisions in Attachment O of OMB Circulars A-102 (grantees), and A-110 (subrecipients) shall apply.

(2) In all cases not governed by Attachment O of OMB Circulars A-102 and A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property, and the provision of assistance by the recipient or by its subrecipients, to individuals, businesses and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals and other private entities under § 570.203 or § 570.204).

(b) *Conflicts prohibited.* Except for approved eligible administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their employment or tenure in office and for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this title, receiving funds under this Part.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exeption may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply*—(1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Dated: June 17, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-15158 Filed 6-21-85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 566]

Disclosure of Sulfiting Agents in the Labeling of Wine, Distilled Spirits and Malt Beverages

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms issues this notice in order to obtain public comment regarding the agency's proposal to require disclosure of the presence of sulfur dioxide or sulfiting agent on the label of a beverage alcohol product where the level of sulfur dioxide or sulfiting agent, expressed as total sulfur dioxide, equals or exceeds the level of measurable detection established by the U.S. Food and Drug Administration (FDA) for sulfiting agents added to foods and beverages. FDA is proposing 10 parts per million as the level of measurable detection.

DATE: Comments must be received on or before August 23, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Ref: Notice No. 566).

Copies of this proposal and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, or James P. Ficaretta, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), vests authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as the delegate of the Secretary of the Treasury, to prescribe regulations which will provide "adequate information" regarding the identity and quality of beverage alcohol products. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7, for wines, distilled spirits, and malt beverages, respectively. The regulations requiring basic mandatory labeling information

for beverage alcohol products have been in effect for nearly 50 years.

In T.D. ATF-150, published in the **Federal Register** of October 6, 1983 (48 FR 45549), ATF required disclosure in the labeling of beverage alcohol products of the presence of FD&C Yellow No. 5 since it had been established that this colorant posed a recognized health problem. The preamble of the Treasury decision included the statement that ATF would look at such other ingredients on a case-by-case basis.

In the three years following publication in the **Federal Register** of July 9, 1982 (47 FR 29956), of its proposals to affirm the GRAS status of sulfur dioxide, sodium metabisulfite, sodium bisulfite and potassium metabisulfite and to revoke the GRAS status of potassium sulfite and soldium sulfite, FDA reexamined the literature pertaining to the use of sulfiting agents in foods and drugs and commissioned the Federation of American Societies for Experimental Biology (FASEB) to review this data.

In light of the concern about the use of sulfiting agents, ATF published in the **Federal Register** of September 24, 1984 (49 FR 37527), Notice No. 543, in which ATF proposes to revise the limitation prescribed for residual sulfur dioxide in wine from the presently authorized level of 350 parts per million to levels of 125 parts per million in low solids red wine, 175 parts per million in low solids white wine, and 275 parts per million in high solids wines with 5 grams of solids per 100 milliliters being proposed as the level of distinction between high solids and low solids wines.

In the preamble of T.D. ATF-182 which also appeared in the September 24, 1984, issue of the **Federal Register** (49 FR 37510), ATF states, in part, that:

> At the present time, there is insufficient scientific data to justify ATF's delisting of the use of sulfiting agents in the treatment of wine. Accordingly, ATF is retaining sulfur dioxide as an authorized preservative agent in the treatment of wine. However, if at some future date the U.S. Food and Drug Administration were to determine that the sulfiting of foods and beverages presents a risk to public health and requires labeling disclosure, ATF would promptly propose the disclosure in labeling of sulfur dioxide and sulfiting agents.

In the April 3, 1985, issue of the **Federal Register** (50 FR 13306), the Commissioner of Food and Drugs and the Secretary of Health and Human Services propose amendment of the food labeling regulations prescribed in Title 21, Code of Federal Regulations, Part 101, to establish 10 parts per million as the level of measurable detection of a sulfiting agent in foods and beverages. FDA proposes that where the level of sulfur dioxide or sulfiting agent equals or exceeds 10 parts per million, expressed as total sulfur dioxide, disclosure shall be made in labeling.

In the preamble of this proposal, FDA states that "sulfiting agents have been shown to produce allergic-type responses in humans, and the presence of these ingredients in food may have serious health implications for those persons who are intolerant of sulfites." FDA states further that "a label declaration of sulfites in food will enable persons intolerant to sulfites to minimize their exposure to these ingredients."

In light of FDA's rulemaking proposal, ATF believes that there is now official recognition of evidence linking the presence of sulfur dioxide and sulfiting agents in foods and beverages to a health risk for a small precentage of consumers. Accordingly, ATF proposes to air the issue of disclosure of the presence of sulfur dioxide or of a sulfiting agent on the label of a beverage alcohol product in which sulfur dioxide or a sulfiting agent is present at a measureable level of detection, namely, 10 parts per million expressed as total sulfur dioxide.

Form of Disclosure

The form of disclosure of presevatives as mandated by food and drug law includes the specific name of the sulfiting agent added and its technical or functional effect, e.g., "Potassium metabisulfite added to prevent oxidation" or "Sulfur dioxide added as a preservative."

However, ATF believes, in light of FDA's concern about the level of sulfiting agent present in finished foods and beverages, that the statement "Contains sulfur dioxide" or wording of similar import, e.g., "Contains potassium metabisulfite" or "Contains a sulfiting agent", constitutes an adequate warning to consumers of beverage alcohol products and requires a label revision resulting in a minimal impact on suppliers of beverage alcohol products affected by this proposal.

ATF has no objection to labels bearing a more detailed statement such as "This product contains not more than (blank) parts per million total sulfur dioxide (added as a preservative)."

The statement disclosing the presence of sulfur dioxide or sulfiting agent shall be truthful and appear separate and apart from any other descriptive of informational material. Where the level of sulfur dioxide or sulfiting agent present in the finished product is disclosed in labeling, such statement shall report only the parts per million *total* sulfur dioxide.

Transition Period

Implementation of a final rule requiring disclosure of sulfiting agents on product labels would requuire a transition period.

For foods and nonalcoholic beverages, FDA has proposed a transition period of six months following the publication of any final regulation. FDA proposes a relatively short transition period "because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sensitive individuals." In addition, FDA's proposal constitutes a clarification of existing statutory and regulatory requirements.

ATF proposes a transition period of 180 days following the date of publication of a Treasury decision (final rule) in the **Federal Register.** However, ATF is proposing a new regulatory requirement which, if adopted, would require revisions of the labels of most wines offered for sale in the United States and to a lesser extent would require revisions to the labels of some malt beverages and few, if any, distilled spirits products offered for sale in the United States. On and after the effective date of any final rule, the label of a beverage alcohol product affected by the requirement for disclosure of residual sulfur dioxide would have to bear the mandatory statement at the time of its removal from Internal Revenue bond or from U.S. Customs bond.

Method of Analysis

Under this proposal, the detectable amount of a sulfiting agent would be 10 or more parts per million, expressed as total sulfur dioxide, in the finished beverage alcohol product when a sample of the product is analyzed using §§ 20.123–20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984).

A copy of this method is available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044.

Public Participation

ATF requests comments from all interested parties regarding this proposal. Of particular interest will be comments from affected industry members in which specific data are presented on the cost burden related to adoption of this proposal. This data should include costs associated with

additional manpower and recordkeeping expenses as well as costs relative to the printing of revised labels and strip labels. ATF also requests comments regarding the proposed form of disclosure and the feasibility of the date proposed for implementation.

All comments received before the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

After consideration of all comments and suggestions, ATF may issue a Treasury decision. The proposals discussed in this notice may be modified due to the comments and suggestions received as well as due to any revision which FDA may make prior to issuance of a final rule in Title 21, Code of Federal Regulations, Part 101.

Disclosure of Comments

ATF will not recognize any designation of material in comments as confidential or not to be disclosed. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any persons submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine whether in light of all circumstances a public hearing should be held.

Compliance With Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under Sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, D.C. 20503.

Drafting Information

The authors of this document are Coordinators Michael J. Breen and James P. Ficaretta of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

Par. 1 The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 985, as amended (27 U.S.C. 206), unless otherwise noted.

Par. 1a. Section 4.32 is amended by revising the introductory text of paragraph (a) to reference paragraph (e) and adding a new paragraph (e) as follows:

§ 4.32 Mandatory label information.

(a) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, there shall be stated on the brand label:

* * * * *

(e) There shall be stated on the brand label or on a back label, separate and apart from all other information, the statement "Contains sulfur dioxide" or wording of similar import where sulfur dioxide or a sulfiting agent is present at a level of 10 or more parts per million, expressed as total sulfur dioxide.

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

Par. 2. The authority citation for 27 CFR Part 5 is revised to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 985, as amended (27 U.S.C. 206), unless otherwise noted.

Par. 2a. Section 5.32 is amended to add a new paragraph (b)(6) and to redesignate paragraphs (b) (6), (7), and (8) as paragraphs (b) (7), (8), and (9), respectively, as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) On the brand label or on a back label:

* * * * *

(6) The statement "Contains sulfur dioxide" or wording of similar import where sulfur dioxide or a sulfiting agent is present at a level of 10 or more parts per million, expressed as total sulfur dioxide.

* * * * *

PART 7—[AMENDED]

27 CFR Part 7—Labeling and Advertising of Malt Beverages is amended as follows:

Par. 3a. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 985, as amended (27 U.S.C. 206), unless otherwise noted.

Section 7.22 is amended by adding new paragraph (b)(5) as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(5) The statement "Contains sulfur dioxide" or wording of similar import where sulfur dioxide or a sulfiting agent is present at a level of 10 or more part per million, expressed as total sulfur dioxide.

Signed: April 15, 1985.

Stephen E. Higgins,

Director.

Approved: May 13, 1985

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-15080 Filed 6-21-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Deliquents; Proposed Changes in Policy Guidelines

Correction

In FR Doc. 85-13375, beginning on page 24236 in the issue of Monday, June 10, 1985, make the following correction: On page 24237, in the first column, in the fourth line of the first complete paragraph, between the words "the" and "appropriate" insert "prisoner's good institutional conduct). Once it has calculated the".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-177; RM-4772]

FM Broadcast Stations in Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 217A to Barstow, California, as that community's first noncommercial educational FM broadcast service, in response to a petition filed by the First Assembly of God Church.

DATES: Comments must be filed on or before August 9, 1985, and reply comments on or before August 26, 1985.

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.

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

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations (Barstow, California); MM Docket No. 85-177, RM-4772.

Adopted: May 22, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by the First Assembly of God Church ("petitioner"), requesting the allotment of Channel 217A to Barstow, California, as that community's first noncommercial educational FM broadcast service. Petitioner states that it will apply for the channel.

2. A staff engineering study reveals that Channel 217A can be allotted to Barstow in conformity with the minimum distance separation requirements specified in §§ 73.207(a) and 73.507(c) of the Commission's Rules. However, since Barstow is located within 320 kilometers (199 miles) of the common U.S.-Mexican border, the Commission must obtain concurrence in the proposal.

3. Since the proposed allotment could provide a first noncommercial educational FM broadcast service to Barstow, California, the Commission believes it is appropriate to elicit comments on the proposal to amend the noncommercial educational FM Table of Allotments, § 73.504(a) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Barstow, California		217A

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 9, 1989, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: George M. Malti, Esq., Farrand, Malti & Cooper, 701 Sutter Street, 7th Floor, San Francisco, CA 94109 (Counsel for petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act ot 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 Nancy V. Joyner, 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 rulemaking, 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(d)(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 Allotments, § 73.504(a) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing 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 allotment 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 allotted 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 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' 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. It 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 allot 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 Rules 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. 85-15118 Filed 6-21-85 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-176; RM-4934]

FM Broadcast Stations in Tawas City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C2 Channel 284 for Channel 284A at Tawas City, Michigan, and modification of the Class A license for Station WKJC(FM) in response to a petition filed by Carroll Enterprises, Inc. The assignment could provided Tawas City with a first Class C2 assignment.

DATES: Comments must be filed on or before August 9, 1985, and reply comments must be filed on or before August 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Tawas City, Michigan); MM Docket No. 85-176, RM-4934.

Adopted: May 21, 1985.
Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by Carroll Enterprises, Inc.[1] ("petitioner"), requesting the substitution of FM Channel 284C2 for Channel 284A at Tawas City, Michigan, and modification of its license for Station WKJC(FM) to specify operation on the new channel.

2. We believe the petitioner's proposal warrants consideration. The channel can be assigned in compliance with the minimum distance separation requirements provided there is a site restriction 24.9 kilometers (15.5 miles) northwest of Tawas City. The site restriction will prevent a short spacing to FM Channel 283A[2] (vacant), Saginaw, Michigan, and Channel 285A, Station WIDL, Caro, Michigan. In addition, we shall propose to modify the license of Station WKJC(FM) (Channel 284A) as requested by petitioner, to specify operation on Channel 284C2. However, in conformity with Commission precedent, should another party indicate an interest in the Class C2 allotment, the modification could not be implemented unless an additional equivalent channel is also allotted. See, *Modification of FM and TV Stations Licenses,* Docket 83-1148, 49 FR 34007, published August 28, 1984.

3. Concurrence of the Canadian government is required since Tawas City, Michigan, is located within 320 kilometers (199 miles) of the common U.S.-Canadian border.

4. In order to provide a wide coverage area station for the Tawas City area, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Tawas City, Michigan.	269A, and 284A.....	269A, and 284C2.

5. 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.

6. Interested parties may file comments on or before August 9, 1985, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Christopher D. Imlay, Booth, Freret & Imlay, 1920 N Street NW., Suite 520, Washington, D.C. 20036 (Counsel for petitioner).

[1] Petitioner is the licensee of Station WKJC(FM), Tawas City, Michigan.

[2] Channel 283A was recently allotted to Saginaw, Michigan, in MM Docket 84-231, 50 FR 3514, published January 25, 1985.

7. 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 section 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.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, 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(d)(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 Allotments, § 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 allotment 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 alloted 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 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 allot 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 § 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. 85–15119 Filed 6–21–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–180; RM–4773]

FM Broadcast Stations in Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 224A to Butte, Montana, in response to a petition filed by Ronald J. Huckeby and John D. Jacobs. The allotment of Channel 224A to Butte could provide a third FM broadcast service to that community.

DATES: Comments must be filed on or before August 9, 1985, and reply comments on or before August 26, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Butte, Montana); MM Docket No. 85–180, RM–4773.

Adopted: May 21, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Ronald J. Huckeby and John D. Jacobs ("petitioner"), requesting the allotment of FM Channel 224A to Butte, Montana, as that community's third FM service. Petitioner has expressed an interest in applying for the channel, if alloted. The channel can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. In view of the fact that the proposed allotment could provide a third FM service to Butte, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to that community, as follows:

Channel No. City	Present	Proposed
Butte, MT	231 and 238	224A, 231, and 238.

3. The Commission's authority to institute rule making proceedings, showing 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 allotted.

4. Interested parties may file comments on or before August 9, 1985, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Ronald J. Huckeby, John D. Jacobs, 122 Star Lane, Butte, Montana 59701.

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 Kathleen Scheuerle, 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(d)(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 Allotments, § 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 allotment 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 allotted 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 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 allot 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 § 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. 85–15122 Filed 6–21–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-181; RM-4755]

FM Broadcast Stations in Port Isabel, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Jaime Martinez, proposes the allotment of Channel 271A to Port Isabel, Texas, as that community's second FM allocation.

DATES: Comments must be filed on or before August 9, 1985 and reply comments on or before August 26, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR part 73

Radio broadcasting.

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

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Port Isabel, Texas); MM Docket No. 85–181, RM–4755.

Adopted: May 21, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Jaime Martinez ("petitioner"), requesting the allotment of FM Channel 272A to Port Isabel, Texas, as that community's second FM channel.[1]

[1] Recently in the *First Report and Order* in MM Docket No. 84–231, 50 FR 3514, published January 25, 1985, Channel 266A was allotted to Port Isabel, Texas.

Continued

Although the petitioner submitted information in support of the proposal he failed to express an intention to apply for the channel, if allotted. Therefore, he is requested to do so in his comments.

2. A staff engineering study reveals that Channel 272A connot be allotted to Port Isabel in compliance with our minimum spacing requirements.[2] However, Channel 271A is available to Port Isabel in compliance with § 73.207 of the Commission's Rules. Since Port Isabel is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposal requires concurrence by the Mexican government.

3. In view of the fact that the proposed allotment could provide a second FM channel to Port Isabel, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Port Isabel, TX	266A	266A and 271A.[1]

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 allotted.

5. Interested parties may file comments on or before August 9, 1985 and reply comments on or before August 26, 1985 and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jaime Martinez, Valley Broadcast Engineering, Inc., P.O. Box 3087, Harlingen, Texas 78551.

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 Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. 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, constututes 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(d)(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 Allotments, § 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 allotment 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 alloted 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 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 Section 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 allot 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 accompained 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. 85-15123 Filed 6-21-85; 8:45 am]
BILLING CODE 6712-01-M

[2] There is a 62.5 km (38.8 miles) short spacing to Channel 273 at Reynosa, Tamaulipas, Mexico.

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47 CFR Part 73

[MM Docket 85-179; RM-4870]

TV Broadcast Stations in Fredericksburg, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of VHF television Channel 2 to Fredericksburg, Texas, in response to a petition filed by Steven D. King, as that community's first television assignment. In addition, channel offsets must be changed at Amarillo and Midland, Texas.

DATES: Comments must be filed on or before August 9, 1985, and reply comments on or before August 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

Authority: Secs. 4, 303, 48 Stats., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making and Order To Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Fredericksburg, Texas); MM Docket No. 85-179, RM-4870.

Adopted: May 22, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Steven D. King ("petitioner") requesting the assignment of VHF television Channel 2 to Fredericksburg, Texas, as that community's first commercial television assignment. Petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Fredericksburg (population 6,412),[1] seat of Gillespie County (population 13,532) is located in central Texas approximately 120 kilometers (75 miles) west of Austin, Texas. The proposed assignment can be made in compliance with the minimum distance separation and other technical requirements provided offset changes are made for Station KMID-TV, Channel 2, Midland, Texas, from "minus" to "plus" and for unused but applied-for Channel *2, Amarillo, Texas,[2] from "plus" to "minus". Since Fredericksburg and Midland, Texas, are within 400 kilometers (250 miles) of the U.S.-Mexico border, Mexican concurrence is required for the assignment and the change in offset at Midland.

3. the ultimate permittee of Channel 2, Fredericksburg, Texas, as a condition of the assignment of that channel to Fredericksburg, will be required to reimburse the licensee of Station KMID-TV, Channel 2, Midland, Texas, for reasonable expenses incurred as a result of the change in offset.

4. In view of the foregoing and the fact that the proposed assignment could provide a first television assignment to Fredericksburg, Texas, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Amarillo, TX	*2-, 4, 7, 10, and 14+.	*2+, 4, 7, 10, and 14+
Fredencksburg, TX	2+.	
Midland, TX	2+ and 18	2- and 18.

5. Accordingly, it is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Telepictures Broadcasting Corporation ("Telepictures"), licensee of Station KMID-TV, Midland, Texas, shall show cause why its license should not be modified to specify operation on Channel 2- proposed herein instead of the present Channel 2+.

6. Pursuant to §1.87 of the Commission's Rules, Telepictures may, not later than August 9, 1985, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Telepictures may, not later than August 9, 1985, file a written statement showing the particularity who its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call upon Telepictures to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license 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, Telepictures 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.

7. It is further ordered, That the Secretary shall send a copy of this *notice of proposed rule making and order to show cause* by certified mail, return receipt requested, to Telepictures Broadcasting Corporation, 15303, Ventura Boulevard, Sherman Oaks, California, 91403; Family Media, Inc. 1700 Duncan, Pampas, Texas 79178; and Amarillo Junior College District, P.O. Box 447, Amarillo, Texas, 79178.

8. 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.

9. Interested parties may file comments on or before August 9, 1985, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Steven D. King, P.O. Box 90357, Atlanta, Georgia 30364.

10. 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), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact D. David Weston, 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.

[1] Population figures are extracted from the 1980 U.S. Cenus.

[2] The applicants for Channel *2, Amarillo, Texas, are: Family Media, Inc. (BPET-83107KH); and Amarillo Junior College District (BPET-831219KM).

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in sections 4(i), 5(e)(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 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 § 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. 85-15121 Filed 6-21-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-174; RM-4876]

TV Broadcast Stations in St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of VHF television Channel 12 to St. George, Utah, in response to a petition filed by Steven D. King, as that community's first commercial television assignment.

DATES: Comments must be filed on or before August 9, 1985, and reply comments on or before August 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (St. George, Utah); MM Docket No. 85-174, RM-4876.

Adopted: May 21, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Steven D. King ("petitioner") requesting the assignment of VHF TV Channel 12 to St. George, Utah, as that community's first commercial television assignment. Petitioner submitted information in support of the proposal and indicated his interest in applying for the channel, if assigned.

2. St. George (population 11,350),[1] seat of Washington County (population 26,065), is located in southwestern Utah, approximately 170 kilometers (110 miles) northeast of Las Vegas, Nevada. A staff engineering study reveals that VHF television Channel 12 can be assigned to St. George consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

3. In view of the above considerations, we believe the petitioner's proposal warrants consideration since it could provide a first commercial television service to St. George, Utah. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
St. George, UT	*18—	12 and *18—.

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 9, 1985, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant as follows: Steven D. King, P.O. Box 90357, Atlanta, Georgia 30364 (petitioner).

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 TV Table of Assignments,

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

§ 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), 73.504 and 73.606(b) of the Commission's Rules*, 46 F.R. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time of Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract 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 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 the 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 advanced in initial comments, so that parties may comment on them in reply comments. They will ot 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 § 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. 85-15117 Filed 6-21-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-178; RM-4916]

TV Broadcast Stations in Mayville, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 52 to Mayville, Wisconsin, as that community's first commercial television service, at the request of The Pacer Television Company.

DATES: Comments must be filed on or before August 9, 1985, and reply comments on or before August 26, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Proposed Rule Making

In the matter of amendment of § 73.206(b), Table of Assignments, TV Broadcast Stations (Mayville, Wisconsin); MM Docket No. 85-178, RM-4916.

Adopted: May 22, 1985.

Released: June 17, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by The Pacer Television Company ("petitioner"), requesting the assignment of UHF Television Channel 52 to Mayville, Wisconsin, as that community's first commercial television service. Petitioner stated an intention to apply for the channel, if assigned. The assignment can be made in compliance with the minimum distance separation requirements.

2. Mayville (population 4,333)[1] in Dodge County (population 75,064) is located in southeastern Wisconsin approximately 75 kilometers (45 miles) northwest of Milwaukee.

3. In view of the fact that the proposed assignment could provide a first local television service to Mayville, the Commission believes it is in the public interest to seek comments on the proposal to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Mayville, WI	---	52

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 9, 1985, and reply comments on or before August 26, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant as follows: Lyle Robert Evans, Broadcast Engineering Consultant, 1145 Pine Street, Green Bay, WI 54301 (Consultant for Petitioner).

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, § 73.606(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), 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 Patricia Rawlings, 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(e)(l), 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 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 action 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. 85–15120 Filed 6–21–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-196; FCC 85-313]

Amendment of the Rules To Permit the Maintenance of Pools of Questions for Amateur Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to allow Volunteer-Examiner Coordinators (VEC's) instead of the FCC to maintain the question pools for each written examination element under the amateur operator volunteer examination program. This action is being proposed because it is no longer necessary for the FCC to continue this function in an otherwise all-volunteer program.

DATE: Comments are due by August 30, 1985 and replies by September 30, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio broadcasting.

In the matter of Amendment of Part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VEC's) to Maintain

Pools of Questions for Amateur Operator Examinations; PR Docket No. 85-196, FCC 85-313.

Notice of Proposed Rule Making

Adopted: June 12, 1985
Release: June 18, 1985.

By the Commission.

1. The volunteer examination system for amateur licenses above the Novice Class went into effect December 1, 1983. *Report and Order*, PR Docket No. 83-27, 47 FR 45652, October 6, 1983. The system was adopted to implement legislation designed to maximize the number of amateur operator examination opportunities, which had been recently limited due to Commission resource and personnel reductions. See 47 U.S.C. 154(f)(4). As part of our continuing regulatory review we are issuing this *Notice of Proposed Rule Making* to determine whether certain examination functions we retained in initial implementation of this legislation may now be assumed by amateur volunteer organizations.

2. Under the *Report and Order* in PR Docket No. 83-27, *supra*, each written examination element was to be designed by the FCC from the publicly available FCC-approved question pool for that element. On reconsideration in this docket, Volunteer-Examiner Coordinators (VEC's) were given the function of designing the written examination elements. Starting January 1, 1987, both VEC's and volunteer examiners may design written examination elements. See *Memorandum Opinion and Order*, PR Docket No. 83-27, 49 FR 30310, July 30, 1984.

3. Currently, the FCC maintains and annually updates the question pools for each of the written examination elements (Elements 2, 3, 4(A) and 4(B)). These pools are published by the FCC and made available to the public as PR Bulletins 1035 A, B, C and D. Individual amateur operators may submit suggested questions for these pools to the FCC, as prescribed in the Study Guide for FCC Amateur Radio Operator License Examinations, PR Bulletin 1035. VEC's annually report to the FCC on the efficacy of the questions in the question pools.

4. A VEC designs a written examination element by choosing questions from the FCC-issued pool for that element. Volunteer examiners administer the examination element in that form to applicants for amateur operator licenses. In less than two years volunteer examiners will also be permitted to choose the questions from the FCC-issued pools to design a particular written examination element.

5. It appears that it is unnecessary for us to continue to be the source of question pools for written examination elements. Our maintenance of these question pools is now mainly a custodial function. Changes are made primarily from the suggestions of the VEC's. VEC's with hands-on experience at coordination of the administration and preparation of amateur operator examinations appear at least as well suited as we are to maintain the question pools for each written examination element. PR Bulletin 1035 will continue to be the syllabus for construction of the question pools and examination elements. The syllabus insures sufficient control and uniformity so that only qualified applicants pass the examinations.

6. We are therefore proposing rule changes which would abolish PR Bulletins 1035 A, B, C, and D and instead vest VEC's with the duty to maintain publicly available question pools for the examinaton elements. The rules proposed would allow VEC's to start with current question pools and then supplement them with recommendations from qualified amateur radio operators. We propose to permit amateur operators to recommend question changes to any recognized VEC.

7. We currently write the questions in each question pool in a manner that permits the designer of the examination to choose whatever format (essay, multiple choice, fill-in-the-blank, or multi-purpose) is desired. We expect that VEC's under the proposed program would publish question pools with similar flexibility, but we do not propose to require them to do so.

8. We would require that each VEC's question pools be publicly available. These pools are currently publicly available and act as a valuable study tool. Their availability does not appear to appreciably accelerate current pass rates. Moreover, volunteer examiners preparing and administering examinations for the Novice Class will continue to need a pool of Element 2 questions from which to design their examinations. Additionally, under the current rules volunteer examiners preparing and administering examinations above the Novice class would need these pools for all written elements starting January 1, 1987 for their design of written examinations.

9. Since we have already decided to allow volunteer examiners to design written examinations, and since transfer of the question pool maintenance function provides an immediate infrastructure which accommodates this intent, we see no reason to further delay examiners' entry into the design process. We propose accelerating their January 1, 1987 entry to the design process to a date consistent with the effective date of these rules. Volunteer examiners would be able to choose whether to make their own examination designs or to use those provided by their VEC. Both VEC's and volunteer examiners would be required to keep examination designs in confidence.

10. The proposed rules include a requirement that VEC question pools exceed the number of questions used for any one examination element by a factor of ten in order to continue to minimize the likelihood of any abuse of the examination process by rote memorization of publicly available questions. *See Report and Order*, PR Docket No. 83-27, *supra* at para. 55. The FCC-imposed algorithms for each element which would be abolished along with PR Bulletins 1035 A, B, C, and D would be replaced with publicly available VEC algorithms representative of the syllabi in and based upon the requirements of PR Bulletin 1035. We expect to specify the number of questions required for each written examination element in our Instructions to the VEC's. In the near future, we do not expect to deviate from the current requirements: twenty questions for Element 2, fifty questions for Element 3, fifty questions for Element 4(A) and forty questions for Element 4(B).

11. Accordingly, rules to transfer the function of maintenance of question pools for amateur operator written examination elements from the FCC to VEC's are proposed as set forth in the attached Appendix. We are also proposing to amend paragraph (a) of § 97.29 to clarify that it applies both to the Novice and above-Novice volunteer examination programs and that examiners are responsible (as part of their duty to grade the examinations) for determining the correct answer to each question.

Other Matters

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments)

between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202) 632-7000.

13. Authority for issuance of this notice is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before August 30, 1985, and reply comments on or before September 30, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file Formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply commments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

14. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public. Any burdens or duties assumed by VEC's are assumed voluntarily and therefore not subject to the provisions of the Paperwork Reduction Act.

15. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), we certify that this rule change would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radio communication. (see 47 CFR 97.3(b)).

16. It is ordered, that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration.

17. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Paragraphs (c), (d) and (e) of § 97.27 would be revised to read:

§ 97.27 Examination preparation.

* * * * *

(c) Element 2 must be designed by the examiner by selecting questions from the current Element 2 VEC question pool according to that VEC's published algorithm.

(d) The volunteer examiner team shall design Elements 3, 4(A) and 4(B) or obtain them from the VEC. Examinations must be designed by selecting questions from the VEC's current question pool for the appropriate element. The questions must be selected according to the VEC's published alogrithm.

(e) Volunteer examiners must hold examination designs in confidence.

3. Paragraph (a) of § 97.29 would be revised to read:

§ 97.29 Examination grading.

(a) The examiner(s) must determine the correct answer for each examination question and grade each examination element separately.

* * * * *

4. Paragraph (d) of § 97.31 would be revised to read:

§ 97.31 Volunteer examiner requirements.

* * * * *

(d) Each volunteer examiner who designs or administers an examination for the Technician, General, Advanced or Amateur Extra class operator license must be accredited by the Volunteer-Examiner Coordinator (see Subpart I) coordinating that examination.

* * * * *

5. Section 97.517 would be revised to read:

§ 97.517 Examinations.

A VEC may design (see § 97.27(d)), assemble, print and distribute Elements 1(B), 1(C), 3, 4(A) and 4(B). A VEC is required to hold examination designs in confidence.

6. Section 97.521 would be revised to read:

§ 97.521 Question pools.

(a) A VEC must maintain a current pool of questions for each written examination element. The question pool for each element must contain at least ten times the number of questions to be specified for a single examination. The current question pool for each element must be published and made available to any member of the public upon request.

(b) VEC question pools may be composed of questions from two sources:

(1) The appropriate last issue of PR Bulletin 1035 A, B, C, or D; or

(2) Questions submitted to the VEC by amateur radio operators in accordance with the instructions in PR Bulletin 1035. Amateur Extra licensees may submit written questions for any examination element. Advanced licensees may only submit questions for Elements 2 and 3. General or Technician licensees may only submit questions for Element 2.

7. Section 97.523 would be revised to read:

§ 97.523 Algorithms.

A VEC must publish and provide to the public upon request an algorithm for

each examination element for choosing questions from its question pool to design an examination for that element. Each algorithm must assure that each examination element contains questions representative of the various subject categories set forth in the syllabus for that element in PR Bulletin 1035.

[FR Doc. 85-15112 Filed 6-21-85; 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

AGENCY: Interstate Commerce Commission.

ACTION: Scheduling of supplemental comment period for advance notice of proposed rulemaking.

SUMMARY: The Commission grants the petitions of several participants for an opportunity to file supplemental comments in response to proposals advanced in the reply comments received April 25, 1985. Comments were received in response to an advance notice of proposed rulemaking (49 FR 27333, July 3, 1984) which gave commentors an opportunity to offer alternatives to the Commission's boxcar decision in Ex Parte 346 (Sub-No. 8) published at 48 FR 20412, May 6, 1983, as it pertains to car hire and car service rules for boxcars.

DATES: Supplemental comments are due July 24, 1985.

ADDRESS: An original and 15 copies of supplemental comments in Ex Parte No. 346 (Sub-No. 19) should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Supplemental comments must also be served on all parties of record in both Ex Parte No. 346 (Sub-No. 19) and Ex Parte No. 346 (Sub-No. 8).

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

Decided: June 14, 1985.

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

James H. Bayne

Secretary.

[FR Doc. 85-15089 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Ginseng Harvested in 1985 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. In general, export of wild specimens of plants listed in Appendix II of CITES may occur only if: (1) The Scientific Authority (SA) has advised the permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species and will maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs; and (2) the MA is satisfied that the plants were not obtained in violation of laws for protection of the species. Export of cultivated specimens of plants listed in Appendix II may occur only if the MA is satisfied that the plants were artificially propagated.

This document announces the U.S. Fish and Wildlife Service's MA and SA proposed findings on export of American ginseng (*Panax quinquefolius* Linnaeus) from the United States. Until 1982 such findings were made annually on a State-by-State basis. In 1982, the Service revised guidelines and made multi-year findings covering the 1982, 1983, and 1984 harvest seasons (which end with the calendar year). The Service now proposes to grant multi-year ginseng export approval for the 1985 and subsequent harvest seasons. The Service seeks data and information on topics described in this proposal as a basis for determining whether to initiate or to continue export approval from States for the 1985 and/or subsequent seasons.

Monitoring State ginseng programs for eight years has shown the Service that States for which ginseng export has been approved will usually continue to satisfy CITES requirements. To ensure that this is so, the Service plans to continue annual monitoring in accordance with the procedures described herein. Existing management reports are analyzed concerning each State for which ginseng export is approved, by the end of May of each year, to document its most recent harvest and current status of ginseng.

The Service also requests information on environmental or economic impacts that might result from these findings, and suggestions on alternative approaches to meeting CITES requirements.

DATE: The Service will consider information and comments received by July 24, 1985, in making its final rule.

ADDRESS: Please send correspondence concerning this notice to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, room 611, Arlington, Virginia 22201. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 620 of the office.

FOR FURTHER INFORMATION CONTACT: Management Authority: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service (address above), telephone (703) 235-2418;

Scientific Authority: Dr. Bruce MacBryde, Botanist, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION: Export from the United States of species listed in Appendix II of CITES may only occur upon approval of both the MA and SA, which functions are the responsibility of the U.S. Fish and Wildlife Service. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, is responsible for enforcing CITES for terrestrial plants (see final rule of October 25, 1984, 49 FR 42907). This is the first of two notices concerning the Service's MA and SA findings on export of American ginseng taken in the 1985 and subsequent harvest seasons. The previous rule for export of ginseng was published on August 28, 1984 (49 FR 34020).

Scientific Authority Findings

General criteria used by the SA in advising on whether export will not be detrimental to the survival of a species are as follows (originally described in a notice of July 11, 1977, 42 FR 35800):

(1) Whether such export has occurred in the past and has not reduced numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

(2) Whether such export is expected to increase, decrease, or remain constant; and

(3) Whether the life history parameters of the species and the relevant structure and function of its ecosystems indicate that present or

proposed levels of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the SA, in accordance with these criteria, will continue to be based on the following information for each affected State, to the extent it is available in annual reports (with sources and accuracy indicated) or otherwise (slightly revised from the rule of October 4, 1982, 47 FR 43701):

(1) Historic, present, and potential distribution of wild ginseng by county, using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss or protection of habitat; and map of locations and information on approximate acreage and percentage of the State's wild ginseng that is on statute-protected lands where collecting is prohibited (ginseng is considered as willd if it occurs in naturally-perpetuated habitat, where the species is naturally propagated or with only limited planting of wild seed by people and no subsequent tending of the species until harvest);

(2) Map of the approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

(3) Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map of the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any changes from previous years or differences from historical population sizes;

(4) A description of the State's annual harvest practices and controls on wild ginseng, including limitation of harvest season (45 FR 69844, October 21, 1980; States are urged not to permit local harvest until fruits are ripe and seeds thus mature), and harvest requirements such as on minimum size or age of collected plants and on planting their seeds:

(5) Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors in the State, and on the amount of wild ginseng from the State harvested and amount certified for export, in pounds (dry weight) per year;

(6) Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in root sizes or number of wild roots per pound (dry weight) over previous years;

(7) A description of the State's research program on wild ginseng and its progress, including a summary of results obtained; and

(8) State maps showing those counties in which ginseng is commercially cultivated (cultivated ginseng is considered that artificially propagated and maintained under controlled conditions, for example in intensively prepared or managed fields, gardens, or patches with artificial or natural shade); and information on the amount of cultivated ginseng from the State harvested and the amount certified for export, in pounds (dry weight) per year.

Management Authority Findings

In addition to SA advice that ginseng exports will not be detrimental to the survival of the species, the MA must be satisfied: (1) That the ginseng was not obtained in contravention of laws for its protection; and (2) whether it was of wild or artificially propagated origin.

Criteria used by the MA in determining if a State program qualifies for export are that the State has adopted and is implementing the following regulatory measures (revised from notices of October 21, 1980, 45 FR 69844, and July 23, 1984, 49 FR 29635):

(1) A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

(2) State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng, and report such commerce to the State in a signed and dated statement every 30 days, as well as in a signed and dated annual accounting at the end of the State's export year;

(3) Dealer records required to show date of transaction, name and address of seller/buyer of ginseng, whether roots were wild or artificially propagated, if roots were green (fresh) or dried at time of transaction, weight of roots, State of origin of roots, and the identification numbers of the State certificates used to ship ginseng from the State;

(4) Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. Experience has shown the value of an inspection and certification program by a State official who can document both the weight of the roots in question and that they were legally taken from the wild or artificially propagated in that State:

(a) Ginseng unsold by December 31 of the harvest year must be weighed by the State and the dealer given a weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

(b) The certificates of origin must remain in State control until issued at certification and must contain the following information:

—State of origin,
—serial number of certificate,
—name and address of dealer,
—dealer's State registration number,
—dealer's shipment number for that harvest season,
—year of harvest of ginseng being certified,
—designation as wild or artificially propagated roots,
—designation as green (fresh) or dried roots,
—weight of roots, expressed both numerically and in writing,
—verified statement that the ginseng was obtained in that State in accordance with State laws of that harvest year,
—name and title of State-certifying official,
—date of certification, and
—signatures of both dealer and State official making certification.

This certificate should be issued in triplicate with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by State for reference; and

(5) State regulations that prohibit uncertified ginseng from entering or leaving the State.

Each State for which ginseng export is approved is requested to inlcude the following information in its annual report:

(1) Reaffirm State ginseng program and indicate modifications concerning:

(a) State ginseng law and regulations,

(b) Season of harvest and selling/buying operations,

(c) State dealer, digger, and/or grower license or registration rules,

(d) Sample of digger's license, if any, indicating cost of license and dates of authorized use,

(e) Cost of dealer license or registration,

(f) Dealer record maintenance and reporting requirements,

(g) Sample of current-year dealer certificates and reporting forms,

(h) Sample of current-year State certificate of legal take and origin,

(i) Description of State-certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State; and

(j) Name, address, and telephone number of State person to contact concerning such information.

(2) The report should also include information on the following:

(a) Pounds (dry weight) of wild and of cultivated ginseng (i) harvested and (ii) certified by the State, as well as the pounds of each (iii) sold from in-State and from out-of-State sources,

(b) Indicate how dealers not resident in the State have ginseng roots harvested in that State certified and how this commerce is controlled by State law, and

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies.

Findings for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 69844), the Service announced it would approve export of artifically propagated ginseng only from States for which export of wild-collected ginseng was approved, because those States had programs necessary to document the source of roots. The Service more recently announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service proposed to continue granting such approval.

Export Procedures

Valid Federal CITES documents are necessary to export wild or artificially propagated ginseng roots. Applications for these documents should be sent to the Federal Wildlife Permit Office at the address given above.

Ginseng may only be exported through U.S. Department of Agriculture (USDA) ports recently designated by the U.S. Department of the Interior (see 49 FR 42938; October 25, 1984). For each export, the exporter must present to the USDA, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ) Port Inspector the following:

(1) Ginseng roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for reexport). An exporter or dealer may split an original State certificate by striking a line through the original weight on the certificate, and identifying by numbers and writing the new (lower) weight of ginseng being exported. This change in certificate weight must be certified by the dealer or exporter with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter;

(3) Two completed Federal CITES export documents (permits or certificates);

(4) One copy of executed waybill and invoice; and

(5) One copy of Customs declaration for the shipment.

The PPQ Port Inspector may sign and validate the CITES documents only after a satisfactory inspection of the export documentation and contents of the shipment. Once the CITES documents are validated, the inspector will forward State certificates, one CITES export documents, waybill, invoice, and Customs form to the Service for recordkeeping and reporting. The remaining CITES export document will authorize the international shipment of the ginseng and will be collected by the importing country.

Previous Export Approval

On October 4, 1982 (47 FR 43701), the Service granted multi-year export approval for 1982–84 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other revised criteria of both the SA and MA. Export from certain additional States was approved under these guidelines on October 7, 1983 (48 FR 45775), March 19, 1984 (49 FR 10123) and August 28, 1984 (49 FR 34020). The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved only from the States named in 50 CFR 23.51(e) (see below).

Wisconsin has developed a somewhat different ginseng regulatory program that appears to offer the same legal assurance as the standard State certification system usually required by the Service. This program includes annual measurement of cultivated ginseng gardens (fields) by a county tax assessor, and certification to the State of all ginseng commerce by growers and dealers. The appropriate State officials spot-check these procedures and examine collected records of ginseng commerce from all State growers and dealers. The State's analysis of these records of commerce are then sent to the Service for review.

Multiyear Findings

From monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which export of ginseng has been approved will continue to satisfy CITES requirements. Each State seeking to obtain multi-year export approval for 1985 and subsequent harvest seasons must apply by (30 days from date of publication) 1985, in accordance with the MA and SA requirements described above. States that have not done so should submit data on their harvest and/or status of ginseng for 1982, 1983 and/or 1984 as a precondition of renewed export approval. States seeking to begin harvests for exports of their ginseng under CITES should apply following the above procedures no later than May 31 of the year they hope to start. To ensure that the States maintain successful programs and that export is not detrimental to the survival of this species, the Service plans to continue annual monitoring of State management programs and of information on the status of ginseng populations, especially by evaluation of annual reports from the States and of export documents returned from the ports.

Schedule of Notices

The Service intends to publish its final export findings and rule on September 1985, in advance of the 1985 harvest season. Notices will be published in future years if new information or changed conditions show reason for revised findings or guidelines.

Request for Information and Comments

The Service requests information and comments on the requirements and procedures for demonstrating that ginseng is not harvested in contravention of laws for its protection, that it is accurately declared as wild or artificially propagated, and that the ginseng being exported originates in States from which export has been approved. Information is also requested to determine if export will not be detrimental to the survival of the species.

The Service also requests information on environmental or economic impacts and effects on small entities (including small businesses, small organizations, and small governmental jurisdictions) that would result from findings for or against export approval. This information will aid the Service in evaluating, prior to the final rule, the conclusions stated in the Note below. The proposed rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq., 87 Stat.

884, as amended), and was prepared by S Ronald Singer, Federal Wildlife Permit Office, and Bruce MacBryde, Office of Scientific Authority.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1981–84 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of wild singseng export from any one State would not significantly affect the industry. Furthermore, because the proposed rule treats exports on a State-by-State basis and proposes to approve export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1985 and subsequent harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities.

The information collection requirement contained in this final rule have been approved by the Office of Management and Budget under 44 USA 3501 *et seq.* and assigned clearance number 1018–0022. The information will enable the Service to determinate if State ginseng management and export programs qualify for long-term export approval and in issuing export permits for international movement of ginseng from approved States. Responses are necessary to obtain a benefit.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Proposed Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, it is proposed to amend Part 23, Subchapter B of Chapter I, Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, and Endangered Species Act of 1973 as amended, 87 Stat. 884, 16 U.S.C. 1531 et seq.

Subpart F—Export of Certain Species

2. In § 23.51, revise that part of paragraph (e) that appears before "Conditions" to read as follows:

§ 23.51 American ginseng (Panax quinquefolius).

* * * * *

(e) *1982–1984 harvests* (wild and cultivated for each year unless noted): Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee (wild and cultivated for 1982 and 1983, cultivated only for 1984), Vermont (cultivated only for 1982 and 1983, wild and cultivated for 1984), Virginia, West Virginia, Virginia, and Wisconsin.

* * * * *

3. In § 23.51, add new paragraph (f) as follows:

* * * * *

(f) *1985 and subsequent harvests* (wild and cultivated for each year unless noted): As for 1984, subject to approval of applications to be submitted by these or other States: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Conditions on export: Roots must be documented as to State of origin, season of collection, and dry weight. The State must certify whether roots originated in their State, are wild or cultivated (artificially propagated), were legally obtained, and such certification must be presented upon export. The State must maintain a ginseng program, as described by the Service in the 1985 rule; a report is requested annually by May 31.

Dated: May 22, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–14934 Filed 6–21–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 121
Monday, June 24, 1985

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

Science and Education Research Grants Program Policy Advisory Committee; Small Business Innovation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Phase I Topic Managers, Small Business Innovation Research, Technical Advisory Committee Science and Education Research Grants Program.

Date: July 18, 1985.

Time: 8:30 a.m. to 6:00 p.m.

Place: U.S. Department of Agriculture, Room 112 J.S. Morrill Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for Phase I research in the SBIR program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Wayne K. Murphey, Executive Secretary, Small Business Innoviation Research, Office of Grants and Program Systems, USDA, Room 112 J.S. Morrill Building, Washington, D.C. 20251.

Done at Washington, D.C., this 13th day of June 1985.

Wayne K. Murphey,

Executive Secretary.

[FR Doc. 85–15076 Filed 6–21–85; 8:45 am]

BILLING CODE 3410-MT-M

Science and Education Research Grants Program Policy Advisory Committee; Small Business Innovation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Phase II Topic Managers, Small Business Innovation Research, Technical Advisory Committee Science and Education Research Grants Program

Date: July 19, 1985.

Time: 8:30 a.m. to 6:00 p.m.

Place: U.S. Department of Agriculture, Room 112 J. S. Morrill Building, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for Phase II research in the SBIR program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of P.L. 92–463.

Contact Person: Wayne K. Murphey, Executive Secretary, Small Business Innovation Research, Office of Grants and Program Systems, USDA, Room 112 J. S. Morrill Building, Washington, D.C. 20251.

Done at Washington, D.C., this 13th day of June 1985.

Wayne K. Murphey,

Executive Secretary.

[FR Doc. 85–15077 Filed 6–21–85; 8:45 am]

BILLING CODE 3410-MT-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-401]

Antidumping Duty Order; Red Raspberries From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: The United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that red raspberries from Canada are being sold at less than fair value and that sales of these products are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after December 18, 1984, the date on which the Department published its preliminary determination of sales at less than fair value in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the **Federal Register**.

Supplementary Information

The merchandise covered by this investigation is fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are classified under item numbers 146.5400 and 146.5600 of the *Tariff Schedules of the United States Annotated* (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on December 18, 1984, the Department published its preliminary determination that there was reason to believe or suspect that red raspberries from Canada were being sold in the United States at less than fair value (49 FR 49129). On May 10, 1985, the Department published its final determination that these imports were being sold at less than fair value (50 FR 19768).

On June 17, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of red raspberries are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the

administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of red raspberries from Canada, with the exception of that produced by Abbotsford Growers Cooperative Association which has been excluded from this investigation.

These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after December 18, 1984, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Jesse Processing Limited	22.76
Mukhtiar & Sons Packers, Ltd.	1.21
East Chilliwack Fruit Growers Cooperative	3.39
All other manufacturers/producers/exporters	2.41

This determination constitutes an antidumping order with respect to red raspberries from Canada pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 19, 1985.

[FR Doc. 85-15188 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. A-580-405]

Grand and Upright Pianos From the Republic of Korea; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the petitioners in this investigation to postpone the final determination, as provided for in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(B)). Based on this request, we are postponing our final antidumping duty determination as to whether sales of grand and upright pianos from the Republic of Korea have occurred at less than fair value until not later than September 9, 1985.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th St. and Constitution Avenue, NW., Washington D.C. 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On October 17, 1984, we announced the initiation of an antidumping duty investigation to determine whether grand and upright pianos from the Republic of Korea, are being, or are likely to be, sold in the United States at less than fair value (49 F.R. 40627). We issued our preliminary negative determination on April 25, 1985 (50 F.R. 16331). That notice stated that we would issue a final determination by July 3, 1985. On May 17, 1985, counsel for petitioners requested that we extend the period for the final determination until not later than the 135th day after publication of our preliminary determination in accordance with section 735(a)(2)(B) of the Act. If a petitioner requests an extension after a negative preliminary determination, the Department is required , absent compelling reasons to the contrary to grant the request. Accordingly, we grant the request and postpone our final determination until not later than September 9, 1985.

This notice is published pursuant to section 735(d) of the Act.

Scope of Investigation

The products covered by this investigation are grand and upright pianos as currently provided for under items numbered 725.0320 and 725.0100, respectively, of the *Tariff Schedules of the United States Annotated.*

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 17, 1985.

[FR Doc. 85-15141 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-DS-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on July 25, 1985 at 1:30 p.m. until 4:00 p.m. in the Music Box/Plymouth Room, Grand Hyatt New York, Park Avenue at Grand Central, New York, New York 10017. The Committee provides advice about ways to promote increased exports in 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 19, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-15139 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-DR-M

[A-570-003]

Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On February 14, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China. The review covers the three known exporters and three of the four known third-country resellers of this merchandise to the United States and the period March 28, 1983 through December 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results. At the request of an

importer, we held a public hearing on April 1, 1985. Based on our analysis of the comments received and the correction of clerical errors, we have changed the margins for certain firms from those presented in the preliminary results of review.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 6227) the preliminary results of its administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China (48 FR 45277; October 4, 1983). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of cotton shop towels. Cotton shop towels are currently classifiable under item 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the three known exporters and three of the four known third-country resellers of this merchandise to the United States and the period March 28, 1983, through December 31, 1983.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results, as provided by § 353.53(d) of the Commerce Regulations. At the request of an importer, Fedtex Incorporated, we held a public hearing on April 1, 1985.

Comment 1: Fedtex and another importer of Chinese shop towels, Unifirst Corporation, argue that the failure of Chinese exporters to respond to the Department's request for information did not justify the Department's application of the best information rule set forth in section 776(b) of the Tariff Act of 1930 ("the Tariff Act"). They note that section 776(b) applies only when "a party . . . refuses or is unable to provide information requested . . . or otherwise significantly impedes an investigation." They argue that, because China is a state-controlled-economy country, the exporters do not possess information that could be the basis for our foreign market value determination and the exporters therefore could do nothing to significantly impede that determination.

Fedtex and Unifirst further claim that we cannot consider the Chinese exporters to have refused to provide requested foreign market value information, because we never requested such information during this review. The importers contend that, at most, the Department might have been able to use a response to question C.1 of the Department's questionnaire to make adjustments to foreign market value for differences in physical characteristics, but the response could not have served as the overall basis of a foreign market value calculation. Question C.1 did not request production factor information (the Department's method of calculating fair value during the original investigation). Even if that question could be considered relevant to production factors, § 353.8(c) of the Commerce Regulations authorizes the Department to use that method for calculating foreign market value only after exhausting the possibility of using surrogate data from producers of the merchandise in non-state-controlled-economy countries comparable to China in level of economic development. The Department must follow and exhaust that hierarchy of options before resorting to best information. Except for the production factor methodology, all of the options require information that the Chinese exporters do not possess.

Fedtex and Unifirst also contend that it is not the best information rule, but rather the substantial evidence standard, that requires the Department to conduct a thorough investigation. They contend that the record of this proceeding contains no indication that the Department sought to obtain surrogate information, demonstrating the Department's disregard of its statutory and substantial evidence obligations. If the Department had looked, it might well have found a surrogate producer willing to provide information. Even without such cooperation, we could have obtained surrogate information from other sources.

Milliken argues in opposition that the Department's initial questionnaire request for information was only the first step in the administrative review process; the failure of Chinese exporters to respond to that request relieved the Department of any obligation to refine its questions in follow-up questionnaires.

In a narrower vein, Milliken contests the importers' arguments that Chinese exporters had no information to provide about foreign market value. A fictional constructed value must be based upon factors of production supplied by the Chinese industry.

Department's Position: The complete refusal of the Chinese exporters to respond to any of the Department's requests for information justifies the application of the best information rule of section 776(b) of the Tariff Act. Section 776(b) states that "the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available." The complete failure of the Chinese exporters to produce any of the information requested, to respond to all to the questionnaire or to any other inquiries, constitutes refusal to respond and did significantly impede this administrative review. (On June 11, 1985, after the close of the comment period, the Department received, through counsel for Fedtex and Unifirst, a purported questionnaire response from Chinatex.

Assuming this to be an official response from Chinatex, the Department has not considered the data contained in the submission in reaching these final results because the Department considers questionnaire responses received after publication of preliminary results of review to be untimely. *See also* Comment 9.)

The failure of the exporters to respond prevented the Department from obtaining accurate, timely information on U.S. sale prices, the types of merchandise sold to the U.S., and the dates of U.S. sales for choosing appropriate surrogate comparison sales. Further, the refusal of the Chinese exporters to respond prevented the Department from properly adjusting non-state-controlled-economy prices or constructed values used to represent foreign market value for potentially adverse adjustments for differences in the physical characteristics of the merchandise and differences in circumstances of sale such as credit, commissions, etc. Thus, regardless of the method the Department might have used under § 353.8 of the Commerce Regulations, the absence of any response to the U.S. price portion of the questionnaire made it impossible for the Department to calculate accurately foreign market values. Absent response, the Department had to begin its calculations late in the review by resorting to the best information available for U.S. price. Collecting that information alone took four months.

The question of the sufficiency of the Department's questionnaire with regard to overtly requesting production factor information is in our view immaterial. There was no reason to believe that the Chinese exporters would have answered more direct questions regarding factors of production. Nor would we have allowed them to answer only about those factors and not answer the rest of the questionnaire.

Comment 2: Fedtex and Unifirst argue that, if the Department decides to continue to apply the best information rule in this review, the best information is not what the Department chose for the preliminary results, *i.e.*, not the 1983 selling price of the lowest-priced U.S.-manufactured shop towel, the WIPO Eagle towel. The importers state that the legislative history of section 776(b) contains no indication that Congress intended the provision to be applied as a penalty, particularly if a party were by its very nature unable to supply the requested information; rather, the function of the provision is to enable the Department to reach required determinations within the strict statutory deadlines. They argue that the Department's own application of the rule demonstrates the Department's understanding that the provision is not a license to penalize, and that the Department is to weigh alternatives before selecting the best information othewise available. They cite final results of reviews of the countervailing duty order on Michelin X-radial steel-belted tires from Canada and of the antidumping duty finding on bicycle speedometers from Japan as instances in which the Department exercised careful and independent judgment in choosing the best information. The importers also note that the decision for the Court of Appeals for the Federal Circuit in *Atlantic Sugar, Ltd.* v. *United States*, 774 F.2d 1556 (Fed. Cir. 1984) merely indicated that a party unwilling or unable to produce information ran the risk that the administering agency's choice of best information otherwise available might work against the party's best interests. They argue that, in *Atlantic Sugar*, the International Trade Commission's choice of best information actually rewarded the failure of the respondent U.S. firm by enhancing the evidentiary support for an affirmative injury finding.

By contrast, Milliken argues that the *Atlantic Sugar* opinion supports the proposition that the Department is statutorily compelled to resort to best information otherwise available whenever a respondent fails to provide requested information. As the court said, the Department may use this rule as an informal club over recalcitrant parties.

Department's Position As we have indicated repeatedly since 1980, in **Federal Register** notices, articles, internal memoranda placed in public files, hearings, etc., we believe that, in a situation like the one at hand, the best information rule is a rule of adverse inference. Without such an interpretation, the Department's administration of the antidumping and countervailing duty laws would be futile. The Department lacks any authority to issue subpoenas for information. Parties are under no direct compulsion to answer our requests for information. If we could not resort to interpreting such complete refusals to answer as the planned withholding of information known by the potential respondent to be detrimental to its interests, then all respondents would adopt with impunity such a strategy of withholding. We must have the authority to use other market information for the potentially detrimental information withheld.

The fact that unrelated importers must bear the burden of refusals by exporters to respond is imbedded in the statute, for better or worse. It is no different in kind from the basic statutory scheme of requiring that unrelated importers pay the duties resulting from the unfair trade practices of exporters.

The importers cite to two of our prior decisions regarding our choice of best information. In the first, the final results of our administrative review of the countervailing duty order on Michelin X-radial steel-belted tires from Canada (46 FR 48737; October 2, 1981), we stated that we review parties whose exports we have previously determined to be dumped. Those subject to an antidumping or countervailing duty order have the incentive "to minimize . . . the magnitude of their dumping or subsidization." We rejected all of Michelin's suggested best information figures for Canadian sales of its Canadian produced tires. We did so, among other reasons, because adoption of its suggestions would reward its earlier refusal to provide requested information. We ultimately chose our best information with that in mind.

Our decision in the final results of review of the antidumping finding on bicycle speedometers from Japan (47 FR 28978; July 2, 1982) also clearly demonstrates our use of adverse inference.

Moreover, as provided in § 353.51(b) of the Commerce Regulations: Where a party to the proceeding refuses to provide requested information, that fact may be taken into account in determining what is the best available information.

As for the court's decision in *Atlantic Sugar*, the court did say that our choice of best information may appear to be a penalty in the eyes of the non-cooperating party. Whether the ITC's actual application of best information in *Atlantic Sugar* operated as a penalty is irrelevant to our review here. In any event, we believe our use of adverse inference is different than using section 776 as a penalty. If it were a penalty, we could arbitrarily pick any number without regard to market data usable under the statute.

In the context of our adverse inference interpretation, we do exercise discretion in choosing the best information otherwise available. For example, in determining United States price for this review, we have rejected the petitioner's information and used available Customs Service data which we were able to obtain because of the suspension of liquidation of Chinese entries. Similarly, we have considered numerous avenues for calculating foreign market value. *See* Comments 3 and 4. When we decide to use the best information otherwise available, due to the complete failure of a manufacturer or exporter to respond to our requests for information, we consider independent information that we can readily obtain without unduly delaying the review.

Comment 3: Fedtex and Unifirst assert that the Department, even in its selection of best information, is bound by the hierarchy for choosing foreign market value outlined in section 773(c) of the Tariff Act and § 353.8 of the Commerce Regulations. They argue that the Department's reasons for proceeding directly to U.S. producer prices are erroneous.

The importers argue that the Department possesses extensive information concerning shop towel export sales to the United States by Pakistani and Indonesian producers, including import data reported in Census Publication IM 146. The Department also could have obtained from the Customs Service all necessary import data regarding Pakistani or Indonesian shop towel entries during the period of review. The Department used comparable Customs Service data for Chinese imports as the basis of United States price in this review. The Department could have asked for invoices from the Customs Service. Alternatively the Department could have used the copies of commercial invoices that the importers submitted for

export sales to the United States from Hong Kong, Pakistan, and Peru.

Fedtex and Unifirst contend that the Pakistani government's blocking of the Department's access to Pakistani companies for potential surrogate home market sales data in the original fair value investigation in this case is irrelevant in this review. Nor does it justify totally abandoning that country as a potential surrogate. The hierarchy in the regulations requires proceeding to the next stated option.

In the importer's view, the Department's policy of not using as a surrogate any country subject to an antidumping or countervailing duty proceeding on comparable merchandise has not basis in law. The Department could easily include in the foreign market value whatever margin of dumping or subsidization the Department concludes exists for that surrogate. The Department's policy is inappropriate because it seriously diminishes the likelihood of the Department's finding any reliable surrogate measure of foreign market value. Even if the Department refuses to consider countries subject to antidumping or countervailing duty proceedings, Hong Kong and Indonesian export sales to the United States would still be available. The petitioner's contention concerning Hong Kong towel manufacturers using dumped Chinese fabric is unsupported and irrelevant. Finally, in the countervailing duty investigation of Indonesian textiles, the Department preliminarily found subsidies of only 0.83 percent; such a level of subsidization should not prohibit the use of Indonesian export sales as surrogate information.

Should we not use sales to the United States from one of those countries as the basis for foreign market value, the importers argue that we should use the one-year old 1982 production factor data from the final less-than-fair-value determination as a reliable approximation of what 1983 production factors would be. Shop towels are not sophisticated products for which the production process constantly changes, and the Department could make an adjustment for Indonesian inflation. Prices in Indonesia's clothing sector increased by only 4.4 percent from 1982 to 1983, and wage rates in Indonesia's textile sector declined during that period. Further, the devaluation of the rupiah against the dollar between 1982 and 1983 would have caused a 29 percent drop in the Indonesian textile cost translated into U.S. dollars, assuming costs in local currency remained constant. Finally, such adjustment for inflation would eliminate any incentive to a respondent not to answer and to assume the Department's use of the respondent's prior rate as best information.

The petitioner argues that Departmental policy correctly precludes the use of unfairly traded exports from one country as the standard for determining the foreign market value of imports from another country. Because the Department has found Pakistani and Indonesian export subsidies on shop towel shipment to the United States, those unfairly traded exports should not be used in this administrative review.

Milliken also alleges that Hong Kong shop towels are in fact made with dumped Chinese fabric that firms in Hong Kong merely cut into squares and overedge, and that those towels should not be used here for foreign market value.

The petitioners finally contends that the use of a constructed value based upon Chinese factors of production valued in a non-state-controlled-economy country, as provided for in § 353.8(c) of the Commerce Regulations, exceeds the Department's authority under section 773(c) of the Tariff Act.

Even if the factor approach were lawful, it would be inappropriate in this instance because the respondents during the fair value investigation did not provide information on those factors adequate to meet the requirements of § 353.8(c). That fictional constructed value from the fair value investigation also is unusable now because there is no way of knowing the extent to which the Chinese factors of production or the Indonesian valuation of such factors may have changed. The lack of any response to the Department's questionnaire, even before the Department was able to reach the point of asking for updated information on the factors, gives rise to the negative inference that the factors have changed in a direction that would result in a higher margin than that found in the fair value investigation. The petitioner also cites various inflation rates for several sectors of the Indonesian economy as evidence that we cannot adjust costs found during the fair value investigation for use in this review, absent a detailed study of Indonesian conditions during the review period. Milliken notes that the Indonesian currency devaluation cited by the importers would have increased the cost of dollar-denominated imports of the raw cotton Indonesia must import for shop towel production.

In sum, the only data usable by the Department, whether or not referred to as best information, are U.S. producer prices.

Department's Position: As a general proposition, we believe that under section 773(c) of the Tariff Act and § 353.8 of the Commerce Regulations we must attempt to base foreign market value upon sales or costs of producers in a non-state-controlled-economy country at a similar level of economic development. However, when the state-controlled-economy country manufacturers or exporters totally refuse to respond, the obligation to follow the hierarchy in asssessing antidumping duties no longer exists. We have our concurrent obligation to conduct a timely review.

Assuming we had the obligation to follow the hierarchy in best information situations, information possessed by us (or readily obtainable through other sources) on the importers' suggested surrogate choices within the hierarchy is inadequate or inappropriate for us to use to determine foreign market value. We could not have attempted to obtain missing information without greatly delaying the review.

First, complete and detailed information on U.S. entries of shop towels from other countries during the period of review was unavailable. We could only obtain from the Customs Service invoices for entries of Pakistani towels during the period October 24, 1983, through December 31, 1983, because those entries were suspended due to the pending countervailing duty investigation. However, those invoices covered only part of our review period here. We could not use the invoices submitted by the importers for the suggested countries' U.S. shipments, because those invoices represented only a portion of the invoices corresponding in time to the sales of Chinese shop towels that entered during the period.

Even if we had adequate information on those suggested exports to the United States, it remains our general policy in state-controlled-economy cases not to base foreign market value on surrogate countries' exports to the U.S. if those exports are subject to countervailing duty orders or suspension agreements. We are not persuaded that including the amount of the net subsidy in the surrogate's export price would yield a foreign market value that falls within our hierarchy or, if it did, would provide a preferred basis for calculating foreign market value. Any such value would be merely a constructed hypothetical value. In addition, for Pakistani 1983 shop towel exports, the Pakistani response to our countervailing duty questionnaire was inadequate for us to calculate the

amount of the net subsidy on those exports. For Peruvian 1983 exports, the Department on September 4, 1984, suspended its countervailing duty investigation of Peruvian shop towels after entering into an agreement with Peruvian exporters to cease their exports to the United States. We therefore did not complete our calculation of the net subsidy on 1983 exports. In our preliminary determination, we had found an estimated net subsidy of 44 percent *ad valorem*. On April 17, 1985, the Department terminated its countervailing duty investigation of Indonesian textile mill products, covering calendar year 1983. Because that termination was precipitated by the petitioners' withdrawal of the petition, it would have been inappropriate to use prices of Indonesian shop towels exported to the U.S. in 1983 in this review. Before the termination, we had preliminarily found those exports to be subsidized, and the termination did nothing to alter our conclusion of subsidization. It did end completion of our measurement of the magnitude of subsidization on 1983 exports. We also could not use Sri Lankan 1983 exports. It would also not have been appropriate to use prices of Hong Kong shop towel exports to the U.S. as the basis for foreign market value. In conclusion, we could not have used information on any of those countries' 1983 shop towel sales to the U.S. We note that imports of shop towels from the only two other exporting countries that we know of, India and Hungary, were so insignificant that they would not have formed an adequate basis for foreign market value.

We had insufficient information to base foreign market value on the Indonesian costs used in the fair value investigation adjusted for inflation. We agree with Milliken that, absent a questionnaire response, we cannot ascertain how Chinese factors of production may have changed. In addition, the petitioner's information (contradicting the importers' information) indicated that costs in Indonesia so changed as to have precluded our accurately evaluating the submissions without a detailed study that would have required directly contacting Indonesian producers. That would unduly delay the final results of the review. Both sets of contradictory information were submitted after our publication of the preliminary results.

We disagree with the petitioner's contention that § 353.8(c) of the Commerce Regulations violates section 773(c) of the Tariff Act. Also, this review is not the appropriate forum for reviewing the adequacy of our conclusions during the original investigation regarding the responses on the factors of production.

Comment 4: Fedtex and Unifirst argue that, if we use prices of U.S.-made shop towels as the basis for foreign market value, we must use accurate WIPO towel prices, not the questionable ones submitted by the petitioner. We also should not use Milliken's new suggestion of an average price of all U.S.-produced shop towels.

Fedtex and Unifirst point out that the petitioner previously acknowledged the WIPO Eagle towel as most similar to the Chinese towel, and they object to the petitioner's later argument that: (1) The Eagle towel is inferior to the Chinese towel; and (2) the Department should consider other U.S.-made towels as the basis of foreign market value. They note that WIPO advertises the Eagle towel to be superior to imported towels. They argue that there is no information in the record to support the proposition that towels produced by the petitioner or a third U.S. manufacturer constitute a better "such or similar" merchandise selection.

Finally, Fedtex and Unifirst note that there is printing on the Eagle towel, while the Chinese towel is generally unprinted, justifying an adjustment for differences in the physical characteristics of the merchandise. (The importers after the hearing supplied data on the cost of the WIPO printing.) They also argue that the Department, in accordance with section 773(a) (4) (B) of the Tariff Act and §353.15 of the Commerce Regulations, should make downward adjustments to any such foreign market value for differences in credit costs, in the range of marketing activities, in the levels of trade, and in other circumstances of sale.

Win-Tex also argues that the Chinese shop towels sold in the U.S. are smaller, have less expensive packing than the petitioner assumed, and have slightly less ocean freight and insurance charges than appear in the petitioner's model.

The petitioner contends that the Tariff Act and the Commerce Regulations do not provide for the use of the lowest or "lowest average" price of merchandise produced in a non-state-controlled-economy country as the basis for foreign market value, and that the Department erred in using the lowest rather than the weighted-average U.S. producer price as the basis for foreign market value.

The petitioner further argues that there is no legal basis for any adjustment to U.S. producer prices used in determining foreign market value, that the lack of evidentiary support on the record (and of any Chinese claims for adjustment) preclude such adjustments, and if adjustments were to be made, they would increase foreign market value. For instance, Chinese exporters bear warehousing and financing costs far in excess of any such costs borne by U.S. producers, and physical differences between Chinese and U.S. towels paradoxically make the inferior Chinese towel costlier to produce.

Department's Postiion: We agree that, to the extent possible, we must base foreign market value on merchandise identical to, or most similar to, that sold to the U.S. Based on information submitted by both the petitioner and importers, we conclude that the Eagle towel is the U.S.-manufactured towel most similar to the Chinese shop towel, and thus the most appropriate basis for foreign market value.

We are not precluded in a best information situation from using a weighted average of the prices of more than one model of towel where, for instance, the prices of the most similar merchandise are not easily segregable from the prices of less similar merchandise. This, however, is not the case here. After considering the information regarding Eagle towel pricing submitted by importers and the petitioner and data obtained from an independent source, we determine that the Eagle price used for foreign market value in our preliminary results is the appropriate price.

As the petitioner has conceded, we requested in October 1984, suggestions regarding the best information otherwise available, and the petitioner at that time argued that we should use the price of the Eagle towel as the basis for foreign market value. The petitioner at that time provided no details of differences in physical characteristics and costs between the Chinese and Eagle towels.

The Tariff Act and the Commerce Regulations do not prohibit adjustments to U.S. producer prices used as the basis for foreign market value. In fact, as with other bases of foreign market value, adjustments would be appropriate when we opt to use U.S. producer prices as the basis for comparison. However, we did not receive from either side timely or usable claims for adjustments. In particular, since we lack adequate information on the net effect of any physical differences between the Eagle towel and Chinese towels, we have made no adjustment to foreign market value for differences in physical characteristics. Similarly, for all circumstance-of-sale adjustments suggested by either the petitioner or importers, we received no timely claims

and we have insufficient information on relative costs to calculate such adjustments.

Comment 5: Fedtex and Unifirst agree with the Department that the data the Department obtained from the Customs Service for the preliminary results' best information calculation of United States price contained virtually all needed information regarding relevant U.S. sales. The only figure that was not included is Chinese inland freight, and the Department correctly used verified Chinese cost information from the fair value investigation, rather than the petitioner's suggested data. Fedtex and Unifirst note that, because the Department did not account for packing costs in calculating foreign market value, there is no need for the Department to deduct packing costs from United States price.

The petitioner argues that, in determining U.S. price, the Department should make deductions for Chinese inland freight and packing costs. It notes that, because China is a state-controlled-economy country, the Department should use surrogate shipping charges as a measure of Chinese inland freight, and suggests the use of U.S. charges as surrogate information.

Department's Position: We agree that the prices on Customs Service documents constitute the best information available for U.S. price. We have changed our estimate of Chinese inland freight for U.S. price calculations. For the same reasons that we use no other internal prices of a state-controlled-economy country in calculating foreign market vlaue, it was incorrect to use Chinese rates to value those charges in U.S. price. *See* Comment 10. The statute does not permit us to deduct packing costs in calculating U.S. price. We can adjust for differences in packing in calculating foreign market value. However, in this instance, because we do not have adequate information on the cost of packing for U.S. or Chinese shop towels, we cannot make an adjustment to foreign market value for differences in packing costs.

Comment 7: Counsel to Fedtex and Unifirst contends that the Department's refusal to grant his request for a disclosure conference on behalf of Unifirst contravened § 353.53(d) of the Commerce Regulations, which provides for disclosure approximately 30 days prior to the final results. He argues that our refusal seriously compromises Unifirst's rights and impedes representation of the company's interests.

Department's Position: Section 353.53(d) gives the Department discretion in its administration of disclosure requests. As in all section 751 reviews, the notice of preliminary results of this administrative review clearly stated that the Department must receive disclosure requests within 10 days of the date of publication of that notice. Counsel's request on behalf of Unifirst was untimely. We did grant the same counsel's timely request for disclosure on behalf of Fedtex. That counsel, therefore, received a full explanation of the best information methodology used identically in the preliminary results for both companies. Counsel's claim that we impeded his ability to represent his client thus is without merit.

Comment 8: Another importer, Win-Tex Company, questions the petitioner's alleged loss of market share and its contention that other domestic manufacturers have nearly been forced out of business.

Department's Position: In our calculation of dumping margins we cannot and did not consider the petitioner's allegations of injury.

Comment 9: Win-Tex contends that Chinatex stated that "the questionnaire was never presented to them." Win-Tex further suggests that the questionnaire may never have reached the office or individual capable of completing and returning it. Win-Tex argues that the questionnaire should have been sent to Chinatex by registered letter rather than delivered by American Embassy personnel in Beijing.

Department's Position: Our use of American Embassy personnel to transmit questionnaires to Chinatex and other Chinese exporters was the appropriate way to ensure that the companies received the questionnaire. It is not our responsibility to ensure that the company personnel receiving a questionnaire transmit it to the office or individual within the firm appropriate for completion and return.

We note that there was in the materials submitted on June 11, 1985, a letter from Chinatex acknowledging receipt of the questionnaire on July 24, 1984. Therefore, Chinatex's failure to respond for 11 months was, as we stated in Comment 1, a refusal to respond. Chinatex only responded after the filing of post-hearing briefs on the best information preliminary results.

Comment 10: Win-Tex disputes the petitioner's calculation of U.S. price, noting for example that the petitioner used a 13.6 percent normal duty rate and a 36.2 percent antidumping duty cash deposit rate, while the actual rates were 13.5 percent and 30.1 percent, respectively. Win-Tex also states that the distance between the Chinese factory and port is one-half of that claimed by the petitioner, and that the foreign inland freight on the U.S. shipments, even if valued by U.S. rather than Chinese rates, would be $1.20 per bale rather than the $9.75 per bale suggested by the petitioner.

Fedtex also disagrees with the petitioner's estimate of the distance between the Chinese manufacturing plants and the ports of exportation.

Department's Position: We have not used any of the petitioner's information in our calculation of U.S. price. Rather, for all but Chinese inland freight, we have used information from the Customs Service. We contacted transportation brokers in various regions of the U.S. to obtain freight rates for the transport of shop towels. We applied the average of the rates obtained to the weights of the Chinese shipments. We took the resultant numbers and applied them to estimated distances from the Chinese factories to the ports of exportation.

Comment 11: Win-Tex argues that the Chinese factors of production valued in China should be used as the basis of foreign market value, and Win-Tex provided as part of its prehearing brief a calculation of foreign market value based on Chinese costs.

Department's Position: The Tariff Act does not permit us to value factors of production using costs in the state-controlled-economy country.

Comment 12: Win-Tex contends that, because WIPO offered and sold its Eagle towel for substantially less during 1983 than the Department's chosen figure (suggested by Milliken) in the preliminary results, the Department's number does not necessarily represent the lowest market price of a U.S.-manufactured shop towel.

Fedtex and Unifirst also disagree with the petitioner's assertion of the selling price for the WIPO towel. They believe the price was substantially lower.

Department's Position: After reviewing all the information,we conclude that our number used for the preliminary results is appropriate to use as the basis of foreign market value. *See also* Comment 4.

Comment 13: Win-Tex notes that it is able to negotiate a good price for Chinese shop towels because it purchases in volume quantities.

Department's Position: Because we have no evidence regarding quantity discounts given by WIPO, we cannot make an adjustment for differences in quantities.

Comment 14: Win-Tex argues that there are raw material, overhead, and labor cost differences between the Chinese towels and Milliken towels.

Department's Position: Since we have concluded that the Eagle towel, not the Milliken towel, is the U.S.-produced towel most similar to the Chinese towel, this point is moot.

Comment 15: The petitioner argues that the Tariff Act and the Commerce Regulations, independently of the best information rule, require the use of U.S. producer prices as the basis for foreign market value in this review. Section 773(c) of the Tariff Act requires that the foreign market value of merchandise produced in a state-controlled-economy country be based upon the price or constructed value of such or similar merchandise in a non-state-controlled-economy country. The petitioner argues that the term "non-state-controlled-economy country" includes the United States, and, because the Department has home market prices in the United States and does not have home market price or constructed value information for shop towels produced in any other non-state-controlled-economy country, it must use U.S. producer prices as the basis for foreign market value.

Department's Position: Section 353.8(a)(1) of the Commerce Regulations specifies that, when the merchandise is produced in a state-controlled-economy country, foreign market value may be the prices at which similar merchandise manufactured in a non-state-controlled-economy country is sold in that country, or to other countries (including the United States) or the constructed value of similar merchandise in a non-state-controlled-economy country. Section 353.8(b)(1) stipulates that, to the extent possible, the Department shall use a non-state-controlled-economy country at a comparable level of economic development. If information on a comparable country cannot be obtained, then under § 353.8(b)(2), the Department must if possible use another non-state-controlled-economy country, other than the United States. Under § 353.8(b)(3), the Department can use prices or construced value in the United States only if the Department cannot find a country meeting the requirements of § 353.8(b)(1) or (2). We believe this hierarchy to be lawful and would follow it except when we must resort to best information.

Comment 16: The petitioner criticizes the importer's suggested use of non-state-controlled-economy country export prices to the U.S. for foreign market value because competition from a major state-controlled-economy supplier such as China forces those other exporters to lower their prices or withdraw from the market.

Department's Position: Section 773(c) of the Tariff Act and § 353.8 of the Commerce Regulations direct the Department to consider exports from non-state-controlled-economy countries to the United States as possible bases for determining foreign market value.

Comment 17: The petitioner contends that, if the Department chooses to consider sales of Pakistani, Indonesian, or Hong Kong towels, the Department must satisfy itself that those sales are made at prices above their cost of production.

Department's Position: This issue is moot because we are not using those sales for foreign market value.

Comment 18: The petitioner contends that, in other cases in which the Department used the fair value investigation margin as the best information otherwise available for a non-responsive firm, the petitioner generally had no objection to that choice and did not offer any alternative to the Department's choice. There also was no evidence of price reductions by exporters or shifts among exporters to take advantage of differences in company-specific cash deposit rates. Here, the petitioner alleges that China shifted the source of its exports from CNART to Chinatex, which had a cash deposit rate seven percentage points lower than CNART. Chinatex accounted for few of the shop towel imports during the period of the fair value investigation, but later became the major supplier. The petitioner notes that the two companies share the same Beijing address, and claims that the shift "involved no more than a shuffling of papers." The petitioner alleges that, through that shift and the lowering of prices on sales to the U.S., China has managed to continue its exports at record levels despite the antidumping duty order, with a disastrous impact on the U.S. shop towel industry.

Department's Position: In cases in which the manufacturer and/or exporter is non-responsive, for best information otherwise available the Department generally has used since 1980 (*see, e.g.,* the final results of review of the antidumping finding on expanded metal from Japan (45 FR 77501; November 24, 1980)) the highest rate among all responding firms with shipments during the period, or the firm's prior rate, whichever is higher.

However, in this case, because none of the Chinese exporters responded, there was no highest rate among responding shippers. Because there was an allegation, supported by Customs Service data, that prices of Chinese shop towel imports were generally lower during the review period than during the period of the fair value investigation, we doubt the current accuracy of the only prior rate, the fair value rate. We therefore have considered alternate sources of best information. *See* Comments 3 and 4.

Information available to the Department is inadequate to support the allegation of a deliberate switch of export sourcing as a result of the antidumping determination. Furthermore, the allegation is untimely.

In a section 751 administrative review we do not consider the level of imports and their effect on the domestic industry.

Comment 19: Milliken argues that the best information available for U.S. price is information submitted by Milliken, rather than Customs Service data, which Milliken claims overstate U.S. price. Otherwise, the Customs Service data suggest that importers sold Chinese shop towels at or below their cost during the period of review; those prices are, therefore, unreliable.

Department's Position. In the absence of a response and verification, we can not assesss the veracity of information submitted to the Customs Service. In a section 751 review, we do not consider the resale prices of unrelated importers. The Customs Service data remain the best information otherwise available.

Final Results of the Review

As a result of the comments received, and the correction of clerical errors, we have revised our preliminary results, and we determine that the following weighted-average margins exist for the period March 28, 1983 through December 31, 1983:

Exporter/third-country reseller (country)	Margin (percent)
China National Arts and Crafts Import and Export Corporation (CNART)	38.42
CNART/Cuisininere Co., Limited (Hong Kong)	[1] 37.20
CNART/Fabric Enterprise Limited (Hong (Kong)	[1] 36.20
China National Native Produce and Animal By-Products Import and Export Corporation	86.10
China National Textiles Import and Export Corporation (Chinatex)	73.22
Chinatex/Trans-Atlantic Sales Co., Ltd. (Canada)	66.00

[1] No entries during the period.

The Department shall determine and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries for a new exporter not covered by this administrative review, whose first shipments of Chinese cotton shop towels occurred after December 31, 1983 and who is unrelated to any reviewed firm, a cash deposit of 86.10 percent shall be required. These deposit requirements are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: June 18, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-15140 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Extension of Comment Period for Draft Federal Consistency Study

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Extension of Comment Period for Draft Federal Consistency Study.

SUMMARY: This notice extends the public comment period for the review of the Draft Federal Consistency Study from June 30, 1985 to August 31, 1985. The original notice of availability of the study was published in the **Federal Register** on May 1, 1985 (50 FR 18546). The Study presents information on Federal consistency reviews under Section 307 of the Coastal Zone Management Act.

The comment period for the Draft Federal Consistency Study is extended to August 31, 1985 in order to provide full opportunity for public review. Requests have been received for an extension of the public comment period. In light of these requests, and due to the length of the study and the complexity of the material, an extension of the review period is appropriate. NOAA encourages all interested parties to review the Study and provide comments.

DATE: Please submit comments by August 31, 1985.

ADDRESS: Submit written comments to: Nan Evans, Senior Policy Analyst, N/ORM4, Office of Ocean and Coastal Resource Management, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235, (202) 634-4251.

FOR FURTHER INFORMATION CONTACT: Brooke Alexander, Policy Analyst, Office of Ocean and Coastal Resource Management (202-634-4251).

SUPPLEMENTARY INFORMATION: For a more detailed description of the Study contents see the notice of availability of the Draft Federal Consistency Study published in the **Federal Register** on May 1, 1985 (50 FR 18546).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 18, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-15073 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic amd Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the California, Virgin Islands, Pennsylvania, Maryland, Connecticut, South Carolina, and New York Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the perfomance of each coastal state with respect to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementaion and enforcement, as appropriate. Accomplishment in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)-(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (telephone: 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 14, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-15082 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-08-M

Intent To Evaluate; Coastal Management Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Alabama Coastal Management Program (CMP); the Wisconsin CMP; Florida's Rookery Bay National Estuarine Sanctuary; Maryland's Chesapeake Bay National Estuarine Sanctuary, and Maine's Wells National Estuarine Sanctuary through September 1985. These reviews will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management if funded under CZMA section 306, and the National Estuarine Sanctuary Program is authorized by CZMA section 315. The reviews involve consideration of written submissions, a site visit to the state, and consultation with interested Federal, state and local agencies and members of the public. Public meetings

will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, D.C. 20235 (telephone 202/634-4245).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 14, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-15081 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Clarification of Definition of Handmade Textile and Apparel Products

June 18, 1985.

Certain bilateral cotton, wool and man-made fiber textile and apparel agreements and arrangements negotiated by the United States with other countries provide for the exemption from limits of handmade products made from handloomed fabrics which are properly certified by the government of the exporting country prior to exportation.

The purpose of this notice is to clarify for importers and other interested persons that, in order to qualify for exemption under the terms of the bilateral agreements and arrangements, such items must be cut and sewn with needle held in the hand, in the cottage industry of the country, without the use of any treadle or power-driven sewing machine. Shipments of such goods which are determined by the U.S. Customs Service not to be in conformity with the foregoing definition will be denied entry, or withdrawal from warehouse, for consumption in the United States, regardless of exempt certification by the government of the exporting country.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15126 Filed 6-21-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985 Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: June 24, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Additions to the Procurement List of the commodities listed below was published in the **Federal Register** on September 14, 1984 (49 FR 36133) and January 18, 1985 (50 FR 2704).

One comment was received in response to the notice on surgical towel pack. The commenter questioned the capability of the workshop to produce the item in compliance with the specification and indicated that the impact would be severe on his firm which had the current contract for the item. The Committee considered the comment received as well as other pertinent information and determined that the workshop is capable of producing the surgical towel pack in compliance with applicable specifications based on the Government's inspection of the workshop and that the addition of the surgical towel pack would not result in serious adverse impact on the current contractor for the item.

Several comments were received in response to the notice on the plastic canteen. One commenter suggested that the addition be limited to 50% of the Government's requirement. Another, the counsel for the current contractor, questioned the capability of the workshop to produce the canteen in compliance with the specification and at the fair market price. Based on the proposed addition of the total Government requirement for this item, he indicated that the loss of business would severely impact on the firm and cause it to lay off 20 employees. He stated further that the firm has a substantial investment in production and testing equipment that can only be used for canteen production and that it is doubtful if the firm would retain sufficient employees, machinery, and equipment to maintain its capacity to expand in event of mobilization. Another commenter indicated that the current contractor was justified in requesting that the Committee reject the proposed addition.

The workshop was inspected by the Government and determined to be capable of producing the canteen in compliance with the specifications. The addition represents about 51% of the Government's requirement for the canteen and will leave a significant quantity for procurement from competitive sources. The addition to the Procurement List will add another producer to the industrial base.

The Committee considered the comments and the information reflected above and determined that the workshop can produce the canteen in compliance with applicable specifications at the fair market price and that the addition will not result in severe impact on the current contractor.

Additions

After considerations of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51.2-6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1985:

Commodities

Towel Pack, Surgical, 6530-00-110-1854

Canteen, Water, Plastic, 8465-01-115-0026

(Requirements for Mechanisburg, PA; Tracy, CA; and Oakland, CA DLA depots only)

C.W. Fletcher,

Executive Director.

[FR Doc. 85-15130 Filed 6-21-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; 1985 Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: July 24, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1985, October 19, 1984 (49 FR 41195):

Service

Janitorial/Custodial for the following locations:

Bishop Henry Whipple Federal Building and Motor Pool, Fort Snelling, Minnesota

Federal Building, 212 3rd Avenue South, Minneapolis, Minnesota

Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minnesota

Social Security Building 1811 Chicago Avenue South, Minneapolis, Minnesota

Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul, Minnesota

C.W. Fletcher,

Executive Director.

[FR Doc. 85-15131 Filed 6-21-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Correction

In FR Doc. 85-14115, appearing on page 24673 in the issue of Wednesday, June 12, 1985, make the following correction: In the second column, in the fourth line of the first paragraph, between the words "the" and "Naval" insert "Naval Research Advisory Committee will meet on June 27, 1985, at the Office of".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Dates for Transmittal of Fiscal Year 1986 New Grant Applications.

SUMMARY: Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Grants for the Training Personnel for the Education of the Handicapped program are authorized by Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act.

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other appropriate nonprofit agencies and organizations.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of closing dates for new grant applications covered by this notice. Part II contains individual application announcements for each priority. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications noted below:

Transmittal of Applications: Applications for new awards must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Application delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Available funds: An applicant for a grant may propose a project period of up to 60 months. However, awards will

generally be made for a period of 24 to 36 months. Since fiscal year 1986 appropriation levels have not yet been determined, accurate estimates of funding under each priority are not available. However, based on the Administration budget request, it is expected that funding will be available to award new grants at the approximate funding levels indicated under the application notice for each priority. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unles that amount is otherwise specified by statute or regulation. At least 10 percent of the appropriation for this program will go toward the support of new and continuing Parent Organization Projects.

Priorities for funding: The regulations for this program provide that the Secretary, in any fiscal year, may select one or more of the ten published priorities, or any combination of priorities, for competition. In fiscal year 1986, competitions will be held in nine of the ten priority areas included under § 318.11 of the regulations. Applications which do not address these priorities will not be considered.

Part I—List of Closing Dates for the Transmittal of New Grant Applications Published in This Notice

CFDA	Priority announcement	Closing date
84.029D	Preparation of Leadership Personnel.	09-06-85
84.029K	Special Projects	09-06-85
84.029Q	Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Handicapped Children.	09-06-85
84.029W	Preparation of Personnel to Work in Rural Areas.	09-06-85
84.029X	Preparation of Personnel for Minority Handicapped Children.	09-06-85
84.029B	Preparation of Special Educators.	11-15-85
84.029F	Preparation of Related Services Personnel.	11-15-85
84.029H	State Education Agency Programs.	03-17-86
84.029P	Parent Organization Projects	03-17-86

Part II—Application Notices

83.029D—Preparation of Leadership Personnel

Closing date: September 6, 1985.

Program information: This priority supports doctoral and post-doctoral preservice preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $65,000.

84.029K—Special Projects

Closing date: September 6, 1985.

Program information: This priority supports projects to develop and demonstrate new approaches for the preservice training purposes set forth in 34 CFR 318.10(a), for the preservice training of regular educators, and for the inservice training of special education personnel, including classroom aides, related servcies personnel, and regular education personnel who serve handicapped children and youth. Project activities assisted under this priority include development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and development of materials to prepare personnel to educate handicapped children and youth.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $75,000.

84.029Q—Preparation of Personnel To Provide Special Education and Related Services to Newborn and Infant Handicapped Children

Closing date: September 6, 1985.

Program information: This priority supports the preservice preparation of personnel who will serve newborn and infant handicapped children, or newborn and infant children who are determined to be at high risk of being handicapped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents or guardians who are the primary care givers for their children.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $60,000.

84.029W—Preparation of Personnel To Work in Rural Areas

Closing date: September 6, 1985.

Program information: This priority supports the preservice training of personnel for rural areas. Particular attention must be given to preservice training related to the unique aspects of providing services to special populations in rural areas. Projects supported under this priority must prepare special education personnel to fill a variety of rural specific roles with handicapped students, parents, peers, and administrators. Training curricula must be designed to—

(i) Teach students about local community systems and encourage understanding of interdisciplinary models of service delivery which are consistent with local community values; and

(ii) Train students in alternative ways of adopting teaching techniques for specific rural community characteristics.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $60,000.

84.029X—Preparation of Personnel for Minority Handicapped Children

Closing date: September 6, 1985.

Program information: This priority supports the preservice preparation of special education and related service personnel to educate minority or underserved populations, and provides training for members of groups which have been traditionally underrepresented in these fields.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $60,000.

84.029B—Preparation of Special Educators

Closing date: November 15, 1985.

Program information: This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

Available funds: About $3,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this

priority. The average grant is expected to be about $60,000.

84.029F—Preparation of Related Services Personnel

Closing date: November 15, 1985.

Program information: This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $50,000.

84.029H—State Education Agency Programs

Closing date: March 17, 1986.

Program information: This priority supports State educational agencies in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children and youth, or supervisors of such teachers. Projects must deal with unique Statewide training in all or several of the areas of need identified by the State comprehensive system of personnel development under 34 CFR 300.380–300.387, and may include training in management and organizational design which enhances the ability of the States to provide special education and related services to handicapped children and youth. Only State educational agencies are eligible to submit applications under this priority.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $60,000.

84.029P—Parent Organization Projects

Closing date: March 17, 1985.

Program information: This priority supports grants to parent organizations, as defined in § 318.2(b), for the purpose of providing training and information to parents of handicapped children and youth, and to volunteers who work with parents to enable those individuals to participate more effectively with professionals in meeting the educational needs of handicapped children and youth. These projects must be designed to meet the unique training and information needs of parents of handicapped children and youth, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

In selecting projects under this priority, the Secretary ensures that grants will be—

(A) Distributed geographically to the greatest extent possible throughout all the States; and

(B) Targeted to parents of handicapped children and youth in both urban and rural areas, or on a State or regional basis.

Parent training and information projects assisted under this priority must assist parents to—

(A) Better understand the nature and needs of the handicapping conditions of their handicapped child or youth;

(B) Provide followup support for their handicapped child's or youth's educational programs;

(C) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) Participate in educational decisionmaking processes including the development of their handicapped child's or youth's individualized education program under 34 CFR 300.340–300.349;

(E) Obtain information about the programs, services, and resources available to their handicapped child or youth, and the degree to which the programs, services, and resources are appropriate; and

(F) Understand the provisions for the education of handicapped children and youth as specified under Part B of the Education of the Handicapped Act and 34 CFR Part 300.

Only parent organizations which meet the criteria set out in § 318.2(b) are eligible to submit applications under this priority.

Available funds: About $3,250,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1986 will be made available for this priority. The average grant is expected to be about $75,000.

Application forms: Application forms and program information packages for new applications are scheduled to be available for mailing on July 23, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any additional paperwork on the application content, reporting, or performance requirements beyond those inposed under the Statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested. (Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732–1068.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: June 19, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–15155 Filed 6–21–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-85-015; OFP Case No. 61050-9275-21, 22-22]

Acceptance of Petition for Exemption and Availability of Certification From Matanuska Electric Association, Inc. (MEA), on Behalf of the Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T), for an Exemption From the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On May 14, 1985, Matanuska Electric Association, Inc. (MEA), of Palmer, Alaska, on behalf of the Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for two proposed new electric powerplants from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act").[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The two proposed 80 MW gas turbine powerplants for which AEG&T seeks an exemption will use natural gas as their primary generation fuel. Construction of Unit No. 1 (named Hollywood No. 1) is scheduled to commence by July 1986, with an on-line date of September 1987. Construction of Unit No. 2 (named Hollywood No. 2) is to commence in 1995. The present construction plan calls for a combined cycle heat recovery steam unit once Unit No. 2 is in service. Hollywood No. 1 is to be configured so as to accommodate the proposed combined cycle operation.

Gas for Units No. 1 and 2 will be produced from various gas fields located in the Beluga and Kenai areas. Enstar, the local area supplier of natural gas, is the owner of the Alaska Pipeline Service Company which operates a main 20-inch diameter gas transmission line within four miles of the Hollywood units' site. Enstar has recently contracted with major producers for approximately one-half a trillion cubic feet of gas. In addition, there are substantial uncommitted proven reserves in the area. This assures a continuing, adequate supply for the proposed powerplants.

After receipt of information from MEA, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from MEA at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before August 8, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA-FC-85-015 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202)252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202)252-6947

SUPPLEMENTARY INFORMATION: MEA proposes AEG&T will install two 80 MW gas turbine powerplant units in combined cycle with 60 MW of waste heat capability. The geographic location of the units is to be 40 acres at Township 17 North, Range 3, West of the Seward Meridan, Alaska. Construction is to commence on Unit No. 1 in July 1986 and on Unit No. 2 in 1995.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted. . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40 (a) and (c), MEA's petition on behalf of AEG&T for a permanent exemption for Hollywood powerplant Units No. 1 and 2 includes evidence and supporting information demonstrating that Hollywood powerplant Units No. 1 and 2 are qualifying powerplants under Section 317 of Pub. L. 97-394; that no alternate power supply exists; and that the use of mixtures in the units is not feasible. In addition, MEA submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA compliance: In processing this exemption request, ERA will comply with the requirements of the National

[1] The Alaska Generation and Transmission Cooperative, Inc. (AEG&T), is a cooperative formed by Matanuska Electric Association (MEA) and the Homer Electric Association for the purpose of financing additional electrical system generation and transmission requirements in the Matanuska Valley and the Kenai Peninsula, Alaska. AEG&T will operate the proposed powerplants.

Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that AEG&T is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on June 14, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-15167 Filed 6-21-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-08; OFP Case No. 67014-9272-21, 22, 23, 24,-22]

Order Granting Texas Utilities Electric Co., DeCordova Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Notice.

SUMMARY: On April 2, 1985, Texas Utilities Electric Company, (TUEC), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing DeCordova Electric Generating Station (DeCordova), operated by Texas Utilities Generating Company, a division of TUEC, from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

TUEC DeCordova requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of four 115 MW combustion turbine-generator systems (peak output at 30 °F and plant site elevation at 704 feet). The combustion turbine generating units are expected to have a design heat input of 1,495 MMBtu per hour unit. The proposed units are to be installed at the TUEC DeCordova facility located at approximately six miles southeast of Granbury, Hood County, Texas. The powerplant will be capable of burning natural gas or petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting the TUEC DeCordova a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the facility in Hood County, Texas.

The basis for ERA's order is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Recovery Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esquire, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, D.C. 20585, Telephone (202)252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. TUEC DeCordova has filed a petition for a permanent peakload powerplant exemption to use petroleum on natural gas as a primary energy source in its proposed DeCordova, Hood County, Texas facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit in the **Federal Register** on April 24, 1985 (50 FR 16128), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of TUEC DeCordova's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed June 10, 1985. No comments were received and no hearing was requested.

TUEC DeCordova certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

TUEC DeCordova certified that although the manufacturer of the proposed combustion turbines has not yet been selected, for planning purposes the maximum rating of each of the four individual units will be 115 MW. The combustion turbine generating units will be operated as a peakload powerplant with a maximum annual capacity factor of 17.12 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

TUEC DeCordova has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a

pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that TUEC DeCordova has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants TUEC DeCordova a permanent exemption for a peakload powerplant to be installed at its facility in Hood County, Texas, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of TUEC DeCordova's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption 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.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on June 13, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-15166 Filed 6-21-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-010; OFP Case No. 67014-9274-21, 22, 23, 24, 25, 26-22]

Order Granting Texas Utilities Electric Co., Morgan Creek Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration. DOE.

ACTION: Notice.

SUMMARY: On April 12, 1985, Texas Utilities Electric Company, (TUEC), filed a petition with the Economic Regulatory administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Morgan Creek Electric Generating Station (Morgan), operated by Texas Utilities Generating Company, a division of TUEC, from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

TUEC Morgan requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of six 109 MW combustion turbine-generator systems (peak output at 30 °F and plant site elevation at 2,100 feet). The combustion turbine generating units are expected to have a design Btu input of 1,417 MMBtu per hour per unit. The proposed units are to be installed at the TUEC Morgan Creek facility approximately five miles Southwest of Colorado City, Mitchell County, Texas. The powerplant will be capable of burning natural gas or petroleum.

Pursuant to section 212 (g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to TUEC Morgan Creek a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the facility in Mitchell County, Texas.

The basis for ERA's order is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esquire, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-13, Washington, D.C. 20585, Telephone (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials of this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. TUEC Morgan Creek has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Mitchell County, Texas facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR § 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit in the **Fedeal Register** on April 24, 1985 (50 FR 16125), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of TUEC Morgan Creek's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed June 10, 1985. No comments were received and no hearing was requested.

TUEC Morgan Creek certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload poweplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours.".

TUEC Morgan Creek certified that although the manufacturer of the proposed combustion trubines has not yet been selected, for planning purposes the maximum rating of each of the six individual units will be 109 MW. The combustion turbine generating units will be operated as a peakload powerplant with a maximum annual capacity factor of 17.12 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

TUEC Morgan Creek has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the

Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that TUEC Morgan Creek has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants TUEC Morgan Creek a permanent exemption for a peakload powerplant to be installed at its facility in Mitchell County, Texas, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of TUEC Morgan Creek's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption 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.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on June 13, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-15164 Filed 6-21-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-09; OFP Case No. 67014-9273-21, 22, 23, 24, 25-22]

Order Granting Texas Utilities Electric Co., Permian Basin Peaking Facility, Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On April 2, 1985, Texas Utilities Electric Company, (TUEC), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Permian Basin Electric Generating Station (Permian), operated by Texas Utilities Generating Company, a division of TUEC, from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq*). which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

TUEC DeCordova requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of five 107 MW combustion turbine generator-systems (peak output at 34 ° F and plant site elevation at 2652 feet). The combustion turbine generating units are expected to have a design heat input of 1,391 MMBtu per hour per unit. The proposed units are to be installed at the TUEC Permian Basin facility approximately four miles West of the intersection and U.S. Highway 80 and State Highway 18 which is in Monahans, Ward County, Texas. The powerplant will be capable of burning natural gas or petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to TUEC Permian a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the facility in Ward County, Texas.

The basis for ERA's order is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esquire, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, D.C. 20585, Telephone (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. TUEC Permian has filed a petition for permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Ward County, Texas facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit in the **Federal Register** on April 24, 1985 (50 FR 16126), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of TUEC Permian's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed June 10, 1985. No comments were received and no hearing was requested.

TUEC Permian certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

TUEC Permian certified that although the manufacturer of the proposed combustion turbines has not yet been selected, for planning purposes the maximum rating of each of the five individual units will be 107 MW. The combustion turbine generating units will be operated as a peakload powerplant with maximum annual capacity factor of

17.12 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

TUEC Permian has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA has determined that no alternative fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that TUEC Permian has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants TUEC Permian a permanent exemption for a peakload powerplant to be installed at its facility in Ward County, Texas, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of TUEC Permian's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption 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.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on June 13, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19165 Filed 6-21-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER 85-545-000]

Boston Edison Co.; Filing of Cancellation of Rate Schedule

Correction

In FR Doc. 85-14485, appearing on page 25122 in the issue of Monday, June 17, 1985, in the first column, tenth line of the last paragraph, "May 22," should have read "June 21,".

BILLING CODE 1505-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $148,250 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with The Boswell Oil Company of Cincinnati, Ohio (Case No. HEF-0040). The fund will be available to customers who purchased refined petroleum products from Boswell during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: The Boswell Oil Company Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case No. HEF-0040.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the Boswell Oil Company of Cincinnati, Ohio. The consent order settled possible pricing violations with respect to the firm's sales of motor gasoline, Nos. 2 and 6 fuel oils, and other refined petroleum products to customers during the November 1, 1973 through April 30, 1974 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on December 10, 1984. 49 FR 49881 (December 17, 1984).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.** Applications will be accepted from customers who purchased refined petroleum products from Boswell during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: June 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Special Refund Procedures

June 17, 1985.

Name of Firm: The Boswell Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0040.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received pursuant to a settlement agreement or remedial order. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons or firms who may have been injured as a result of alleged or adjudicated violations, or to ascertain the amount of each person's injury. *See*

Office of Enforcement, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with The Boswell Oil Company (Boswell) of Cincinnati, Ohio on October 21, 1981. The firm operates two petroleum product storage facilities, one in Cincinnati (the Midland Marine terminal) and the other in Dravosburg, Pennsylvania (the Dravosburg terminal). According to the ERA, Boswell is a "reseller-retailer" as that term was defined in 10 CFR 212.31, and was therefore subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of Boswell's operations revealed possible pricing violations in sales of motor gasoline, No. 2 and No. 6 fuel oils, and other refined petroleum products during the six-month period from November 1, 1973 through April 30, 1974 (the audit period). On June 30, 1980, 1980, a Notice of Probable Violation (NOPV) was issued to Boswell in which the ERA alleged that the firm had overcharged its customers by $690,158.31 in its sales of refined petroleum products during the audit period. In order to settle all claims and disputes between Boswell and the DOE regarding the firm's sales of motor gasoline, No. 2 and No. 6 fuel oils, and other refined petroleum products during the audit period, the firm entered into a consent order agreement with the DOE. The consent order refers to the ERA's overcharge allegations, but notes that the issues raised by the NOPV were not adjudicated and states that Boswell does not admit that it committed any such violations. Under the terms of the consent order, Boswell agreed to remit $148,250 to the DOE and the ERA agreed to release Boswell from any civil claims that the DOE may have had pertaining to the specified transactions during the audit period.

On December 10, 1984, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Boswell's alleged regulatory violations. *See The Boswell Oil Co.*, Case No. HEF-0040 (December 10, 1984) (Proposed Decision), 49 FR 48981 (December 17, 1984). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the Boswell consent order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by Boswell's alleged overcharges during the consents order period. We stated that money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process, but that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

We received comments on the Proposed Decision from only one party, the State of New Mexico. Those comments address only the disposition of funds in the second stage of the proceeding. This Decision and Order establishes the procedures to be used for filing and processing claims in the first stage of the Boswell refund process. We will not, therefore, determine second stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) (Marion). It would therefore be premature for us to address the issues raised by the state of New Mexico concerning the second-stage disposition of funds.

II. Jurisdiction

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. After reviewing the record in this proceeding, we have concluded that it is difficult to identify potentially injured parties and to ascertain readily the extent to which such parties may have been injured by Boswell's pricing practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The OHA will therefore accept jurisdiction over the funds received by the DOE pursuant to the Boswell consent order.

III. Refund Procedures

Since we did not receive any comments objecting to the first stage procedures tentatively established in the Proposed Decision, we have concluded that those procedures should be adopted. The Boswell consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by Boswell's pricing practices during the six-month consent order period (November 1, 1973 through April 30, 1974). The audit files indicate that Boswell's customers were generally resellers (including retailers and refiners operating in the capacity of resellers) of motor gasoline and No. 2 fuel oil, and also industrial end-users of No. 2 and No. 6 fuel oils. Potential claimants are firms and individuals who purchased these products either directly from Boswell or from firms in a chain of distribution leading back to Boswell.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of products covered by the Boswell consent order during the consent order period. If the products were not purchased directly from Boswell, the claimant will be required to include a statement setting forth the reasons for believing the product originated with Boswell. In addition, a reseller filing a refund claim will generally be required to document that it was injured by the alleged overcharges. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from Boswell, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85.168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.* 10 DOE ¶ 85,009 (1982). Each reseller will also be required to show that it maintained "banks" of uncovered increased product costs. *See Office of Enforcement*, 10 DOE ¶ 85,029 (1982), *Standard Oil Co. (Indiana/Suburban Propane Gas Corp.*, 13 DOE ¶ ——— Case No. RF21-8802 (April 17, 1985). The presence of banks, however, does not automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron, U.S.A.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

First, we will adopt the presumption that the alleged overcharges were dispersed equally in all sales of covered products sold by Boswell during the consent order period. The OHA refers to this presumption as volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm.

In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. Under this method, a per gallon volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In this case, the volumetric amount is $0.001940 ($148,250 remitted to the DOE by Boswell divided by 76,400,000 gallons of covered products sold by Boswell during the consent order period).[1] Refunds will be calculated by multiplying an applicant's total gallons of product purchased from Boswell during the consent order period by the per gallon volumetric refund amount. An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund since its remittance to the DOE.

We will also adopt a presumption that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order.[2] *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (*Uban*). The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Boswell consent order is based on a number of considerations. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed financial information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may exceed the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a purchase volume figure from the consent order firm or as a dollar refund figure. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*Texas Oil*), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We have determined that the same approach will be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to both the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the volumetric refund amount is fairly low and the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[3] *See id.; Marion.*

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases with reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *Marion; Texas Oil*, 12 DOE at 88,209. We have therefore concluded that end-users of Boswell petroleum products need only document their purchase volumes from Boswell to make a sufficient showing that they were injured by the alleged overcharges. *See generally Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984); *Standard Oil Company (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Company (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983).

As in prior special refund cases, we will not grant refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See, e.g., Uban*, 9 DOE at 85,225.

Generally in special refund proceedings, we attempt to identify specific customers who may have been injured by the consent order firm's pricing practices and provide those customers with notice of the refund proceeding. The Boswell audit files provide the names and, in some cases, the addresses of firms who were customers during early 1973. *See* Appendices A and B. Although this period was prior to the consent order period, we believe that these firms may have been injured by Boswell's alleged overcharges. Accordingly, we intend to provide notice to those firms for whom we have addresses and to make additional efforts to locate those firms for whom we do not have addresses.[4] Moreover, we are continuing to seek Boswell's cooperation in locating its customers during the consent order period and apprising them of this special refund proceeding. We may also use local newspapers to publicize this proceeding.

IV. Refund Application Procedures

We have determined that the procedures described in the Proposed

[1] We recognize that the impact of a seller's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the amount determined using the volumetric presumption. *See, e.g., Amtel Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[2] We will also presume, however, that if a reseller made only spot purchases from Boswell, it was not injured by Boswell's pricing practices. Accordingly, it would not be eligible to receive a refund, even one at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make spot purchases and would therefore not have made spot purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe that the same rationale holds true in the present case. Accordingly, in addition to demonstrating injury, a spot purchaser which files a claim should submit evidence to establish that it is inappropriate to presume that the firm had discretion as to where and when it made the purchase(s) on which its refund claim is based.

[3] As in prior refund cases, resellers whose refund calculated using the volumetric factor exceeds the threshold amount may elect to apply for a refund based on the threshold amount.

[4] In order to ensure that those customers receive notice of this proceeding, we solicit information concerning the addresses of the firms listed in Appendix B.

Decision are the most equitable and efficacious means of distributing the Boswell consent order fund. Accordingly, Applications for Refunds will now be accepted from parties who purchased Boswell petroleum products during the consent order period. The following information should be included in all Applications for Refund:

1. Applications should prominently display Case No. HEF-0400 and the applicant's name on the cover.

2. Each Application should include the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. Each applicant should specify how it used the Boswell petroleum product, i.e., whether it was a reseller or end-user.

4. Each applicant should report the volume of each Boswell petroleum product it purchased by month for the period of time for which it is claiming it was injured by the alleged overcharges. If the product was not purchased directly from Boswell, the claimant must include a statement setting forth the reasons for believing the product originated from Boswell.

5. If the applicant is a reseller (or retailer or refiner) who wishes to claim a refund in excess of $5,000 it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

6. Each applicant should state whether it was in any way affiliated with Boswell. If so, it should state the nature of the affiliation.

7. Each applicant should state whether there has been any change in ownership of the entity that purchased Boswell petroleum products since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. Each applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actiodns. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

9. Each Application must also include the following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW, Washington, D.C. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the confidential material has been deleted, together with a statement specifying why the information is privileged or confidential.

All Applications should be sent to: The Boswell Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by The Boswell Oil Company pursuant to the consent order executed on October 21, 1981 may now be filed.

(2) All Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: June 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Boswell's 1973 Customers, Addresses Known

Air Products, P.O. Box 565, Creighton, PA 15030
Armoco Steel Company, 703 Curtis Street, Middletown, OH 45042
Barton Brands, Barton Road, Bardstown, KY 40004
Champion Paper Company, 601 North B, Hamilton, OH 45011
Clark Oil Company, 300 S.W., End Avenue, Dayton, OH 45426
Commerce Oil Corp., 10 Rockefeller Plaza, New York, NY 10020
Crucible, Inc., P.O. Box 226, Midland, PA 15059
Dana Corporation, 2700 East Plum, New Castle, IN 47362
Emery Industries, 4900 Este Avenue, Cincinnati, OH 45232
Foster Forbes, East Charles, Marion, IN 46952
General Motors, Inland Division, 2701 Home Avenue, Dayton, OH 45417
Gold Circle Stores, 8755 Colerain Avenue, Cincinnati, OH 45239
Harris-Thomas Drop Forge, 1400 East 1st Street, Dayton, OH 45403
Mead Corporation, South Paint, Chillicothe, OH 45601
Monsanto Company, River Road, Addyston, 45001
Ohio Brass Company, 380 North Main Street, Mansfield, OH 44903
Quaker State Oil Refining Corp., Quaker State Building, Oil City, PA 16301
R & W Oil Products, 440 West 5th Avenue, McKeesport, PA 15132
Randall Company, Randall Street, Greensburg, IN 47240
Reilly Tar & Chemical, 1500 S. Tibbs Avenue, Indianapolis, IN 46217
Sinclair Koppers, P.O. Box 219, Bridgeville, PA 15017
Standard Oil Company, 20600 Chagrin Boulevard, Cleveland, OH 44122
Sorg Paper Company, 901 Manchester, Middletown, OH 45042
Susan Rockwell, Esq., U.S. Steel Corp., 600 Grant Street, Pittsburgh, PA 15230
Volney Felt Mills, West 8, Brookville, IN 47012
Wagoner Gas & Oil, 112 Walnut Lane, West Newton, PA 15089
Weirton Steel, P.O. Box 431, Weirton WV 26062

Appendix B

Boswell's 1873 Customers, Addresses Unknown

Belle Vernon Oil
Bernard Miller
Best Oil Co.
Brite Oil
C. Block
C.E. Glass
Campbell Bard
Diamond International
E.C. Smith
Gil Products
Golden Flame
Green Line Steamers
Harrison Steel Castings
Industrial Oil Co.
Jenkins Atlantic
King & Keeny
Logan-Long

Paul Corry Construction
Pittron
Standard Terminal
Suchko
The Flintcote Co.
Universal Oil

[FR Doc. 85-15097 Filed 6-21-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $765,207.76 (plus accrued interest) obtained as a result of Consent Orders which the DOE entered into with Eugene Endicott of Redmond, Oregon (Case No. HEF-0069), Field Oil Company of Ogden, Utah (Case No. HEF-0071), F.O. Fletcher, Inc. of Tacoma, Washington (Case No. HEF-0074), Glaser Gas, Inc. of Calhan, Colorado (Case No. HEF-0080), Ideal Gas, Inc. of Nyssa, Oregon (Case No. HEF-0093), and Inland U.S.A., Inc. of St. Louis, Missouri (Case No. HEF-0096). The funds will be available to customers who purchased refined petroleum products from one of the consent order firms during the relevant consent order period.

DATE AND ADDRESS: Application for refund of a portion of one of the consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Endicott Consent Order Proceeding, Field Consent Order Proceeding, Fletcher Consent Order Proceeding, Glaser Consent Order Proceeding, Ideal Consent Order Proceeding, or Inland Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to Consent Orders entered into by Eugene Endicott (Endicott) of Redmond, Oregon, Field Oil Company (Field) of Ogden, Utah, F.O. Fletcher, Inc. (Fletcher) of Tacoma, Washington, Glaser Gas, Inc. (Glaser) of Calhan, Colorado, Ideal Gas, Inc. (Ideal) of Nyssa, Oregon, and Inland U.S.A., Inc. (Inland) of St. Louis, Missouri (hereinafter collectively referred to as the consent order firms). These Consent Orders settled possible pricing and allocation violations with respect to the consent order firms' sales of refined petroleum products during the relevant consent order periods. Under the terms of the Consent Orders, the products covered, the consent order periods, and the consent order amounts are as follows:

Products covered	Consent order period	Consent order amount
Endicott: Motor gasoline	11/1/73-11/30/75	$10,000.00
Field: Motor gasoline	3/1/79-7/31/79	17,955.15
Fletcher: Motor gasoline middle distillates	11/1/73-5/31/74	132,110.00
Glaser: Propane	11/1/73-2/29/76	23,155.37
Ideal: Propane	11/1/73-4/30/74	53,714.00
Inland: Motor gasoline	3/1/79-8/30/79	528,273.24

The consent order amounts are being held in separate interest-bearing escrow accounts pending determination of their proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the six consent order funds. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on April 3, 1985. 50 FR 14423 (April 12, 1985).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased refined petroleum products from one of the consent order firms during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: June 17, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

June 17, 1985.

Names of Firms: Eugene Endicott; Field Oil Company; F.O. Fletcher, Inc.; Glaser Gas, Inc.; Ideal Gas, Inc.; and Inland U.S.A., Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0069; HEF-0071; HEF-0074; HEF-0080; HEF-0093; and HEF-0096.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement special procedures for the distribution of funds received pursuant to Consent Orders entered into by the DOE and the following parties: Eugene Endicott (Endicott) of Redmond, Oregon; Field Oil Company (Field) of Ogden, Utah; F.O. Fletcher, Inc. (Fletcher) of Tacoma, Washington; Glaser Gas, Inc. (Glaser) of Calhan, Colorado; Ideal Gas, Inc. (Ideal) of Nyssa, Oregon; and Inland U.S.A., Inc. (Inland) of St. Louis, Missouri (hereinafter collectively referred to as the consent order firms).[1] The aggregate amount of funds involved in this proceeding is $765,207.76.

I. Background

Each of the consent order firms is a "reseller" or "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order

[1] This consolidated proceeding initially included a Consent Order entered into by the DOE and Arkla Chemical Corporation (Arkla) (Case No. HEF-0030). *See Arkla Chemical Company et al.*, 6 Fed. Energy Guidelines ¶ 90,056 (Proposed Decision and Order, April 3, 1985). We have subsequently determined that the Arkla case should be consolidated with a Subpart V and Arkansas Louisiana Gas Company (Case Number HEF-0201), of which Arkla is a wholly-owned subsidiary. Accordingly, the final determiantion of procedures for the distribution of the Arkla consent order fund has been set forth in a recent, separate Decision and Order. *See Arkansas Louisiana Gas Company et al.*, 13 DOE ¶ ——— Case Nos. HEF-0201, HEF-0030 (May 17, 1985). No comments were received which would affect this new consolidation.

with the DOE in order to settle its disputes concerning certain sales of refined petroleum products.[2] Each Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, each Consent Order states that the consent order firm does not admit that it committed any such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability regarding sales to their respective customers during the consent order periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the consent order amounts, the products covered by the Consent Orders, and the dates of the consent order periods are set forth in Appendices A–F to this Decision and Order.

On April 3, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order funds. 50 FR 14423 (April 12, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on information contained in the ERA audit files. We observed that this approach was warranted based on our experience in prior Subpart V cases where the consent order period is coterminous with the audit period, all or most of the firm's customers were identified by the ERA, and alleged overcharge amounts were specified for those customers in the audit records. *See, e.g., Marion Corp.,* 12 DOE ¶85,014 (1984). At the same time, we recognized that there may have been other purchasers who were not identified in the audit files and who were injured as a result of the pricing practices of one of the consent order firms during the relevant consent order period. We therefore proposed to establish a claims procedure whereby the consent order firms' customers could apply for a refund.

A copy of the PD&O was published in the **Federal Register** on April 12, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those purchasers whose names and addresses were listed in the ERA audit files and are set forth in Appendices A–F. While none of the consent order firms' customers commented on the proposed refund procedures, comments were filed on behalf of the State of Texas. A portion of Texas' comments, however, discusses the distribution of any residual funds that might remain after refunds have been made to first-stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of refined petroleum products from one of the consent order firms should submit in an Application for Refund in order to establish eligibility for a portion of the relevant consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement,* 9 DOE ¶82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by Texas' comments concerning the disposition of any funds remaining after all the meritorious first-stage claims have been paid.[3] Comments filed by Texas regarding the proposed first stage procedures will be addressed in Section III of this Decision.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶82,553 (1982); *Office of Enforcement,* 9 DOE ¶82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the six consent order funds.

III. Determination of Injury

In the PD&O, we proposed that retailer and reseller claimants (including refiners acting as resellers) be required generally to demonstrate that they did not pass on to their customers price increases implemented by one of the consent order firms. *See, e.g., Vickers.* We have received no comments objecting to this proposal. Accordingly, in order to qualify for a refund, firms that resold petroleum products purchased from one of the consent order firms must show that during the consent order period market conditions would not permit them to increase their prices to pass through to their customers the additional costs associated with the alleged overcharges. In addition, resellers must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices.[4] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.,* 10 DOE ¶85,014 (1982); *Vickers Energy Corp./Standard Oil Co.,* 10 DOE ¶85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.,* 10 DOE ¶85,038 (1982).

As in many prior special refund cases, we also proposed to adopt a presumption of injury with respect to small claims. Specifically, we proposed that a reseller or retailer claimant whose refund claim is below a threshold amount of $5,000 not be required to submit any additional evidence of injury beyond purchase volumes.

The State of Texas has filed comments in opposition to these proposals. Texas argues that the proposals would permit the "unjust enrichment" of reseller claimants, who may thereby receive refunds without proving injury or adequately demonstrating that they have "clean

[2] Although Endicott did not enter into a Consent Order with the DOE, the firm agreed to pay $10,000 to the DOE under the terms of a Stipulation for Consent to Judgement approved by the United States District Court for the District of Oregon on June 10, 1980. *Endicott v. Schlesinger,* Civil No. 79-129 (D.C. Ore. 1980). In view of the similarity between the terms of the Stipulation and the terms usually agreed upon in a Consent Order, we will hereinafter refer to the Stipulation as a Consent Order.

[3] Furthermore, it is not clear that the State of Texas has a direct interest in the present proceeding, since none of the sales involved were made in Texas.

[4] Some of the motor gasoline sales covered by the Consent Orders entered into by Field and Inland occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers who purchased motor gasoline from Field or Inland will not be required to submit bank information for purchases made after July 15, 1979.

hands." Comments at 4–5. Texas further argues that funds available to ultimate consumers will be "wrongfully diminished" if the OHA adopts a presumption of injury and a threshold level for reseller claimants. Comments at 5.

We are not persuaded by Texas' arguments. For the reasons stated below, we have determined that it is appropriate to establish a presumption of injury for all claims of $5,000 or less filed by resellers and retailers of refined petroleum products purchased from one of the consent order firms. *See Cosby Oil Company,* 13 DOE ¶ ———, Case No. HEF–0056 (April 10, 1985).

As we stated in the PD&O, presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of these regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e).

As we pointed out in the PD&O, the presumption that claimants seeking smaller refunds were injured by the pricing practices settled in a Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). First, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. As we noted in the PD&O, this procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Texas has not advanced any arguments contesting this finding. Moreover, the transactions covered by the Consent Orders involved in the present proceeding took place 6–11 years ago, and we recognize that obtaining even purchase records may be difficult for some of the claimants. Therefore, as we stated in the PD&O, we are convinced that failure to allow simplified application procedures for small claims could operate to deprive injured parties of the opportunity to obtain a refund.[5]

Secondly, as we stated in the PD&O, the use of a small claims presumption is desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly and to use its limited resources more efficiently.

As of April 16, 1985, the Office of Hearings and Appeals was evaluating 3,365 applications for first-stage refunds in 89 proceedings. In addition, as of May 20, 1985, there were 165 pending refund proceedings in which applications for refund will be accepted in the near future. In order to expeditiously process this case load, it is essential to use presumptions like those proposed in the PD&O.

Finally, as we noted in the PD&O, it is clear that claimants seeking smaller refunds did purchase covered products from one of the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact. In view of these considerations, we reject Texas' position on the small claims presumption of injury issue.

Under the small claims presumption we are adopting, a reseller, refiner, or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[6]

Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *id,* at 88,210. In the PD&O, we proposed that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the PD&O, we stated that in view of the length of time which has transpired since the consent order periods in this case, the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See id.; Marion Corp.,* 12 DOE ¶ 85,014 (1984). Texas has not presented any persuasive grounds for us to alter the proposed threshold level. Accordingly, we shall utilize a $5,000 threshold for reseller claimants.[7]

In addition to the presumption for small claims, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled for the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.,*

[5] The use of a small claims presumption for resellers will not deprive ultimate consumers who were direct purchasers of their maximum potential refunds. The ultimate consumers who were most likely injured by the pricing practices of Field, Fletcher, Glaser and Ideal were designated to receive a direct refund from the consent order firm under the terms of the Consent Order. *See* footnote 8. The consumers who were most likely injured by the pricing practices of Endicott and Inland are designated as potential recipients of refunds in Appendices A and G. The amount of money available for distribution to these consumers does not depend on the size or number of refunds granted to reseller claimants.

[6] Resellers (including refiners and retailers) who made only spot purchases from one of the consent order firms will be presumed to have suffered no injury. They will therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97; *see also Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise considerable discretion as to where and when it made the purchase(s) on which its refund claim is based.

[7] Any claimant whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold amount.

10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of petroleum products purchased from one of the consent order firms need only document their purchase volumes from the consent order firm to make a sufficient showing that they were injured by the alleged overcharges.[8] On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased petroleum products consumed as fuel or as raw materials will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

IV. Calculation of Refund Amounts

In the PD&O, we proposed that the maximum refund for each of the firms listed in the Appendices be based on the amount it was allegedly overcharged, as calculated by the ERA. These refund amounts represent a prorated portion of the alleged overcharges by the consent order firms.[9] Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe that it is appropriate to use this information in the present case. As we noted in the PD&O, the ERA audits were very well-defined, and the Consent Orders were limited to the same products and time periods as the audits. Because of these factors, the information contained in the ERA audit files can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* Since we have received no comments regarding this proposed method of distribution we will adopt the procedures set forth in the PD&O. Successful refund applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow accounts.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

V. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the six consent order funds. Accordingly, we shall now accept applications for refunds from the customers listed in the Appendices. We will also accept claims from any customers not listed in the Appendices who can show that they were injured by the pricing practices of one of the consent order firms during the relevant consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of petroleum products for which it is claiming a refund. The applicant must also state how it used the petroleum products, i.e., whether it was an ultimate consumer or a reseller. Ultimate consumers who purchased refined petroleum products from Field, Fletcher, Glaser, or Ideal must certify that they did not receive a direct refund from the consent order firm. Retailers and resellers (including refiners acting as resellers) who request refunds in excess of the $5,000 threshold amount must submit evidence to establish that they did not pass on the alleged overcharges to their customers. Specifically, the applicant must state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until the product was decontrolled and, if so, must furnish the OHA with quarterly bank calculations. The applicant must also state whether it or any of its affiliates have filed any other applications for refund in which banks have been provided to demonstrate injury. An applicant whose refund is in excess of $5,000 and is based on propane purchases, or who had multiple suppliers of other consent order products, must submit evidence of the quarterly prices it paid during the applicable periods for the products for which it is claiming a refund and must state the locations of such purchases.

In addition, each applicant must state whether there has been a change in ownership of the firm since the relevant audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Applicants should also report any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** Each application must be in writing, signed by the applicant, and specify that it pertains to either the Endicott Consent Order Fund, Case No. HEF-0069, the Field Consent Order Fund, Case No. HEF-0071, the Fletcher Consent Order Fund, Case No. HEF-0074, the Glaser Consent Order Fund, Case No. HEF-0080, the Ideal Consent Order Fund, Case No. HEF-0093, or the Inland Consent Order Fund, Case No. HEF-0096. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be

[8] The Consent Order entered into by Field, Fletcher, Glaser, and Ideal required each consent order firm to refund a certain amount directly to its end-user customers. The funds in the DOE escrow accounts are thus primarily intended for distribution to the firms' reseller and retailer customers. Accordingly, and end-user of refined petroleum products purchased from Field, Fletcher, Glaser, or Ideal will not be eligible for a refund in this proceeding unless it did not receive a direct refund from the consent order firm.

[9] In addition to selling motor gasoline directly to the customers listed in Appendix F, Inland sold motor gasoline to end-users at company-owned service stations. The ERA audit files pertaining to Inland's sales to these end-user customers list only the total alleged overcharges attributable to them as a class (*See* Appendix F). As proposed in the PD&O, we will therefore establish a claims procedure whereby these unidentified customers can apply for a refund based on the volume of motor gasoline they purchased from service stations owned by Inland. *See Vickers.* The volumetric factor will be determined by dividing the portion of the adjusted consent order amount designated for distribution to customers at Inland's service stations ($145,275) by the estimated total volume of motor gasoline sold at the service stations during the consent order period (27,499,100 gallons). This results in a volumetric refund amount of $0.005283 for each gallon of motor gasoline which an applicant purchased from an Inland service station during the consent order period.

sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the consent order fund remitted to the Department of Energy by the consent order firms listed in Appendices A–F to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: June 17, 1985.

George B. Breznay,

Director Office of Hearings and Appeals.

Appendix A

Eugene Endicott, P.O. Box 386, Redmond, Oregon

OHA Case Number: HEF–0069.

Consent Order Period: 11/1/73–11/30/75.

Products Covered: Motor gasoline, aviation gasoline.

Consent Order Amount: $10,000.

Identified customers	Potential refund [1]
John Hull, 8572 W. Antler, Redmond, Oregon 97756	$2,090.00
Ronald Halsey, 668 E. 1st Street, Prineville, Oregon 97754	1,980.00
Lawrence Loar, P.O. Box 1, Camp Sherman, Oregon 97730–0001	190.00
Butler Aircraft, Roberts Field, Redmond, Oregon 97756	810.00
Tasco, Inc., 606 110 Ave. NE., Suite 315, Bellevue, Washington, 98004	4,930.000

[1] Rounded to the nearest dollar.

Appendix B

Field Oil Company, 136 W. Rushton Street, Ogden, Utah 84401

OHA Case Number: HEF–0071.

Consent Order Period: 3/1/79–7/31/79.

Product Covered: Motor gasoline.

Consent Order Amount: $17,955.15 to reseller customers, $4,772.41 to end-user customers (*see* footnote 8)[1]

Identified reseller customers	Potential refund [1]
Amoco Freeway, 3185 Harrison Blvd., Ogden, Utah 84403	$2,518.80
Big Verns, 345 N. Main, Clearfield, Utah 84015	110.14

[1] Under the terms of the Field Consent Order, the firm agreed to pay $4,781.56 directly to end-users and $18,052.00 to the DOE. In response to a subsequent discovery of several mathematical errors in the audit, an addendum to the Consent Order was executed on July 6, 1981, thereby reducing the consent order amounts to $4,772.41 for direct payment to end users and $17,995.15 for payment to the DOE.

Identified reseller customers	Potential refund [1]
Bill's American Service, 5608 S. 1900 W., Roy, Utah 84067	1,638.09
Ed Blair Service, 2991 Monroe Blvd., Ogden, Utah 84401	443.19
Crabtree Auto Company, 705 W. Riverdale, Ogden, Utah 84403	29.44
Walt Devore's Service, 133 N. Main, Clearfield, Utah 84015	2,225.81
Harry Duckworth, 155 S. 300 E., Kaysville, Utah 84015	219.26
Farr Better Service, P.O. Box 1167, Ogden, Utah 84402	872.53
Delbert Jensen, 4525 S. 300 W., Ogden, Utah 84403	780.80
Kar Kwik No. 1, 2784 Jefferson Ave., Ogden, Utah 84403	27.19
Airs' Rent-A-Car, 123 22nd Street, Ogden, Utah 84401	20.85
Mini Mart, 1453 Washington Blvd., Ogden, Utah 84401	1,954.82
Nebeker Oil,[2] 1662 Washington Blvd., Ogden, Utah 84401	36.03
Bill Olsen, 2301 S. Main, Bountiful, Utah 84010	1,341.41
Woody Pendleton, 3185 Harrison Blvd., Ogden, Utah 84403	1,018.50
Short Stop, 5598 Harrison Blvd., Ogden, Utah 84403	2,278.16
Stimson's Market, 2784 Jefferson Ave., Ogden, Utah 84403	435.52
Vern Stockseth, 5965 S. Woodlawn Drive, S. Ogden, Utah 84403	677.57
M.J. Kunz	618.80
Gordon Truck Service	748.24

[1] Since the consent order amount constituted a 100% settlement of the alleged overcharges, each potential refund amount represents the total alleged overcharges incurred by the identified customer.

[2] A copy of the PD&O was sent to Nebeker Oil, but was returned to this Office unclaimed. Although we will therefore not send a copy of the final Decision and Order to Nebeker Oil, the firm is still eligible to apply for a refund in the present proceeding.

Appendix C

F.O. Fletcher, Inc., 606 Alexander, Tacoma, Washington 98421.

OHA Case Number: HEF–0074.

Consent Order Period: 11/1/73–5/31/74.

Products Covered: Motor gasoline, middle distillates.

Consent Order Amount: $131,470.00 to resellers, $3,350.00 to end-users (*see* footnote 8).

Identified reseller customers	Potential refund [1]
Garkie Oil Co., 7005 N. Vincent Ave., Portland, Oregon 97217	$285.00
Leo Huber, 12959 S.E. Powell Blvd., Portland, Oregon 97236	292.00
Arden & Ed C. Kneppers, 1000 S.E. 82nd Ave., Portland, Oregon 97266	1,644.00
R&M Transport,[2] 7321 N.E. 140th Place, Kirkland, Washington 98033	37.00
Pennco Oil Co., 1919 W. 39th St., Vancouver, Washington 98660	716.00
H.C. Sanderson,[2] Route Bigg Jct., Portland, Oregon 97229	171.00
John M. Wilson, 1906 N.E. 57th Street, Portland, Oregon 97213	1,404.00
Franko Oil Co., P.O. Box 2440, Eugene, Oregon 97402	619.00
Ballard Oil Co., 5300 26th Ave. N.W., Seattle, Washington 98108	[3] 9.00
Blue Line Exchange,[2] P.O. Box 37, Portland, Oregon 97043	117.00
Brokers Petroleum,[2] 5100 N.W. 137th Ave., Portland, Oregon 97229	805.00
Chappell Oil Co.,[2] Rte. 3, Box 4766, St. Helens, Oregon 97051	1,908.00
Bob Epley,[2] A-1 Oil Co., 1013 N.E. 62nd Ave., Portland, Oregon 97213	12,837.00
McCall Oil Co.,[2] 2313 Lloyd Center, Portland, Oregon 97232	8,975.00
Morrison Oil Co., P.O. Box 17339, Portland, Oregon 97217	1,120.00
Pacific Petroleum, Inc., 1328 S.W. Baseline Rd., Hillsboro, Oregon 97123	2,939.00
Powell Distributing Co., P.O. Box 17194 Kenton Station, Portland, Oregon 97208	533.00
Redmond Oil Co.,[2] 14344 Woodinville-Redmond Road, Redmond, Washington 98052	4,073.00
Joe B. Young, P.O. Box 267, Hood River, Oregon 97031	83.00
Robert Wanamaker, P.O. Box 77, Haines, Washington 97833	1,174.00
Vernon Pratt, 3564 E. 2nd Street, The Dalles, Oregon 97058	197.00
Triwax Service, 205 Columbia N.E., Salem, Oregon 97303	2,202.00
James F. Lemon, P.O. Box 55, Monroe, Oregon 97546	69.00
Doubrowsky Logging Co., P.O. Box 191, Coldenvale, Washington 98620	180.00
D. Anderson,[2] 824 State Street, Olympia, Washington 98506	815.00
Petro Stops Northwest,[2] 302 S. Plummer, Tucson, Arizona 85719	165.00
Savway,[2] 95 S.W. First Ave., Ontario, Oregon 97914	1,299.00
Schroeder Fuel Co., 1593 Wenatchee Ave., Wenatchee, Washington 98801	1,763.00
Duncan Service Station,[2] 10656 Pacific Avenue, Tacoma, Washington 98444	249.00
Lukenbill Service Station,[2] 5535 McKinley, Tacoma, Washington 98404	240.00
Ripley Service Station,[2] 941 Meridian, Puyallup, Washington 98371	475.00
Brannon Service Station,[2] 401 Valley, Puyallup, Washington 98371	190.00
Lilyblad Petroleum, 2244 Port of Tacoma Road, P.O. Box 1381, Tacoma, Washington 98401	8,750.00
Marlen L. Knutson, P.O. Box 318, Stanwood, Washington 98292	742.00
Chet & Jack Potter,[2] 1601 E. 27th, Tacoma, Washington 98421	806.00
Able Oil Co.,[2] P.O. Box 103, Aderdeen, Washington 98520	2,662.00
Pedersen Oil Co., 1702 Penn Ave., Bremerton, Washington 98310	1,318.00
Norm Drew, P.O. Box 2014, Olympia, Washington 98501	124.00
Gene Morris Fuel Co., Box 71, Route 1, Glenoma, Washington 98336	1,416.00
Port Orchard Oil Co., P.O. Box 140, Port Orchard, Washington 98366	1,353.00
City Fuel,[2] 1912 Wilkerson, Tacoma, Washington 98405	304.00
Northwest Petroleum, 250 E. D Street, Tacoma, Washington 98405	52.00
Gene Peters, Caribou Four, Glenoma, Washington 98336	1,225.00
Harvey DeWitt,[2] 9605 14th South, Seattle, Washington 98108	531.00
Elton Newman,[2] 1105 Lynhurst Way, San Jose, California 95118	1,013.00
Ray Ridgeway, 3457 15th West, Seattle, Washington 98119	2,896.00
Lee Clayton,[2] 9605 14th South, Seattle, Washington 98108	36.00
Leonard L. Anderson,[2] Anderson Heating, 1098 N.W. Innis Arden Dr., Seattle, Washington 98177	38.00
Cecil Armstrong, Cunningham Fuel, 4459 S. Hudson, Seattle, Washington 98118	40.00
Best Fire Oil Co., 7624 S.E. 24th, Mercer Island, Washington 98040	41.00
Charles Forsberg, 2024 N.W. 190th, Seattle, Washington 98177	221.00
J. Klietsch, Burien Fuel, 14260 Des Moines Way, Seattle, Washington 98168	1,345.00
Bob Landon, Landon Fuel, 16068 Ambaum Blvd. So., Seattle, Washington 98148	18.00
Art Stokke, Williams Heating Oil, 2008 N.W. 56th, Seattle, Washington 98107	112.00
Suburban Fuel, 15055 Des Moines Way, Seattle, Washington 98148	82.00
J. Wasilousky, Fireside Fuel, 3515 N.E. 96th Seattle, Washington 98115	28.00
Ken Wise, West Fuel Co., 4455 35th St. SW., Seattle, Washington 98126	534.00
Tom Danforth, Thrifty Oil Heat, Box 2646, Everett, Washington 98200	439.00

Identified reseller customers	Potential refund [1]
J. Pardonavion, Paddy's Fuel, 6311 Rockefeller, Everett, Washington 98200	490.00
Emmet Kramer, Freeland Oil Sales, Langley, Washington 98260	[3] 11.00
L. DeYoung Oil Co., P.O. Box 227, Woodinville, Washington 98072	215.00
A. Jaskari, Sea Rac Oil, 1102 S. 166th Place, Seattle, Washington 98148	146.00
Salmon Bay Oil,[2] 206 Administration Bldg., Fisherman's Terminal, Seattle, Washington 98104	307.00
Sound Oil, 6346 Rainier Ave., Seattle, Washington 98118	318.00
Tom's Fuel, 3801 Second Ave. N.E., Seattle, Washington 98105	97.00
J. Clements, 402 Third Ave. South, Twin Falls, Idaho 83301	1,077.00
C.W. Douds,[2] Boise, Idaho 83702	[3] 8.00
Lynch Oil Co., 535 West Main, Box 790, Burley, Idaho 83318	4,648.00
Johnson Oil, State Street, Boise Idaho 83702	170.00
Meyers Oil Co., 1310 State Street, Boise, Idaho 83702	103.00
Blue & White 914 Royal Blvd., Boise, Idaho 83706	11,915.00
Franklin Oil Co., P.O. Box 176, Caldwell, Idaho 83605	7,523.00
Fred West, P.O. Box 7467, Boise, Idaho 83707	375.00
J.A. Trimble Oil,[2] 1424 Second Ave. South, Nampa, Idaho 83651	3,169.00
C.B. Oil, 1010 First Street, Nampa, Idaho 93651	5,989.00
A.J. Miller, 352 Oak Circle Drive, Boise, Idaho 83702	840.00
Jackson Oil, P.O. Box 35, Homedale, Idaho 83628	1,129.00
Farmer Oil Co., 301 S. 24th, Boise, Idaho 83706	35.00
Veryl Smith, P.O. Box 818, Lagrande, Washington 98348	1,381.00
Milton Schofield,[2] 419 S. Main, Freewater, Oregon 97862	220.00
James Simmons, P.O. Box 488, Long Creek, Oregon 97856	1,045.00
Joe Young, P.O. Box 267, Hood River, Oregon 97031	22.00
C. Buck, Consumer Corner, Umatilla, Oregon 97882	66.00
Savway, 471 North Curtis Road, Boise, Idaho 83706	457.00
F.L. Bunds, 15440 S.E. 262, Boring, Oregon 97009	31.00
Marvin McKelvie, 1103 N.W. 49th St., Vancouver, Washington 98663	96.00
B.B. Pruett, 4848 S.E. Caruthers, Portland, Oregon 97215	138.00
E.G. Smith, 3107 S.E. 90th Place, Portland, Oregon 97213	21.00
Darr Oil Co., Inc., P.O. Box 603, Albany, Oregon 97321	4,970.00
D. Fraser, 6825 Highway 99, Vancouver, Washington 98665	222.00
J.D. Johnson & Co., P.O. Box 276, Hood River, Oregon 97301	1,617.00
Skillern Oil Co., 50 Highway 99 North, Eugene, Oregon 97402	663.00
Redmond Oil Co.,[2] P.O. Box 670 Bend, Oregon 97701	1,258.00
Roger Malfait, Rte. 2, Box 282-M, Waslousia, Washington 98671	1,138.00
Peter Willden, 10587 S.E. 82nd Ave., Portland, Oregon 97266	1,544.00
Longview Staples, 965 15th Ave., Longview, Washington 98632	2,039.00
Eugene Nichols, 205 Columbia N.E., Salem, Oregon 97303	1,822.00
Killingsworth Boomtown, 5020 N. Interstate Ave., Portland, Oregon 97266	28.00
Mustang,[2] 19105 S.E. Yamhill, P.O. Box 16211, Portland Oregon 97233	412.00
Valley Willamette, 1995 Commercial St., Salem, Oregon 97303	[3] 4.00
Unlocated End-Users	[4] 640.00

[1] Rounded to the nearest dollar.
[2] Copies of the PD&O were sent to these firms, but were returned to this Office unclaimed. Although we therefore do not intend to send copies of the final Decision and Order to these firms, they are still eligible to apply for a refund in the present proceeding.
[3] In the absence of other evidence of injury, these customers will not be eligible for refunds under the procedures set forth in the attached Decision because their potential refund claims are below the minimum refund amount of $15.
[4] This amount was deposited in the DOE escrow account after Fletcher was unable to locate several end-user customers who were eligible for direct refunds under the terms of the Fletcher Consent Order. As we proposed in the PD&O, any end-user who was designated for a direct refund from Fletcher, as set forth in Schedule A of the Consent Order, and who can certify that it did not receive a direct refund from Fletcher will be eligible for a refund in the present proceeding. We will base its refund on the amount it would have received under the terms of the Consent Order if Fletcher had initially been able to locate it.

Appendix D

Glaser Gas, Inc., P.O. Box 38, Calhan, Colorado 80808

OHA Case Number: HEF-0080.

Consent Order Period: 11/1/73–2/29/76.

Product Covered: Propane.

Consent Order Amount: $23,155.37 to resellers, $31,655.36 to end-users (*see* footnote 8).

Identified reseller customers	Potential refund [1]
Red Tag Gas, 215 Auburn Drive, Colorado Springs, CO 80906	$15,352.00
Kiowa Store, c/o Steve Herrick, Kiowa, CO 80117	6,414.00
Arkansas Valley Coop Assoc., 302 N. Main St., La Junta, CO 81050	93.00
Henderson Propane Co., Box 52, Simla, CO 80835	1,297.00

[1] Rounded to the nearest dollar.

Appendix E

Ideal Gas, Inc., 901 King Avenue, Nyssa, Oregon 97913

OHA Case Number: HEF-0093.

Consent Order Period: 11/1/73–4/30/74.

Product Covered: Propane.

Consent Order Amount: $53,714.00 to resellers, $18,326.00 to end-users (*see* footnote 8).

Identified reseller customers	Potential refund [1]
American Propane, 122 W. Avenue, Caldwell, Idaho 83605	$283.00
Economy Gas, P.O. Box 561, Litchfield, Minnesota 55355	5,366.00
Burns Propane Gas,[2] 1310 Hines Blvd., Burns, Oregon 97720	1,209.00
Domestic Industrial Gas, 6806 Northeast Highway 99, Vancouver, Washington 98665	32,878.00
T&T Gas,[2] P.O. Box 45, Conway, Kansas 67434	3,976.00
Petrolane Northwest, 455 E. 4 S. Suite 404, Salt Lake City, Utah 84111	10,002.00

[1] Rounded to the nearest dollar.
[2] Copies of the PD&O were sent to these firms, but were returned to this Office unclaimed. Although we therefore do not intend to send copies of the final decision and Order to these firms, they are still eligible to apply for a refund in the present proceeding.

Appendix F

Inland U.S.A., Inc., 305 Kimberly Building, 2510 South Brentwood, St. Louis, MO 63144

OHA Case Number: HEF-0096.

Consent Order Period: 3/1/79–8/30/79.

Product Covered: Motor gasoline.

Consent Order Amount: $485,000.[1]

Identified customers	Potential refund [1]
Midwest Petroleum Co., 6760 Southwest Ave., St. Louis, MO 63143	$52,040.00
Gold Oil Co.,[2] 701 Sherman Rd., Belleville, IL 62221	4,261.00
Laws Enterprises (Bi-Rite), 2110 Chouteau, St. Louis, MO 63103	9,790.00
Sieveking Co., Inc., 12960 Gravois Rd., St. Louis, MO 63217	12,917.00
Knapp Oil Co., P.O. Drawer 2, Xenia, IL 62899	7,275.00
Hutchinson Farms, Rt. 2, Charleston, MO 63834	23.00
Reelfoot Packing Co., P.O. Box 689, Union City, TN 38261	140.00
Gas Mart Oil Co.,[2] 2745 E. Skelly Drive, Suite 101, Tulsa, OK 74105	997.00
Pemiscott Oil Co., 103 East 10th St., Caruthersville, MO 73830	585.00
Energy Petroleum Co., 2130 Kienlen, St. Louis, MO 63121	2,172.00
Lieber Service Station, 8227 Gravois St., St. Louis, MO 63123	3,452.00
City of Fulton, City Hall Bldg., Fulton, KY 42041	138.00
Vickers Oil Co., P.O. Box 2240, Wichita, KS 67201	1,516.00
UCO Oil Co., 12920 East Whittier Blvd., Whittier, CA 90607	71,446.00
Aero Gas Co., 3755 Hwy 94 South, St. Charles, MO 63301	997.00
ALP Oil Company,[2] 13010 Manchester, Des Peres, MO 63131	114.00
Circo III,[2] P.O. Box 12731, Creve Coeur, MO 63141	2,346.00
Ray Oil Co., 12981 Gravois Rd., St. Louis, MO 63127	1,192.00
Dalton Petroleum, P.O. Drawer Y, Hayti, MO 63851	793.00
Kenneth Yount,[2] Box 6705, Brentwood, MO 63144	135.00
Kellett Oil Co., P.O. Box 889, Hwy 615, Sikeston, MO 63801	438.00
Wolf Oil Company, Highway 24 W, Box 574, Moberly, MO 65270	846.00
Don Williams, Rt. 3, Charleston, MO 63834	23.00
Robert Brace Service, Highway 19, Wellsville, MO 63384	230.00
C.J. Coddington, 1727 West 50th O'Fallon IL 62269	292.00
Onyx Corp., 11345 Olive St. Road, Creve Coeur, MO 63141	21,924.00
Ronnie Nixon, 104 North MO., Potosi, Missouri 63664	687.00
Key & Sons Oil Company, Highway AT, Villa Ridge, MO 63089	649.00
Billy J. Lawson, Frankclay, MO 63644	179.00
Clyde Nixon, Highway 21 East, Potosi, MO 63364	179.00
Len Thoele Service, 1703 N. Fourth St., St. Charles, MO 63301	1,280.00
C.C. Dillon Oil Co., 1342 Lonedell Road, Arnold, MO 63010	8,222.00
McCollum Service Station, Vandalia, MO 63382	375.00
Texas Discount Gas Co., P.O. Box 248, Arnold, MO 63010	7,821.00
Wides Oil Co.,[2] Murphysboro, IL 62966	854.00
Feld Chevrolet, 7700 Manchester Road, St. Louis, Mo 63143	26.00
Manchester Leasing, 1075 S. Brentwood Blvd., St. Louis, MO 63117	25.00
Raymond Cornwell, 401 E. Main St., E. Prairie, MO 63845	1,408.00
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	7,099.00
Charles Browder Marine, P.O. Box 623, Fulton, KY 42041	1,333.00
John Watson, North Blanche, Mounds, IL 62964	483.00
Saveway Oil Co., P.O. Box 338, Cape Girardeau, MO 63701	722.00
Site Oil Company, 7755 Carondelet, St. Louis, MO 63105	41,440.00

[1] Inland actually paid $528,273.24 into the DOE escrow account, as a result of interest which had accrued prior to the date of payment. Accordingly, each of the potential refund amounts listed in this Appendix includes a prorated share of this interest.

Identified customers	Potential refund [1]
Flash Oil Corporation, 7755 Carondelet, St. Louis, MO 63105	114,132.00
Unidentified Customers of Company-owned Service Stations (*see* fn. 9)	145,275.00

[1] Upon closer examination of the Inland audit file, we have determined that some of the potential refund amounts set forth in the PD&O did not accurately reflect the customer's prorated portion of the alleged overcharges plus interest accrued on the consent order fund prior to payment. Accordingly, we have adjusted these potential refund amounts and rounded them to the nearest dollar.

[2] Copies of the PD&O were sent to these firms, but were returned to this Office unclaimed. Although we therefore do not intend to send copies of the final Decision and Order to these firms, they are still eligible to apply for a refund in the present proceeding.

[FR Doc. 85-15098 Filed 6-21-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53072; TSH-FRL 2849-4]

Premanufacture Notices; Monthly Status Report for March 1985

Correction

In FR Doc. 85-13866, beginning on page 24567 in the issue of Tuesday, June 11, 1985, make the following corrections:

On page 24569, in table II, in the Identity/generic name column for PMN No. P85-494, "(1-lethylethylidene)" should have read "(1-methylethylidene)".

2. On page 24574, in table V:

a. In the Expiration date column for PMN No. P83-333, "Mar. 13, 1983" should have read "Mar. 14, 1983".

b. In the PMN No. column, "P83-4012" should have read "P83-401".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85-151]

Harold J. Haley and Madisonville Media; Hearing Designation Order

In re applications of Harold J. Haley, d/b/a. Madison County Broadcasting Co., Madisonville, Texas (File No. BP-820625AE), Reg: 1220 kHz, .5 kW, D; Madisonville Media Co., Madisonville, Texas (File No. BP-821029AD), Req: 1220 kHz, kW, D.

Adopted: May 7, 1985.

Released: June 14, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Harold J. Haley d/b/a Madison County Broadcasting Co. and Madisonville Media Co.

2. As indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

3. Accordingly, is is ordered, That pursuant to section 309(e) of the Communication Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposal would, on a comparative basis, better serve the public interest.

2. To determine in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It Is Further Ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

5. It Is Further Ordered, That to avail themselves of the opportunity to be heard the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

6. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing as prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-15116 Filed 6-21-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1520]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

June 14, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Pine Top, Arizona) (MM Docket No. 84-522 RM-4653.)

Filed By: Arthur Stambler and Andrew Ritholz, Attorneys for KBW Associates, Inc. on 4-25-85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-15111 Filed 6-21-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221-003086-002.

Title: Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)
Standard Fruit and Steamship Company (Standard)

Synopsis: Agreement No. 221-003086-002, modifies the parties' basic agreement providing for Standard's lease of a private banana facility. The

amendment restates the term of the agreement to reflect the exercise of the option to extend the initial term for five years, it deletes all references to railroad trackage which is not provided by the City and provides for a different formula for calculating the amount of compensation payable to the City.

Agreement No.: 212-009848-014.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

United States Lines (S.A.) Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 202-009968-012.

Title: Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands Area.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I. e I.
A/S Ivarans Rederi
Companhia Maritima Nacional
Companhia De Navegaco Lloyd Brasileiro
Companhia De Navegacaó Maritima Netumar
Compania Anonima Venezolana de Navegacion (C.A.V.N.)
Empresa Lineas Maritimas Argentinas Sociedad Anonima (Elma S/A)
Empresa De Navegacao Allianca S.A.
Frota Amazonica S.A.
High Seas Company Limited
Passaat Line N.V.
Paxicon, Inc.
Ship Operators (International) Inc.
Suriname Line
Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 224-010768.

Title: San Pedro Terminal Agreement.

Parties:

American President Lines, Ltd. (APL)
Eagle Marine Services, Ltd. (Eagle)
Philippines, Micronesia & Orient Navigation Company (PM&O)

Synopsis: Agreement No. 224-010768 provides that APL and its wholly-owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for PM&O Lines' vessels at Berth 121/126, San Pedro, California. The term of the agreement will be for three years. PM&O shall compensate Eagle at the rates and charges as set forth in Schedules B and C of the agreement. The parties requested a shortened review period for the agreement.

Agreement No.: 224-010769

Title: Oakland Terminal Agreement.

Parties:

American President Lines, Ltd. (APL)
Eagle Marine Services, Ltd. (Eagle)
Philippines, Micronesia & Orient Navigation Company (PM&O)

Synopsis: Agreement No. 224-010769 provides that APL and its wholly-owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for PM&O Lines at Middle Harbor Terminal, Berths C & D, Oakland, California. The term of the agreement will be for three years. PM&O shall compensate Eagle for services performed at the rates and charges as provided by Schedules B and C contained in the agreement. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010770.

Title: Seattle Terminal Agreement.

Parties:

American President Lines, Ltd. (APL)
Eagle Marine Services, Ltd. (Eagle)
Westwood Shipping Lines (Westwood)

Synopsis: Agreement No. 224-010770 provides that APL and its wholly-owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for Westwood at Terminal 46, Port of Seattle. The term of the agreement shall run for five years. Eagle shall perform the services called for by the agreement as per the rates and charges provided for in Schedules B and C contained in the agreement. The parties requested a shortened review period for the agreement.

Agreement No.: 224-010771.

Title: Oakland Terminal Agreement.

Parties:

American President Lines, Ltd. (APL)
Eagle Marine Services, Inc. (Eagle)
Westwood Shipping Lines (Westwood)

Synopsis: Agreement No. 224-010771 provides that APL and its wholly-owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for Westwood at Middle Harbor Terminal, Berths C and D, Oakland, California. The term of the agreement shall run for a period of five years. Westwood shall compensate Eagle for the services performed, as per the rates and charges contained in Schedules A & B of the agreement. The parties requested a shortened review period for the agreement.

Dated: June 19, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-15134 Filed 6-21-85; 8:45 am]

BILLING CODE 6730-01-M

Request for Additional Information

Agreement No.: 224-010754.

Title: New Orleans Terminal Agreement.

Parties:

Baton Rouge Marine Contractors, Inc.
Machinery Rentals, Inc.
Cooper/T. Smith Corporation
Strachan Shipping Company
ITO Corporation
Kerr Steamship Co., Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720), has requested additional information from the parties to the agreement in order to complete the statutory review of Agreement No. 224-010754 required by the Act. This section extends the review period as provided in section 6(c) of the Act.

Dated: June 19, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-15143 Filed 6-21-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 84-33]

Section 19 Inquiry—United States/Argentina and United States/Brazil Trades; Intent To Restructure Proceeding

The Executive Agencies[1] move the Commission for suspension of this inquiry into shipping conditions in the U.S. trades with Argentina and Brazil on the grounds that the most urgent problem has been ameliorated by action of the Argentine Government and that further proceedings might be detrimental to the orderly pursuit of U.S. foreign maritime policy functions which are the province of the Executive Agencies.

Background

This proceeding was instituted by Order of Investigation served October 2, 1984, pursuant to section 19(1)(b) of the

[1] The Executive Agencies are represented by the Department of Transportation appearing on behalf of itself, the Departments of State, Justice and Commerce and the United States Trade Representative.

Merchant Marine Act of 1920 (1920 Act) (46 U.S.C. 876(1)(b)):

* * * for the purpose of (1) determining whether, in fact, conditions unfavorable to shipping exist in the foreign oceanborne trade between the United States and Argentina, and/or between the United States and Brazil, and (2) if such conditions are found to exist, fashioning an appropriate remedy.

The proceeding was assigned to an Administrative Law Judge, with authority to determine the most appropriate type of hearing and to require the submission of reports under section 15(a) of the Shipping Act of 1984 (46 U.S.C. app. 1714(a)). The parties to the proceeding have submitted statements of fact and rebuttal statements. Two parties—the Commission's Bureau of Hearing Counsel and the Executive Agencies—also submitted memoranda of law on issues involving the relationship of section 19 to treaties and Executive Agreements, at the request of the Presiding Officer. Opening briefs were due from all parties on April 19, 1985, but were suspended indefinitely by the Presiding Officer in response to a separate motion by the Executive Agencies. The Commission thereafter suspended the date on which an Initial Decision in the proceeding would be due, in order to give further consideration to the present Motion.

The Executive Agencies request the Commission to suspend the proceeding in its entirety, on grounds that the problem of greatest Surgency—that of Ivarans Lines—has been ameliorated and further proceedings by the Commission may be detrimental to the orderly pursuit of U.S. foreign maritime policy. The Executive Agencies inform the Commission that discussions with the Governments of Argentina and Brazil will be undertaken in the near future, dealing with the content bilateral agreements and the nature of the revenue sharing pools in these trades. Although the Executive Agencies view these trades as "suffer[ing] from economic distortions and a lack of competitive access that are inconsistent with our overall maritime policy * * *," the Executive Agencies advise that they are "not prepared to take a position on questions relating to the interpretation of the bilateral agreements" governing these trades pending the outcome of further consultations with the concerned foreign governments. The Executive Agencies therefore conclude that "[a]ny determination by the Commission whether conditions unfavorable to shipping exist, with or without an evaluation of proposed remedies, would be inappropriate, likely be overtaken by events, and possibly detrimental to the orderly pursuit to our foreign maritime policy."

The Executive Agencies state that the Commission is obligated under its rules (46 CFR 585.13) to discontinue or postpone any Commission action taken pursuant to section 19 (1)(b) of the 1920 Act if informed by the President that discontinuance or postponement is required for reasons of foreign policy or national security.[2] The President's day-to-day responsibility for "setting policy in the conduct of international maritime transportation services relations," it is further stated, has been delegated to the Executive Agencies which have concluded that the proceeding should be suspended in the interests of U.S. foreign policy.

Companhia De Navegacao Lloyd Brasiliero, (Lloyd Brasiliero), the major Brazilian-flag carrier in these trades, agrees with the Executive Agencies that findings or determinations of the issues in this proceeding by the Commission may have adverse foreign policy effects. Lloyd Brasiliero objects, however, to the request that the proceeding be suspended, because it allegedly would remain a threat to Brazilian and Argentine negotiators, and suggests instead that the proceeding be discontinued. Companhia de Navegacao Maritima Netumar (Netumar), another Brazilian-flag carrier, joins in these views. Lloyd Brasiliero also disputes the Executive Agencies' statements that the record of investigation is complete and, more particularly, that the trades suffer from economic distortions and a lack of competitive access.

Empressa Lineas Maritimas Argentinas, S.A. (E.L.M.A) and A. Bottacchi, S.A. de Navegacion C.F.I.I. (Bottacchi), the Argentine-flag carriers, support the Executive Agencies' Motion. They indicate that, in their view, the "peremptory" language of the Commission's regulations, at 46 CFR 585.13, leaves the Commission without discretion to do otherwise than to suspend this proceeding as requested by the Executive Agencies. ELMA and Bottacchi also suggest that the proceeding be dismissed because its very existence is inconsistent with the procedures established in the U.S./Argentine Memorandum of Understanding and the charter of the Organization of American States (2 U.S.C. 2394) for resolving disputes and problems arising between the signatory nations. Suspension of the proceeding will allegedly "reduce the coercive atmosphere" of the upcoming diplomatic discussions.

The Commission's Bureau of Hearing Counsel supports the Motion to Suspend as a means of permitting the Executive Agencies to achieve needed reforms in these trades through a negotiated removal of unfavorable conditions. Hearing Counsel suggests that the Commission suspend the proceeding for a time sufficient to allow bilateral negotiations, with a request that the Executive Agencies keep the Commission apprised of their progress.

The Chemical Manufacturers' Association (CMA) supports continuation of the proceeding but would not object to a limited suspension to be terminated July 1, 1985 unless the Commission is concinced at that time that the negotiations demonstrate real promise of substantial competitive improvements in the trade. CMA generally supports decisive Commission action under section 19, but indicates that bilateral negotiations between the U.S. and its trading partners might proceed more smoothly if the immediate threat of adverse findings of conditions unfavorable to shipping and the attendant imposition of sanctions were removed for the immediate future. CMA is, nevertheless, reluctant to forgo entirely the possible beneficial impact it foresees on the willingness of the Argentine and Brazilian Governments to negotiate substantial expansion of competitive access to these trades as a result of continued Commission jurisdiction and possible further action in this proceeding.

CMA takes exception to the Executive Agencies' argument that the proceeding must be suspended at their request, as the collective delegates of the President's authority to establish foreign policy for maritime transport relations. CMA notes that the scheme established by statute for responding to conditions unfavorable to shipping delegates to the Commission the authority to make rules and regulations to meet such conditions and permits other government agencies which disagree with the Commission's actions to submit the facts to the President who is authorized to suspend, modify the annul such rules.

United States Lines (S.A), Inc. (USL) generally supports the Motion of the Executive Agencies, but suggests that termination of the proceeding would be more appropriate than suspension. USL disagrees with other parties'

[2] 46 CFR 585.13 provides that: "the Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone or discontinue any or all such actions if the President informs the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security."

characterizations of the state of the record and whether that record would ultimately prove the existence of unfavorable conditions in the trade. USL also takes issue with the Executive Agencies' statement that the most urgent problem, that of Ivarans Line, seems to have been ameliorated, a well as statements concerning the "economic distortions" which the Executive Agencies see in these trades.

Discussion

Based upon the Motion of the Executive Agencies and the responses thereto, we have concluded that this proceeding as presently constituted is not meeting the Commission's objectives. In order to provide an opportunity to make changes which will enable us to meet those objectives, the Motion to Suspend will be held in abeyance. Before proceeding to a discussion of the reasons for our conclusion, and a proposed remedy, we consider the issue raised by the Executive Agencies of their authority over Commission section 19 proceedings.

We do not agree with the Executive Agencies that the Commission's rules require suspension of this proceeding at their request as delegatees of the President's foreign policy authority, for several reasons.

While the general foreign policy responsibilities of these agencies doubtless lend expertise to their arguments, and are to be considered by the Commission in its decisionmaking under section 19, responsibilities assigned by statute or delegated by the President to the Executive Agencies cannot supplant the responsibilities assigned by the 1920 Act to the Commission, which is an independent regulatory agency.[3]

As CMA points out, the language and structure of section 19 itself is instructive as to the appropriate division of these responsibilities. CMA mistakenly argues, however, that section 19 itself requires Presidential action to suspend or annul a Commission-promulgated rule under section 19.[4] The statute makes no specific provision for Presidential or other executive agency action in connection with Commission rules or regulations issued under section 19(1)(b). Section 19(3), however, indicates that certain disagreements among government agencies, including the Commission, as to the desirable content of regulations affecting shipping in the foreign trades may be brought to the President for resolution. This procedure is limited to disputes regarding Commission request for or approval of regulations affecting shipping promulgated by *other* government departments or agencies under section 19(2).[5] Absent a specific provision similar to section 19(3), it would appear that the President has no statutory authority to set aside action by an independent regulatory agency specifically authorized by statute. This is not to say, however, that the Commission would not as a policy matter give serious and deferrential consideration to a request by the President to defer or withhold section 19 action based upon consideration of foreign policy. Commission policy in this regard is reflected in the regulation cited above, 46 CFR § 585.13, in which the Commission has indicated that it will accede to a Presidential request to delay or cancel section 19(1)(b) "actions".[6]

Thus, we conclude that no Presidentially delegated or other statutory authority appears to reside in the Executive Agencies upon which they may rely to require the suspension of section 19(1)(b) proceedings before the Commission.

The remaining issues raised by the Executive Agencies' Motion involve the balance between the Commission's duty to deal with conditions unfavorable to shipping under section 19 and the responsibilities of the Department of State and Transportation in establishing and implementing U.S. maritime trade policies through diplomatic negotiations with U.S. trading partners. The Executive Agencies have expressed their desire to negotiate improvements in competitive access to these trades in the absence of Commission findings or sanctions, although they believe that the trades suffer from "economic distortions and a lack of competitive access * * *"

The Commission instituted this proceeding for the purpose of determining whether the recurrent problems and distruptions in these trades were the result of laws, decrees or practices of the Argentine and Brazilian governments, and whether such conditions are "unfavorable to shipping" within the meaning of section 19(1)(b). With all due deference to the functions and responsibilities reposed in the Executive Agencies, our responsibilities under section 19(1)(b) would not appear to be inconsistent with these funcations and purposes but complementary to them.

The Commission undertook the unusual step of initiating an investigation under section 19 on its own motion in order to elicit information from a broad spectrum of interested parties who were invited to participate by public notice, and hoped to elucidate through this proceeding a picture of conditions in these trades and the sources of those conditions, which would form the basis for further action. This procedure was, in itself, a departure from the past Commission practice of initiating section 19 proceedings, on petition or on its own motion, by issuing for public comment proposed rules to meet or adjust allegedly unfavorable conditions. It was our belief that such a proceeding would permit us to construct an informed picture of the trades which would be beneficial to the Commission in proposing rules to meet or adjust any unfavorable conditions found. In the context of the announced intentions of the Executive Agencies, such a picture of current trade conditions would, it is hoped, be equally useful in pursuing their responsibilities.

It appears, however, from the Motion of the Executive Agencies and the responses thereto, that the existing proceeding cannot, as it is presently structured, achieve these goals. Due perhaps in part to the unavoidable impact in this proceeding of the concurrent filing and pursuit by A/S Ivarans Rederi (Ivarans) of its own petition for relief under section 19,[7] and

[3] Reorganization Plan No. 7 of 1961 (75 Stat. 840, 84 Stat. 1036), sections 101(b) and 103(c).

[4] The authority of the President to "establish, * * * suspend, modify, or annul such rule or regulation * * *," cited by CMA, refers to rules affecting shipping in the foreign trade promulgated by government departments or agencies other than the Commission to which the Commission objects, as provided in subsection (2) of section 19, not to Commission rules promulgated under section 19(1)(b). The reference to subsection (2) is omitted from CMA's quotation of the statute.

[5] It would also seem, at a minimum, that Commission regulations issued under section 19(1)(b) are of no less import than those issued by other agencies under section 19(2), and should not be subject to suspension or annulment upon any lesser authority than that of the President. CMA's conclusion may therefore be consistent with the general import of the 1920 Act and the Commission's own regulation which provides that the Commission "shall" postpone, discontinue or suspend any "actions taken by it under" 46 CFR Part 585 when so requested by the President (46 CFR 585.13).

[6] Although the language is less than ideally clear, 46 CFR 581.13 is intended to apply only to final actions of the Commission under section 19(1)(b) and not to actions involving the coinduct of any proceeding itself.

[7] Subsequent to the Commission's determination to institute this proceeding, but prior to the issuance of the Order of Investigation, a petition for issuance of rules to meet or adjust conditions unfavorable to shipping in the U.S./Argentina trade was filed by Ivarans, a third-flag carrier in that trade. That petition was treated as a separate matter in Docket

Continued

the identification of the issues and duplication of parties in these two proceedings, this proceeding assumed the configuration and form of an adversary quasi-adjudicatory proceeding. It has become particularly focused upon the possibility that the outcome will be final rules which impose "sanctions" upon particular parties.[8] We consider these developments an unfortunate product stemming also, perhaps, from the quasi-adjudicatory language upon which our Order of Investigation was modeled. To the extent that these developments were the irritants which motivated the Executive Agencies' Motion and the responses of other parties, they have been (in the case of Ivarans' petition) or can be removed. Their removal will, moreover, facilitate the achievement of the Commission's original fact-finding purpose in instituting this investigation. Moreover, although a number of parties have filed voluminous factural presentations and arguments already, without reflecting on the substance of these materials which are not before us, we are not convinced that the record in this proceeding is either complete or adequate to our original purposes.

In hopes of yet achieving those goals; to some useful end, we propose to restructure and continue this proceeding. The discretion to structure the proceeding as appropriate has been delegated to the Presiding Officer. We think that discretion is appropriately his. We will, however, modify the Order of Investigation in order to clarify our purposes in insfituting and continuing this proceeding and to assure that the quasi-legislative nature of rulemaking generally will be emphasized in further proceedings. To this end, the active participation of Hearing Counsel in securing broader participation of shippers and even carriers in the proceeding will be directed.[9] The use of legislative techniques of fact-finding, including the filing of written comments, and the oral presentation of evidence if deemed necessary or advisable by the Presiding Officer may prove most useful in compiling a record which will enable him to form a clear picture of the trades and the degree to which problems and disruptions in them result from Government-imposed cargo reservation schemes rather than historical competitive forces. While it is impossible to make such fine-tuned judgments on these points as would emerge in an adversary proceeding involving adjudication of questions of Shipping Act violations or similar matters, they are issues to which the rulemaking functions and procedures of section 19 appear particularly apt.[10]

Conclusion

On the basis of the concerns discussed above, we announce herein our intention to deny the Motion of the Executive Agencies and direct the Presiding Officer to restructure and continue this proceeding. We announce that intention herein, rather than acting upon it, in order to invite the comments and suggestions of present parties to the proceeding and members of the public. Our final action on the Motion to Suspend is, therefore, being held in abeyance.

Therefore, it is ordered, That any person wishing to comment upon the matters discussed in this Notice, or to suggest alternative means of pursuing the Commission goals outlined above, file such comments with the Acting Secretary of the Commission within 30 days of publication of this Notice in the **Federal Register.**

It is further ordered, That the Motion of the Executive Agencies to Suspend the Proceeding is held in abeyance pending receipt of the comments invited above and further order of the Commission.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-15105 Filed 6-21-85; 8:45 am]

BILLING CODE 6730-01-M

No. 84-34, *Shipping Conditions in The United States/Argentina Trade.* Ivarans withdrew its petition on April 26, 1985 based on assurance from the Government of Argentian that it will continue to be permitted to serve the trade without joining the conference or the northbound pooling agreement. The Commission discontinued Docket No. 84-34 on May 13, 1985.

[8] The Commission stated as its second purpose in this proceeding to determine what rules or regulations would appropriately adjust or meet any unfavorable conditions it found to exist. Such rules or regulations are the end product ordinarily envisioned by section 19. In view of the present representations of the Executive Agencies that they intended to undertake negotiations with the Governments of Argentina and Brazil on the subject of these trade conditions, we consider it extremely unlikely that a need for Commision proposed rules will emerge from any future proceeding in this Docket. In order to assure that the continuation of this proceeding, discussed below, will be without the spectre of threat previously perceived by some of the parties, the Commission will expressly amend the Order of Investigation to the issue of appropriate remedies.

[9] As an initial step, to the extent that the Commission's staff is able to identify shippers who participate in these trades, as well as carriers who now serve geographically proximate trades, their participation will be sought through direct service of this notice upon them by the Acting Secretary. Additionally, this notice shall be published in the **Federal Register** to solicit the comments of any other interested parties.

[10] See *e.g.* K. Davis, 2 Administrative Law Treatise 412-415 (2d ed. 1979), re: "legislative facts" as distinguished from "adjudicative facts" and their distinct purposes.

FEDERAL RESERVE SYSTEM

Anchor Financial Corp; et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anchor Financial Corporation,* Myrtle Beach, South Carolina; to engage

de novo through its subsidiary, Anchor Automated Services, Inc., Myrtle Beach, South Carolina, in providing data processing services of a financial, banking, or economic nature for internal operations of the holding company and for the general public; providing courier services relating to data processing activities; and providing management consulting services to depository institutions.

B. **Federal Reserve Bank of Dallas.** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *New Ulm Financial Corporation,* New Ulm, Texas; to engage *de novo* through its subsidiary, New Ulm Service Corporation, New Ulm, Texas , in providing others with data processing and data transmission services, facilities, data bases, or access to such services or data bases.

C. **Federal Reserve Bank of San Francisco.** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ventura County National Bancorp,* Oxnard, Calfornia; to engage *de novo* through its subsidiary, Ventura County Management Services Co., Inc., Oxnard, California; in providing data processing services with respect to financial, banking and economic data.

Board of Governors of the Federal Reserve System, June 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15084 filed 6-21-85; 8:45 am]

BILLING CODE 6210-01-M

Hartford National 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 section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 15, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hartford National Corporation,* Hartford, Connecticut; to acquire 100 percent of the voting shares of The Seymour Trust Company, Seymour, Connecticut.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to acquire 100 percent of the voting shares of Bankers Trust (Delaware), Wilmington, Delaware.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Security Bancorp of Tennessee, Inc.,* Halls, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of the following banks: Bank of Halls, Halls, Tennessee; Security State Bank, Newbern, Tennessee; and Gates Banking & Trust Company, Gates, Tennessee.

Board of Governors of the Federal Reserve System, June 18, 1985.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 85-15085 Filed 6-21-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel

Date, time, and place. July 11 and 12, 9 a.m., Rm. 703A-727A, 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, July 11, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; closed committee deliberations, July 12, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Lillian Yin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a cochlear implant system and a draft guideline for the preparation of premarket approval applications for cochlear implants.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information pertaining to the cochlear implant system. This portion of the meeting will be closed to permit discussion of the information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. July 15 and 16, 9 a.m., North Auditorium, Health and Human Services Building, 330 Independence Ave. SW. (entrance on C St.), Washington, DC.

Type of meeting and contact person. Open public hearing, July 15, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, July 16, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Mary Elizabeth Jacobs, Center for Devices and

Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 15, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL or Nd:YAG laser issues is not completed, discussion will be continued the following day. On July 16, the committee will discuss PMA's for contact lenses and other ophthalmic devices and requirements for PMA approval.

Closed committee deliberations. On July 15, the committee will review trade secret or confidential commercial information regarding PMA's for IOL's and ND:YAG lasers. On July 16, the committee may discuss trade secret or confidential commercial information relevant to PMA's for contact lenses or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. July 26, 8:30 a.m., Rm. 703A, 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 10 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 19, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a PMA for a cardiac pacemaker system, and a PMA for a transluminal percutaneous angioplasty catheter.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. July 29, and, if necessary, July 30, 8:30 a.m., Building 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 29, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; closed committee deliberations, if necessary, July 30, 8:30 a.m. to 11:30 a.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will review the status of some current vaccine issues.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to pending license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral

presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 15, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-15068 Filed 6-21-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 49 FR 50113, December 26, 1984), is amended to:

1. Reflect the following changes in the Office of Program Support (HCA5): (a) Consolidate functions of the Computer Systems Office and technology-related information resources functions in the Communications and Management Analysis Office (CMAO), specifically office automation and telecommunications, into a newly established Information Resources Management Office (HCA54); (b) transfer committee management and personnel and nonelectronic documentary security activities from CMAO to the Personnel Management Office; (c) transfer regulations from CMAO to the Office of Program Planning and Evaluation (HCA4); (d) change the name of CMAO to the Management Analysis and Services Office (HCA59); and (e) transfer responsibility for the physical security of the CDC Chamblee and Lawrenceville facilities to the Office of Biosafety; and

2. Revise the "Order of Succession" to place the officials in the proper order.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. Under the heading *Office of Program Support (HCA5),* in item (2), change the word computer to information.

2. Delete in its entirety the heading and statement for the *Computer Systems Office (HCA51).*

3. Under the heading *Engineering Services Office (HCA52),* delete item (5) and renumber items (6) and (7) as items (5) and (6).

4. After the heading and statement for the *Financial Management Office (HCA53),* add the following:

Information Resources Management Office (HCA54). (1) Develops and coordinates CDC-wide plans and budgets for the management of information technology and sevices, including data processing, office automation, and telecommunications; (2) develops and recommends policies and procedures relating to information resource management and support services; (3) provides leadership in the implementation of policies and procedures to promote improved information management practices throughout CDC; (4) coordinates, manages, and administers CDC-wide integrated ADP, office automation, and telecommunications networks; (5) Identifies CDC-wide information needs, and develops or stimulates the development of creative solutions to these needs; (6) designs, develops, catalogs, and manages data bases, including acquisition and use of external data bases, and information systems supporting CDC-wide functions; (7) maintains state-of-the-art expertise in information science and technology to promote the efficent and effective conduct of the CDE mission; (8) provides consultation, technical advice and assistance, and training in the selection and use of equipment, system, and services to process information; (9) manages all centralized data and word processing, voice, and data communications facilities; (10) develops and coordinates the implementation of automated information systems security program; (11) maintains liasion with

HHS, PHS, and other Federal agencies on information resource management activities.

5. Under the heading *Personnel Management Office (HCA57)*, add after item (9): (10) coordinates committee management activities; (11) conducts personnel and nonelectronic documentary security programs.

6. Change the name of the *Communications and Management Analysis Office (HCA59)* to *Management Analysis and Services Office (HCA59)*, and delete from Item: (1) The words Committee management, communications, office automation, personnel and documentary security, and regulations.

7. Under the heading *Office of Biosafety (HCA1)*, in item (3), change the words safety programs to safety and physical security programs.

8. Under the heading *Office of Program Planning and Evaluation (HCA4)*, add after item (7): (8) coordinates the development and review of regulatory documents and congressional reports.

Section HC-C, Order of Succession. After the first sentence, delete the listing of officials and substitute the following: (1) Deputy Director, (2) Assistant Director/Washington, (3) Assistant Director for Public Health Practice, (4) Assistant Director for Science, (5) Assistant Director for Management, (6) Assistant Director for International Health, (7) Director, Office of Program Support.

Dated: June 3, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-15127 Filed 6-21-85; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-8446-A2]

Alaska Native Claims Selection; Chenega Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to The Chenega Corporation for approximately 6,064 acres. The lands involved are in the vicinity of Chenega.

Seward Meridian, Alaska (Partially Surveyed)

T. 3 N., R. 7 E.
T. 1 N., R. 10 E.
T. 1 S., R. 8 E.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 24, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-15132 Filed 6-21-85; 8:45 am]

BILLING CODE 4310-JA-M

[AA-11828]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h), will be issued to Cook Inlet Region, Inc., for 7.5 acres. The lands involved are approximately 14 miles south of Talkeetna, Alaska, in the vicinity of Montana Creek, in T. 23 N., R. 4 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 24, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-15133 Filed 6-21-85; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Central and Western Gulf of Mexico Lease Sales (April and August 1987) Call for Information and Nominations and Intent To Prepare an Environmental Impact Statement

Call for Information and Nominations

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23 with regard to proposed OCS Lease Sale 110 in the Central Gulf of Mexico and an unnumbered Western Gulf of Mexico Sale, tentatively scheduled for April and August 1987, respectively.

The proposed unnumbered lease sale in the Western Gulf of Mexico, August 1987, is identified in the Draft Proposed 5-Year OCS Oil and Gas Leasing Program for Mid-1986 through Mid-1991, which appeared in the **Federal Register** at 50 FR 11589 on March 22, 1985.

This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the

next step in the planning process—Area Identification—to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for September 1985.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which may include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent on scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and existing coastal zone management programs.

Description of Area

The general area of this Call covers the Central and Western portions of the Gulf of Mexico between approximately 88° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundary seaward to approximately 26° N. latitude. The entire Call area is offshore Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas for individual lease sales: the Central Gulf of Mexico; and the Western Gulf of Mexico.

The Central Gulf of Mexico planning area is bounded on the east by approximately 88° W. latitude, thence east to approximately 92° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, and thence south to approximately 26° N. latitude. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area extends south to approximately 26° N. latitude. All blocks in water depths greater than 2,400 meters were deferred from Central Gulf Sale 98 held in May 1985. Commenters are asked to reexamine this area and provide their views as to whether these blocks should be given further consideration or should be deleted from Sale 110 at the Area Identification stage. Any new information as to resource potential, technology, and other factors relevant to this deepwater area deferred at Sale 98 would be most useful.

The Western Gulf of Mexico planning area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf of Mexico planning area. The area extends south to approximately 26° N. latitude. Two blocks in the Flower Garden Banks (Blocks A-375 and A-398, High Island Area, East Addition, South Extension) are excluded from this Call. Also excluded at this time are 123 blocks in the immediate vicinity of the provisional maritime boundary between the United States and Mexico. Commenters are asked to examine whether blocks in water depths greater than 2,400 meters in the Western Gulf should be deleted at the Area Identification stage.

The following list comprises the Leasing Maps and the OCS Official Protraction Diagrams used in identifying this Call area. These maps and diagrams may be purchased from the Regional Director, Gulf of Mexico Region.

1. Central Gulf ot Mexico

Leasing Maps. Outer Continental Shelf Leasing Maps—Louisiana Nos. 1 through 12. This set of 30 maps sells for $17.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each—

- NH 15-12 Ewing Bank (approved December 2, 1976)
- NH 16-4 Mobile (approved April 19, 1983)
- NH 16-7 Viosca Knoll (approved December 2, 1976)
- NH 16-10 Mississippi Canyon (approved December 2, 1976)
- NH 15-3 Green Canyon (approved December 2, 1976)
- NH 15-6 Walker Ridge (approved December 2, 1976)
- NH 16-1 Atwater Valley (approved November 10, 1983)
- NH 16-4 (No Name) (approved December 2, 1976)

2. Western Gulf of Mexico

Leasing Maps. Outer Continental Shelf Leasing Maps—South Texas Nos. 1 through 4. This set of seven maps sells for $5.00

Outer Continental Shelf Leasing Maps—East Texas Nos. 5 through 8. This set of nine maps sells for $7.00.

Outer Continental Shelf Official Protection Diagrams

These diagrams sell for $2.00 each—

- NG 14-3 Corpus Christi (approved January 27, 1976)
- NG 14-6 Port Isabel (approved January 27, 1976)
- NG 15-1 East Breaks (approved January 27, 1976)
- NG 15-2 Garden Banks (approved December 2, 1976)
- NG 15-4 Alaminos Canyon (approved March 26, 1976)
- NG 15-5 Keathley Canyon (approved December 2, 1976)

Instructions on Call

A map specific to this event delineates the Call area and shows the area identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to nominate and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in the 1987 Central and Western Gulf of Mexico lease sales. Boundaries of the Call area are shown on the small scale map at the end of this Notice and are shown in greater detail on the Call for Information Map available free from the Public Information Unit, Gulf of Mexico Region, MMS, Post Office Box 7944, 3301 N. Causeway Blvd., Metairie, Louisiana 70010, or by telephone (504) 838-0755 or 838-0765. Although nominations are considered to be privileged and proprietary information, the names of persons or entities submitting nominations or submitting comments will be of public record. Those submitting nominations are required to do so on the Call map. Nominations should be shown by outlining along block lines.

Respondents should rank nominated areas according to priority of their interest (e.g., priority 1 (high), 2, or 3). Nominated areas on which respondents have not indicated priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information concerning both location and priority of interest submitted by individual companies will be held proprietary and will be used as a criterion in determining the areas to be analyzed in the EIS. In addition to the blocks nominated by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

Comments are requested on the technology presently available or anticipated for exploration and development operations in deepwater areas.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, or socioeconomic conditions or conflicts, or other

information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State coastal zone management programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in the terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for proposed 1987 lease sales in the Central and Western Gulf of Mexico" or "Comments on the Call for Information and Nominations for the proposed 1987 lease sales in the Central and Western Gulf of Mexico," as appropriate.

The original Call map and nominations and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico Region, at the address stated above under "Instructions on Call." One copy of the Call map showing nominations and any comments should also be sent to the Chief, Offshore Leasing Management Division, MMS Mail Stop 645, Room 2523, DOI, 18th and C Streets, N.W., Washington, D.C. 20240. Hand deliveries in the Washington, D.C. area may be made to the Chief, Offshore Leasing Management Division, Room 2523, at the Washington address.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. A final Notice of Sale for each sale will be published in the **Federal Register** detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede these sales, proposed for April and August 1987:

	CGOM sale 110	WGOM sale unnumbered
Comments due on the call	August 1985	August 1985.
Area identification	September 1985.	September 1985.
Scoping comments due	July 1985	July 1985.
Draft EIS published	May 1986	May 1986.
Hearings held on draft EIS	June 1986	June 1986.
Final EIS published	November 1986.	November 1986.
Proposed notice of sale published.	December 1986.	April 1987
Governor's comments due on proposed notice.	February 1987.	June 1987
Final notice of sale published	March 1987	July 1987.
Sale	April 1987	August 1987

Existing Information

Information already available includes that gathered during the EIS process for the 5-Year OCS Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used. The following is a list of other information which will be available to DOI for consideration regarding the proposed 1987 OCS Lease Sales in the Gulf of Mexico.

Gulf of Mexico Indexes and Reports

1. Gulf of Mexico Index, December 1980 through August 1982, prepared by MMS.
2. Gulf of Mexico Index, September 1982 through July 1983, prepared by MMS.
3. Gulf of Mexico Summary Report, September 1983, prepared by MMS.
4. Geology Report, Central Gulf of Mexico, December 1984, prepared by MMS.
5. Geology Report, Western Gulf of Mexico, March 1985, prepared by MMS.

Environmental Studies Program Information in the Central and Western Gulf of Mexico

The DOI initiated studies in these areas in 1973. The emphasis, including continuing studies, has been on geological mapping, environmental characterization of biological sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies will provide useful information for a number of environmental issues, including topographic features, deepwater biological communities on the continental slope, and coastal wetland habitat.

Major completed studies for which final reports are available include:

- marine geology and geohazards evaluations in the northwestern Gulf of Mexico;
- environmental baseline studies for the South Texas OCS;
- the biological, geological, and physical dynamics of numerous submarine banks and reefs, including the Flower Garden Banks;
- ecological investigations of petroleum production platforms in the Central Gulf of Mexico;
- environmental and socioeconomic impacts of the IXTOC oil spill;
- ecological characterizations of the coastal zone in the Mississippi Deltaic Plain, which include a description of important wetland resources in the Central Gulf of Mexico; and
- distribution and abundance of endangered species.

A complete listing and ordering information for available study reports can be obtained from the Gulf of Mexico Regional Office at the address stated under "Instructions on Call" or by telephone at (504) 838-0755 or 838-0765, Public Information Unit. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico Regional Office at the address stated under "Instructions on Call" or by telephone at (504) 838-0896.

Notice of Intent To Prepare an Environmental Impact Statement

Purpose of Notice of Intent

Pursuant to the regulation implementing the procedural provision of the National Environmental Policy Act of 1969 (40 CFR 1501.7), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposals known as Sale 110 in the Central Gulf of Mexico and an unnumbered Western Gulf of Mexico sale. The Notice of Intent also serves to announce the scoping process which will be followed for the EIS. The scoping process is intended to involve Federal, State, and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposals which may

be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico Region, at the address stated under "Instructions on Call" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Proposed 1987 Lease Sales in the Central and Western Gulf of Mexico. Comments are due no later than July 24, 1985.

Dated: June 18, 1985.

Wm. D. Bettenberg,

Director, Minerals Management Service.

J. Steven Griles,

Deputy Assistant Secretary, Land and Minerals Management.

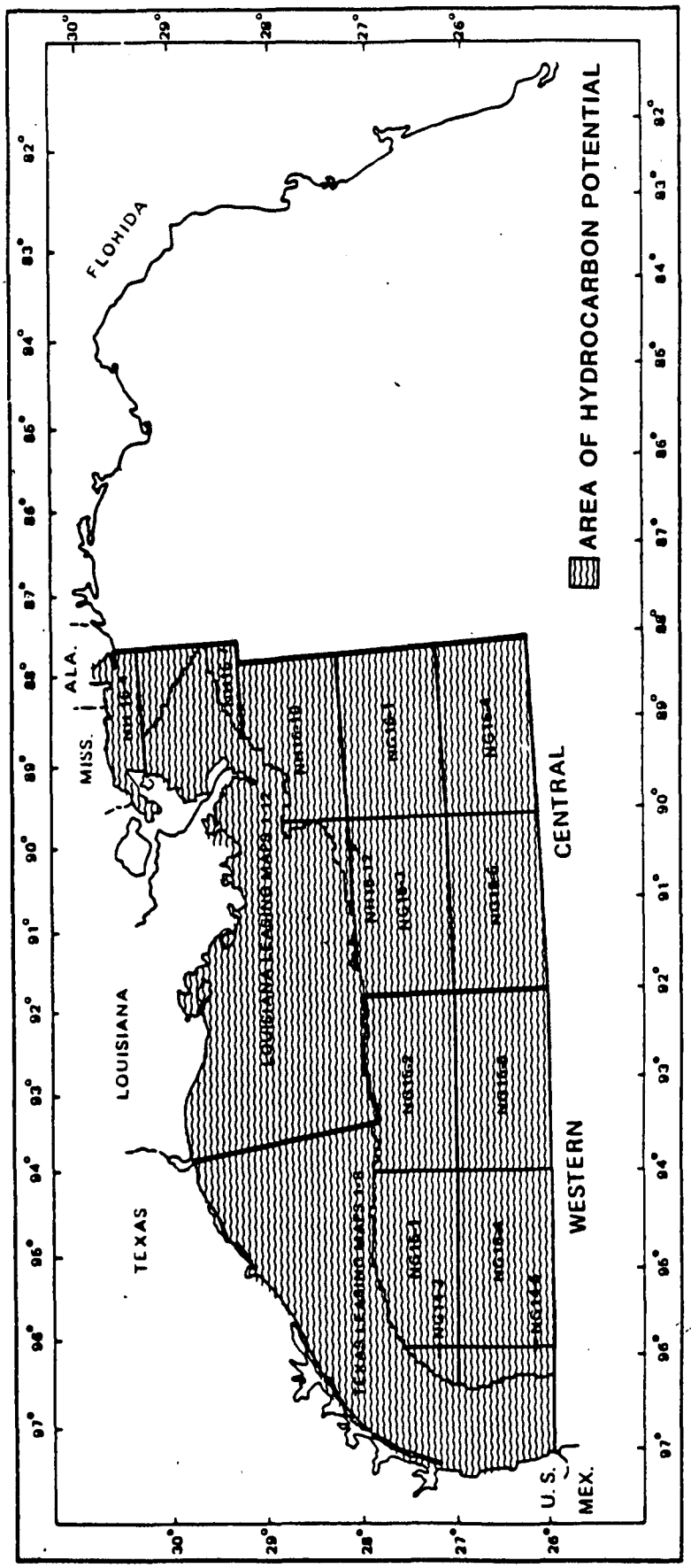
BILLING CODE 4310-MR-M

UNITED STATES DEPARTMENT OF THE INTERIOR

MINERALS MANAGEMENT SERVICE

GULF OF MEXICO REGIONAL OFFICE

LEASE SALES - 1987 CALL FOR INFORMATION



National Park Service

Alaska Region, Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Access to park for subsistence uses.
2. Resident zones.
3. Resources (games management) a. Definition of "rural" and "local."
4. Draft recommendations to Secretary of the Interior and Governor.
5. Agency reports.
6. Discussion of correspondence received.

DATES: The meeting of the Wrangell-St. Elias Subsistence Resource Commission will be held at the Park Headquarters in Glennallen, Alaska, Mile 105 Richardson Highway, August 1 and 2 commencing at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588.

SUPPLEMENTARY INFORMATION: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub L. 96-487.

Dated: June 12, 1985.

M.V. Finley,

Acting Regional Director, Alaska Region.

[FR Doc. 85-15163 Filed 6-21-85; 8:45 a.m.]

BILLING CODE 4310-70-M

Lincoln Home National Historic Site; Insignia; Prescription

I hereby prescribe the Lincoln Home National Historic Site "Lincoln Home" symbol, which is depicted below, as the official Insignia of the Lincoln Home National Historic Site, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification, card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive "Lincoln Home" Insignia, and to assure against its use for purposes other than identifying site buildings, marking interpretive exhibits, and informational literature for site visitors, and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the historic site was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Lincoln Home National Historic Site "Lincoln Home" Insignia.

Dated: June 14, 1985.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 85-15162 Filed 6-21-85; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Insignia; Prescription

I hereby prescribe the Indiana Dunes National Lakeshore logo which is depicted below, as the official Insignia of the Indiana Dunes National Lakeshore, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive logo, and to assure against its use for purposes other than identifying lakeshore boundaries, marking interpretive exhibits, and informational literature for lakeshore visitors, and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the lakeshore was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Indiana Dunes National Lakeshore logo.

Dated: June 14, 1985.

Charles H. Odegaard,

Regional Director, Midwest Region.

Indiana Dunes National Lakeshore Logo

[FR Doc 85-15161 Filed 6-21-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-192 and 194 (Final)]

Oil Country Tubular Goods From Brazil and Mexico

AGENCY: United States International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On June 5, 1985, the Commission was notified by the United States Department of Commerce that, effective May 31, 1985, the petitioners in the subject investigations, Lone Star Steel Co. and CF&I Steel Corp., withdrew the antidumping duty petitions filed by them on June 13, 1984. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the following investigations are terminated: Oil Country Tubular Goods from Brazil and Mexico (investigations Nos. 731-TA-192 and 194 (Final)).

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0339), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR § 207.40).

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15065 Filed 6-21-85; 8:45 am]

BILLING CODE 7020-02-M

Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Certain Fasteners From Japan

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On November 15, 1982, the Commission received a request from the government of Japan for the review of the countervailing duty orders on fasteners from Japan (T.D. 77-128 and T.D. 79-158). Notices of the countervailing duty orders were published on May 6, 1977, and June 4, 1979, in the **Federal Register** (42 FR 23146 and 44 FR 31972).

The Commission received a letter on May 6, 1985, from the Industrial Fasteners Institute, the original petitioner for the countervailing duty orders, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty orders.

In light of the legislative history of section 704(a) of the Tariff Act of 1930 indicating Congress' expectation that the Commission will permit public comment prior to termination, the Commission requests written comments from persons concerning the proposed termination of the investigation on certain fasteners from Japan. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the **Federal Register**

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15067 Filed 6-21-85; 8:45 am]

BILLING CODE 7020-20-02M

Termination of Countervailing duty Investigations Concerning Float Glass From the Federal Republic of Germany and the United Kingdom

AGENCY: U.S. International Trade Commission.

ACTION: Termination of countervailing duty investigations under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to float glass from the Federal Republic of Germany and the United Kingdom.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On December 27, 1982, the Commission received requests from counsel for exporters of float glass from the Federal Republic of Germany and the United Kingdom for the reviewing of the outstanding countervailing duty orders on float glass from the subject countries. Notice of the countervailing duty orders was published on December 27, 1982, in the **Federal Register** (47 FR 57549 and 47 FR 57550).

On March 29, 1985, the Commission was notified by letter that ASG Industries, Inc., PPG Industries, Inc., Libbey-Owens-Ford Company, and CE Glass, Inc., the original petitioners for the countervailing duty orders, wished to withdraw their request for the imposition of countervailing duties under the above-referenced countervailing duty orders.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case

investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On April 24, 1985 (50 FR 16176), the Commission published a notice in the **Federal Register** requesting public comment by May 24, 1985, on the proposed termination of the Commission investigations on float glass from the Federal Republic of Germany and the United Kingdom. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigations on float glass from the Federal Repubic of Germany and the United Kingdom. The termination of these investigations has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty orders were to be revoked.

In addition to publishing its **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with these investigations and is also notifying the Department of Commerce of its action.

Issued: June 18, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15066 Filed 6-21-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-261)]

Burlington Northern Railroad Co.; Abandonment in Lawrence and Randolph Counties; AR; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 11.19-mile rail line between Walport (milepost 402.28) and Pocahontas (milepost 413.47) in Lawrence and Randolph Counties, AR. 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 left-hand 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 Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-15092 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-14)]

Intrastate Rail Rate Authority; Michigan

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: The Commission grants final certification to the Michigan Department of Transportation under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it modify its standards and procedures as noted in the full decision.

DATES: If the necessary changes are made, certification will begin July 24, 1985.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 12, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 85-15090 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30661]

Pocono Northeast Railway, Inc.; Exemption From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Pocono Northeast Railway, Inc., from the requirements of 49 U.S.C. 10901 to acquire and operate an abandoned 18.76-mile line of Consolidated Rail Corporation in Wayne and Ashland Counties, OH.

DATES: This exemption is effective on June 21, 1985. Petitions to reopen must be filed by July 15, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30661 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Mark H. Sidman, Suite 350, 1575 Eye Street, NW., Washington, DC 20005

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

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800)-424-5403.

Decided: June 14, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 85-15093 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Adjustment Factor and Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Approval of Rail Cost Adjustment Factor and Decision.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The application of the index provides for a third quarter 1985 Rail Cost Adjustment Factor (RCAF) of 1.040. This RCAF shows a decrease of .002 in railroad input prices from the second quarter 1985 RCAF of

1.042. No rate actions are ordered. The Commission has also reconsidered its previous decision in this proceeding and concluded that the comparison of the forecasted index and the index calculated using actual data should continue to be published with each quarterly notice and decision.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek (202) 275-0938; Douglas Galloway (202) 275-7278.

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the third quarter of 1985 and find that, with one exception, these calculations comply with the rules contained in our decision served January 2, 1985. These rules call for the lease rental portion of the equipment rents component of the index to be calculated using actual data. AAR is still attempting to develop a satisfactory lease rental index using actual data. After a review of AAR's lease rental index working papers, we believe it is better to continue using the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products as a surrogate at this time. The lease rental index developed by AAR using actual data showed quarter-to-quarter fluctuations so broad that it cannot be accepted without additional verification. We will continue toi monitor AAR's development of a lease rental index using acutal data. We observe that the lease rental portion of the total all inclusive index is relatively small (2.4 percent of the total) and is not likely to have a major effect on the RCAF. Furthermore, the third quarter Producer Price Index for Industrial Commodities less Fuel, Power and Related Products showed a slight decline from the second quarter 1985 level.

We find the RCAF for the third quarter of 1985 is 1.040. This is a decrease of .002 from the second quarter of 1985. No rate actions are ordered.

The indices and the RCAF derived from AAR's third quarter calculations are shown in Table A (see appendix). Table B (see appendix) shows the first quarter 1984 index calculated on both an actual basis and a forecasted basis for comparative purposes. This index differs from the one shown in Table A because it was calculated according to the interim methodology which was in use at that time.

In our decision approving the second quarter 1985 RCAF, we stated our intent to simplify these quarterly decisions by discontinuing the publication of the index recalculated using actual data. After reviewing petitions from certain shipper parties, we have reconsidered that position and concluded that the value of the information to the shipping public outweights any additional cost to the Commission of preparing and publishing the data. Thus, we will continue to include a comparison of the forecasted index and an index calculated using actual data. This comparison is included in this decision as Table B.

This decision will not signficantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: June 14, 1985.

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

James H. Bayne,

Secretary.

APPENDIX

TABLE A.—EX PARTE 290, (SUB-NO. 2)

Line No.	Index component	1983 weights (percent)	Second quarter 1985 forecast	Third quarter 1985 forecast
1.	Labor	50.4	146.5	144.9
2.	Fuel	10.8	88.6	91.4
3.	Materials and supplies	7.5	108.3	108.5
4	Equipment rents	9.6	151.2	151.7
5.	Depreciation	7.7	115.1	117.4
6.	Other items [1]	14.0	120.1	119.8
7.	Weighted average	100.0	131.7	131.4
	a. 1980 = 100			
	b. Linked index [2]			
8.	Rail cost adjustment factor [3] (10/1/82 = 100) 120.9 = 100.			

[1] Other items are a combination of the following items all of which are measured by the Producer Price Index for Industrial Commodities less Fuel Related Products and Power.

Index component	1983 weight (percent)
Purchased services	7.3
Casualties and insurance	2.6
General and administrative	2.2
Other taxes	1.5
Loss and damage	.4
Total other items	14.0

[2] Linking is necessitated by a change to 1983 weights beginning with the fourth quarter 1984. The following formula was used for the third quarter 1985 index: 3rd quarter 1985 All inclusive index (1983 weights) divided by 2nd quarter 1985 all inclusive index (1983 Weights) multiplied by 2nd quarter—1985 interim index equals to linked index (linked index) (1980 Weights to 1983 weights) or 131.4 divided by 131.7 multiplied by 125.0 equals to 125.7.

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.

TABLE B.—COMPARISON OF FOURTH QUARTER 1984 INTERIM INDEX CALCULATED ON BOTH A FORECASTED AND AN ACTUAL BASIS

Line No.	Index component	1983 weights (percent)	First quarter 1985 forecast	First quarter 1985 actual
1.	Labor	48.5	146.9	146.9
2.	Fuel	10.3	95.7	90.6
3.	Materials and supplies	7.2	106.8	106.8
4.	Other expenses	34.0	115.3	115.0
5.	Weighted Average	100.0	128.0	127.4
	a. 1980 = 100			
	b. Linked index		125.7	126.1
6.	Rail adjustment factor		1.048	[1] 1.043

[1] For comparative purposes only, an RCAF for the first quarter 1985 has been calculated using actual data. The published RCAF for the first quarter 1985 was computed using forecasted data.

[FR Doc. 85-15088 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-146X)]

Seaboard System Railroad Co.; Abandonment and Discontinuance of Operations Exemption in Alachua County, FL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.185 miles of rail lines between milepost ASG-704.5 and milepost ASG-707.685, between Hainesworth and the South Leg of the Burnetts Lake Wye, in Alachua County, FL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 24, 1985 (unless stayed pending reconsideration). Petitions to stay must

be filed by July 5, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 15, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Seaboard System Railroad, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 17, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15091 Filed 6-21-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 15, 1985, and published in the **Federal Register** on January 23, 1985; (50 FR 3040), Abbott Laboratories, 14th and Sheridan Road, Attention: Customer Service D-345, North Chicago, Illinois 60064 made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 13, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-15129 Filed 6-21-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Task Force on Two-Entry Longwall Mining Systems; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public briefing on the recently completed study of "Two-Entry Longwall Mining System."

DATE: The public meeting will be held on July 18, 1985, beginning at 8:30 a.m. MST.

ADDRESS: The public meeting will be held in Lecture Hall A, Building 25, Denver Federal Center, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Monte Christo, Mining Engineer, MSHA, 303-236-2642.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Mine Safety and Health established a Task Force to study Two-Entry Longwall Mining Systems. This study has been completed and the results of the study have been provided to interested parties representing all segments of the mining community. The purpose of the meeting is to brief the affected mining public on the findings, conclusions, and recommendations contained in the Agency's task force report.

Dated: June 18, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85-15078 Filed 6-21-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel (Demonstration Section); Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Demonstration Section) to the National Council on the Arts will be held on July 11-12, 1985, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on July 12, from 3:00-4:00 p.m. to dicuss policy issues.

The remaining sessions of this meeting on July 11, 1985, from 9:00 a.m.-5:30 p.m. and on July 12, from 9:00 a.m.-3:00 p.m. and from 4:00-5:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 19, 1985.

[FR Doc. 85-15137 Filed 6-21-85; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel (Art in Public Places—Letter of Intent Section); Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Art in Public Places—Letter of Intent Section) to the National Council on the Arts will be held on July 11-12, 1985, from 9:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee

Management Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W. Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 19, 1985.

[FR Doc. 85-15136 Filed 6-21-85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview Section) to the National Council on the Arts will be held on July 8, 1985, from 9:00 a.m.-5:30 p.m. and on July 9, 1985, from 9:00 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public July 8, from 9:00 a.m.-5:30 p.m. and on July 9, from 9:00 a.m.-12:30 p.m. The topics for discussion will be policy issues including fellowships, ensembles, recording, career development, professional training, Five-Year Planning Document and Opera-Musical Theater Study.

The remaining sessions of this meeting on July 9, from 1:30 p.m.-5:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanties Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 15138 Filed 6-21-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. 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.

The draft guide, temporarily identified by its task number, FC 413-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Licenses for the Use of Radioactive Materials in Calibrating Radiation Survey and Monitoring Instruments" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing license applications for the use of radioactive materials in calibrating radiation survey and monitoring instruments.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by August 20, 1985.

Although a time limit is given for comments on these drafts, 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.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 17th day of June 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-15146 Filed 6-21-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328; License Nos. DPR-77 and DPR-79; Docket Nos. 50-259, 50-260 and 50-296, License Nos. DPR-33, DPR-52, and DPR-68; EA 85-49]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2) (Browns Ferry Nuclear Plant, Units 1, 2, and 3); Order Modifying Licenses

I

Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating Licenses Nos. DPR-77 and DPR-79 which authorize the licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2 (SNP) in Daisey, Tennessee and the holder of Facility Operating Licenses Nos. DPR 33, DPR 52, and DPR 68 which authorize the licensee to operate the Browns Ferry Nuclear Plant, Units 1, 2, and 3 near Athens, Alabama .

II

On March 27-29, 1985, a special review was conducted of the circumstances surrounding preparation of certain Nonconformance Reports (NCR's) involving pressure transmitters at SNP. On October 26, 1984, NCR WBNNEB 8415 was initiated at the Watts Bar Nuclear Plant documenting that certain containment pressure transmitters at the Watts Bar facility were not environmentally qualified. The generic implications of the transmitters were identified in NCR WBNNEB 8415. The Office of Engineering in Knoxville on or about November 5, 1984 recognized the need to review the pressure transmitters at SNP which

were similar to the transmitters at Watts Bar. However, no review of the Sequoyah instrumentation was conducted until more than two months later when NCR SQNNEB 8501 was initiated in January 1985. Following the preparation of that NCR on January 16, 1985, it took until January 31, 1985 to obtain the required approvals. The NCR was designated as a significant condition adverse to quality, concluding that the documentation for the installed pressure transmitters did not support the accuracy requirement necessary for post-accident indication of containment pressure.

In accordance with procedures, Failure Evaluation/Engineering Report (FE/ER) (Rev. 0) was prepared for the transmitters since the NCR identified the matter as significant. The FE/ER (Rev. 0) on NCR SQNNEB 8501 stated that it was discovered that pressure transmitters at SNP, specifically PDT-30-42, -43, -44, and -45 had inaccuracies in excess of FSAR specifications due to harsh environment conditions (high temperature and radiation dosage). The FE/ER designated the nonconformance as Category III which is defined as "Unable to perform its required design function(s) unless corrective modifications are made." The FE/ER concluded that as a result of the failure mode, a reactor operator will have inaccurate information to mitigate a Loss of Coolant Accident or Main Steam Line Break event inside containment and that as a result, certain safety functions or actions would be defeated or delayed. The engineering analysis of these events included as part of the FE/ER concluded that the consequences of such events could lead to exceeding the containment design pressure limits.

The FE/ER was initiated on February 15, 1985, by a staff engineer who signed it on February 25, 1985. The FE/ER was reviewed and signed by another staff engineer on Feburary 25 and subsequently reviewed and approved by a supervisor on February 27, 1985. The FE/ER was concurred in by the engineering staff at the Sequoyah site on March 4, 1985 and signed by the Chief Nuclear Engineer (Nuclear Engineering Branch Chief) on March 5, 1985. Although the FE/ER documented a significant safety issue, at no point during the development of the document was the issue brought to the attention of senior plant operations management nor were requirements for reportability to the NRC considered. In fact, personnel from the Office of Engineering asserted that they have no responsibility for reporting of items generated by their organization for operating facilities nor were they aware of the regulatory implications of the FE/ER (Rev. 0).

Rev. 0 of the FE/ER was telecopied from the Office of Engineering, Knoxville, to the Office of Engineering staff at the Sequoyah site February 28, 1985. The on-site Office of Engineering staff concurred in the FE/ER on March 4, 1985. The Office of Nuclear Power (NUC PR) Regulatory Engineering Staff (RES) received the FE/ER on March 5, 1985. RES discussed the document with Site Engineering on March 5, 1985 and determined that the FE/ER might be inaccurate and needed to be revised. For purposes of the procedures and review times, RES did not consider the copy of the FE/ER received on March 5, 1985 to be a "formal" document. The FE/ER was not formally sent out of the Engineering Office in Knoxville until March 7, 1985 and was not received on-site until March 8, 1985. The supervisor of RES received his "formal" copy of the FE/ER on March 11, 1985 and brought it to the attention of the Compliance Supervisor. The Compliance Supervisor indicated that if the FE/ER was accurate, both Sequoyah Units would have been required to shut down. He brought the FE/ER to the attention of the Plant Superintendent, Plant Manager, Office of Engineering Management, and other NUC PR representatives who met and decided that Rev. 0 was inaccurate and that the pressure transmitters were operable. Work was initiated to revise the NCR and FE/ER.

Rev. 1 of the FE/ER was completed and signed by the preparer on March 21, 1985. All parties responsible for concurrence in the revision also signed the form on March 21, 1985. The Chief Nuclear Engineer signed Revision 1 of the FE/ER on March 22, 1985. The primary changes made between Rev. 0 and Rev. 1 were: (1) The deficient condition category was changed from Level III to Level II and (2) information for justification for continued operation was included. Rev. 1 to the FE/ER and NCR was formally received on site on March 25, 1985. The Supervisor of Regulatory Engineering completed and forwarded Rev. 1, with their safety evaluation, to the Supervisor of Compliance on March 27, 1985. The safety evaluation essentially agreed with the justification for continued operation contained in Rev. 1 to the FE/ER and proposed replacement of the transmitters. The Supervisor of Compliance is responsible for making determinations of reportability. The pressure transmitter matter was not formally reported to the NRC by TVA.

III

TVA procedures specify certain deadlines for making determinations and for obtaining appropriate concurrences on NCR's and FE/ER's. TVA procedure EN DES EP 1.26, "Nonconformances—Reporting and Handling by EN DES" specifies requirements for Office of Engineering personnel to generate and process NCR's. A determination of significance is to be made within 3 working days of the NCR preparation date. The procedure further specifies that the time for a determination of significance must not exceed 8 calendar days. If the time exceeds 8 calendar days, the NCR is automatically designated as significant. For significant NCR's, the procedure requires preparation of an FE/ER by OE. Pursuant to TVA Procedure EN DES EP 1.48, "Preparation of Failure Evaluations/Engineering Reports of Deficient Conditions for Operating Nuclear Plants," the FE/ER is to be issued by the appropriate OE Branch Chief within 15 calendar days. The stated purpose of the FE/ER is to provide NUC PR with engineering information to be used for operating decisions such as compliance with technical specification limiting conditions for operation, and for reporting to the NRC. The procedure specifies certain circumstances under which the times specified may be exceeded or extended but does not explicitly require that certain potentially significant items be handled in a manner which ensures expeditious resolution of the concerns unless there is a significant immediate threat to health and safety which would lead to a major increase in risk. Once the Chief Nuclear Engineer (the Nuclear Engineering Branch Chief) signs the FE/ER, it is sent to the site manager for the unit affected. It is then processed in accordance with Sequoyah site procedure SQA 118, "Handling of Non-Conformance Reports," which requires RES to determine the adequacy of the documents. OE is to be notified immediately if the FE/ER is judged to be inadequate. RES is given three days to prepare a safety evaluation and the FE/ER is to be forwarded to the Compliance Staff which has an additional three days to determine the reportability of the issue. The procedures do not distinguish between the three significant categories for notifying plant management or operators.

IV

A review of the circumstances surrounding this event indicates that the preparation and processing of NCR

SQNNEB 8501 was not done in ccordance the producers described in section III nor were the procedures adequate, even if followed, to meet their intended purposes of providing information for operating decisions such as compliance with technical specifications' limiting conditions for operations and for making prompt reporting decisions.

Specifically: (1) An NCR was not initiated for SNP within eight days of determining applicability to SNP, (2) after initiating the NCR the significance determination was not made within the required eight days, (3) the FE/ER was not prepared within fifteen days of the NCR determination of a significant condition adverse to quality, (4) the procedures did not require that the schedule for processing potentially significant information be expedited (unless a significant immediate threat to health and safety was present such that there would be a major increase in risk), and (5) the procedures did not require information, determined by responsible engineers in the Office of Engineering to be potentially safety significant, to be immediately communicated to the appropriate levels of plant management.

As a result of the deficiencies in procedural compliance and inadequate procedures, a condition determined to be significant to SNP in November 1984 was not received by responsible plant management until March 11, 1985 even though TVA's Chief Nuclear Engineer (Nuclear Engineering Branch Chief) had determined that the transmitters would be unable to meet their required design function on March 5, 1985. Compliance with the Commission's requirements for safe operation and reporting of information require that licensees, regardless of the structure of their particular organizations, have procedures to assure that potentially significant safety information is promptly evaluated and communicated to cognizant plant management. The licensee's actions call into question whether, in the absence of corrective action, it will promptly and properly evaluate potentially significant safety conditions, ensure that responsible levels of management are made aware of such conditions, and that those individuals responsible for reporting such conditions under Part 21 or 50.72 are promptly made aware of them. Therefore, I have determined that the public health, safety, and interest requires that the following actions to improve the licensee's procedures and the associated training be effective immediately. These procedures are required at each of the licensee's nuclear power plants.

V

In view of the foregoing, pursuant to sections 103, 161c, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective imediately, that:

A. Within 60 days, the licensee shall:

(1) Complete an evaluation of its procedures at each of its operating nuclear power plant sites and at its Office of Engineering in Knoxville, Tennessee with regard to their adequacy for ensuring that when potentially significant safety conditions are identified by engineering management such as the Chief Nuclear Engineer (Nuclear Engineering Branch Chief), they are immediately reported to plant management, evaluated expeditiously, for appropriate action, including applicability to other plants, reported if required, and corrected:

(2) Submit the evaluation to the Regional Administrator, Region II with a copy to the Director, Office of Inspection and Enforcement, along with a plan and schedule for promptly revising the procedures as appropriate.

B. Within 120 days, the licensee shall develop and submit to the Regional Administrator, Region II, with a copy to the Director, Office of Inspection and Enforcement, a plan for training of all personnel involved in implementing the revised procedures including responsible licensee management personnel both in the Office of Engineering and the Office of Nuclear Power to ensure that such personnel recognize potentially significantly safety conditions and ensure that they are expeditiously evaluated, reported, and corrected and understand their individual responsibilities in carrying out the procedure. The plan shall provide a schedule for when the training will be completed for all of the employees and managers.

C. Within 45 days the licensee shall provide the Regional Administrator, Region II with copies of all reports, evaluations or other analysis that may have been prepared of the circumstances surrounding, including chronology of events, the qualification issue of the pressure transmitters at Sequoyah between October 1, 1984 and April 1, 1985. If investigations have been conducted or are ongoing that have not yet been completed this shall be indicated and an expected date when the documents will be provided. In addition, within 45 days the licensee shall survey all of its OE employees and NUC PR employees as well as any other appropriate employee are prepare a report submitted under oath to the Regional Administrator which identifies each employee including managers who was aware of the pressure transmitter qualification issue between October 1, 1984 and April 1, 1985 at SNP and the date of his or her first knowledge of such an issue. Persons who were employed during that period who have since left the licensee's employ shall also be contacted. Copies of material submitted under this paragraph shall also be sent to the Director, Office of Inspection and Enforcement.

D. The Director, Office of Inspection and Enforcement, may relax or terminate any of the above conditions for good cause.

VI

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of the Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30303. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section V of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland, this 14th day of June 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-15147 Filed 6-21-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee for Review of Enforcement Policy; Reestablishment; Meetings

The U.S. Nuclear Regulatory Commission announces the reestablishment of the AD Hoc Advisory Committee on Review of Enforcement Policy. This Committee was initially established in November 1984 and was expected at that time to complete its activity by the end of May 1985. The Committee now requires a brief

additional period of time to complete its final report to the Commission. The report is expected to be submitted to the Commission within the next 90 days.

Notice is also given pursuant to the Federal Advisory Committee Act that the Advisory Committee on the Enforcement Policy is planning to meet on July 9, 1985 and on July 25 and 26, 1985. At both meetings, which will be open to the public, the Committee will be discussing its findings and drafting its final report to the Commission.

The meeting on July 9 will be at 1717 H Street, NW., Washington, D.C., in room 1167 from 8:45 a.m. until 5:00 p.m. The meeting on July 25 and 26 will be at the Electric Power Research Institute, 3412 Hillview Avenue, Palo Alto, California, from 8:30 a.m. until 5:00 p.m. on July 25; from 8;30 a.m. until conclusion on July 26.

Further information on the meetings may be obtained from Karen Cyr, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone, (301) 492-7269.

Dated: at Washington, D.C., this 19th day of June, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-15145 Filed 6-21-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14584; File No. 812-5934]

SBD Lease Funding Corp.; Application and Opportunity for Hearing

June 18, 1985.

Notice is hereby given that SBD Lease Funding Corporation ("Applicant"), 1345 Avenue of the Americas, New York, N.Y. 10105, filed an application on September 7, 1984, and an amendment thereto on December 13, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. 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 text of all applicable provisions thereof.

According to the application, Applicant is a Delaware corporation and expects to have all of its outstanding shares of common stock owned by Smith Barney Inc. ("Smith Barney") or a company controlled by it. Applicant represents that all of its directors and officers are expected to be officers or employees of Smith Barney and/or Smith Barney, Harris Upham & Co. Incorporated ("SBHU"). SBHU is a registered broker-dealer under the Securities Exchange Act of 1934, as amended, and a registered investment advisor under the Investment Advisers Act of 1940, as amended. Applicant represents that there has been, and undertakes that in the future there will be, no public offering of its common stock or any other equity security.

Applicant has been created for the sole purpose of participating as lender in one or more leveraged lease transactions ("Leases") in which the DOW Chemical Company ("DOW"), or any of its wholly-owned subsidiaries is lessee (collectively, "Lessees"). Applicant states that its participation as lender in the Leases will be limited to making loans, pursuant to a Loan and Security Agreement ("Loan Agreement"), to the lessors of such Leases which will be payable primarily from rentals and other payments by the Lessees pursuant to such Leases. Applicant expects that such lessors ("Lessors") will be grantor trusts or corporations formed exclusively for the purpose of the lease financing. Applicant states that a portion of the purchase price of the property owned by the Lessor and leased to the Lessee will be paid by the beneficiaries or shareholders of the trust or corporation that acts as Lessor as their equity investment in the property. The loans by Applicant will be without recourse to the general credit of the Lessors or their beneficiaries or shareholders and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes"). Applicant states that under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Applicant also expects that such rental payments will also provide an investment return to the beneficiaries or shareholders of the Lessor. Applicant further states that such obligations of the Lessees will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. Applicant expects to enter into a Commitment Agreement with Dow pursuant to which Applicant will agree to make loans to one or more Lessors designated by Dow from time to time.

Applicant intends to acquire the funds necessary for the purchase of the Lessor Notes through the issuance of its debt securities in one or more series ("Corporation Notes") which will be secured on a parity basis by a first lien on, and security interest in, all of the asset of Applicant, consisting primarily of the Lessor Notes. Applicant expects that the Lessor Notes will be issued under circumstances making such transactions exempt from registration under the Securities Act of 1933, as amended ("Securities Act").

Applicant states that the Loan Agreements will set forth the terms and conditions under which the Lessor Notes will be issued. Applicant repesents that each Loan Agreement will require the Lessor to grant Applicant a first lien on and security interest in the property which is the subject of the Lease ("Leased Property"), as well as the Lessor's rights under the Lease, including its rights to the basic rentals and other payments to be made by the Lessee thereunder. Applicant states that it will be precluded from purchasing any Lessor Note which is secured by Leased Property having a fair maket sales value at the time of purchase of less than 125% of the principal amount of such Lessor Note. Further, Applicant states that each Loan Agreement will include as events of default, without limitation: (a) Payment defaults on the Lessor Note issued thereunder and (b) events of defaults on the related Lease.

According to the application, the various series of Corporation Notes will have terms which may differ as to maturity dates, interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Corporation Notes and other matters. Applicant states that such Corporation Notes, which may include commercial paper and intermediate-term and long-term obligations, may be issued in the private or public markets in the United States, and in offerings outside the United States under circumstances reasonably designed to assure that such Corporation Notes are not offered or sold to citizens and/or residents of the United States.

Applicant states that the Corporation Notes will be issued under a common indenture and a separate supplemental indenture for each series (collectively the "Secured Indenture") which will establish the terms of the Corporation Notes of that series. It is expected that the trustee under the Secured Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Dow or its subsidiaries.

Applicant proposes that the intital issuance of Corporation Notes will be through an underwritten public offering of one or more series having an aggregate principal amount of

approximately $300 million. Applicant represents that although Dow will not be the actual issuer of the Corporation Notes, it may be considered the "issuer" thereof for purposes of the Securities Act and that any registration statement filed under the Securities Act relating to the Corporation Notes will name Dow as the registrant or a co-registrant and will be signed on behalf of Dow as the registrant or a co-registrant and by such officers and directors of Dow as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder.

Applicant represents that it will assign and pledge to the Trustee under the Secured Indenture as security for the payment of the principal of and premium, if any, and interest on all Corporation Notes, the security interests in the Leases and the property subject thereto granted to Applicant by the various Lessors, as well as the Lessor Notes. As holder of the Lessor Notes, the Trustee, Applicant represents, will have the right to exercise any voting powers and to give any consents or waivers in respect of such Lessor Notes and the respective Loan Agreements under which they are issued. The Trustee may also exercise the rights and remedies afforded a holder of such Lessor Notes under the respective Loan Agreements, including the right to exercise remedies under the Leases and with respect to the property in which it has a security interest, provided such Leases are then in default.

Applicant represents that among the rights and remedies of a holder of Lessor Notes which may be exercised by the Trustee under the Secured Indenture is the right under a particular Loan Agreement to accelerate the maturity of the Lessor Notes issued under such Loan Agreement in the event of default. Applicant further represents that among the rights and remedies under the Leases which may be exercised by the Trustee in the event such Leases are in default is the right to demand payment by the Lessees of a liquidated amount which will be at least sufficient to pay the full amount of the principal of, and premium, if any, and interest on, the Lessor Notes then due, and the right to repossess the leased property and sell it to a third person.

Applicant represents that the occurrence of an event of default under any Lease will constitute an event of default under the Secured Indenture. Applicant further represents that, as a consequence, upon the occurrence of an event of default under a Lease, the holders of a stated percentage in principal amount of the Corporation Notes at the time outstanding will have the right to direct the Trustee under the Secured Indenture in regard to the time, method and place of the exercise by the Trustee of its rights and remedies under such Lease, including the rights and remedies in respect of the Leased Property.

Applicant states that the payment of principal of and premium, if any, and interest on the Corporation Notes will be made exclusively from amounts paid by the Lessees under the Leases and from other proceeds of the security held by the Trustee which is related to such Leases. Neither Smith Barney nor any of its subsidiaries will be liable, directly or indirectly, for any payment of principal of or premium, if any, or interest on any of the Corporation Notes.

Applicant asserts that its proposed activities are appropriate in the public interest because the proposed issuance of Corporation Notes would provide a convenient mechanism for Dow and its subsidiaries to obtain the benefits of access to segments of the debt capital markets other then the institutional private placement market. Applicant further asserts that an exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be equally well protected under the proposed arrangements as under functionally equivalent arrangements that would not result in the applicability of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 12, 1985, 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15087 Filed 6-21-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 2193 AMDT. 1]

Ohio

The above numbered declaration (49 FR 24338) is amended in accordance with the amendment to the President's declaration of June 3, 1985, to include Coshocton and Portage Counties as adjacent areas in the State of Ohio as a result of damage from severe storms, high winds, and tornadoes beginning on May 31, 1985. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on August 2, 1985, and for economic injury until the close of business on March 3, 1986.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Dated: June 10, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-15096 Filed 6-21-85; 8:45 am]

BILLING CODE 8025-01-M

Direct Business Loans; Interest Rates

The Interest rate on section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is twelve and one eight (12⅛) percent for the fiscal quarter beginning July 1, 1985.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of 1985, this rate will be eleven and three-eights (11⅜) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 85-15095 Filed 6-21-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Delegation of Authority No. 157; Public Notice 940]

Under Secretary for Management; Delegation of Authority

By virtue of the authority vested in me as Under Secretary for Management and

by Department of State Advisory Committee Management regulations (22 CFR Part 8), I hereby delegate to the Director of Management Operations the authority to make determinations to close advisory committee meetings to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, and General Services Administration interim advisory committee management regulations, 41 CFR 101-6.1023. I hereby also delegate to the Director of Management Operations the authority to approve in exceptional circumstances the giving of less than 15 days' public notice of an advisory committee meeting, as provided in 41 CFR 101-6.1015(b) (1). Notwithstanding any other provision of this delegation of authority, the Under Secretary for Management may at any time exercise any function delegated by this delegation of authority.

Ronald I. Spiers,

Under Secretary for Management.

June 43, 1985.

[FR Doc. 85-15083 Filed 6-21-85; 8:45 am]

BILLING CODE 4710-35-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-769]

United States Lines (S.A.) Inc.; Application to Provide a TR 4/15A Dual Service

United States Lines (S.A.) Inc. (USL(S.A.)), by application dated May 9, 1985, as amended, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract No. MA/MSB-338 and MA/MSB-425, to provide a TR 4/15A (U.S. East Coast/Venezuela, South and East Africa with privilege service to Brazil) dual service.

Currently, Venezuela (TR 4) is served on USL(S.A.)'s TR ¼ (U.S. East Coast/East Coast South America and Caribbean) service. USL(S.A.) wants the flexibility to call Venezuela on its TR 4/15A dual service instead of on only a TR 1/4 dual service. For the present USL(S.A.) intends to suspend calling Venezuela of its TR ¼ dual service and substitute it with TR 4.15A dual service. USL(S.A.) wishes to retain the option to substitute one such dual service for the other.

The new service configuration plan by USL(S.A.) would be: (1) A U.S. East Coast/Brazil & Argentina (TR 1) service, and (2) a U.S. East Coast/Venezuela-South Africa-Brazil (TR 4/15A) dual service. USL(S.A.) also operates a TR 20 (U.S. Gulf/East Coast South America & Venezuela) service not materially affected by the application.

USL(S.A.)'s application stresses several important benefits it expects will be gained by approving the proposed combination of services. By removing Venezuela from its current TR 1/4 service, the operator expects the resultant TR 1 service could be served by three-rather than the current four-vessels. This will result in a reduction in the amount of ODS paid by MARAD, and USL(S.A.) will benefit from better utilization of vessel capacity. USL(S.A.) notes that the proposed TR 4/15A service will be served by four vessels, the same number as currently serves TR 15A.

USL(S.A.) points out that the market does not support the current 56 day transit time of the existing TR 1/4 service. By removing Venezuela and making other adjustments to the East Coast rotation, TR 1 could be serrved in a 42 day rotation. Lastly, the operator maintains that insertion of Venezuela into the southbound leg of the proposed TR 4/15A service will improve its southbound vessel load factors from the U.S. East Coast to Africa. USL(S.A.) believes the benefits could all be attained with improved overall vessel utilization and without any affective loss in required vessel capacity.

USL(S.A.) currently provides bi-weekly service on TR 20 with one C6-S-60b (640 TEU) and two C6-S-60c (707 TEU) partial containerships. Bi-weekly service is provided on its TR 1/4 (U.S. East Coast/East Coast South America & Caribbean) service with two C6-M-F145a (1,900 TEU) containerships and two C6-S-1x (1,000 TEU) containerships. Vessels on USL(S.A.)'s bi-weekly TR 15-A (U.S. East Coast/South & East Africa) service also make homebound calls at Brazil on TR 1 on a privilege basis en route from ports in South and East Africa. USL(S.A.)'s TR 15-A service is provided with one C6-S-60b and two C6-S-60c partial containerships and one C5-S-73b (1,220 TEU) full containership. A review of USL(S.A.)'s sailings from January 1984 to the present indicates that every homebound TR 15-A voyage called at Brazil. USL(S.A.) has indicated that this practice will continue into the future.

Under ODSA MA/MSB-338 USL(S.A.) is authorized to make a minimum/maximum of 40/70 sailings per year on TR 1 and a minimum/maximum of 22/36 sailings per year on TR 15A. Under ODSA MA/MSB-425 USL(S.A.) is authorized to make a minimum/maximum of 22/55 sailings per year on TR 4. USL(S.A.) has the necessary interchange/transfer authority in order to implement its proposed realignment.

If the application is approved, the numbers and types of vessels USL(S.A.) employs on each of its different services will be different than previously described. A table summarizing the proposed realignment is as follows:

USL(S.A.) Current and Proposed Services

	Current service	Proposed new service
Service	TR ¼	TR 1.
Foreign countries served	Brazil	Brazil.
	Argentina	Argentina.
	Uruguay	Uruguay.
	Venezuela	
Number and type of vessels	(2) C6-S-1x (1,000 TEU)	(1) C5-S-73b (1,220 TEU).[1]
	(2) C6-F-145a (1,900 TEU)	(2) C6-F-145a.
	—	—
	4	3.
Voyage length	56 days	42 days.
Service frequency	2 weeks	2 weeks.

[1] To be replaced in September by a third C6-F-145a.

	Current service	Proposed new service
Service	TR 15A	TR 4/15A.
Foreign countries served	South Africa	Venezuela.
	Brazil	South Africa.
		Brazil.
Number and type of vessels	(1) C6-S-60b (640 TEU)	
	(1 C5F-S-73b	(2) C6-S-1x
	(2) C6-S-60c (707 TEU)	(2) C6-S-60c.
	—	—
	4	4.
Voyage length	56 days	56 days.
Service frequency	2 weeks	2 weeks.

The net effect of the proposed re-alignment of service is that USL(S.A.) will be able to provide better service to each of its routes than it presently does with one less vessel. The main thrust behind the re-alignment is to free up

more space for the heavy northbound Brazil/Argentina to New York trade while simultaneously increasing the weak outbound load factors on USL(S.A.)'s services. A further benefit is the savings to both the operator and MARAD by the lay-up of one vessel.

Besides its subsidized service on TR 1/4, USL(S.A.) has been regularly voyage chartering foreign-flag container vessels to move TR 1 cargoes in excess of its capacity. USL(S.A.) had 19 such charters during 1984 and has had three thus far in 1985 with full (670 to 1,000 TEU) container vessels. The need to continually charter these foreign-flag vessels underscores USL(S.A.)'s need for increased flexibility in order to maximize its northbound capacity.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on July 15, 1985. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Date: June 19, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-15135 Filed 6-21-85; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 121
Monday, June 24, 1985

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, July 1, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization; GC Recommendations
2. Proposed Contract for Expert Services in Connection with a Court Case.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, The Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued June 19, 1985.

Dated: June 19, 1985.

Johnnie Johnson,

Attorney Advisor.

[FR Doc. 85-15207 Filed 6-20-85; 12:36 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, July 2, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Request for Opinion Letter Concerning the Lawfulness of an Amendment to a Pension Plan
4. Briefing on the General Motors-EEOC Conciliation Agreement

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Contract for Expert Services in Connection with a Court Case.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued June 19, 1985.

Dated: June 19, 1985.

Johnnie Johnson,

Attorney Advisor.

[FR Doc. 85-15208 Filed 6-20-85; 12:36 pm]

BILLING CODE 6750-06-M

3

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From June 21st Open Meeting

The following item has been deleted at the request of the Chief, Common Carrier Bureau from the list of agenda items scheduled for consideration at the June 21, 1985 Open Meeting and previously listed in the Commission's Notice of June 14, 1985.

Agenda, Item No., and Subject

Common Carrier—1—Title: Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans—CC Docket No. 84-1235. Summary: The Commission will consider proposed guidelines for dominant carriers' alternative MTS rate and rate structure proposals.

Issued: June 14, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-9683 Filed 6-20-85; 2:24 pm]

BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, June 18, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Application of Miami Valley Bank of Southwest Ohio, Franklin Ohio, a proposed new bank, for Federal deposit insurance, and for consent to acquire the assets of and assume the liability to pay deposits made in Miami Valley Building and Loan Association, Franklin, Ohio, a non-federally insured institution.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 19, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–15202 Filed 6–20–85; 11:54 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION AGENCY MEETING

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:17 p.m. on Tuesday, June 18, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution (a) making funds available for the payment of insured deposits made in Strong's Bank, Dodgeville, Wisconsin, which was closed by the Commissioner of Banking for the State of Wisconsin on Friday, June 14, 1985; (b) accepting the bid of M&I Bank of Dodgeville, Dodgeville, Wisconsin, a newly-chartered State nonmember bank, for the transfer of the insured deposits of the closed bank; and (c) designating M&I Bank of Dodgeville as the agent for the Corporation for the payment of the insured deposits of the closed bank; and (2) an Order approving the applications of M&I Bank of Dodgeville, Dodgeville, Wisconsin, for Federal deposit insurance and for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Strong's Bank, Dodgeville, Wisconsin.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters of less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)((9)(A)(ii), and (c)(9)(B)).

Dated: June 19, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–15203 Filed 6–20–85; 11:54 am]

BILLING CODE 6714-01-M

6

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Monday, June 24, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of proposed changes to the Commission's Rules of Practice to encourage negotiated resolutions of discovery disputes, including changes to Rules 2.7(d)(4), 3.22(f), 3.34, and 3.37, 16 CFR 2.7(d)(4), 3.22(f), 3.34, and 3.37 (1985).

CONTACT PERSON FOR MORE INFORMATION: Susan B. Tichnor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–15246 Filed 6–20–85; 3:13 p.m.]

BILLING CODE 6750-01-M

federal register

Monday
June 24, 1985

Part II

Department of Agriculture

Forest Service

National Environmental Policy Act; Revised Implementing Procedures

DEPARTMENT OF AGRICULTURE

Forest Service

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Forest Service hereby gives notice that it is adopting revised policy and procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These guidelines replace policy and procedures published in the **Federal Register** on November 19, 1981 (46 FR 56998, Part 3), and will be issued through the agency directives system as Chapter 1950 of the Forest Service Manual and as Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook.

DATE: These procedures are effective upon issuance to Forest Service personnel in the Forest Service directive system. It is estimated that Forest Service personnel will have received this guidance on or about July 1, 1985. These procedures apply to the fullest extent practicable to analyses and documents started before that date. However, work done under previous guidelines need not be revised.

FOR FURTHER INFORMATION CONTACT: David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013. Telephone (202) 447-4708.

SUPPLEMENTARY INFORMATION: Chapter 1950 of the Forest Service Manual (FSM) and Forest Service Handbook (FSH) 1909.15 contain Forest Service policy and procedural guidelines to implement the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508).

Consistent with agency directives policy, FSM 1950 has been revised to specify desired results, to minimize procedural detail, to rely as much as practicable on judgment of field professionals, and to permit discretion in achieving on-the-ground results appropriate to local situations and conditions. FSM 1950 as revised contains only that direction needed by line and primary staff officers. More detailed procedures for environmental analyses and documentation needed by line and staff officers and resource specialists and set forth in the handbook, FSH 1909.15.

The major changes in FSM 1950 are: Clarification of the Chief's and Secretary's NEPA responsibilities in situations where they have retained decision authority; clarification and broadening of direction on categorical exclusions; and expansion of the use of scoping to apply to analysis of all proposed actions.

The Council on Environmental Quality's regulations and supplementary guidance emphasize that competent scoping is the key to successful environmental analysis and appropriate documentation. Scoping is the analytical stage at which to examine the characteristics of a proposed action and to identify potentially affected and interested agencies and publics, important issues, and a range of reasonable alternatives. For this reason, the Forest Service is applying appropriate scoping procedures to all proposed actions under NEPA, not just to those requiring environmental impact statements. This broader application of scoping sets the stage for efficient, defensible analysis with relevant, concise documentation.

The revised policy on categorical exclusions clarifies and broadens current direction by allowing responsible officials to exclude from preparation of environmental assessments and environmental impact statements proposed actions not having a significant effect on the human environment. It also expands the listing of typical classes of actions which might be excluded. This will permit agency officials to concentrate valuable time and other resources on proposed actions which will or might have significant effects.

In addition to changes to FSM 1950, portions of the handbook have been reorganized and edited for a more concise, logically ordered presentation and minor changes were made to keep the handbook consistent with FSM 1950 manual revisions.

Response to Comments

Draft guidelines were published for public review in the **Federal Register** on September 21, 1984 (49 FR 37306). Comments were received from 19 private organizations, 6 Federal and State agencies, 27 Forest Service units, and private citizens. We fully considered each comment and made a number of substantive as well as editorial changes, in response to these comments. A summary of major comments received and the agency response to them follows.

General Comments. Reviewers tended to support the proposed changes. Many offered valuable suggestions for improving the wording of specific passages to ensure desired results. Almost all who commented on scoping supported its early and expanded use to identify issues and to focus on the environmental analysis and subsequent documentation, if needed.

Several reviewers noted missing exhibits. When no changes were proposed, exhibits were merely referenced and intentionally omitted to save printing costs. All exhibits are included in this final revision.

Specific Comments on FSM Chapter

1. *FSM 1950.3—Policy.* Some respondents expressed concern that interested publics might not be informed of decisions to proceed with actions which have been categorically excluded from documentation. In response, we have revised the policy statement to provide that interested and affected publics be notified of the decision to proceed with an action that is categorically excluded from documentation.

2. *FSM 1950.41b—Director of Environmental Coordination.* One respondent said social analysis should be better defined. The paragraph has been revised to state that the Director of Environmental Coordination is responsible for social impact analysis policy and procedures, which are set forth in FSM 1973 and FSH 1909.17, chapter 30.

3. *FSM 1950.43—Forest Supervisors, Project Leaders, and State and Private Forestry Field Representatives.* Reviewers asked whether Station Directors and the Area Director could redelegate responsibility for environmental procedures to Forest Supervisors, Project Leaders, and State and Private Forestry Field Representatives. The paragraph has been eliminated; and the delegation of authority is included under FSM 1950.42, Regional Foresters, Station Directors, and Area Director.

4. *FSM 1951—Scoping and Environmental Analysis.* Several reviewers requested further clarification of the relationship between scoping and environmental analysis. Accordingly, we have added a statement explaining that scoping is an integral part of environmental analysis and that scoping includes issue identification and orderly planning. We have also revised the second paragraph to explain that environmental analysis continues after scoping until needed information is obtained. Environmental analysis includes information necessary to assess the effects of a proposed action and the type of documentation needed,

if the action is not categoricallly excluded from documentation.

5. *1952.2—Categorical exclusion from documentation.* The largest volume of comment was generated by proposed changes designed to increase the number of actions categorically excluded from documentation. Some reviewers were concerned that excluding additional actions might result in reduced public involvement, in decisions with insufficient environmental analysis and documentation to support them, or in misinterpretation of the purpose of the list of typical classes of actions that might be excluded from documentation.

The agency does not believe that the revisions of categorical exclusion direction will have these results. Under the revised policy, scoping is necessary for all proposed actions, including those which may be categorically excluded from documentation. Interested and affected publics must be kept informed and have an opportunity to contribute to an environmental analysis (FSH 1909.15, secs. 11.6, 11.8, 12, and 21). Moreover, actions may be categorically excluded from documentation *only* if both past experience and environmental analysis demonstrate that no significant effects on the human environment will result, individually or cumulatively (FSM 1952.2).

Finally, the list of typical classes of actions that might be excluded is merely illustrative. In some instances, environmental analysis will reveal that significant effects could occur and an environmental assessment or environmental impact statement must be prepared. The guiding principal is that the depth and breadth of the environmental analysis, the extent of public involvement, and the type of documentation for a proposed action must be commensurate with the scale and intensity of the anticipated effects.

Several of those commenting emphasized that some of the typical classes of actions which might be excluded from documentation are at times quite impactive and that these exceptions need to be evaluated and documented in an environmental assessment or impact statement. Road building, pesticide use, and timber sales were most often cited as examples. We believe our revision of this section responds to these concerns. As previously noted, this section now emphasizes that an action may not be categorically excluded unless both past experience and environmental analysis indicate that the action will not have a significant effect on the human environment, individually or cumulatively.

Other reviewers endorsed the list of typical classes of actions that might be excluded from documentation; and some cited additional, potentially excludable actions. For example, two respondents asked that field and laboratory research be added to the list of typical classes of actions for categorical exclusion. This suggestion was not accepted because low-impact research activities are already excluded from documentation under USDA regulations (7 CFR 1b.3).

Some reviewers supported the use of the list of typical classes but called for better definition of certain items. For example, they felt the Forest Service should specify what is meant by a low-impact road, mineral activity, or timber sale. In response, the definitions of several of the typical classes of actions which normally can be categorically excluded were revised to better express our intent. The purpose for listing typical classes which normally can be categorically excluded is also clarified. The number of examples of actions which are given for each typical class was also reduced to emphasize that (1) the specific actions mentioned were only representative of those included in a particular class; (2) it is not possible to specify all of the conditions that will or will not produce significant impacts; and (3) conditions vary in each locality; therefore, field personnel must evaluate each proposed action for potentially significant effects as defined by the Council on Environmental Quality regulations (40 CFR 1508.14 and 1508.27).

Several reviewers thought the categorical exclusion option could or would be misused as deliberate avoidance tactics, such as breaking a larger action into smaller parts for categorical exclusion, intentionally constructing substandard roads when a standard road is needed, and justifying all types of pesticide projects that do not involve aerial application. This is not the Forest Service intent in expanding the use of categorical exclusions. The Forest Service routinely conducts management reviews at the Regional, Forest, and District levels to ensure compliance with policies and procedures and takes corrective action where reviews indicate such action is necessary.

Some reviewers stated that decisions to categorically exclude an action from documentation should always be documented and filed for future reference. This suggestion was not accepted since this would be an unnecessary and very costly task for the Forest Service to document all actions involving the environment. However, when there is reason to believe that specific information about such an analysis and decision will be needed later, documentation is advisable.

Several respondents stressed that final decisions to proceed with an action that has been categorically excluded should not be made until interested parties have been informed of the proposed action. This section has been changed to require that interested and affected people be informed of the decision to proceed with an action that has been categorically excluded from documentation.

6. *FSM 1952.3—Environmental Assessments.* Two reviewers said that if an action "may significantly affect" the human environment, an EIS is required (NEPA, sec. 102(2)(A)). We agree that the use of "may" is misleading in this section. The phrasing has been changed to direct that environmental assessments be prepared when an action is not categorically excluded from documentation and it is not determined that an environmental impact statement is necessary.

Specific Comments on Forest Service Handbook—FSH 1909.15

Public and agency comments resulted in editorial and organizational changes to increase the clarity and precision of the handbook. This includes several changes needed to make the handbook consistent with the above manual revisions and also rewording of several definitions. The definition of *environmentally preferable alternative* has been revised to better convey the meaning of Section 101 of NEPA. This definition of *proposed action* has been added to provide the basis for initiating an environmental analysis.

Chapter 10 has been revised to describe scoping as an integral part of environmetal analysis that also includes determining whether a plan of work is needed. The requirement to produce a work plan has been deleted to avoid the impression that a formal plan of work is always required. Section 11.2 has been reworded to clarify the kind of information needed about impending decisions. The statement of whether or not a categorical exclusion is appropriate has been deleted to avoid the false impression that environmental analysis is unnecessary if an action is categorically excluded from documentation. A new item has been added to recognize the existence of higher plans and commitments. In section 11.5, provisions for consulting have been revised to specifically include other agencies. The first sentence in section 12 on informing participants of results of scoping has been changed and moved to section 11.7-Interdisciplinary

Analysis to ensure that the interdisciplinary approach is used in all environmental analyses, not just those leading to environmental impact statements.

In chapter 20, section 21 is revised to emphasize that scoping is the first phase of environmental analysis. Section 22 is amended to address situations in which information about significant adverse effects on the human environment, which is necessary for a reasoned choice among alternatives, is incomplete or uncertain. In section 23, we have used only the term "issues" and omitted "concerns" and "opportunities" since these terms are not used in the Council on Environmental Quality regulations. Section 23.1 is amended to provide that the no-action alternative must be considered in detail in each environmental analysis.

In chapter 30, section 33.4—Distribution of Decision Documents is amended to apply to wetlands as well as floodplains. **Federal Register** document requirements have been removed from chapter 40 and placed in chapter 60, section 67, as reference material. Section 42.22 is amended to address situations in which information about significant adverse effects on the human environment, which is necessary for a reasoned choice among alternatives, is incomplete or uncertain. Sections 42.31 and 42.32 now define the official filing date for environmental impact statements sent to the Environmental Protection Agency. Section 42.32 has also been amended to provide additional information about circulating final environmental impact statements. Section 53 has been amended to ensure that anticipated results are achieved by monitoring.

The full text of FSM 1950 and chapter 10 thru 50 of FSH 1909.15 are set out in full as Appendices I and II to this document. To save printing costs, only the Table of Contents to chapter 60 is printed. Chapter 60 contains reference material such as the National Environmental Policy Act, the Council on Environmental Quality Regulations, **Federal Register** Document Requirements, etc. These policies and procedures will be effective upon distribution through the agency's directive system. Forest Service personnel should receive these directives on or before July 1, 1985.

Dated: June 17, 1985.

F. Dale Robertson,

Associate Chief.

APPENDIX I

TITLE 1900—PLANNING

CHAPTER 1950—ENVIRONMENTAL POLICY AND PROCEDURES

Contents

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TITLE 1900—PLANNING

CHAPTER 1950—ENVIRONMENTAL POLICY AND PROCEDURES

This chapter sets forth Forest Service policies and requirements governing environmental analysis and documentation that are in addition to those required by statute and regulation. The minimum legal requirements are shown in cross references. throughout the chapter.

1950.1—Authority

1. *The National Environmental Policy Act of 1969 (NEPA)*, as amended (42 U.S.C. 4321–4346). NEPA encourages the Forest Service to carry out its programs in ways that will create and maintain conditions under which people and nature can exist in productive harmony and can fulfill social, economic, and other requirements of present and future generations.

The act requires the agency to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.

NEPA also requires a systematic, interdisciplinary approach in planning and decisionmaking for actions that may affect the human environment. The act also requires detailed statements on proposals for legislation and on other major Federal actions that significantly affect the quality of the human environment.

2. *Council on Environmental Quality Regulations* (40 CFR 1500–1508). These regulations set forth specific requirements for implementing the National Environmental Policy Act.

3. *U.S. Department of Agriculture NEPA Policies and Procedures* (7 CFR 1b). These regulations direct Department of Agriculture agencies to develop and to implement procedures for compliance with NEPA. The regulations exclude seven categories of activities from documentation such as program funding, educational and informational activities, and civil and criminal law enforcement and investigation activities.

The full text of these authorities and supplementary Council on Environmental Quality guidance are printed in full in chapter 60 of the Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15).

1950.2—Objectives. In meeting the requirements of the National Environmental Policy Act, the Forest Service also seeks to:

1. Consider carefully the environmental consequences of agency planning and decisionmaking.

2. Conduct and document environmental analyses and subsequent decisions appropriately, efficiently, and cost effectively.

1950.3—Policy. It is Forest Service policy to:

1. Fully integrate National Environmental Policy Act requirements into agency planning and decisionmaking.

2. Use scoping to determine the depth and breadth of environmental analysis required for proposed actions.

3. Notify interested and affected publics, in a manner appropriate to the situation, of the availability of environmental documents (40 CFR 1506.6(b)), records of decision, and decision notices and of decisions to proceed with actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement.

4. Make environmental documents, decision notices, and records of decision available to the public, free of charge, to the extent practicable (40 CFR 1506.6(f)).

5. Apply the concepts of tiering and adoption to both environmental impact statements and environmental assessments (40 CFR 1502.20 and 1506.3).

1950.4—Responsibility

1950.41—Washington Office

1950.41a—Chief. The Chief is responsible for environmental analysis, documentation, and decisions relating to legislation and national policies, plans, programs, projects, and other actions of national importance where the Chief has retained authority.

1950.41b—Director of Environmental Coordination. The Director is the staff official responsible for establishing the national standards, procedures, and coordination measures necessary to implement the National Environmental Policy Act for the Forest Service. This includes policies and procedures for conducting social impact analysis (FSM 1973 and FSH 1909.17, ch. 30).

The Director also provides liaison with the Council on Environmental Quality and consults with the council on possible referrals (40 CFR 1504) and emergencies (40 CFR 1506.11).

1950.42—Regional Foresters, Station Directors, and Area Director. Regional Foresters, Station Directors, and the Area Director are delegated responsibility for proposed actions. They are also responsible for related environmental analyses, including scoping and documentation (FSM 1220 and 1230).

Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for actions within their authority. Refer matters requiring consultation with the Council on Environmental Quality to the Washington Office Director on Environmental Coordination.

Regional Foresters, Station Directors, and the Area Director may redelegate responsibility for environmental analyses, documentation, filing of environmental impact statements, and related requirements on proposed actions to Forest Supervisors, project leaders, and State and Private Forestry field representatives.

1950.6—Further Guidance. See FSH 1909.15, Environmental Policy and Procedures Handbook, for detailed instructions for conducting and documenting environmental analyses and for implementing and monitoring proposed actions.

1951—SCOPING AND ENVIRONMENTAL ANALYSIS. Scoping is an integral part of environmental analysis. Use scoping to investigate and identify relevant issues and to determine the extent of environmental analysis required for all proposed actions. Scoping varies depending on the complexity and nature of the action. Only brief consideration of a few pertinent factors may be necessary for a proposed action which may be categorically excluded from documentation in an environmental assessment or environmental impact statement. Preparation of an environmental impact statement requires compliance with the Council on Environmental Quality scoping regulations (40 CFR 1501.7).

After scoping, continue environmental analysis by estimating the physical, biological, social, and economic effects of proposed agency actions on the quality of the human environment: Then, determine what types of environmental documents are needed if the action is not categorically excluded.

1952—DOCUMENTATION

1952.1—Environmental Impact Statements. Prepare environmental impact statements to document the results of analysis of major Federal actions that will significantly affect the human environment (40 CFR 1502.3). These documents must meet the requirements of 40 CFR 1502. Actions that require environmental impact statements include:

1. Proposals for legislation recommended by the Forest Service when significant effects on the human environment would result.
2. Regional guides and forest land and resource management plans.
3. Other major actions that would produce significant effects on the human environment.

1952.2—Categorical Exclusion From Documentation. (40 CFR 1508.4). In addition to the seven categories of actions excluded from documentation in 7 CFR 1(b)(3), exclude from documentation in environmental assessments or environmental impact statements other actions that, based on both past experience and environmental analysis, will have no significant effect on the human environment, individually or cumulatively. The guide for exclusion is the significance of the effects of the proposed action, considering both context and intensity (40 CFR 1508.27). In unusual circumstances, an action that normally could be categorically excluded may have a significant environmental effect. Unusual circumstances might include areas involving threatened and endangered species; critical habitat; floodplains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Inform, in an appropriate manner, interested and affected people of a decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement.

Generally, the nature of a proposed action determines whether or not to document the decision to categorically exclude an action. In those situations where environmental assessments have historically been prepared for actions that now may be categorically excluded, a simple note or memorandum documenting the exclusion of one or more projects should be adequate. In other situations, no documentation is necessary.

Typically, classes and representative examples of actions that might be categorically excluded are listed below. Past experience and environmental analysis indicate that these actions and classes usually do not significantly affect the human environment, individually or cumulatively.

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.
2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads such as traffic service level "D" roads (FSH 7709.56); and trails.
3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.
4. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood sales; salvage, thinning, and small harvest cuts; site preparation; and planting and seeding.
5. Low-impact range management activities, such as fencing, seeding, and installing water facilities.
6. Issuance or modification of authorization or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.
7. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.
8. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

9. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

10. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act, purchases and gifts, and small transfers and trades with other Federal agencies.

1952.3—Environmental Assessments. Prepare environmental assessments to document the analysis of actions that are not categorically excluded and for which the need for an environmental impact statement has not been determined (40 CFR 1501.3 and 1501.4(b)).

Environmental assessments must meet the purpose and content requirements of 40 CFR 1508.9.

1953—RELATED DOCUMENTS

1953.1—Notice of Intent. (40 CFR 1508.22). Publish a notice of intent in the Federal Register as soon as practicable after making a decision to prepare an environmental impact statement.

1953.2—Finding of No Significant Impact. (40 CFR 1501.4(e) and 1508.13).

1953.3—Decision Notice. In cases where an environmental assessment has been prepared, the responsible official shall prepare a decision notice. A decision notice states what the decision is, the reasons for the decision, and whether the decision is subject to administrative appeal pursuant to 36 CFR 211.18. The responsible official must sign and date a decision notice on the date the decision is made.

1953.4—Record of Decision. (40 CFR 1505.2). In cases where an environmental impact statement has been prepared, the responsible official shall prepare a record of decision. For actions subject to administrative appeal pursuant to 36 CFR 211.18, the responsible official should sign and date the record of decision on the date that it is transmitted with the final environmental impact statement to the Environmental Protection Agency and made available to the public.

For actions not subject to administrative appeal, the responsible official signs and dates the record of decision no sooner than 30 days after the notice of availability of the final environmental impact statement is published in the Federal Register (40 CFR 1506.10(b)).

1954—EMERGENCY ACTIONS. (40 CFR 1506.11). Emergencies may require immediate action, without adequate environmental analysis and documentation, to prevent or to reduce risk to public health or safety or to serious resource loss. Contact the Washington Office Director of Environmental Coordination regarding consultation with the Council on Environmental Quality (FSM 1950.41b; 1950.42).

02—OBJECTIVES

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To provide uniform guidelines and direction for conducting environmental analyses associated with preparing Regional guides and forest land and resource management activities.

04—RESPONSIBILITY. Line officers are responsible for ensuring that planning and decisionmaking follow the procedural direction in this Handbook.

05—DEFINITIONS

1. *Categorical Exclusion.* (40 CFR 1508.4).

2. *Cooperating Agency.* (40 CFR 1508.5).

3. *Cumulative Impact.* (40 CFR 1508.7).

4. *Decision Notice.* A concise public record of the responsible official's decision when an environmental assessment is prepared.

5. *Effects.* (40 CFR 1508.8).

6. *Environmental Analysis.* An investigation of alternative actions and their predictable environmental effects, including physical, biological, economic, and social consequences and their interactions; short- and long-term effects; and direct, indirect, and cumulative effects. This process provides the information needed for identifying actions that may be categorically excluded, for preparing environmental documents, and for determining whether an environmental impact statement is required.

7. *Environmental Assessment.* (40 CFR 1508.9).

8. *Environmental Design Arts.* Disciplines that directly influence the biological and physical environment as a result of the design of projects of all kinds.

9. *Environmental Document.* (40 CFR 1508.10).

10. *Environmental Impact Statement.* (40 CFR 1508.11).

11. *Environmentally Preferable Alternative.* An alternative that best meets the goals of section 101 of the National Environmental Policy Act. Ordinarily, this means an alternative that causes the least damage to the biological and physical environment. It also means the alternative that best protects, preserves, and enhances historical, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

12. *Finding of No Significant Impact.* (40 CFR 1508.13).

13. *Floodplains.* As defined by E.O. 11988, lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a 1 percent or greater chance of flooding in any given year.

14. *Human Environment.* (40 CFR 1508.14).

15. *Irreversible.* A term that describes the loss of future options. Applies primarily to the effects of use of nonrenewable resources, such as minerals or cultural resources, or to those factors, such as soil productivity that are renewable only over long periods of time.

16. *Irretrievable.* A term that applies to the loss of production, harvest, or use of natural resources. For example, some or all of the timber production from an area is lost irretrievably while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production.

17. *Issue.* A point of discussion, debate, or dispute.

18. *Jurisdiction by Law.* (40 CFR 1508.15).

19. *Lead Agency.* (40 CFR 1508.16).

20. *Legislation.* (40 CFR 1508.17).

21. *Major Federal Action.* (40 CFR 1508.18).

22. *Matter.* (40 CFR 1508.19).

23. *Mitigation.* (40 CFR 1508.20).

24. *NEPA Process.* (40 CFR 1508.21).

25. *Notice of Intent.* (40 CFR 1508.22).

26. *Proposal.* (40 CFR 1508.23).

27. *Proposed Action.* A proposal by the Forest Service to authorize, recommend, or implement an action.

28. *Record of Decision.* (40 CFR 1505.2).

29. *Referring Agency.* (40 CFR 1508.24).

30. *Scope.* (40 CFR 1508.25).

31. *Scoping.* The procedure by which the Forest Service determines the extent of analysis necessary for an informed decision on a proposed action. Scoping is an integral part of environmental analysis. Depending on the complexity and nature of the action, scoping varies from a brief consideration of a few pertinent factors in a proposed action that may be categorically excluded to compliance with the Council on Environmental Quality direction for a proposed action that must be documented in an environmental impact statement.

32. *Special Expertise.* (40 CFR 1508.26).

33. *Significantly.* (40 CFR 1508.27).

34. *Substantive Comment.* A comment that provides factual information, professional opinion, or informed judgment germane to the action being proposed.

35. *Tiering.* (40 CFR 1508.28).

36. *Wetlands.* As defined by E.O. 11990, areas that are inundated by surface or ground water with a frequency sufficient to support and that under normal circumstances do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth or reproduction.

06—OVERVIEW OF PROCESS. Exhibits 1 and 2 illustrate the full National Environmental Policy Act process and indicate the normal sequence of actions that occur under various alternatives. Exhibit 3 identifies the responsibility of participants in the process.

Exhibit 1—Sec. 06

Overview of the NEPA Process

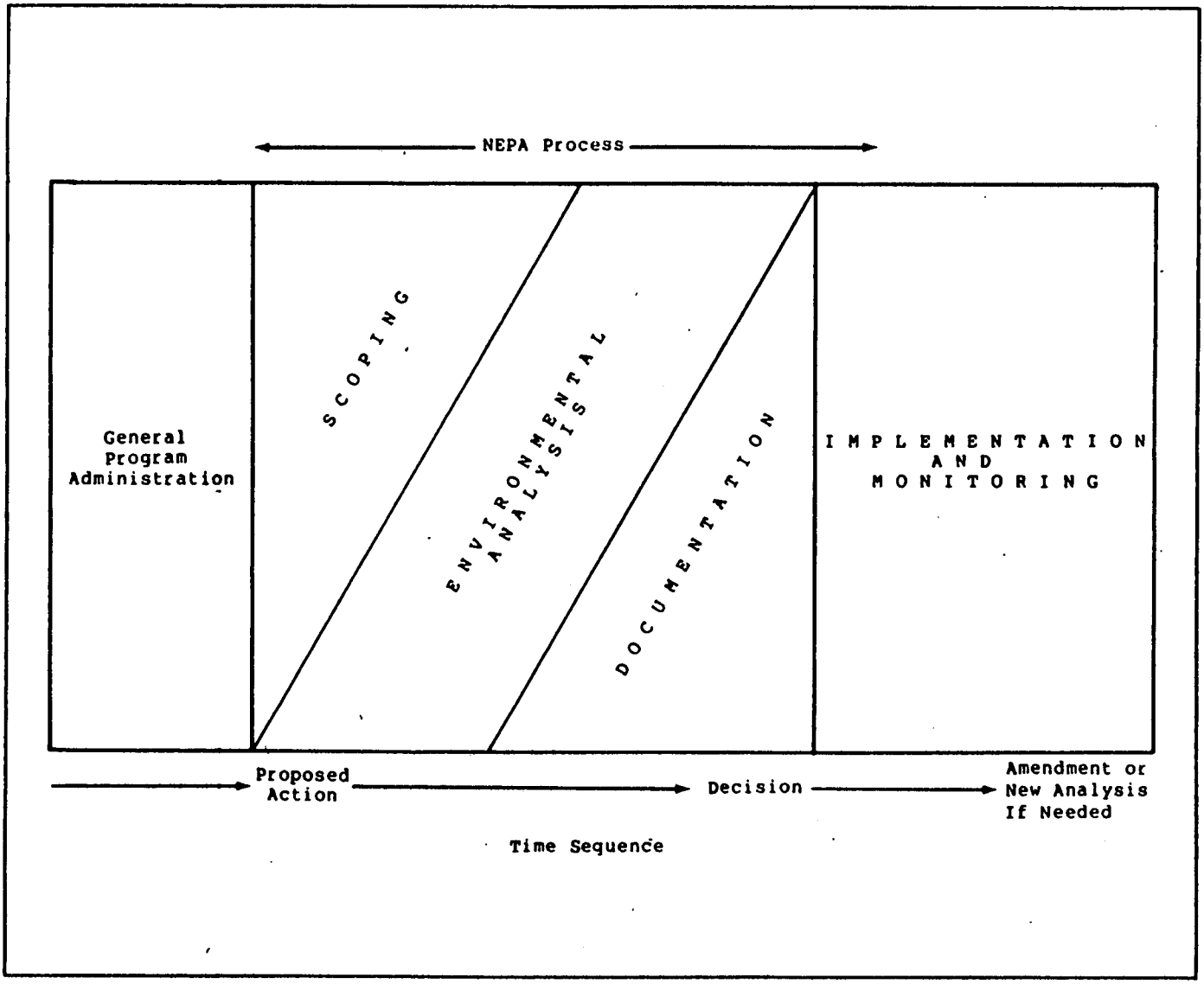

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Exhibit 2—Sec. 06

Environmental Analysis, Documentation, and Implementation Overview

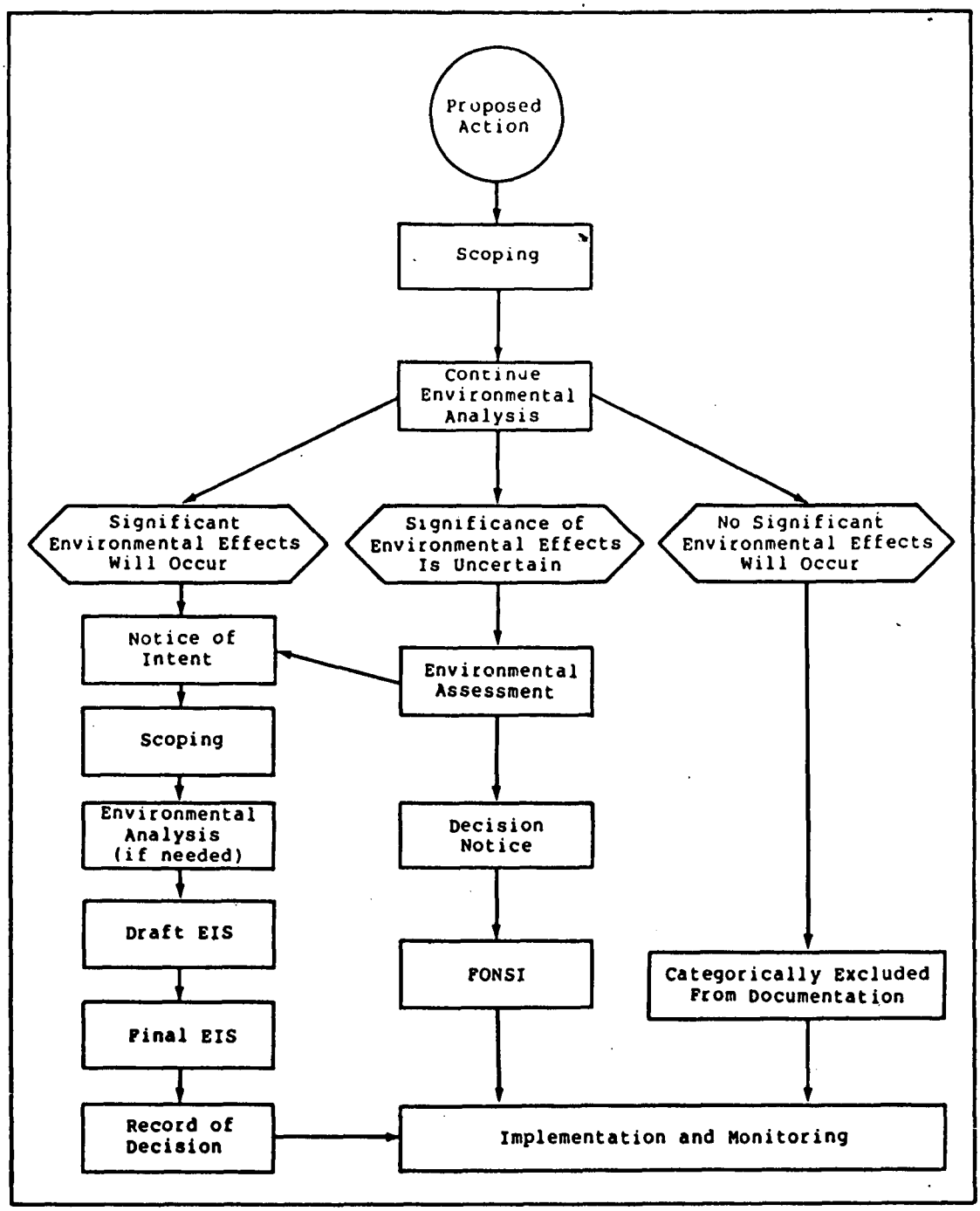

Exhibit 3—Sec. 06

Responsibility of Participants in the NEPA Process

NEPA Process Activity	Responsible Official	Staff, Specialist, or Interdisciplinary Team	Other Agencies, Organizations, and Individuals
1. Environmental analysis actions[1]			
a. Scoping	Approve	Conduct	Provide information and suggestions
(1) Characterize the proposed action, including the nature of the decision			
(2) Identify agencies involved and the responsible official			
(3) Look for relevant issues			
(4) Explore possible effects and existing direction			
(5) Assess public participation needs and make initial contacts			
(6) Identify skills needed in the analysis			
(7) Convene interdisciplinary team, identify cooperators, and assign tasks			
(8) Expand public involvement as appropriate			
(9) Plan for an orderly analysis (a) Formulate analysis criteria (b) Formalize issues (c) Explore agency alternatives (d) Determine other analysis needs (e) Continue public involvement as needed			
b. Collect data	Review	Conduct	Provide information and suggestions
c. Interpret data	•	•	
d. Develop alternatives	•	•	
e. Estimate effects	•	•	
f. Evaluate alternatives	•	•	
g. Identify the preferred alternative(s)	Approve	Recommend	Recommend
2. Documentation	Review	Prepare	Review
3. Decision	Decide	Recommend	Review
4. Implementation and Monitoring	Execute	Conduct	Assist

[1]Analysis actions may be omitted or combined as appropriate to the situation.

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Appendix II

UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE

ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK

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ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK ZERO CODE

This Handbook provides procedural guidance for implementing the National Environmental Policy Act and the Council on Environmental Quality regulations (40 CFR 1500–1508) in Forest Service activities.

The Handbook distinguishes clearly between analyzing the effects of proposed actions and documenting the results of such analysis. Chapter 10 sets forth guidelines on the scoping process. Chapter 20 addresses the actual analysis process. Chapters 30 and 40 contain the documentation requirements for environmental assessments and environmental impact statements. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, memoranda, and other reference materials needed to carry out the procedures in this Handbook.

Use this Handbook in conjunction with the broad direction set forth in FSM 1950, Environmental Policy and Procedures.

CHAPTER 10—SCOPING

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CHAPTER 10—SCOPING

Scoping is an integral part of environmental analysis. Scoping requires examining a proposed action and its possible effects; establishing the depth of environmental analysis needed; and determining analysis procedures, data needs, and task assignments. Scoping varies from a brief consideration of a few pertinent factors for a proposed action that may be categorically excluded to compliance with the Council on Environmental Quality direction for a proposed action that must be documented in an environmental impact statement. Elements of scoping may include exploring the nature of the action, determining the responsible official and cooperating agencies, initiating public involvement, identifying issues, selecting an interdisciplinary team, establishing analysis criteria, exploring possible alternatives and their environmental effects, and making task assignments.

10.2—Objectives. The Forest Service conducts scoping to:

1. Determine the depth of analysis required for a proposed action.

2. Guide environmental analysis and documentation, and to assign tasks.

3. Achieve effective use of time and money in conducting environmental analysis.

10.3—Policy

1. Use scoping to investigate the nature of proposed actions and to determine how much analysis is necessary. The use of scoping is not confined to the preparation of environmental impact statements.

2. Conduct the scoping actions set forth in this chapter commensurate with the complexity of the proposed action. Not all scoping activities are required for each proposed action.

10.4—Responsibility. The official who is responsible for a decision on a proposed action shall:

1. Ensure that an appropriate level of scoping occurs.

2. Determine whether an interdisciplinary (ID) team of specialists and a formal plan of work are needed.

3. Select the ID team and leader and keep abreast of their work (sec. 11.7).

For actions where the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff participates with the appropriate field or other WO staffs and involves the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary (FSM 1950.41).

11—CONDUCT SCOPING

11.1—Organize Scoping Effort. The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (NEPA sec. 102(2)(A)). The interdisciplinary approach used in scoping varies according to the judgment of the responsible official.

Where it is necessary to resolve which agency shall be the lead agency for scoping and analysis, follow the direction in section 46.1.

11.11—Use Flexible Procedures. Because the nature and complexity of a proposed action determine the scope and intensity of the required analysis, there is no single required or prescribed technique. The responsible official may expand, omit, or combine the various steps of the process outlined in this handbook to aid in the understanding of the proposed action and in responding to the issues identified. In each analysis, use previously documented information to avoid duplication of effort. If there is no longer a need to complete an analysis (because a project application is withdrawn or for other reasons), stop the analysis and inform the interested parties.

11.2—Determine the Characteristics of the Proposed Action and Nature of the Decision. Important details include:

1. Sponsorship: Who wants the action, and why.

2. Technical details: Phases of activity, equipment used, number and types of employees needed.

3. Time schedules: When the action would begin and end, the duration of major phases.

4. Preliminary estimates of possible environmental effects.

5. Preliminary estimates of public interest in the action and the likelihood of controversy.

6. Type of decison: scope and nature of decision, such as implement, permit, or consent.

7. Recognition of higher level plans and commitments.

11.3—Identify Agencies Involved and Responsible Officials. The responsible official for proposed actions usually is the agency employee who has the delegated authority to make the required decision(s). When an action is proposed, the responsible official must identify other Federal, State, or local agencies with an interest in the action and must estimate the extent of analysis required for an informed decision. The official may base this estimate on existing documentation, personal experience, and consultation with knowledgeable people. At this point, decide whether an interdisciplinary team is necessary to carry out the remainder of the analysis process or whether a much less formal interdisciplinary approach would suffice (sec. 11.7).

11.4—Determine If Existing Documents Address the Proposed Action. Sometimes a responsible official may determine that an existing environmental document adequately addresses a proposed action. For such actions, the official may adopt the existing document. See 40 CFR 1506.3 for procedural requirements.

Case histories of similar actions may be reviewed for additional information on:

1. Geographic areas and resources that the action is likely to affect.

2. The size, duration, and intensity of possible effects.

3. Applicable Federal and State laws and regulations.

4. Pertinent documents and other data sources.

Such information should help define the situation and should narrow the scope of the environmental analysis. The environmental documents prepared for the proposed action may incorporate these sources by reference. (Sec. 32.2., Tiering; sec. 32.3, Adoption; and sec. 32.4, Incorporation by Reference).

11.5—Look for Relevant Issues. Based on reviews of similar actions, knowledge of the area or areas involved, discussions with community leaders, and/or consultations with experts and other agencies familiar with such actions and their effects, prepare and evaluate a preliminary list of issues. This list provides an early look at potential issues and sharpens the focus of the environmental analysis (40 CFR 1501.1(d)).

11.6—Assess Public Involvement Needs and Initiate Public Participation. Review the need for public participation in scoping. Identify options for involving potentially interested and affected individuals, organizations, and governments in the analysis process (40 CFR 1506.6).

Early in the analysis of proposed actions that may have important or controversial effects:

1. Provide adequate information to the public about the proposed action.

2. Analyze public reactions; that is, who expects to be affected and how.

3. Consider suggestions offered by those affected.

11.7—Use Interdisciplinary Analysis. Use of interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental design arts in environmental analysis (40 CFR 1502.6).

Proposals for some actions, especially those that can be tiered from an existing environmental document (40 CFR 1508.28), may not require the selection of an interdisciplinary team (secs. 11.3 and 11.72). A qualified individual may perform the analysis, which must consider all of the physical, biological, social, and economic factors pertinent to the decision.

Interdisciplinary review of the analysis also may satisfy the requirement for use of the interdisciplinary approach. Complex actions normally require a team of specialists representing the necessary disciplines.

11.71—Use of Interdisciplinary Teams. Use interdisciplinary teams to analyze proposed actions with a potential for substantial enviromental effects, especially if an environmental impact statement may be needed.

11.72—Team Selection and Management. The responsible official must select the leader and other members of the interdisciplinary team, define their tasks, and keep abreast of their work.

The team is responsible for additional scoping, for subsequent environmental analyses, and for preparation of environmental documents. A team integrates its collective knowledge of the physical, biological, economic, and social sciences and the environmental design arts into the analysis process. Interaction among team members often provides insight that otherwise would not be apparent.

11.73—Team Qualifications. The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified (40) CFR 1502.6). The team must have the expertise to identify and to evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives (40 CFR 1507.2; 1508.25).

11.73a—Team Leader. To ensure selection of an effective team leader, the responsible official should consider such factors as the individual's:

1. Degree of working knowledge of the National Environmental Policy Act process.

2. Ability to communicate effectively with team members and the responsible official.

3. Ability to facilitate interaction among team members.

4. Ability to organize and interpret information.

5. Past performance in meeting assigned deadlines.

11.73b—Team Members. In selecting other team members, consider such factors as:

1. Variety of disciplines needed.

2. Ability to work as part of a team.

3. Ability to communicate to others information about the field that a member represents.

4. Knowledge of and degree of experience in the environmental analysis process.

5. Ability to conceptualize and solve problems.

11.74—Team Size. Limit the team to a manageable number of persons with a good mix of needed skills and expertise.

11.75—Convene Team and Assign Tasks. The interdisciplinary team continues the scoping at a more specialized level, revising as necessary the:

1. Estimates of the type, distribution, and intensity of effects.

2. Public and agency issues.

3. Public participation procedures.

11.8—Expand Public Involvement as Appropriate. The Council on Environmental Quality regulations require a diligent effort to involve the public in the National Environmental Policy Act process (40 CFR 1506.6), including:

1. *Analyzing target groups.* Identify potentially affected groups and the nature of their concerns (FSH 1609.13). Maintain and use mailing lists as appropriate.

2. *Developing and implementing a public participation plan.* Establish the level of needed public participation. Ensure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.

When extensive public involement is necessary, prepare a formal public participation plan (FSM 1626).

The Public Participation Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process. Invite participation from potentially affected Federal, State, and local agencies; Indian tribes, interested individuals and groups; and others who might be affected by the action or its alternatives.

11.9—Plan for Orderly Analysis. Scoping can substantially improve the efficiency and effectiveness of the analysis by focusing on important issues.

11.91—Formulate Analysis Criteria. Criteria and standards may be necessary to guide the process. Be sure to consider Forest Service objectives identified in legislation, policies, and plans. Refine these criteria, as necessary, during the course of the analysis.

Frequently, it is necessary to formulate analysis criteria for:

1. Selecting data, sources, and standards of accuracy.
2. Determining depth or detail of the analysis.
3. Developing a suitable range of alternatives
4. Evaluating alternatives.
5. Estimating the significance of effects (40 CFR 1508.27).

11.92—Formalize Issues and Criteria. Formalize the lists of important issues and the analysis criteria, taking public and agency comments into account. These lists define the goals, priorities, and standards for the remainder of the analysis. Adjust these lists as necessary as new insights emerge.

11.93—Explore Alternatives. For the proposed action, consider possible alternatives that are responsive to the issues.

Discuss the feasibility and possible effects of these alternatives with potentially affected agencies and public parties. Decide which merit further study and which do not belong in the analysis.

11.94—Determine Other Analysis Needs. During scoping, anticipate later analysis needs, and make arrangements for meeting them. These might include:

1. Data needed and their availability.
2. Time and support services available. Time and page limits may be set (40 CFR 1501.7(b)).
3. Other agency needs that the analysis can meet.
4. How other agencies might contribute to the analysis.
5. Responsibility for each task not yet assigned.
6. Additional staff support and travel funds needed.
7. The possibility of publishing a notice of intent to prepare an environmental impact statement.

11.95—Continue Scoping. Scoping is required following the decision to prepare an EIS, including situations in which the proposed action was scoped earlier for a different purpose. Use scoping to determine the public issues at this time. Even though the public may have already been involved in the environmental analysis, an additional opportunity to provide input is required (40 CFR 1501.7 and sec. 11).

12—INFORM PARTICIPANTS OF RESULTS OF SCOPING. After scoping, provide participants with prompt feedback in an appropriate manner, summarizing both the scope and the important issues that the environmental analysis will consider in depth.

CHAPTER 20—ENVIRONMENTAL ANALYSIS

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25 EVALUATE ALTERNATIVES AND IDENTIFY PREFERRED ALTERNATIVE(S)

CHAPTER 20—ENVIRONMENTAL ANALYSIS

Environmental analysis assesses the nature and significance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Scoping is an integral and initial component of environmental analysis. For detailed guidance on scoping, see chapter 10. This chapter addresses the requirements for conducting the more detailed environmental analysis that follows the scoping process. Exhibit 2 in section 06 of zero code shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

21—KEEP THE PUBLIC INFORMED. Consistent with the importance of the action, keep the public informed of the progress of the environmental analysis. For major actions, this includes notifying the public that the action is under consideration and providing feedback on the results of scoping and subsequent stages of the analysis. Monitor and consider the interests and concerns of affected publics, and respond to individual requests for information.

22—COLLECT AND INTERPRET DATA. The type and amount of data to collect depend on the nature of the action, agency objectives, public concerns, opportunities, and the scope of anticipated effects. Focus data collection on the present and expected physical, biological, economic, and social conditions affecting or affected by the decision. When appropriate, document the assumptions, methods, and data sources.

When evaluating significant adverse effects on the human environment, if information that is essential to a reasoned choice among alternatives, is either missing or incomplete, follow the procedures at 40 CFR 1502.22 and chapter 40, section 42.22.

23—DEVELOP ALTERNATIVES. The final alternatives must provide different responses to important issues identified with the proposed action. Consider all reasonable alternatives (40 CFR 1502.14). The phrase "all reasonable alternatives" is firmly established in case-law interpreting the National Environmental Policy Act. The phrase has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed (sec. 65.11, ex. 1, 43 FR 55983). The objectives of legislation or of higher order Forest Service plans, programs, and policies guide, but do not limit, the range of alternatives that are considered in detail in each environmental analysis.

23.1—No Action Alternatives. Consider in detail the no action alternative in each environmental analysis. The no action alternative provides a baseline for estimating the effects of other alternatives.

Two distinct interpretations of no action are often possible, depending on the nature of the proposal being evaluated. The first interpretation involves an action such as the updating of a land management plan where ongoing programs initiated under existing legislation, regulations, and budget allocations continue, even as new plans are developed. In these cases, no action is no change from current management direction or from the level of management intensity. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plans. The second interpretation of no action is that no action or activity would take place, such as when proposals for projects are denied.

23.2—Other Alternatives. Develop other alternatives fully and impartially.

Ensure that the range of alternatives does not foreclose prematurely any option that might protect, restore, and enhance the environment. Consider reasonable alternatives outside the jurisdiction of the Forest Service (40 CFR 1502.14(c)). In the alternatives section of an environmental impact statement, explain the reasons for eliminating from detailed study any alternative originally considered. (40 CFR 1502.14(a)). Modify alternatives or develop new alternatives as necessary as the analysis proceeds. Alternatives must specify any activities that may produce important environmental changes, and they must address management requirements, mitigation measures, and monitoring of environmental effects.

24—ESTIMATE EFFECTS OF EACH ALTERNATIVE. (40 CFR 1502.16, 1508.8, and 1508.25(a)(2) and (c)). Estimate the effects of implementing each alternative. Consider direct, indirect, and cumulative effects. For each alternative, effects may be expressed in terms of changes in the physical, biological, economic, and social components of the human environment. Analyze these changes in terms of differences from the no action alternative. Consider the magnitude, duration, and significance of the changes. See section 61 for a list of environmental factors that may change as a result of implementation of the various alternatives.

It is not always necessary to deal with all factors and components of the environment. Consider in detail only those effects important to the issues identified during scoping.

If indicators of economic efficiency are appropriate, develop them at this point. Also consider unquantified environmental amenities and values.

For all alternatives, be sure to consider the effects on the following:

1. Consumers, civil rights, minority groups, and women (FSM 1730).
2. Prime farmland, rangeland, and forest land.
3. Wetlands and floodplains.
4. Threatened and endangered species.
5. Cultural resources.

If the need for an environmental impact statement (EIS) has not been established already (FSM 1952.1), consider the significance of effects in terms of context and intensity in order to determine whether an EIS is necessary. See the definition of "Significantly," at 40 CFR 1508.27, for definitions of "context" and "intensity."

25—EVALUATE ALTERNATIVES AND IDENTIFY PREFERRED ALTERNATIVE(S). Compare alternatives on the basis of their effects on the human environment. This evaluation, along with other relevant considerations, provides a basis for identifying the preferred alternative(s).

When the Chief or the Secretary is the responsible official, the Washington Office (WO) Environmental Coordination Staff Unit participates with appropriate field or other WO staff unit(s) and with the appropriate Deputy Chief, Chief, or Assistant Secretary to identify the preferred alternative(s).

CHAPTER 30—ENVIRONMENTAL ASSESSMENTS AND RELATED DOCUMENTS

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CHAPTER 30—ENVIRONMENTAL ASSESSMENTS AND RELATED DOCUMENTS

30.4—Responsibility

1. When the Chief or Secretary is the responsible official, the appropriate field unit prepares documents with assistance from the Washington Office Environmental Coordination Staff and other appropriate Washington Office staff units. The Environmental Coordination Staff arranges for processing of documents and involves other appropriate staff units.

2. The responsible official may require applicants or contractors to conduct studies to determine the impact of a proposed action on the human environment and to provide data and documentation (40 CFR 1506.5 (b) and (c)). When applicants or contractors prepare an environmental assessment, limit their activities to those shown in section 06, exhibit 1, for staff, specialists, and interdisciplinary teams participating in the National Environmental Policy Act process.

32—DOCUMENTATION OF ANALYSIS. (FSM 1952). Document the results of analysis in an environmental assessment when the analysis indicates that the proposed action is not categorically excluded and the decision to prepare an environmental impact statement (EIS) has not been made (40 CFR 1501.3, 1501.4, and 1508.9). The length and detail of documentation in an environmental assessment may vary according to the complexity of the issues involved in the analysis. Environmental analysis or a resulting environmental assessment may reveal that a proposed action significantly affects the quality of the human environment. If so, publish a notice of intent in the **Federal Register** and prepare an EIS (ch. 40).

31.1—*Content.* (40 CFR 1508.9). An environmental assessment may be prepared in any format useful to facilitate planning and decisionmaking as long as the requirements of 40 CFR 1508.9 are met. An assessment must include brief discussions of:

1. The need for the proposal.
2. Alternatives as required by section 102(2)(e) of the National Environmental Policy Act.
3. Environmental impacts of the proposed action and alternatives.
4. A listing of agencies and persons consulted.

32—OTHER CONSIDERATIONS IN PREPARING ENVIRONMENTAL ASSESSMENTS

32.1—Public Involvement. (40 CFR 1506.6).

32.2—Tiering. (40 CFR 1502.20 and 1508.28). Tiering is appropriate for environmental assessments. See section 45.1 for additional information about tiering.

32.3—Adoption. (40 CFR 1506.3). Adoption is appropriate for environmental assessments, as well as for environmental impact statements.

32.4—Incorporation by Reference. (40 CFR 1502.21).

Incorporation by reference is appropriate for environmental assessments, as well as for environmental impact statements.

32.5—Supplements, Corrections, and Revisions. Supplement, correct, or revise enviornmental assessments, as needed (sec. 42.4).

33—DOCUMENTATION OF DECISIONS

33.1—Decision Notice. A decision notice may be a separate document or combined with a finding of no significant impact. Exhibit 1 displays a document that combines a decision notice and a finding of no significant impact.

A decision notice also may be an integral part of brief environmental assessments.

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the decision notice with

assistance from the Washington Office (WO) Environmental Coordination Staff, as necessary. The Environmental Coordination Staff coordinates the review and signing of the decision notice, involving other appropriate WO staff units, Deputy Chiefs, the Chief, and the Secretary, as necessary.

Exhibit 1—Sec. 33.1

Decision Notice and Finding of No Significant Impact

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT

BROWN BUG TIMBER SALE

Siskiyou County, California
Klamath National Forest
Happy Camp Ranger District

The Brown Bug Timber Sale Environmental Assessment documents the analysis of 3 timber harvest alternatives for the Coon Creek and Douglas Compartments. The southwest corner of the Coon Creek Compartment is an inventoried roadless area that was contested in the California Rare II suit. The environmental assessment is enclosed.[1]

Based on the analysis documented in the environmental assessment and the current status of roadless areas, it is my decision to adopt Alternative 1 with the following modifications. Delete units 41, 42, 43, 44, 45, and 50, and roads 15N28 and 15N28C. This will defer any proposed activity within the roadless area. The modified alternative harvests an estimated 6.3 million board feet of timber primarily by clearcutting 316 acres of understocked partial cut and old growth timber stands. It also constructs 1.95 miles of new road. After harvest, 181 acres of clearcuts will require broadcast burning and 135 acres tractor piling to control vegetation and reduce slash. All clearcuts will be planted with Douglas-fir. The modified Alternative 1 is selected because it provides for:

1. No timber harvest activity in the contested roadless area.

[1]The FONSI shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (1501.7(a)(5)). (40 CFR 1508.13).

BILLING CODE 3410-11-M

Exhibit 1--Continued

2. Timber management in conformance with Multiple-Use and Timber Management Plan direction.

3. Maintenance of acceptable water quality.

4. Protection of private property.

5. Improvement of deer winter range.

6. Protection of the Pick-a-Wish Ceremony.

7. Harvest of high silvicultural priority stands.[2]

Alternatives considered were:

Alternative 1. Harvest 9.5 MMBF of timber by regenerating both poorly stocked old growth and partial cut stands.

Alternative 2. No action. Defer harvest activity until a later date.

Alternative 3. Harvest 6.1 MMBF of timber by regenerating only those poorly stocked old growth and partial cut stands that are not adjacent to private property, in domestic watersheds, or on sensitive terrain.

Alternative 1, as proposed in the environmental assessment, was not selected because it proposed harvest within a roadless area. Alternative 2 was not selected because it did not conform with Multiple-Use and Timber Management Plan direction and it did not harvest high silvicultural priority stands. Alternative 3 was not selected because it also proposed harvest in a roadless area and did not harvest as many high silvicultural priority stands.

I have determined through the environmental assessment that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination is based on the following factors:

[2]Decision and reason for the decision.

Exhibit 1--Continued

1. There are minimal irreversible resource commitments and irretrievable loss of timber production.

2. There are no significant cumulative effects.

3. The physical and biological effects are limited to the area of planned activity.

4. No known threatened or endangered wildlife are affected.

5. No activity is proposed within a roadless area.

6. This project is within the scope of the Environmental Statement for Forest Re-establishment on National Forests in California, USDA, 1974, and the Environmental Statement for the Klamath National Forest Timber Management Plan, USDA, 1974.[3]

Implementation of this decision may occur after the sale has been awarded to a successful bidder.

This decision is subject to appeal pursuant to 36 CFR 211.18.

THOMAS SMITH
Forest Supervisor

DATE

[3]List relevant factors that were considered in determining that an environmental impact statement (EIS) was not required (finding of no significant impact).

BILLING CODE 3410-11-C

33.2—Finding of No Significant Impact. (40 CFR 1508.13). A finding of no significant impact may be included as an integral part of the decision notice or prepared as a separate document.

33.3—Publication of Decision Documents on Actions of National Concern. If the responsible official determines that an environmental impact statement is not necessary, but that the effects of the action are of national concern, publish the decision notice and a finding of no significant impact in the **Federal Register.** Follow the **Federal Register** document requirements in section 67. In addition, to be in compliance with E.O. 12372 and the National Environmental Policy Act process, send copies to the State Single Points of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved (40 CFR 1506.6(b)(2)).

33.4—Distribution of Decision Documents. (40 CFR 1506.6(b)). In addition to the requirements of sections 33.3 and 51.21, distribute environmental assessments, decision notices, and findings of no significant impact in a manner designed to inform parties interested in or affected by the proposed action.

For an action similar to one that normally requires an evnironmental impact statement, for an action without precedent, or for an action involving floodplains or wetlands, make the decision notice and finding of no significant impact available for public review for 30 days before implementation. In addition, send copies to the State Single Points of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State Official(s) involved.

CHAPTER 40—ENVIRONMENTAL IMPACT STATEMENTS AND RELATED DOCUMENTS

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CHAPTER 40—ENVIRONMENTAL IMPACT STATEMENTS AND RELATED DOCUMENTS

40.4—Responsibility

1. When the Chief or the Secretary is the responsible official for an action requiring an environmental impact statement, the appropriate field unit prepares the necessary documents with assistance from the Washington Office Environmental Coordination Staff and other Washington Office staffs.

2. The Washington Office Environmental Coordination Staff coordinates, reviews, and processes documents for actions for which the Chief or the Secretary is the responsible official.

41—NOTICES OF INTENT

41.1—Preparation and Circulation of Notices of Intent. (40 CFR 1501.7 and 1508.22). Prepare and publish the notice of intent in the **Federal Register** as soon as practicable after determining that an environmental impact statement (EIS) is necessary, except in cases where a lengthy period of time may exist between the determination of need and the actual preparation of the EIS (40 CFR 1501.7 and 1507.3(e)). The notice of intent must meet the requirements of 40 CFR 1508.22 and must include the identity of the responsible official(s) and the estimated dates for filing the draft and final EIS. Follow the **Federal Register** document requirements in section 67.

In addition to sending notices of intent to the Office of the Federal Register, send one copy to the Washington Office (WO) Director of Environmental Coordination. The WO Staff uses notices of intent to prepare reports of EIS's under preparation.

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the notice of intent as soon as practicable after the decision to prepare an EIS (40 CFR 1507.3(e) and FSM 1953.1). Send the notice of intent to the WO Environmental Coordination Staff for review, processing, and submission to the Office of the **Federal Register.** Exhibit 1 illustrates a notice of intent.

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Exhibit 1—Sec. 41.1

Notice of Intent

[3410-11][1]

DEPARTMENT OF AGRICULTURE

Forest Service

CLOUD TOP MOUNTAIN ALPINE WINTER SPORTS SITE

Star Mountain National Forest

Summit County, Colorado

Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the development of Cloud Top Mountain Alpine Winter Sports Site on the Galaxy Ranger District.

[1]This Forest Service billing code is shown on all Federal Register documents.

Exhibit 1--Continued

The Star Mountain National Forest Land and Resource Management Plan has been prepared. One of the management decisions in the Plan was to study further the development of an Alpine Winter Sports Site on Cloud Top Mountain.

[2]A range of alternatives for this site will be considered. One of these will be nondevelopment of the site. Other alternatives will consider development designs with capacities ranging from 4,000 to 10,000 persons at one time. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State, and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

[2]Note that the document has only two lines between paragraphs, not three lines, and each paragraph is indented five spaces.

Exhibit 1--Continued

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential winter sports site.

The Forest Supervisor will hold public meetings in his office at the Star Mountain National Forest, Central, Colorado, at 1 p.m., Saturday, November 3, 1984.

William Watson, Regional Forester, Rocky Mountain Region, Denver, Colorado, is the responsible official.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by (month/year). The final environmental impact statement is scheduled to be completed by (month/year).

Written comments and suggestions concerning the analysis should be sent to William Hill, Forest Supervisor, Star Mountain National Forest, Central, Colorado 80000, by December 15, 1984.

Exhibit 1--Continued

Questions about the proposed action and environmental impact statement should be directed to Phil Graham, Recreation Staff Officer, Star Mountain National Forest, phone 303-234-3800.

WILLIAM WATSON — Date

Regional Forester

BILLING CODE 3410-11-C

41.2—Revision of Notices of Intent. The official responsible for preparation of an environmental impact statement (EIS) must notify the appropriate Regional, Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever information shown in the notice of intent changes. Significant changes may require publishing a revised notice of intent in the **Federal Register** (40 CFR 1501.7 and 1507.3(e)). A revised notice of intent shall reference any previously published document relevant to the action being proposed, including the filing of an EIS.

41.3—Cancellation Notice. Publish a cancellation notice (exhibit 1) in the **Federal Register** to terminate the process, if, after publication of a notice of intent or distribution of a draft EIS, the project application is withdrawn or, for some other reason, a decision is not longer necessary. A cancellation notice must refer to any previously published notice of intent or notice of availability of an EIS. Prepare and distribute a cancellation notice in the same manner as the notice of intent (sec. 41.1).

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the cancellation notice as soon as there is a decision to terminate the process and sends the notice to the Washington Office Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

Exhibit 1—Sec. 41.3

Cancellation Notice

[3410-11][1]

DEPARTMENT OF AGRICULTURE
Forest Service

LOMEX PROSPECTING

Los Padres National Forest
San Luis Obispo County, California

Environmental Impact Statement
Cancellation Notice

Lomex Corporation, now the Caithness Corporation of New York, has withdrawn its proposal for mineral exploration for uranium and other minerals in the Navajo area of San Luis Obispo County.

The Notice of Intent, published in the Federal Register of August 15, 1980, is hereby rescinded (45 FR 54386).

For further information contact: Christine A. Rose, Environmental Coordinator, Los Padres National Forest, 45 Aero Camino, Goleta, CA 93117; telephone 805-968-1578 or 8-960-7578.

JOE SMITH
Forest Supervisor

DATE

[1]This billing code must appear on all Forest Service Federal Register documents.

42—ENVIRONMENTAL IMPACT STATEMENTS

42.1—General Preparation Standards

42.11—Preparation. (FSM 1952.1).

42.12—Page Limits. (40 CFR 1502.7).

42.13—Writing. (40 CFR 1502.8).

42.14—Legislative Proposals. (40 CFR 1506.8 and FSM 1952.1).

41.2—Content Standards and Recommended Format. (40 CFR 1502.10). An environmental impact statement must contain the following:

1. *Cover Sheet.* (40 CFR 1502.11). In addition to the Council on Environmental Quality requirements, the cover sheet must include the name and title of the responsible official. The abstract of the statement should include the alternatives considered and identification of the preferred alternative. See exhibit 1 for a cover sheet.

2. *Summary.* (40 CFR 1502.12).

3. *Table of Contents*

4. *Statement of Purpose and Need.* (40 CFR 1502.13).

5. *Description and Comparison of Alternatives, Including the Proposed Action.* (40 CFR 1502.14).

6. *Description of the Affected Environment.* (40 CFR 1502.15).

7. *Statement of the Environmental Consequences of the Actions.* (40 CFR 1502.16 and 1502.22). The environmental impact statement discusses physical, biological, economic, and social consequences of a proposed action and its alternatives. Effects are expressed as quantified or relative changes in components of the affected environment. In addition, it is appropriate to discuss the expected outputs—in terms of goods, services, and uses—that will result from implementing each alternative. In presenting outputs, use the standard Service-wide terminology set forth in FSH 1309.11, Management Information Handbook, and in FSM 1905. Use the Resource Planning Act program planning time periods where appropriate.

8. *List of Preparers.* (40 CFR 1502.17).

9. *List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent*

10. *Index.* (40 CFR 1502.10(j)). All environmental impact statements (EIS's) must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See section 62 for preparation of indexes.

11. *Appendix.* (Sec. 42.51b and 40 CFR 1502.18 and 1503.4).

Exhibit 1—Sec. 42.2

Cover Sheet

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Star Mountain National Forest Land and Resource Management Plan

Summit, Comet, and Garfield Counties, Colorado

Lead Agency:	USDA - Forest Service
Cooperating Agencies:	USDI - Bureau of Land Management 321 No. Fern Street Central, Colorado 80000
	Colorado Fish and Game Department 1700 Alder Street Garfield, Colorado 80017
Responsible Officia :	William Watson, Regional Forester Rocky Mountain Region (for NFS lands)
For Further Information Contact:	Ms. Ruth Gibson Forest Planner Star Mountain National Forest 123 So. Fern Street Central, Colorado 80000 (303-555-1515)

Abstract: The draft environmental impact statement documents the analysis of five alternatives which were developed for possible management of the 2,500,000-acre Star Mountain National Forest. The alternatives are: (A) moderate increase in commodity production; (B) a continuation of present management direction with no change in the level of outputs or activities; (C) dispersed recreation emphasis; (D) commodity emphasis; and (E) amenity emphasis. Alternative A is the Forest Service preferred alternative. The selected alternative will become the forest plan and will guide management of the Forest for the decade 1985-1994.

Comments must be received by September 15, 1985.

42.21—*Incorporation by Reference.* (40 CFR 1502.21).

42.22—*Incomplete or Unavailable Information.* (40 CFR 1502.22). When estimating "overall costs," consider total program costs, including the cost of delaying the proposed action, as well as the costs of research or other activities required to obtain the essential information.

42.23—*Documentation of Cost-Benefit Analysis.* (40 CFR 1502.23).

42.24—*Identification of Methodology and Scientific Accuracy.* (40 CFR 1502.24).

42.25—*Identification in Draft Environmental Impact Statements of Permits Necessary to Implement Proposal.* (40 CFR 1502.25).

42.3—*Filing, Circulation, and Availability of Environmental Impact Statements*

42.31—*Draft Environmental Impact Statements*

1. File a draft environmental impact statement (EIS) with the Environmental Protection Agency (40 CFR 1506.9). The official filing date is the date that the Environmental Protection Agency receives the EIS, not the date that the notice of availability appears in the **Federal Register.**

2. Circulate a draft EIS to agencies and to the public prior to or at the same time it is transmitted to the Environmental Protection Agency (EPA) in Washington, D.C. (40 CFR 1502.19). (See mailing address at 42.34(b).)

3. Conduct public participation sessions, if appropriate.

4. Review, analyze, evaluate, and respond to substantive comments on the draft EIS. Make copies of all comments available for public and in-service review in the office of the responsible official and administrative unit affected by the policy, plan, program, or project (40 CFR 1503.4).

42.32—Final Environmental Impact Statements

1. File a final environmental impact statement (EIS) with the Environmental Protection Agency (EPA), along with all substantive comments or summaries (40 CFR 1503.4(b)) on the draft EIS. The official filing date is the date that the EPA receives the EIS, not the date that the notice of availability appears in the **Federal Register.** The Washington Office files with EPA the statements for which the Chief or the Secretary is the responsible official. Other levels of the Forest Service may assist with the preparation of these documents.

2. Circulate a final EIS to other agencies and to the public prior to or at the same time it is transmitted to EPA (40 CFR 1506.10). If the statement is unusually long, a summary may be circulated instead (40 CFR 1500.4(h)). However, the responsible unit must file the entire document with EPA and furnish it to other persons specified by (40 CFR 1502.19).

A summary distributed as a separate document must:

a. State how other agencies and the public can obtain or review the complete EIS.

b. Have a cover sheet attached.

If changes resulting from comments to a draft EIS are minor, they may be written on an errata sheet and attached to the draft EIS. In this case only the comments, the responses, and the changes need to be circulated. File the entire document with a new cover sheet as the final statement (40 CFR 1503.4(c)).

3. After filing the EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge (40 CFR 1506.6(f) and FSM 1950.3(4)).

42.33—Environmental Impact Statements on RARE II "'Further Planning" Areas. If an environmental impact statement (EIS) deals with plans or projects that allocate RARE II "further planning" roadless areas to nonwilderness uses, the responsible official may make public distribution of the final EIS and may file the final EIS with EPA in the same manner as other EIS's. The responsible official should then send five additional copies of the final EIS to the Washington Office Director of Environmental Coordination for transmittal to congressional committees (sec. 42.34).

42.34—Distribution of Environmental Impact Statements

42.34a—Draft and Final Environmental Impact Statements

1. *When the Responsible Official Is a Field Officer.* When the responsible official is the Regional Forester, Station Director, Area Director, or other field officer having the delegated authority to file EIS's, send:

a. Five copies to the Environmental Protection Agency (EPA) in Washington, D.C., for filing purposes. Include a transmittal letter. See exhibit 1 for a sample transmittal letter.

b. Five copies to the Washington Office, Director of Environmental Coordination.

c. Two copies of the letter transmitting the EIS to EPA to the Washington Office, Director of Environmental Coordination.

2. *When the Chief is the Responsible Official.* When the responsible official is the Chief, send:

a. Ten copies to the Washington Office. (The Washington Office files five copies with EPA). (Thirty-five copies of a draft EIS and twenty-five copies of a final EIS are needed by WO-Land Management Planning for wild and scenic river studies.)

b. One original and two copies of the transmittal letter for transmittal to EPA to the Washington Office for signature.

Exhibit 1—Sec. 42.34a

Transmittal Letter to EPA

Return Address[1]

1950[2]
August 4, 1984

Management Information Unit
Office of Federal Activities (A-104)
Environmental Protection Agency
Room 2119 Mall
401 M Street, SW
Washington, DC 20460

Dear Sir:

Five copies of the Draft Environmental Impact Statement for the proposal to permit Snow Top Mountain Ski Area development, Star Mountain National Forest, Summit, Comet, and Garfield Counties, Colorado, are enclosed.

The responsible official is Regional Forester William Watson, Rocky Mountain Region, Denver, Colorado.

Sincerely,

/s/ William Watson
WILLIAM WATSON
Regional Forester

Enclosures

[1]When the Chief is the responsible official, use WO return address: P.O. Box 2417, Washington, DC 20013.

[2]Use 1950 file designation to ensure proper distribution of EIS's in the Forest Service.

42.34b—*Lists.* Responsible officials shall maintain lists of individuals, groups, organizations, and government agencies interested in reviewing Forest Service environmental impact statements (EIS's). Regions shall develop specific distribution lists. Include on the distribution list the State Single Points of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

1. *State and Local Agencies.* Regions, Stations, and the Area Office shall develop and maintain lists of State and local agencies as supplements to this section.

2. *Organizations.* Regions, Stations, and the Area Office shall develop and maintain lists of organizations as supplements to this section.

3. *Individuals.* Regions, Stations, and the Area Office shall develop and maintain, as supplements to this section, lists of individuals who have expressed an interest in receiving Forest Service EIS's.

4. *Federal Agencies.* Following is the mandatory distribution list for all EIS's prepared by the Forest Service:

a. Management Information Unit, Office of Federal Activities (A-104), Environmental Protection Agency, Room 2119 Mall, 401 M Street, SW., Washington, DC 20460
b. Environmental Protection Agency, Appropriate Regional Offices.
c. Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Room 4256, Washington, DC 20240

Always send copies of EIS's to these Agencies by methods of delivery that require verified receipts. These methods also may be desirable for tother key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction. When the Forest Service requests review and comments from any of the above agencies, the addresses, phone numbers, and recommeded number of copies to be sent are shown in section 63.1.

42.4—Corrections, Revisions, or Supplements. The standards at 40 CFR 1502.9 govern revision of draft environmental impact statements (EIS's) or supplementation of drafts and finals. Use errata sheets to make any necessary corrections to EIS's. Draft EIS's may be revised. Use supplements to modify EIS's, if necessary. Prepare, circulate, and file supplements and revisions in the same manner as the document being modified.

42.5—Environmental Impact Statement Review and Comment Procedures

42.51—Comments on Forest Service Environmental Impact Statements

42.51a—Draft Environmental Impact Statement. (40 CFR 1503.1(a)). The responsible officer may receive comments on a draft environmental impact statement (EIS) after the end of the review period and before filing the final EIS. If it is too late to incorporate the comments in the final EIS, the responsible official may respond to them on an individual basis.

42.51b—Final Environmental Impact Statement. (40 CFR 1502.9(b) and 1503.4). When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories, but the summary must identify the comment specifically. Avoid a general summary.

As a minimum, include in the appendix of a final EIS copies of all comments received on the draft ESI from Federal, State, and local agencies and elected officials. See exhibit 1 for one example of a summary of substantive comments.

BILLING CODE 3410-11-M

Exhibit 1—Sec. 42.51b

Summary of Substantive Comments

PUBLIC COMMENTS AND RESPONSES ON DEIS

Public comments received by the U.S. Forest Service on the Draft Environmental Impact Statement (DEIS) totaled 1,125 letters by the January 29, 1985, deadline. All were considered during preparation of this Final Environmental Impact Statement (FEIS).

Due to the large volume of comments received, only those from government agencies and other public officials are reproduced at the end of this chapter. Other substantive comments have been excerpted from letters to represent a composite of comments on a particular subject. Responses to these comments are either to rewrite the text or to offer a brief explanation. Many comments noted typographic, computational, grammatical, or minor technical errors. These have been corrected in the FEIS without specific identification in this chapter.

1. Impacts of diverting the river, as suggested in Section 4.2.1.3, have not been analyzed.

   Response
   Diversion or mechanical adjustment of the Keta River from the existing channel was suggested as a possible mitigating measure. However, due to the narrow dimension of the bulk sample/access road, it will not encroach upon the main river channel. Therefore, this type of mitigating action is not required. See Encroachment Analysis and floodplain, Section 4.3.1.3.

2. The DEIS, Section 3.4.2, infers that heavy metal concentrations will result in detrimental effects. Is this a valid concern?

   Response
   As demonstrated in the table in Section 4.2.1.4, Water Quality, significant changes in water quality are not anticipated. After mixing and diluting with surface waters, concentrations of copper, lead, and zinc are about 1/10th of the EPA recommended upper limit for toxicity. The diluted concentration for arsenic is about 1/2 the recommended upper limit. Thus, heavy metal concentrations are not a concern at this time.

BILLING CODE 3410-11-C

Exhibit 1--Continued

3. Are the flow discharges of the Wilson/Blossom Rivers and the Keta River large enough to clean themselves of the construction-induced sediments identified in the DEIS?

   Response
   As stated in the concluding paragraph of Appendix H, the Keta River, with its steep channel gradient, should flush the construction-induced sediments through its system and into the delta area of the fjord within 12 months. The Blossom/Wilson Rivers have flatter gradients and the Blossom has numerous deep pools. It could take as long as 24 months to move this sediment load through the system. Also see Appendix I.

4. Many comments expressed concern about the change in designation of the responsible official for this environmental statement.

   Response
   The reason for the change in responsible offical from Forest Supervisor to Chief of the Forest Service has to do with a conflict between provisions of ANILCA and the regulations governing appeals of Forest Service decisions.

5. A number of comments received were critical of the lack of discussion of the Interdisciplinary Team's (IDT) role in the preparation of the DEIS. They were especially concerned that the IDT recommendation was not followed.

   Response
   The IDT's role is to disclose the environmental effects of various alternative actions to the public and the responsible official. It is not a decision-making body nor is it required to recommend a preferred alternative. This IDT made a recommendation (Appendix F) to the Forest Supervisor. Eleven team members preferred the Keta alternative, five team members preferred the Blossom alternative, and three members expressed no preference.

42.52—Review of Other Agency Environmental Impact Statements. (40 CFR 1503.2 and 1503.3). Because of special agency expertise or jurisdiction by law, the Forest Service may be asked to review and comment on environmental impact statements (EIS's) prepared by other agencies. Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EIS's prepared on legislative proposals, Service-wide policies, regulations, or national program proposals. The Regional Forester or Area Director in whose Region or Area a proposal is located shall review all other draft and final EIS's prepared by other agencies. When an EIS affects both Regional and Area program responsibilities, the Regional Forester and the Area Director shall determine who assumes the lead for responding.

The responsible field unit shall submit comments on other agency EIS's directly to the appropriate agency. Send one copy of the comments to the Washington Office Director of Environmental Coordination. When another agency's EIS involves more than one Region, the Washington Office Director of Environmental Coordination coordinates the responses.

42.52a—Referrals to Council on Environmental Quality. (40 CFR 1504). When Forest Service review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, follow the procedures set forth in 40 CFR 1504.3(a).

If after receipt of the final EIS, the other agency has not remedied the situation or reached an agreement with the Forest Service, follow the procedures set forth in 40 CFR 1504.3(b). Send the referral to the Washington Office Director of Environmental Coordination for processing. The Director submits the referral to the Council on Environmental Quality.

The 25-day time period is extremely short; therefore, begin referral documentation immediately after determination that the proposal is environmentally unacceptable.

In addition to the requirements of 40 CFR 1504.3(c), the responsible official shall include a letter to the Council on Environmental Quality requesting the referral for signature by the Chief.

43—OTHER PLANNING AND PREPARATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENTS

43.1—Interdisciplinary Approach. See section 102(2)(A) of the National Environmental Policy Act, as amended; 40 CFR 1502.6; and section 11.7 of this Handbook.

43.2—Public Involvement. (40 CFR 1501.7, and 1506.6).

43.3—Consultation Requirements. (40 CFR 1502.25).

T343.4—Elimination of Duplication With State and Local Procedures. (40 CFR 1506.2).

T343.5—Federal and Federal-State Agencies With Legal Jurisdiction or Special Expertise. (40 CFR 1503.1). See section 63 for the Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See section 63.1 for addresses and recommended document distribution.

43.6—Limitations on Actions During the Environmental Analysis and Documentation Process. (40 CFR 1506.1).

44—RESPONSIBILITIES WHEN APPLICANTS AND CONTRACTORS ARE INVOLVED. (40 CFR 1506.5). The responsible official may require project proponents to provide data and documentation for consideration and use in preparing an environmental impact statement (EIS). When a contractor is to prepare an EIS, limit the contractor's activities to those of the interdisciplinary team (sec. 06, ex. 3) participating in the National Environmental Policy Act process. Applicants or contractors may be required to conduct studies to determine the impact of the proposed action on the human environment. (Sec. 65.14).

45—TIERING AND ADOPTING OTHER ENVIRONMENTAL IMPACT STATEMENTS

45.1—Tiering. (40 CFR 1502.20). Tiered documents may refer to the evaluation of the no action alternative in a broad program document. However, a decision on site-specific actions must consider the no action alternative appropriate to that decision.

45.2—Adoption. Use adoption procedures, when applicable, to avoid duplication of effort (40 CFR 1506.3).

46—DETERMINING LEAD AND COOPERATING AGENCIES

46.1—Lead Agency. (40 CFR 1501.5, 1501.6, 1501.7, 1503.1, and 1508.16). If the Forest Service requests the Council on Environmental Quality to determine which Federal agency shall be the lead agency, send this request to the Director of Environmental Coordination in Washington, D.C., for processing. Where National Forest System lands are involved, the Forest Service shall exert a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, promptly request, in writing, that all other Federal agencies with jurisdiction by law or special expertise become cooperating agencies.

46.2—Cooperating With Other Agencies. (40 CFR 1501.6, 1503.2, 1503.3, and 1508.5). When National Forest System lands are involved and the Forest Service is not the lead agency, the responsible official shall request that the Forest Service be a cooperating agency in scoping, environmental analysis, and documentation. The Forest Service may also be a cooperating or lead agency when State and private forest lands are involved.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsible official shall prepare a reply to this effect. Send two copies of this reply to the Director of Environmental Coordination in Washington, D.C., for transmittal to the Council on Environmental Quality.

47—DOCUMENTATION OF DECISIONS

47.1—Decision. Follow the instructions in exhibit 1 on timing of a decision with other conditions that must be met for environmental impact statements.

EXHIBIT 1—SEC. 47.1

[Conditions for Decision [1]]

If an EIS is required for:	These conditions must be met prior to a decision:
I. Land and Resource Management Plans for units of the National Forest System (36 CFR 219).	
A. That *do not* involve RARE II *Further Planning* areas	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
B. That *do* involve RARE II *Further Planning* areas	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
II. Plans (other than land management plans), adversely affecting the existing wilderness character of RARE II *Further Planning* areas	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
III. Land management or other plans, programs, or projects affecting areas involved in pending legislation for wilderness designation in which either the House or Senate has passed a bill to designate all or any portion of an inventoried roadless area for wilderness or for wilderness study	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.

EXHIBIT 1—SEC. 47.1—Continued

[Conditions for Decision [1]]

If an EIS is required for:	These conditions must be met prior to a decision:
IV. Other plans, programs or projects subject to appeal (for example, 36 CFR 211.18)	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
V. Actions not subject to appeal, for example, State and Private Forestry and Research programs, etc	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA.[3] 2. A final EIS that responds to comments on the draft EIS has been prepared. 3. 30 days have elapsed since the notice of availability of the final EIS was published in the FEDERAL REGISTER by EPA.[2]

[1] For conditions that must be met prior to implementation of a decision, see exhibit 1, section 52.
[2] The 90-day period and the 30-day period may run concurrently.

47.11—Record of Decision. A record of decision is a separate, concise document stating the decision of the responsible official. It must include the official's name, location, administrative unit, and a statement indicating whether or not the decision is subject to appeal. It must also meet the requirements of the Council on Environmental Quality regulations at 40 CFR 1502.2.

The responsible official signs and dates the record of decision. For decisions subject to appeal, the date of decision is usually the date that the official transmits the record of decision and the final environmental impact statement (EIS) to the Environmental Protection Agency and makes it available to the public.

For decisions not subject to appeal, the responsible official must sign, date, and distribute the record of decision no sooner than 30 days after the notice of availability of the final EIS is published in the **Federal Register.** Follow the **Federal Register** requirements in section 67. Distribute the record of decision in the same manner as the final EIS.

When an EIS identifies joint lead agencies, the responsible official from each agency shall sign and date the record of decision for those actions within the authority of each. Each responsible official may prepare separate records of decision. See exhibit 1 for a record of decision.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the record of decision with assistance from the Washington Office Environmental Coordination Staff. The Washington Office Environmental Coordination staff coordinates the review and signing of the record of decision, involving the appropriate Washington Office staff unit(s), Deputy Chief, Chief, or Secretary, as necessary.

Exhibit 1—Sec. 47.11

Record of Decision

RECORD OF DECISION

USDA Forest Service

Road Access and Bulk Sampling at the U.S. Borax Quartz Hill Molybdenum Claims

Tongass National Forest, Alaska

Final Environmental Impact Statement

Based on the analysis in the Final Environmental Impact Statement for road access and bulk sampling at the U.S. Borax Quartz Hill molybdenum claims, it is my decision to adopt an alternative which is a modification of several alternatives under consideration. The selected alternative will allow bulk sampling and surface access via the Blossom River Route with the following stipulations: (1) Trailings disposal will not be authorized in Wilson Arm/Smeaton Bay. (2) A continuous surface access road from the mine to Boca de Quadra will not be permitted. However, a combination tunnel-pipeline may be permitted for tailings disposal purposes. A detailed discussion on tailings disposal and associated impacts will be included in the mine development EIS. (3) The bulk sample access road must be constructed substantially within the design prism for the future mine development road to reduce overall impacts of a bulk sampling access road and a potential mine development road. Minor deviations may be permitted by the Forest Supervisor. Drainage or other structures, except temporary bridges, shall be designed and constructed in a way to permit their incorporation in a mine development road. The Forest Supervisor may require that sections of the bulk sampling road be constructed initially to design specifications suitable for a mine development road. Appropriate means will be taken to avoid or minimize environmental harm and to assure, to the maximum extent feasible, compatibility with the Misty Fjords National Monument.

This alternative envisions the removal of approximately 1,000 tons of material by helicopter for further tests, such as grindability. Approximately 5,000 tons of bulk sample will be mined and removed.

The alternatives considered included: (1) no action, (2) bulk sampling with surface access via the proposed Blossom River routes, (3) bulk sampling with surface access via the alternative Keta River route, (4) bulk sampling and surface access via the Blossom River route with a stipulation that tailings will not be authorized in Wilson Arm/Smeaton Bay, (5) bulk sampling with surface access via the Blossom River route with removal of some or all of the bulk sample by helicopter if the Company desires, (6) bulk sampling with surface access via the Keta River route with removal of some or all of the bulk sample by helicopter if the Company desires, and (7) removal of the bulk sample by helicopter with no surface access road permitted.

Section 503 of the Alaskan National Interest Lands Conservation Act requires an evaluation of the likelihood of each alternative being used as a mine development road. Construction of an access road for bulk sampling along the Keta alignment would less likely be used for mine development. It is a prime concern expressed in the legislation that the bulk sample access road be one that can be utilized in the eventual mine development phase. Therefore, it is my desire to select a single surface access route which is most likely to be suitable for both bulk sampling and potential long-term mine development. A single surface access road will significantly reduce overall, long-term impact. Based on the Mining Development Concepts Analysis Document and the analysis in the EIS, the selected alternative is considered more suitable for use as a mine development access route primarily because of (1) more favorable safety factors (snow avalanches and air and water transportation); (2) more options for town sites, which is an important factor for employees and family morale; (3) a shorter and more protected marine transportation to both Ketchikan and points south; (4) more efficient arrangement of mine site facilities including mill site and material handling; (5) long-term economic advantages from mine development with a roadway in Blossom River drainage as compared to Keta River roadway.

Furthermore, I have determined that implementation of the selected alternative will not cause an unreasonable risk of significant irreparable damage to the habitats of the viable populations of fish management indicator species and the continued productivity of such habitats. The alternative selected provides adequate mitigation to avoid environmental harm. A monitoring program is described in the Final Environmental Impact Statement.

The Final Environmental Impact Statement also incorporates by references and discussion the environmental assessment approved by

the Forest Supervisor on April 17, 1981, for 1980–83 operating plan amendments.

Alternatives 1 and 7 are environmentally preferable.

The decision will be implemented no sooner than August 23, 1985.

This decision is subject to appeal in accordance with the provisions of 36 CFR 211.18.

Date

R. Max Peterson,

Chief.

47.12—Distribution of Records of Decision. Distribute the record of decision to those who have asked for it and to those who are sent a final environmental impact statement (EIS). In addition, the public may be notified as indicated in 40 CFR 1506.6.

CHAPTER 50—IMPLEMENTATION AND MONITORING

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CHAPTER 50—IMPLEMENTATION AND MONITORING

51—IMPLEMENTING DECISIONS BASED ON ENVIRONMENTAL ASSESSMENTS

51.1—Implementation. Implementation of decisions that do not have effects of national concern (sec. 33.3) or involve floodplains and wetlands (sec. 51.22) may take place immediately after signing and dating of the decision notice. Implementation includes responding to requirements for mitigation or monitoring in the environmental assessment or decision notice.

51.2—Limitations on Implementation

51.21—Unprecedented Actions or Actions Similar to Those That Normally Require an Environmental Impact Statement (40 CFR 1501.4(e)(2)). When a proposed action is similar to one that normally requires an environmental impact statement (EIS) or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and a finding of no significant impact have been available for public review for 30 days.

In addition, to be in compliance with E.O. 12372 and the NEPA process, send copies to the State Single Points of Contact or, in cases where a State has elected not to establish a Single Point of Contact, to the State official(s) involved.

At the end of the 30-day period, consider public comment and implement the decision, or publish a notice of intent to prepare an EIS.

51.22—Actions Involving Floodplains and Wetlands. For actions involving floodplains and wetlands, do not implement decisions until 30 days after the decision notice has been signed and dated. This delay allows a reasonable period of public review as required by Executive Order 11988 and Executive Order 11990.

52—IMPLEMENTING DECISIONS BASED ON ENVIRONMENTAL IMPACT STATEMENTS. Be sure that the conditions listed in exhibit 1 are met before implementation of the decision if an environmental impact statement (EIS) is prepared. Commitments for mitigation efforts or monitoring activities included in the final EIS and record of decision also must be met.

EXHIBIT 1—SEC. 52

[Conditions for Decision and Implementation [1]]

If an EIS is required for:	These conditions must be met prior to implementation:
I. Land and Resource Management Plans for units of the National Forest System (36 CFR 219).	
A. That *do not* involve RARE II *Further Planning* areas.	1. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA. (The record of decision normally accompanies the final EIS.)
B. That *do* involve RARE II *Further Planning* areas.	1. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA. 2. 90 days while Congress is in session have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER. 3. An extension of time has not been requested by the appropriate congressional committee chairman. 4. The WO has notified the responsible official that condition 3 above has been met.

EXHIBIT 1—SEC. 52—Continued

[Conditions for Decision and Implementation [1]]

If an EIS is required for:	These conditions must be met prior to implementation:
II. Plans (other than land management plans), adversely affecting the existing wilderness character of RARE II *Further Planning* areas.	1. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA. 2. 90 days while Congress is in session have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER. 3. An extension of time has not been requested by the appropriate congressional committee chairman. 4. The WO has notified the responsible official that condition 3 above has been met.
III. Land management or other plans, programs, or projects affecting areas involved in pending legislation for wilderness designation in which either the House or Senate has passed a bill to designate all or any portion of an inventoried roadless area for wilderness or for wilderness study.	1. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA.
IV. Other plans, programs or projects subject to appeal (for example, 36 CFR 211.18).	1. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA.
V. Actions not subject to appeal, for example, State and Private Forestry and Research programs, etc.	

[1] For conditions that must be met prior to making a decision, see exhibit 1, section 47.1.

53—MONITORING. (40 CFR 1505.3). Monitor actions to ensure that:

1. Environmental safeguards are executed according to plan.

2. Necessary adjustments are made to achieve desired results.

3. Anticipated results are achieved.

CHAPTER 60—REFERENCES

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Monday
June 24, 1985

Part III

Department of Transportation

Coast Guard

46 CFR Parts 10 and 157

Licensing of Pilots; Manning of Vessels—Pilots; Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 157

[CGD 77-084]

Licensing of Pilots; Manning of Vessels—Pilots

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of pilots and the manning of vessels—pilots. This rule: (1) Establishes the minimum age requirement at 21 years, (2) requires pilots to have an annual physical examination, (3) changes the experience requirement for a tonnage endorsement of "any gross tons", (4) requires pilots to maintain knowledge of the routes on their license, and (5) maintains the authority of the Coast Guard to establish limitations on licenses. This action implements the Port and Tanker Safety Act's amendment to the statute authorizing the Coast Guard to license pilots and conforms the pilot licensing regulations with the statute. This rule also amends the regulations by authorizing masters, mates, or operators to serve as pilots on those non-self-propelled vessels of not more than 10,000 gross tons (not 20,000 gross tons as proposed) carrying cargoes subject to the provisions of 46 U.S.C. 3702 (tank barges). In a separate action, the Coast Guard is proposing several other amendments to the regulations dealing with the licensing of pilots and the manning of vessels (CGD 84-060). They are closely related to matters contained in this rule; however, they are not within the scope of this rule and therefore they require a separate notice of proposed rulemaking. Those proposed amendments concern: (1) The piloting of vessels of more than 50,000 gross tons, (2) the authorization of licensed individuals to serve as pilot on self-propelled vessels up to 1,600 gross tons, (3) a definition of "coastwise seagoing vessel" for pilotage purposes, (4) a definition of "pilotage waters," (5) the requirement for pilots on Great Lakes vessels, and (6) allowing a written test alternative to the chart sketch for a first class pilot's license restricted to tug and barge only.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426-2985.

SUPPLEMENTARY INFORMATION: On November 28, 1980 the Coast Guard published a Notice of Proposed Rulemaking (45 FR 79258). The comment period ended February 26, 1981. Two hundred and eleven written comments were received, and public hearings were held at the following locations: Cleveland, Ohio on 1-14-81; Washington, D.C. on 1-27-81; New Orleans, Louisiana on 2-3-81; and in San Francisco, California on 2-10-81. Based on the written and oral comments received, the proposal regarding the licensing of pilots was modified and was republished as a Supplemental Notice of Proposed Rulemaking (48 FR 3912) on January 27, 1983, which included significant changes to the original notice and also incorporated proposals regarding the Manning of Vessels—Pilots. The comment period ended April 27, 1983; however, on May 9, 1983, a Notice of Public Hearings; Reopening and Extension of Comment Period was published in the **Federal Register** (48 FR 20770) extending the comment to July 15, 1983, and identifying the dates and locations of three public hearings. On June 30, 1983, a Supplemental Notice of Additional Public Hearing and Extension of Comment Period was published in the **Federal Register** (48 FR 30152) extending the comment period to July 20, 1983 and identifying the date and location of a fourth public hearing. On October 13, 1983, a Notice of Reopening and Extension of Comment Period was published in the **Federal Register** (48 FR 46556) reopening and extending the comment period to November 28, 1983. The purpose of this last reopening and extension of the comment period was to give notice and an opportunity to comment to interested persons regarding summary barge movement and pilotage cost data which the Coast Guard requested The American Waterways Operators, Inc. to provide, but which was received by the Coast Guard after the close of the comment period. A total of five hundred and thirty one written comments were received, and public hearings were held at the following locations: Belle Chase, Louisiana on 6-8-83; New York, New York on 6-14-83; St. Louis, Missouri on 6-29-83; and Savannah, Georgia on 7-6-83. Comments were directed to the following issues: (1) The annual physical examination requirements, (2) the experience requirement for a tonnage endorsement of any gross tons, (3) the requirement for recency of service over the routes, (4) the requirement for chart sketches of only a portion or portions of an applicant's route, (5) the elimination of the prefix words "first class" in the name first class pilot, (6) the concept of ship's officers serving as pilot on those non-self-propelled vessels carrying cargoes subject to the provisions of 46 U.S.C. 3702 (tank barges), and (7) how large a vessel a ship's officer should be allowed to pilot without meeting all the requirements for a first class pilot license endorsement.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Merchant Marine Safety, and Lieutenant Commanders William B. Short and Ronald C. Zabel, Project Attorneys, Office of the Chief Counsel.

Discussion of Comments

1. Licensing of Pilots

It is a statutory requirement that a pilot must have an annual physical examination. The supplemental notice proposed that the document indicating successful completion of the physical be filed with the Officer in Charge, Marine Inspection (OCMI), but waived this requirement for those pilots who are required by their pilot association or employer to take an annual physical exam and are required to report the results of that annual physical to their pilot association or employer.

Several commenters stated that an annual physical examination was not necessary and that a physical exam every five years was adequate and less costly. As the annual physical examination is a statutory requirement, the Coast Guard has no authority to change the requirement to every five years.

Some commenters stated that the physical examination reporting requirements contained in the proposal placed a burden and responsibility on the employer rather than the individual where it belongs. The Coast Guard has reviewed the proposed physical exam reporting requirements and has decided to eliminate the reporting requirements. Public Law 98-557 amended 46 U.S.C. 7101(e)(3) by requiring that an individual may be issued a pilot's license only if the applicant has a thorough physical examination each year while holding the license, except that this requirement does not apply to an individual who will serve as a pilot only on a vessel of less than 1,600 gross tons. This exception to the annual physical exam requirement applies to individuals holding a pilot's license as well as to individuals who serve as pilots under § 157.20-40. The proposed physical examination requirements other than the reporting requirements remain unchanged. If a

pilot has not had an annual physical examination within 90 days prior to the anniversary of the issuance of the license, the pilot license or endorsement held is invalid as of the anniversary date and the pilot may not operate under the authority of that license or endorsement until a current physical examination has been completed. These same provisions likewise apply to individuals who wish to serve as a pilot under § 157.20–40. The Coast Guard believes that, due to the consequences of acting as a pilot on an invalid license, few individuals will fail to complete the required physical examination. If the Coast Guard had reason to question the physical condition of an individual, proof of the annual physical would be required.

Our initial proposal regarding the round trip requirement to obtain a pilot's license or endorsement was severely criticized. We agreed with those comments and revised the requirements in the Supplemental Notice of Proposed Rulemaking to a range of 12 to 20 round trips for an original pilot's license and 8 to 15 for an endorsement. This latter proposal was widely accepted; however, several commenters suggested a requirement for night trips as a part of the round trip requirement. The Coast Guard agrees with the comments that traversing a route at night provides a different perspective and is an important consideration in becoming familiar with a particular route. Additionally, most OCMI's are presently requiring night trips as part of the round trip requirement. The Coast Guard is therefore including a requirement for round trips made during the hours of darkness as part of the round trip requirement. There may be isolated instances where the night trip requirement cannot be completed during the hours of darkness because of the preponderance of daylight hours. The OCMI will take this type of situation into account and may modify the night trip part of the round trip requirements in these limited circumstances. These instances are not expected to occur very frequently.

Under present practice the OCMI sets tonnage limitations only on licenses under 1,000 gross tons. Persons with sufficient experience with vessels over 1,000 gross tons are issued licenses for "any gross tons." In the supplemental notice the Coast Guard proposed to establish the experience requirement for an "any gross tons" endorsement at 4,000 gross tons. A number of commenters pointed out that in at least one geographic area, there is not a sufficient number of transits by vessels of over 4,000 gross tons for new pilots to obtain the required number of round trips to qualify for the "any gross tons" endorsement. This could eventually result in having no pilots available to pilot vessels of over 4,000 gross tons in that area. Other commenters stated that the figure should remain at 1,000 gross tons because raising it to 4,000 gross tons does not really address the matter of the larger vessel. Upon reexamination, the Coast Guard agrees with these comments, and the experience requirement for an "any gross tons" endorsement is set at 1,600 gross tons to conform to the internationally accepted standard of what size vessels are to be considered unlimited tonnage. In concert with establishing the requirement for an "any gross tons" endorsement at 1,600 gross tons, the Coast Guard is proposing, in a separate action, to require special experience to pilot vessels over 50,000 gross tons.

The Coast Guard further believes that the concern of Congress, as to the type and size of vessels, can be met by the authority of the Coast Guard to place limitations on the licenses it issues. Under current regulations (46 CFR 10.05–39(c)) the Officer in Charge, Marine Inspection, may place limitations on a license based on the experience of an applicant. The procedures for having limitations changed are located at 46 CFR 10.02–15. The Coast Guard is leaving this authority essentially unchanged. It will now be located at 46 CFR 10.07–11.

In order to obtain a tonnage endorsement of "any gross tons" on an original license or endorsement as pilot, the applicant must have experience on vessels of 1,600 gross tons or over for the route authorized. An applicant is considered to have sufficient experience if the applicant has 18 months experience as master, mate, quartermaster, wheelsman, able seaman, apprentice pilot, or equivalent on vessels of 1,600 gross tons or over. In addition, two thirds of the minimum number of round trips required for a particular route must be on vessels of 1,600 gross tons or over. If an applicant for an original license or endorsement as pilot does not meet those requirements the license or endorsement will be for a limited tonnage until the applicant completes a number of additional round trips, as determined by the OCMI, on vessels of 1,600 gross tons or over. Likewise, unless an applicant for additional routes has sufficient documented service on vessels of over 1,600 gross tons the OCMI establishes a tonnage limitation on the license or endorsement commensurate with the applicant's experience until the applicant has sufficient round trips to indicate his ability to pilot deeper draft vessels on the added route(s).

Because many applicants for pilot licenses have gained their experience on relatively small vessels, such as tugs, the Coast Guard believes that an applicant should have some experience on larger vessels before he or she receives an "any gross tons" endorsement. This experience would be gained by additional round trips on larger vessels, and the number of round trips would depend on the experience of the applicant. Such an applicant would keep a restriction on his license until he or she gains sufficient experience on larger vessels.

For example, if an applicant has fewer than 18 months experience as master, mate, quartermaster, wheelsman, able seaman, or apprentice pilot, or equivalent, and/or less than two thirds of the required round trips on vessels of 1,600 gross tons or over, but does have some experience on vessels up to 10,000 gross tons, the OCMI may issue a limitation of up to 10,000 gross tons on the license. As the applicant gains more experience in handling larger vessels, the OCMI may raise the tonnage endorsement commensurate with the applicant's experience. When the applicant has acquired sufficient experience, as determined by the OCMI, the "any gross tons" endorsement will be issued.

Current familiarity with a route is a key factor in pilotage, and the Coast Guard believes that there should be a requirement to maintain experience. The statute also mandates the Coast Guard to require maintenance of knowledge.

Many pilot associations require their members to take refamiliarization trips if they have been away from a particular route for a period of time. The Coast Guard believes that such a refamiliarization scheme is an appropriate and cost effective means of maintaining local knowledge. However, a number of commenters expressed the view that on long or extended routes, such as the Great Lakes and some river systems, it could be impossible in certain circumstances to make a round trip over every segment of the entire route within every three year period. The Coast Guard agrees with those comments and believes that a reasonable solution to this situation would be, for those long or extended routes, the recency of service requirements may be satisfied by the pilot reviewing the appropriate charts, coast pilots, tide and current charts and

tables, local Notices to Mariners, and any other materials which would assist the pilot to safely navigate the particular area in question. The OCMI will determine which routes are to be considered long or extended, and the pilot would certify to the OCMI at the time of license renewal that he has reviewed all appropriate materials regarding the particular route in question.

In addition, commenters stated that it would make more sense to set the refamiliarization requirement at 5 years rather than 3 years in order to coincide with license renewal. There is probably little difference in the amount of information retained after 3 years and that retained for an additional 2 years.

The Coast Guard is therefore requiring that if a pilot has not served within 60 months over a particular route, that person's license becomes invalid for that route and the pilot may not operate on that route under the authority of that license until the pilot has made a re-familiarization round trip over that route or, for long or extended routes, has certified to the OCMI that he has reviewed all relevant materials concerning that route. This requirement would be self enforcing due to the consequences of acting as a pilot on an invalid license.

For those first class pilots who do not already do so, it may be well for the pilot to maintain a log of trips made over routes that are infrequently traversed.

In the supplemental notice the Coast Guard proposed to require chart sketches of only a portion or portions of the route desired by an applicant. A number of commenters stated that the only way for the Coast Guard and the applicant to be certain that the applicant has a thorough knowledge of the area is by the entire route chart sketch. In addition, it was pointed out that the partial chart sketch could be administered in two ways. The same area could be required of all applicants. It would not take long before the area required would be the only area studied by future applicants. Alternatively, the areas required to be sketched could be selected at random by the examining official. This method could be considered unfair and controversial. The Coast Guard recognizes the concerns expressed in these comments. The Coast Guard does feel, however, that sketching only portions of a long or extended route would provide satisfactory evidence of the applicant's knowledge, while minimizing the time consumed in preparing and evaluating the chart sketches. To avoid the first problem, areas required to be sketched will normally be varied. Random selection should not present instances of unfairness, so long as there is uniformity in the extent of sketching required for particular routes. Therefore, the final rule contains the option, at the discretion of the OCMI, of requiring an applicant for a long or extended route to sketch only a portion or portions of the extended route.

Comments were received regarding the proposal to place a restriction of "tug and barge combinations" on the pilot license of an individual who obtained his experience in towing operations. Some comments stated that if it was important to restrict a license as to towing operations, then it should be equally important to restrict licenses as to operations other than towing. Other comments stated that this was really not a problem and that the proposed restriction should not be implemented. The Coast Guard has no evidence that this is a serious problem area, and the proposed change is not adopted.

In the supplemental notice the Coast Guard proposed to eliminate the words "first class" in first class pilot. This was proposed because the Port and Tanker Safety Act raised the minimum age for a pilot's license from 19 to 21, and the only distinction between a first class and second class pilot was the age at which the license could be obtained. As the second class pilot's license was eliminated by statute, the Coast Guard felt that there was no reason to continue the distinction. A number of commenters stated that the words "first class" should be retained because some State laws contain those words and it would be costly for those States to change their statutes. Because this term is used in some States statutes, this proposal will not be adopted, and the words "first class" will be retained.

In the past, the Coast Guard did not place a pilotage endorsement on an operator of uninspected towing vessel (OUTV) license. If the requirements for pilotage were met, the Coast Guard would issue a pilot's license rather then endorse the OUTV license. The Coast Guard will now commence endorsing the OUTV license for pilotage rather than issuing a separate pilot's license, as this will reduce paperwork for both the license holder and the Coast Guard.

Additionally, as the individual directing the navigation of vessels of less than 1,000 gross tons is not required to have a pilot's license, the Coast Guard is no longer issuing an endorsement as first class pilot to a master's, mate's, or OUTV license for a tonnage of less than 1,000 gross tons.

2. Manning of Vessels—Pilots

The majority of the comments received were with regard to the Manning of Vessels—Pilots. In the Supplemental Notice the Coast Guard proposed that masters, mates, or operators of tank barges subject to 46 U.S.C. 3702 could serve as pilots, subject to certain limitations and additional requirements, on their tank barges up to 20,000 gross tons. Comments from individuals associated with the towing industry generally supported the proposal. Comments from independent pilots and several ports generally opposed the proposal. Several commenters, especially at the public hearings, recommended cut-off figures which ranged from 1,000 to 20,000 gross tons.

Comments in support of the proposal included the following:

(1) The towing industry has a good safety record.

(2) Tug and barge units handle differently from self-propelled vessels, and most independent pilots have not had experience on tug and barge units; therefore, it is safer to have the master, mate, or operator of the tug direct the navigation of the tug and barge unit rather than an independent pilot.

(3) Interpretation of the law has changed.

(4) Masters, mates, or operators have operated their units safely without pilots for many years.

(5) There has been no mechanism for masters, mates, or operators in the towing industry to obtain "any gross tons" pilots' licenses because the tonnage has been restricted to the tonnage of the tug.

(6) Most towing companies have good training programs, and the company would not let an individual be in command of a unit if he were not fully qualified to handle that particular rig.

(7) The local knowledge issue is resolved by the requirement of 12 round trips contained in the proposal.

(8) Tug and barge units do and will continue to use independent pilots if and when they are needed.

Comments opposed to the proposal included the following:

(1) The content of the proposal is contrary to existing law.

(2) It was improper to expand the original notice of proposed rulemaking by interjecting the Manning of Vessels—Pilots package into the supplemental notice.

(3) The physical dimensions of tank barges pose the same or more serious problems in narrow confined channels and in ports for safe meeting and

passing than do self-propelled vessels, so the individuals directing the navigation of tank barges should have the same license qualification requirements as first class pilots.

(4) Masters, mates, and operators have not proven the competence necessary to serve as pilots because they have not passed the examinations that first class pilots have passed.

(5) The mechanism for a master, mate, or operator in the towing industry to obtain an "any gross tons" pilot's license was contained in the proposal. Therefore, masters, mates, or operators will now be able to become pilots.

(6) Independent pilots have experience on tug and barge untis. Some pilot organizations obtain their pilots almost exclusively from the towing industry.

(7) The proposal is a contradiction; the Coast Guard is proposing to increase qualifications for first class pilots on one hand and decrease standards for the manning of tank barges on the other hand.

(8) The pilotage costs and paperwork burden are exaggerated.

One commenter specifically questioned the authority of the Coast Guard to allow a person to act as pilot, without specific endorsement, on vessels over 1,000 gross tons. 46 U.S.C. 7101, which is the Coast Guard's authority to establish eligibility requirements for the issuance of a Federal pilot's license, specifically authorized the classification of licenses by the tonnage of vessels, the waters operated on, and "other reasonable standards." Within this authority the regulations establish the requirements for acting as pilot of a limited class and tonnage of vessels in specified waters. The casualty data reviewed during this rulemaking indicates that the standards in this rule are a reasonable way to meet the needs of safety without imposing unnecessary costs.

The Coast Guard is aware of the provisions of 46 U.S.C. 7112 regarding endorsements, and we have considered methods to satisfy the requirements of that section. The primary purpose of 46 U.S.C. 7112 was to relieve the financial and paperwork burdens of having the individual obtain and the Coast Guard issue two separate licenses. In order to satisfy the requirements of 46 U.S.C. 7112, the Coast Guard intends to endorse masters', mates' and operators' licenses with a statement to the effect that the individual may serve as a pilot under the provisions of 46 CFR 157.20–40 provided the requirements of that section have been met. The least costly method of accomplishing this endorsement to both the individual and the Coast Guard would be to endorse existing licenses at the time of license renewal.

Several commenters requested clarification of the meaning of "the route to be traversed" used in § 157.20–40(c) of the supplemental proposal. As used in that section, "the route to be traversed" means the navigable waters which the vessel traverses in going from the high seas to its point of destination, or the reverse transit. With respect to ports, a transit to any dock or berth within a particular complex of a port satisfies the requirement to all docks or berths in that particular complex.

The Coast Guard proposed raising the existing self pilotage tonnage limitation so that masters, mates, or operators of coastwise tows could serve as pilots on tank barges up to 20,000 gross tons, subject to certain restrictions and additional requirements. That proposal was based on a recommendation submitted to the Coast Guard by the Towing Safety Advisory Committee (TSAC) on August 25, 1981. Based on the analysis discussed below, the final rule affirms raising the self pilotage limitation, but changes the cut-off tonnage to 10,000 gross tons.

The Coast Guard reviewed its casualty records for fiscal years 1975 through 1978 and the results of that review were contained in the Supplemental Notice of Proposed Rulemaking published in the **Federal Register** on January 27, 1983 (48 FR 3912). The Coast Guard has updated that review and has analyzed its casualty records for the fiscal years 1979 through 1982. The pertinent points of this updated review are given in the following paragraphs.

(a) There are approximately 488 inspected tank barges that are capable of being subject to the 46 U.S.C. 8502 pilotage requirement (466 of less than 10,000 gross tons and 22 greater than 10,000 gross tons).

(b) A review of casualty records of the Coast Guard's Merchant Marine Investigation Division for the four year period FY 79 through FY 82 indicates that there was a total of 520 casualties involving seagoing tank barges that resulted in collisions, rammings, or groundings. Of these, 91 involved instances where the presence of a 46 U.S.C. 8502 Federal pilot was mandated. A Federal pilot was considered mandated by 46 U.S.C. 364 in only those instances where the voyage include a passage on the high seas. This review was conducted based on this understanding of applicability. However, 46 U.S.C. 8502 as amended by Pub. L. 98–557 makes it clear that such a limited reading is no longer intended and a Federal pilot is now required on inspected coastwise seagoing vessels, not sailing on register, whenever they are not on the high seas. The casualty analysis based on the limited interpretation is still appropriate, however, because the 91 casualties involved those vessels which were actually seagoing. A barge whose voyage does not include a passage beyond the headlands could have its certificates of inspection changed from coastwise to rivers, or lakes, bays or sounds, and would then not be required under the law to take a pilot.

(c)(1) The primary cause of the 91 casualties have been broken down into five general categories. Listed below are the causes and the number of casualties associated with each cause:

(i) Improper towing procedures—6
(ii) Fault of other vessel—5
(iii) Equipment failure—13
(iv) Rules of the Road violations—1
(v) Navigation and pilotage knowledge—66

(2) In those cases in which the cause was associated with navigation and pilotage knowledge, the breakdown by licensed individual in control of the vessel was:

(i) Operator of Uninspected Towing Vessel—39
(ii) First Class Pilot—13
(iii) Master Freight & Towing—5
(iv) 2nd Mate—2
(v) 3rd Mate—3
(vi) Master Inspected Vessel—1
(vii) No Record—3

(d) Based on our analysis of the causes of the casualties, of the 66 casualties associated with navigation and pilotage knowledge, the presence of a licensed first class pilot could possibly have prevented the casualty in 27 instances, and would probably have not prevented the casualty in 39 instances.

(e) The damage caused by these 66 casualties was approximately $2,564,800 over the four year period, or an average of $641,200 per year. The damage associated with the 27 instances in which a first class pilot could possibly have prevented the casualty was approximately $869,400, or an average of $217,350 per year.

During the preparation of the supplemental notice of January 27, 1983, the Coast Guard requested The American Waterways Operations, Inc. (AWO) to provide data regarding barge movements and pilotage costs of its member companies. Data was received from AWO which the Coast Guard utilized in the supplemental notice of January 27, 1983. The Coast Guard again requested AWO to provide updated barge movement and pilotage cost data.

AWO submitted summary barge movement and pilotage cost data obtained from its member companies for calendar year 1982. This data was received after the close of the comment period and because the Coast Guard intended to make use of the date received from AWO, the comment period was reopened and extended to November 28, 1983. The data received from AWO was published in the **Federal Register** (48 FR 46556) in order to provide notification and an opportunity for interested persons to review and comment on the data. We received eleven written comments on the AWO data published in the **Federal Register.** The comments related to barge movements and pilotage cost figures for several specific ports. The figures contained in the comments do not agree with the AWO figures; however, we are unable to relate the specific port data to the nationwide AWO figures. As will be explained later, alternative figures can be developed based on the data submitted by these commenters.

The Coast Guard has reviewed the updated barge movement and pilotage cost data submitted by AWO. Their data included four categories of vessel movements: Entry, Exit, Intra-port, and Inter-port. In order to insure consistency in comparing costs and casualties, the Coast Guard did not take into consideration the AWO data included in the Intra-port and Inter-port categories. Using only the Entry and Exit categories, barge movements made by AWO member companies totaled 9,752, and pilotage costs totaled $7,303,740. In the data submitted by AWO, they indicated that the percentage of the industry responding was 40%. Based on the indication that their figures represent 40% of the industry, total industry figures would be 24,380 barge movements and $18,259,350 in pilotage costs. This extrapolation is valid only to the extent that the remaining 60% of the industry had barge movements at the same general activity level as the AWO member companies. Additionally, an adjustment must be made because the figures submitted by AWO included barge movements and pilotage costs for all sizes of tank barges. As this rule relieves only those tank barges up to 10,000 gross tons, the barge movement and pilotage cost figures relating to those tank barges over 10,000 gross tons must be removed from the total figures. Tank barges over 10,000 gross tons are 4% of total tank barges. However, as these larger barges make fewer movements than the smaller ones (due to longer voyages and load/unload time), total movements have been reduced by 2%. As pilotage costs are usually based on a size factor, the pilotage cost figure has been reduced by 6%. Adjusted total barge movement and pilotage cost figures now become 23,892 and $17,163,789 respectively. Assuming that the extrapolation and adjustments are valid, an annual casualty rate of one casualty per 1,385 barge movements can be calculated (23,892÷17.25) (17.25 is the average number of casualties per year for tank barges of less than 10,000 GT), or, if only casualties associated with navigation and pilotage knowledge are considered one casualty per 1,950 tank barge movements (23,892÷12.25).

Additionally, the average pilotage cost per barge movement can be calculated as $718 ($17,163,789÷23,892). Accordingly, as indicated earlier, and based on the data submitted by AWO, the provisions of this regulation would have eliminated the requirement for the towing industry to incur pilotage costs of $17,163,789 in 1982, and will eliminate this pilotage requirement, with its attendant costs, for future years.

As stated earlier, with regard to the comments received in response to the AWO data published in the **Federal Register,** alternative figures can be developed based on the data submitted by the commenters. The data submitted by the commenters did not agree with the AWO data. Some commenters reported fewer tank barge movements, some reported a greater number of movements. All commenters who commented on pilotage costs indicated that their average pilotage costs were lower than the pilotage costs reported by AWO. Using the lowest average pilotage cost figure reported by a commenter for 1982 of $504, and using the tank barge movement figure reported by AWO of 23,892 (contained in an earlier paragraph and as adjusted), yields a total pilotage cost figure of $12,041,568 (23,892×$504). Therefore, a more accurate total pilotage cost figure for 1982 probably lies somewhere between $12,041,568 and $17,163,789.

Two conclusions can be drawn from the above data. First, having a licensed first class pilot directing the navigation of tug/barge combinations would not necessarily reduce the casualty rate. In the 66 casualties involving navigation and piloting knowledge, a licensed first class pilot was controlling the tug/barge unit in 13 instances, a 20% participation rate. Secondly, it would not be cost effective to require licensed first class pilots at an estimated annual cost of between 12 and 17 million dollars to prevent an estimated $217,350 average annual cost associated with the casualties which a first class pilot may have been able to prevent.

The data on the 66 casualties associated with navigation and pilotage knowledge was analyzed to determine whether there was any relationship between the size of the tank barge and these casualties.

As can be seen in the following table and graph, there are three logical gross tonnage break points; 4,000, 9,000, and 10,000 gross tons. We have selected the 10,000 gross tons cut-off figure because there is a sharp increase in the number of casualties per tank barge for tank barges greater than 10,000 gross tons.

SEAGOING TANK BARGES

Gross tonnage range	Number of tank barges	Number of casualties [1]	Percent of tank barges	Percent of casualties	Number of casualties divided by number of tank barges
0 to 999	158	2	32.4	3.0	.013
1,000 to 1,999	167	9	34.2	13.6	.054
2,000 to 2,999	44	4	9.0	6.1	.091
3,000 to 3,999	35	7	7.2	10.6	.200
4,000 to 4,999	14	7	2.9	10.6	.500
5,000 to 5,999	15	8	3.1	12.1	.533
6,000 to 6,999	9	5	1.8	7.6	.556
7,000 to 7,999	7	4	1.4	6.1	571
8,000 to 8,999	11	1	2.3	1.5	.091
9,000 to 9,999	6	2	1.2	3.0	.333
10,000 to 10,999	4	6	.8	9.1	1.500
11,000 to 11,999	4	0	.8	0	0
12,000 to 12,999	0	0	0	0	0
13,000 to 13,999	0	0	0	0	0

SEAGOING TANK BARGES—Continued

Gross tonnage range	Number of tank barges	Number of casualties [1]	Percent of tank barges	Percent of casualties	Number of casualties divided by number of tank barges
14,000 to 14,999	5	7	1.0	10.6	1.400
15,000 to 15,999	1	0	.2	0	0
16,000 to 16,999	0	0	0	0	0
17,000 to 17,999	1	3	.2	4.5	3.000
18,000 to 18,999	1	0	.2	0	0
19,000 to 19,999	0	0	0	0	0
20,000 to 20,999	1	1	.2	1.5	1.000
21,000 to 21,999	0	0	0	0	0
22,000 to 22,999	1	0	.2	0	0
23,000 to 23,999	0	0	0	0	0
24,000 to 24,999	3	0	.6	0	0
25,000 to 25,999	0	0	0	0	0
26,000 to 26,999	1	0	.2	0	0
Total	488	66			

[1] These are the 66 casualties that are associated with navigation and pilotage knowledge.

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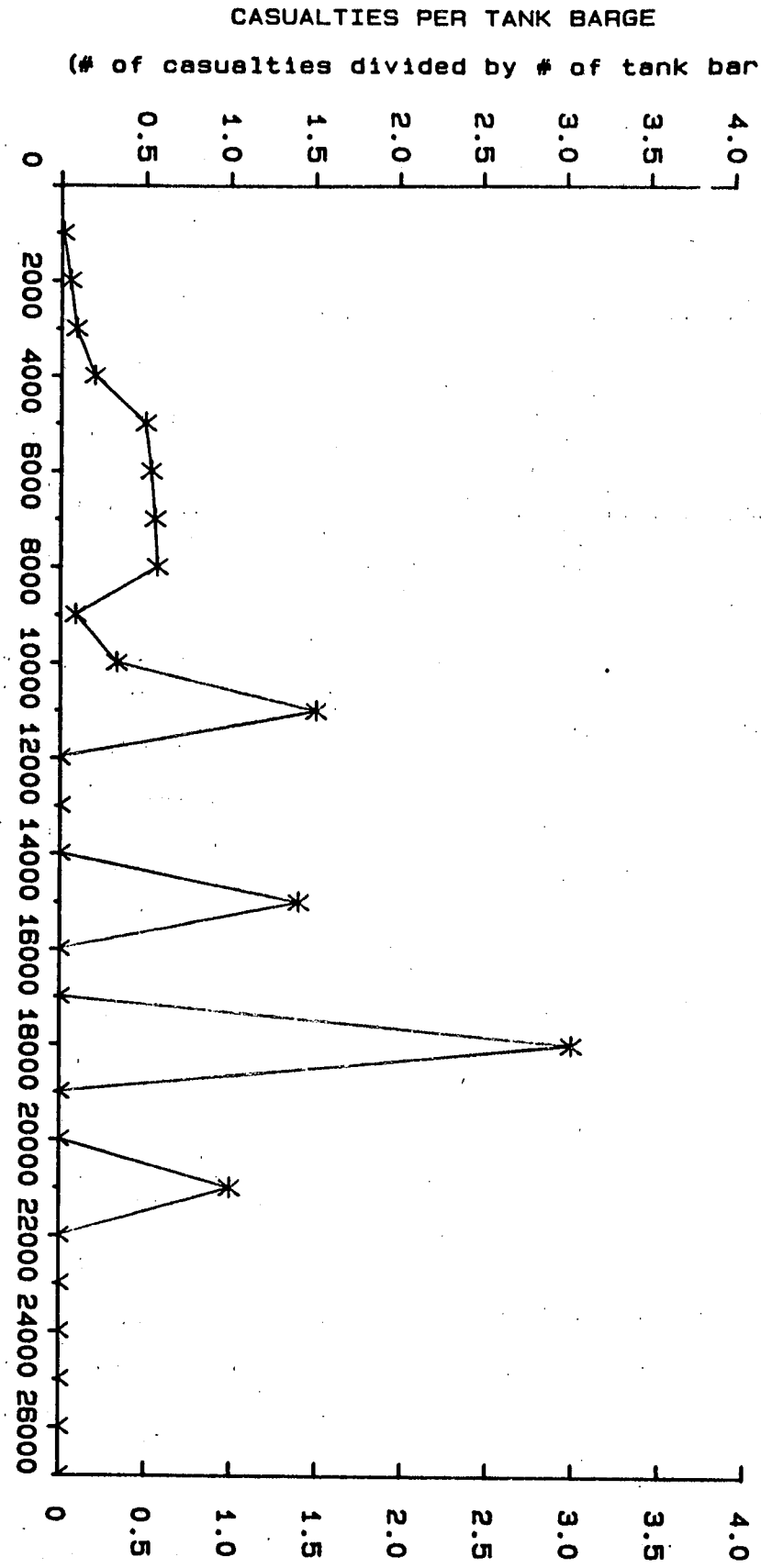
RATIOS OF CASUALTIES PER TANK BARGE BY GROSS TONS[1/]



1/ These are the 68 casualties that are associated with navigation and pilotage knowledge over the four year period FY79 thru FY82.

BILLING CODE 4910-14-C

Our review of the 66 casualties associated with navigation and pilotage knowledge indicates that tank barges greater than 10,000 gross tons were involved in casualties at a rate 7 times greater than those tank barges of less than 10,000 gross tons. Tank barges greater than 10,000 gross tons comprise only 4.5% of the tank barges yet they were involved in 25.8% of the casualties associated with navigation and pilotage knowledge. In addition, of the 27 casualties where a licensed first class pilot could possibly have prevented the casualty, 25.9% involved tank barges greater than 10,000 gross tons. With regard to the dollar damage caused by the 27 casualties associated with navigation and pilotage knowledge, 45% (390,000÷869,400) of the damage was caused by tank barges greater than 10,000 gross tons. Tank barges of greater than 10,000 gross tons are generally more than 450 feet in length. The potential effects of a casualty involving these larger barges is far greater than the smaller ones. Larger tank barges are generally involved in longer voyages and are not in and out of ports as frequently as the smaller barges and consequently provide less opportunity for the operator to acquire local knowledge. Therefore, the Coast Guard considers it necessary that the individual directing the navigation of these larger vessels demonstrates the additional competence of possessing a first class pilot's license.

As indicated earlier, it is obviously not cost effective to require barges to be under the control of a locally hired first class pilot, yet there are statutory pilotage requirements that must be met. In this rulemaking the Coast Guard has attempted to devise a reasonable means of accommodating the Congressional concern that these barges be navigated safely. By establishing a practical means whereby the regularly employed personnel operating towing vessels can qualify as pilots of most tank barges, costs can be minimized. The Coast Guard recognizes, however, that the additional experience required by this rule is not fully comparable to that required of applicants for a first class pilot's license or endorsement and is therefore restricting this alternative to those barges having the safest record. In addition to having a markedly better safety record, based on the data available, the smaller barges present less risk of serious consequence when an accident does occur. The Coast Guard believes that providing this alternative to barges under 10,000 gross tons will not adversely affect safety and will result in lower costs for that major portion of the industry than if required to carry first class pilots. While this leaves approximately 4% of the barge industry subject to the requirement to be under the control of a first class pilot when in pilotage waters, the available data provides no logical cut off above 10,000 gross tons and the Coast Guard has determined that eliminating the requirement for a first class pilot on all tank barges, regardless of size, would not be in accord with the spirit and intent of the statutory requirement.

Evaluation: The Coast Guard has reviewed this final rule under Executive Order 12291 and has determined that it is not a major regulation.

The original proposal was considered a significant regulation under the then existing Department of Transportation guidelines because it was likely to be controversial. The comments received have supported that conclusion. Although the proposal was modified in response to the comments received, some controversy may remain. Accordingly, the final rule remains classified as a significant regulation. As modified, it is not expected to have a significant economic impact. A regulatory impact analysis is not required; however, a final evaluation has been prepared and has been included in the public docket. A copy of the final evaluation may be obtained from: Commandant (G-CMC/21), (CGD 77-084), U.S. Coast Guard, Washington, D.C. 20593.

This rule will not require any major expenditures by the maritime industry, consumers, Federal, state, or local governments. The statutory requirement for an annual physical examination will necessitate an increase in expenditures by the pilots in order to pay for their physical exams. These costs could total as much as $2,190,000 annually, depending upon the number of individuals who choose to be pilots under 46 CFR 157.20-40. The actual increase in costs is likely to be less because many pilots already take annual physical examinations and it is not likely that all of the individuals that could qualify under 46 CFR 157.20-40 will do so.

The requirement that a pilot make a re-familiarization round trip if the pilot has not had recent service over a route could cause the pilot to incur the expenses of making such a trip. These expenses have been minimized in the final rule by allowing a chart and publication review in lieu of an actual trip, for long or extended routes. However, this re-familiarization round trip is required only if the pilot has not served within 60 months and the pilot desires to retain or reinstate qualifications for that route. Because of these factors it is impractical to estimate the possible costs.

Additionally, the Coast Guard has reviewed this rule under the Regulatory Flexibility Act (Pub. L. 96-354) and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposal does not place any additional burdens or requirements on the affected industries, such as pilot associations, shipping companies, or towboat companies, some of which may qualify as small entities, and in fact will relieve some of the present burdens.

Many pilots are employees of shipping or towing companies. Other pilots are generally members of pilot associations and have been considered independent contractors in most circumstances. Usually, membership in a pilot association is similar to a form of partnership in which the pilot fees are collected by the association and, after the expenses of the association have been paid, the balance remaining is distributed among the member pilots. Therefore the Coast Guard is not considering the individual pilot as a small entity.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 157

Seamen, Vessels.

In consideration of the foregoing, Part 10 and Part 157 of Title 46 of the Code of Federal Regulations are amended as follows:

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

1. The authority citation for Part 10 is revised to read as follows:

Authority: 46 U.S.C. 7101; 49 CFR 1.46 (b).

2. Section §10.02-5(b) is revised to read as follows:

§ 10.02-5 Requirements for original licenses.

* * * * *

(b) *Minimum age.* Any person who has attained the age of 21 years and is qualified in all other respects, is eligible for a license, except that a license as third mate or third assistant engineer may be granted an applicant who has reached the age of 19 years and who is qualified in all other respects, but no such license may be raised in grade

before the holder reaches the age of 21 years.

* * * * *

§§ 10.05-39, 10.05-41, 10.05-42, and 10.05-43 [Removed]

3. Remove §§ 10.05-39, 10.05-41, 10.05-42, 10.05-43.

4. Add a new subpart 10.07 to read as follows:

Subpart 10.07—Professional Requirements for Pilots Licenses

Sec.

10.07-1 Application for original license.
10.07-3 Service requirements.
10.07-5 Endorsement to masters', mates', or operator of uninspected towing vessel license as first class pilot or the addition of Route(s) to a first class pilot's license.
10.07-7 Required examinations for first class pilots.
10.07-9 Physical examination requirements for a license or endorsement as first class pilot.
10.07-11 Limitations.
10.07-13 Requirements for maintaining current knowledge of waters to be navigated.
10.07-15 Evaluation of experience not listed.

Subpart 10.07—Professional Requirements for Pilots Licenses

§ 10.07-1 Application for original license.

(a) An applicant for an original first class pilot's license shall furnish discharges, letters, or other documentary evidence certifying:

(1) The name and gross tonnage of the vessels the applicant has served aboard;

(2) The period of service;

(3) The dates, beginning and ending times, and route description of round trips made; and

(4) The capacity in which the applicant served.

(b) Photostatic copies of the documents listed in (a) above may be accepted for filing with the application.

§ 10.07-3 Service requirements

(a) The minimum service required to qualify an applicant for an original license as first class pilot is predicated upon the nature of the waters for which pilotage is desired.

(1) General Routes (routes not restricted to rivers, canals and small lakes). The applicant must have thirty-six months' service in the deck department of steam or motor vessels navigating on oceans, coastwise, Great Lakes, or bays, sounds, and lakes other than the Great Lakes, as follows:

(i) Eighteen months of the 36 months' service must be as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties.

(ii) At least 12 months of the 18 months' service required in paragraph (a)(1)(i) of this section must be on vessels operating on the class of waters for which pilotage is desired.

(iii) At least three months of the required 36 months' service must be obtained within the 36 months immediately preceding the date of application.

(2) River Routes. The applicant must have at least 36 months' service in the deck department of any vessel including at least 12 months' service on vessels operating on the waters of rivers while the applicant is serving in the capacity of quartermaster, wheelsman, apprentice pilot or deckhand who stands watches at the wheel as part of routine duties. At least three months of the required 36 months' service must be obtained within the 36 months immediately preceding the date of application.

(3) Canal and Small Lakes Routes. The applicant must have at least 24 months' service in the deck department of any vessel including at least 8 months' service on vessels operating on canals or waters of small lakes. At least three months of the required service must be within the 24 months immediately preceding the date of application.

(b) In addition to the service required by paragraph (a) of this section, the applicant shall furnish evidence of having made a minimum number of round trips while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an eqivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties, over the route for which the applicant seeks the license as first class pilot. The Officer in Charge, Marine Inspection having jurisdiction determines, within the range limitations of this paragraph, the number of round trips required, considering the geographic configuration of the waterway, the type and size of vessels using the waterway, the known hazards involved, including waterway obstructions or constrictions such as bridges, narrow channels or sharp turns, background lighting effects, abundance or absence of aids to navigation, and other similar factors. The range of round trips for an original license is a minimum of 12 round trips and a maximum of 20 round trips. Unless determined to be impracticable by the OCMI, 25% of the round trips required by the OCMI must be made during the hours of darkness.

(c) One of the round trips required in paragraph (b) of this section must be made over the route within six months immediately preceding the date of application.

(d) A graduate of the Great Lakes Maritime Academy in the deck class meets the service requirements for a license as first class pilot on the Great Lakes provided he or she meets the requirement of paragraph (a)(1)(iii).

(e) The period of time spent by an applicant successfully completing a course of pilot training approved by the Commandant may be accepted as the equivalent of a portion of the service required in paragraph (a) of this section and round trips made during this training may apply toward the round trip requirements of paragraph (b) of this section, but in no case will an applicant for a first class pilot's license be considered qualified with respect to service without a minimum of nine months of shipboard service. The portion of the service to be accepted as the equivalent of the service required in paragraph (a) and any constructive credit allowed for round trips required by paragraph (b) of this section will be identified at the time the Commandant approves the particular course.

§ 10.07-5 Endorsement to master's mate's or operator of uninspected towing vessel license as first class pilot or the addition of route(s) to a first class pilot's license.

(a) A master or mate, authorized to serve on vessels of over 1,000 gross tons, an operator of uninspected towing vessel, or a first class pilot shall furnish evidence of the following service to qualify for examination as a first class pilot or for the addition of route(s) to an existing first class pilot's license:

(1) Three months' service under the authority of the existing license within the past 36 months; and

(2) Completion of the number of round trips over the route specified by the Officer in Charge, Marine Inspection, within the range limitations of this paragraph, for the particular grade of existing license held. The range of round trips for an endorsement is a minimum of 8 round trips and a maximum of 15 round trips. Unless determined to be impracticable by the OCMI, 25% of the round trips required by the OCMI must be made during the hours of darkness.

(b) One of the round trips required in paragraph (a)(2) of this section must be made over the route within six months immediately preceding the date of application.

§ 10.07-7 Required examination for first class pilots.

(a) An applicant for an original license as first class pilot is required to pass an examination that includes:

(1) Evidencing knowledge of the following subjects:

(i) Navigational Rules applicable to the route, including regulations issued thereto.

(ii) Pilot rules.

(iii) Use of tide and current charts and tables; knowledge of weather, and winds.

(iv) Chart navigation, use of Coast Pilot and light lists.

(v) Aids to navigation, including local Notice to Mariners systems.

(vi) Ship handling.

(vii) Pollution prevention and abatement.

(viii) The Captain of the Port regulations and the Vessel Traffic Service procedures, if applicable, for the route desired.

(ix) Any other subject the Officer in Charge, Marine Inspection considers necessary to establish the applicant's proficiency; and

(2) Sketching a chart of the route and waters applied for, evidencing knowledge of:

(i) Recommended courses;

(ii) Distances;

(iii) Prominent aids to navigation;

(iv) Depths of water in channels and over hazardous shoals; and

(v) Other important features of the route, such as the character of the bottom.

(b) The Officer in Charge, Marine Inspection, may accept chart sketching of only a portion or portions of the route for long or extended routes.

(c) An applicant for extension of a first class pilot's route or endorsement of a master's, mate's, or operator of uninspected towing vessel license as first class pilot is required to pass an examination as prescribed in paragraphs (a)(1)(i), (ii), (viii), (ix), and (2) of this section.

§ 10.07-9 Physical examination requirements for a license or endorsement as first class pilot.

(a) An applicant for an original license as first class pilot shall meet the physical examination requirements specified in § 10.02-5(e)(1)-(3) and (7) of this part. The results of this examination must be recorded on Coast Guard form CG-924 or equivalent and submitted with the application.

(b) Every person holding a license or endorsement as first class pilot shall have a thorough physical examination each year while holding the license or endorsement, except that this requirement does not apply to an individual who will serve as a pilot only on a vessel of less than 1,600 gross tons.

(c) Each physical examination must be conducted by a licensed physician.

(d) Each physical examination must meet the requirements specified in paragraph (a) of this section, except that §§ 10.02-9f(3) and (5) shall apply and the first class pilot must have correctable vision to at least 20/40 in each eye. Anyone whose uncorrected vision exceeds 20/40 in each eye must wear corrective lenses and carry spare lenses on board a vessel while serving under the authority of the license.

(e) If the individual holding a first class pilot's license or endorsement does not satisfactorily complete a physical examination within 90 days prior to the anniversary date of the issuance of the license, the first class pilot license or endorsement held is invalid as of the anniversary date and the pilot may not operate under the authority of that license or endorsement until a physical examination has been completed.

(f) Upon request, a first class pilot shall provide the Coast Guard with a copy of his or her most recent physical examination.

(g) An applicant for renewal of a license or endorsement as first class pilot shall satisfactorily complete within 90 days prior to renewal, and file with the OCMI, a physical examination meeting the requirements specified in paragraph (d) of this section.

§ 10.07-11 Limitations.

(a) The Officer in Charge, Marine Inspection, issuing a license or endorsement as first class pilot, imposes appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters.

(b) In order to obtain a tonnage endorsement of "any gross tons" on a first class pilot's license or endorsement on a master's or mate's license as first class pilot, the applicant must have sufficient experience on vessels of 1,600 gross tons or over.

(1) An applicant is considered to have sufficient experience if the applicant has 18 months' experience as master, mate, quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilothouse as part of routine duties, on vessels of 1,600 gross tons or over, and two thirds of the minimum number of round trips required for the route have been on vessels of 1,600 gross tons or over.

(2) If an applicant does not meet the requirements of paragraph (b)(1) of this section the applicant must complete a number of additional round trips, as determined by the OCMI, within the range contained in § 10.07-3(b) or § 10.07-5(a)(2), as appropriate, on vessels of 1,600 gross tons or over.

(3) For purposes of this section, for experience with respect to tonnage on towing vessels, the combined gross tonnage of the towing vessel and the vessel(s) towed will be considered.

§ 10.07-13 Requirements for maintaining current knowledge of waters to be navigated.

(a) If a first class pilot has not served over a particular route within the past 60 months, that person's license or endorsement is invalid for that route, and remains invalid until the first class pilot has made one re-familiarization round trip over that route, except as provided in paragraph (b) of this section. Renewal of a license or endorsement within the 60 month period has no effect on this requirement. Round trips made within 90 days of renewal will be valid for the duration of the renewed license or endorsement.

(b) For long or extended routes, at the discretion of the OCMI, the re-familiarization requirement may be satisfied by reviewing appropriate navigation charts, coast pilots, tide and current tables, local Notice to Mariners, and any other materials which would provide the pilot with current knowledge of the route. Persons using this method of re-familiarization shall certify, when applying for renewal of their license or endorsement, the material they have reviewed and the dates on which this was accomplished. Review within the 90 day period preceding renewal will be valid for the duration of the renewed license or endorsement.

§ 10.07-15 Evaluation of experience not listed.

When an applicant presents evidence of service or experience which does not meet the specific requirements of the regulations in this part, but which in the opinion of the Officer in Charge, Marine Inspection, is a reasonable equivalent thereto, the application for license with supporting data is submitted to the Commandant for evaluation, together with the recommendation of the Officer in Charge, Marine Inspection.

PART 157—MANNING REQUIREMENTS

5. The authority citation for Part 157 is revised to read as follows:

Authority: 46 U.S.C. 3703, 8105, 9102; 50 U.S.C. 198; 49 CFR 1.46(b).

6. 46 CFR 157.20–40 is revised to read as follows:

§ 157.20–40 Pilots.

(a) Every coastwise seagoing vessel propelled by machinery and subject to inspection for certification, and seagoing tank barges subject to 46 U.S.C. Chapter 37, must, when underway, except on the high seas, be under the direction and control of a pilot licensed by the Coast Guard or an individual authorized by the Coast Guard to act as a pilot.

(b) [Reserved]

(c) The requirements of paragraph (a) of this section are satisfied when the vessel is under the direction and control of either:

(1) A first class pilot holding a valid license issued by the Coast Guard, acting within the restrictions of his or her license, or

(2) An individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel, within the restrictions of his or her license and the limitations of paragraph (d) and (e) of this action, provided he or she:

(i) Has reached the age of 21 years;

(ii) Complies with the currency of knowledge provisions of 46 CRF 10.07–13, and

(iii) Complies with the physical examination requirements of 46 CFR 10.07–9.

(d) A licensed master or mate qualifying under subparagraph (c)(2) of this section may serve as pilot of a coastwise seagoing vessel of not more than 1,000 gross tons propelled by machinery and subject to inspection for certification, provided the individual has four round trips, over the route to be traversed, 1 of which must be made during the hours of darkness if the route is to be traversed during darkness, while in the wheelhouse as watchstander or observer.

(e) A licensed individual qualifying under subparagraph (c)(2) of this section may serve as pilot of coastwise seagoing tank barges or tank barges operating upon the Great Lakes, totaling not more than 10,000 gross tons carrying cargoes subject to the provisions of 46 U.S.C. Chapter 37 provided the individual:

(1) Has twelve round trips, over the route to be traversed, 3 of which must be made during the hours of darkness if the route is to be traversed during darkness, as as observer or under instruction in the wheelhouse, and

(2) Has at least six months' service in the deck department on towing vessels engaged in towing operations.

(f) [Reserved]

(g) In any instance when the qualifications of a person discharging the requirement for pilotage through the provisions of this subpart are questioned by the Coast Guard, the individual shall provide the Coast Guard with documentation proving compliance with paragraph (c) and the applicable portion(s) of paragraph (d) or (e) of this section.

(h) An individual may not serve as pilot on any radar equipped vessel of 300 gross tons or more unless qualified as "radar observer." (See § 10.05–46 of this part for radar observer requirements.)

7. Remove 46 CFR 157.30–40.

Dated: June 18, 1985.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 85–15026 Filed 6–21–85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 157

[CGD 84-060]

Licensing of Pilots; Manning of Vessels—Pilots

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing additional amendments to the regulations regarding the licensing of pilot and the manning of vessels—pilots. This proposal would: (1) Increase the gross tonnage authorization of licensed officers to serve as pilots on self-propelled coastwise seagoing vessels from 1,000 gross tons to 1,600 gross tons, (2) require first class pilots to have experience on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of more than 50,000 gross tons, (3) define "coastwise seagoing vessel" for pilotage purposes, (4) define "pilotage waters," (5) require pilots on Great Lakes vessels, and (6) allow a written test alternative to the chart sketch for a first class pilot's license restricted to tug and barge only. This proposal supplements the Supplemental Notice of Proposed Rulemaking (48 FR 3912) regarding the Licensing of Pilots; Manning of Vessels—Pilots. These proposals are closely related to but not within the scope of the Final Rule (CGD 77-084) being published simultaneously with the Notice.

DATES: Comments must be received on or before September 23, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 84-060), U.S. Coast Guard, Washington, D.C. 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-2985.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 84-060), the name and address of the person submitting the comments, and the specific section of the proposal to which each comment is addressed. Persons desiring to acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planned, but they may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. John J. Hartke, Project Manager, Office of Merchant Marine Safety and Commander Ronald C. Zabel, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Coast Guard is proposing to increase the tonnage authorization of licensed officers to serve as pilot on self-propelled coastwise seagoing vessels subject to inspection from 1,000 gross tons to 1,600 gross tons, and adding the requirement that, in order to be authorized to do so, the individual must have four round trips, 1 of which must be made during the hours of darkness, over the route to be traversed. This requirement would be self enforcing due to the consequences of acting as a pilot on an invalid license. This is proposed in order to conform with various other proposed licensing regulations dealing with all licensed officers, and the internationally accepted standard contained in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

There are three statutes under which the Coast Guard requires federal pilots.

(1) 46 U.S.C. Chapter 93 concerns foreign vessels and U.S. registered vessels operating on the Great Lakes. This proposal does not deal with pilots required by this statute. They are the subject of a separate set of regulations.

(2) 46 U.S.C. 8502 requires a coastwise seagoing vessel propelled by machinery and subject to inspection for certification, sailing under a coastwise license, when underway, except on the high seas, to be under the direction and control of a pilot licensed by the Coast Guard. Pilots required under this statute are dealt with in the final rule (CGD 77-084) being published simultaneously with this document, and in 46 CFR 157.20-40 (a) and (d) of this notice of proposed rulemaking.

(3) 46 U.S.C. 8101 concerns the complement of inspected vessels. While Pub. L. 96-378 amended section 4426 of the Revised Statutes by replacing the word "pilot" with "deck officer," the Coast Guard is authorized under 46 U.S.C. 8101 to determine the complement of licensed individuals, including pilots, considered necessary for a vessel's safe operation. Under 46 U.S.C. 8101, the Coast Guard continues to require pilots on certain vessels subject to inspection operating exclusively on pilotage waters of the United States. Pilots required under this statute are dealt with in this notice of proposed rulemaking under 46 CFR 157.20-40 (a), (b) and (f).

The Coast Guard is continuing the present requirement for masters and mates, and first class pilots, on vessels subject to inspection, in excess of 1,600 gross tons, upon the Great Lakes, and rivers, or lakes, bays and sounds other than the Great Lakes. The Coast Guard feels that it is important for these inland route vessels to have on board individuals who possess broader deck officer type of knowledge, for example, cargo handling, stability, lifesaving & firefighting, in addition to pilot type of skills (shiphandling & local knowledge). There is no requirement for a pilot on these inland route vessels of less than 1,600 gross tons. Therefore, the requirements of 21 years of age, the annual physical examination, currency of knowledge provisions, and round trips do not apply to the individuals on these vessels of less than 1,600 gross tons. In addition, inland route tank barges are excluded from the requirements of this regulation. A Supplemental Notice of Proposed Rulemaking regarding Licensing of Officers and Operators and Registration of Staff Officers (CGD 81-059) will be published in the **Federal Register** in the near future dealing with changes to the requirements for all masters and mates. It is suggested that individuals with an interest in the licensing of officers also participate in the above identified rulemaking.

The Coast Guard is also proposing that no first class pilot may serve as pilot on any vessel of more than 50,000 gross tons unless the individual pilot has made 12 round trips as pilot or observer over the route to be traversed on vessels of more than 40,000 gross tons. This is proposed in order to satisfy the concern of Congress and several commenters as to insuring that individuals have experience on vessels of a relatively substantial size. A number of comments received on the supplemental notice of proposed rulemaking (48 FR 3912)

pointed out that a vessel of 1,000 gross tons or even 4,000 gross tons is really not considered to be a very large vessel. The Coast Guard agrees with those comments that something additional is necessary in order to insure that pilots have experience on larger vessels. Comments are requested not only on this general concept but also with regard to the gross tonnage figures for the round trip requirement (50,000 GT and 40,000 GT in this proposal). This proposal, that no pilot may operate under the authority of his pilot's license on vessels of more than 50,000 gross tons unless he has made 12 round trips over the route on vessels of more than 40,000 gross tons, will be self enforcing due to the consequences of acting as a pilot on an invalid license.

The Coast Guard required a pilot on vessels operating on the Great Lakes under the authority of the old 46 U.S.C. 404. While Pub. L. 96–378 amended section 4426 of the Revised Statutes by replacing the word "pilot" with "deck officer," the Coast Guard is authorized under 46 U.S.C. 8101 to determine the complement of licensed individuals, including pilots, considered necessary for a vessel's safe operation. The Coast Guard is proposing that pilots continue to be required on vessels operating on the Great Lakes. As already indicated, this will not change the requirement for a pilot on vessels operating on the Great Lakes.

The Coast Guard has not published a definition of what a coastwise seagoing vessel is for pilotage purposes. Seagoing has been defined in the statutes for other purposes, but not with regard to pilot requirements. For the applicability of vessel inspection, 46 U.S.C. 2101 (32) and (33) define "seagoing barge" and "seagoing motor vessel" by reference to "Boundary Lines" established by the Coast Guard under 33 U.S.C. 151. Since the statute governing Federal pilotage does not refer to 33 U.S.C. 151, the "Boundary Lines" are not applicable. The Coast Guard has interpreted "seagoing" in former 46 U.S.C. 364 (now 46 U.S.C. 8502) as proceeding beyond the headlands. Because of the widespread misunderstanding of the effect of "Boundary Lines" and to clarify when a vessel is required to have a pilot, or a person acting as a pilot, the Coast Guard is now proposing to define coastwise seagoing vessel for pilotage purposes as follows: A "coastwise seagoing vessel," for purposes of the manning of vessels by pilots or for individuals acting as pilots, means a vessel that at any time is authorized by its Certificate of Inspection to proceed beyond the headlands.

The Coast Guard has not published a definitive statement as to where pilotage waters begin, and at least one commenter states that pilotage waters should be more clearly defined. Our present position is that the line delineating pilotage waters from non-pilotage waters is a line drawn across the headlines at the entrance to bays, rivers, or harbors. The Coast Guard is now proposing to define pilotage waters as follows:

"Pilotage waters" as used in Subpart 157.20–40 interprets the phrase "except on the high seas" appearing in 46 U.S.C. 8502 and means generally the navigable waters of the United States shoreward of the ten (10) fathom sounding line depicted on charts except in the following cases:

(1) When the 10 fathom line is beyond the territorial sea, pilotage waters will be the waters shoreward of the territorial sea boundary.

(2) When the 10 fathom line is inside the headlands at the entrance to bays, rivers, or harbors, pilotage waters will be shoreward of a line drawn between the headlands.

(3) The navigable waters of the United States east of a line drawn from the northernmost point of Angeles Point, Washington, to the Traffic Lane Separation Lighted Buoy JA, Latitude 48°14.2′ N., Longitude 123°28.9′ W in the Strait of Juan de Fuca, are pilotage waters.

There are a number of other lines which are used for various other purposes, however, they are not appropriate to delineate pilotage waters and are not identified on all charts. The Coast Guard is proposing that the 10 fathom line be used to delineate pilotage waters because it closely conforms to present practice and it is clearly shown on all large scale charts. In some areas, such as where there are numerous offshore islands, use of the 10 fathom line alone may not be practical. Comments are invited identifying these areas and suggesting alternative delineating lines.

Public Law 98–557 amended 46 U.S.C. 8502 by adding that the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to 46 U.S.C. 8502 is not required to be under the direction and control of a pilot licensed under 46 U.S.C. 7101.

The Coast Guard is therefore proposing the following additional exceptions to the general definition of Federal pilotage waters:

(1) Pilotage waters for the navigable waters of the United States within Prince William Sound, Alaska, are only as follows:

(a) Northeast of a line drawn from Point Freemantel (Latitude 60°55.7′ N, Longitude 146°58.3′ W) to Rocky Point Light 10 (Latitude 60°57.1′ N, Longitude 146°46.0′ W) in Valdez Arm.

(b) East of a line drawn from Sheep Point (Latitude 60°36.9′ N, Longitude 146°00.5′ W) to position Latitude 60°34.4′ N, Longitude 145°58.2′ W on the headlands of Windy Bay, Hawkins Island.

(c) West of a line drawn from Point Pigot (Latitude 60°48.1′ N, Longitude 148°21.3′ W) to Point Cochrane (Latitude 60°46.0′ N, Longitude 148°21.7′ W).

(2) Pilotage waters for the navigable waters of the United States within Southeast Alaska are as follows: the navigable waters within the territorial sea between Dixon Entrance and Cape Spencer.

The Final Rule (CGD 77–084) published simultaneously with this notice contains a requirement for licensed pilots on tank barges subject to 46 U.S.C. 8502 and exceeding 10,000 gross tons. The segment of the towing industry involved with such tank barges over 10,000 gross tons would be required to have first class pilots for their vessels. An individual from a segment of the towing industry requested that the Coast Guard explore an alternative to the chart sketch required in order to obtain the first class pilot's license.

In response to this request, the Coast Guard is proposing an alternative to sketching a chart of the route and waters applied for in connection with a first class pilot's license restricted to tug and barge combinations. The existing examination includes the requirement for a chart sketch and the license is not restricted to tug/barge combinations.

A written test fully discerning of the candidate's ability could be requested by an applicant as an alternative to the chart sketch, however, the license issued would be restricted to "tug and barge only."

The knowledge requirements would be the same, only the method of testing for that knowledge would be different. It is not intended that the test be made easier, as a matter of fact, some individuals would find this type of test more difficult than the chart sketch.

Additionally, there would be a tonnage limitation based on the largest combined gross tonnage of the vessels on which the applicant has the required round trip experience, up to a maximum of 30,000 gross tons.

The following table outlines the pilot requirements for various types of vessels and may assist in clarifying the

proposals contained in this notice of proposed rulemaking:

VESSEL PILOT REQUIREMENTS

	Maximum route on certificate of inspection	
	Coastwise and Great Lakes	Inland
Self-propelled vessels 1,600 GT and over	First Class Pilot (FCP) (§ 157.20-40(a))	First Class Pilot (§ 157.20-40(b)).
Self-propelled vessels less than 1,600 GT	FCP, or license as master or mate with 4 round trips (§ 157.20-40 (a), (c), and (d))	No pilot requirement.
Tank Barges totaling more than 10,000 GT [1]	First Class Pilot (§ 157.20-40(a))	No pilot requirement.
Tank Barges totaling not more than 10,000 GT [1]	FCP, or license as master, mate, or operator with 12 round trips and 6 months towing experience (§ 157.20-40(a), (c), and (e))	No pilot requirement.
Self-propelled vessels over 50,000 GT	FCP plus 12 round trips on vessels over 40,000 GT (§ 157.20-40(f))	N/A—no vessel greater than 50,000 GT is likely to have an inland route on its COI.

[1] The pilot requirements for these tank barges are contained in the Final Rule (CGD 77-084), appearing elsewhere in this issue of the **Federal Register**.

Evaluation: This proposal concerns matters which are closely related to but which were not contained in the supplemental notice of proposed rulemaking published in the **Federal Register** on January 27, 1983 (48 FR 3912).

These proposed regulations are considered to be non-major under Executive Order 12291. The original proposal and the final rule appearing elsewhere in this issue of the **Federal Register** were considered to be significant under the then existing Department of Transportation guidelines because they were likely to be controversial. As this proposal is related to the final rule, it is classified as significant, however, it is not expected to have a significant economic impact or to be particularly controversial.

As discussed below, the economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

The proposal to increase the gross tonnage authorization of licensed officers to serve as pilot on self-propelled coastwise seagoing vessels from 1,000 to 1,600 gross tons, will reduce the burden on some vessel owners and individuals by increasing the size of vessels on which a licensed individual, meeting the requirements identified in the proposal, may serve as a pilot, thereby eliminating the requirement for the individual to obtain a pilot's license or requiring the vessel to employ an independent pilot. Approximately 20 vessels are affected by this proposal.

The requirement to have experience on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of more than 50,000 gross tons is proposed in order to insure experience on large vessels. There are only a limited number of U.S. ports which can accommodate vessels of that size. It is a normal practice to assign the more experienced pilots to the larger ships. Pilots that normally provide services in those ports would have acquired more than 12 round trips on vessels over 40,000 gross tons, so this proposal should not have an impact on them. Pilots that do not normally provide services in one of those particular ports and do not have experience on larger vessels would have to obtain 12 round trips on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of over 50,000 gross tons. It is not possible to estimate the number of pilots that would fall in this latter category.

The proposals dealing with defining coastwise seagoing vessels and pilotage waters do not significantly change the present practice, therefore, there will be little or no impact associated with these proposals.

The proposal requiring pilots on Great Lakes vessels simply continues that requirement. The statute authorizing pilots on Great Lakes vessels was amended and the Coast Guard is proposing to continue the requirement under the authority of a different statute. The requirements for pilots on these vessels is required by the restricted navigation in many areas of the Great Lakes and is supported by the Great Lakes shipping industry, including the pilots.

The proposal to allow an applicant to request a written test alternative to the chart sketch for a first class pilot's license will have no impact other than giving an applicant the choice between a written test and a chart sketch. The Coast Guard would have to develop the substitute written test as it does not presently exist.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 157

Seamen, Vessels.

In consideration of the foregoing it is proposed that Part 10 and Part 157 of Title 46 of the Code of Federal Regulations be amended as follows:

PART 10—LICENSING OF OFFICERS AND MOTORBOAT, OPERATORS AND REGISTRATION OF STAFF OFFICERS

1. The authority citation for Part 10 reads as follows:

Authority: 46 U.S.C. 7101; 49 CFR 1.46(b).

2. By adding a new paragraph (d) to § 10.07-7 to read as follows:

§ 10.07-7 Required examination for first class pilots.

* * * * *

(d) An applicant for an original license, extension of route or endorsement may, upon request, take a written test concerning the route and waters applied for in lieu of the chart sketching required in paragraph (a)(2) of this section. Licenses, extensions or endorsements obtained by taking the substitute written test are restricted to "tug and barge only" and have a tonnage limitation based on the largest combined gross tonnage of the vessels on which the applicant has the required round trip experience, up to a maximum of 30,000 gross tons.

PART 157—MANNING REQUIREMENTS

3. The authority citation for Part 157 reads as follows:

Authority: 46 U.S.C. 3703, 8105, 9102; 50 U.S.C. 198; 46 CFR 1.46(b).

4. By adding new §§ 157.10-89 and 157.10-91 as follows:

§ 157.10-89 Coastwise seagoing vessel.

"Coastwise Seagoing Vessel," for purposes of the manning of vessels by pilots or for individuals acting as pilots, means a vessel that at any time is authorized by its Certificate of Inspection to proceed beyond the headlands.

§ 157.10-91 Pilotage waters.

"Pilotage Waters" means the navigable waters of the United States shoreward of the ten (10) fathom sounding line depicted on charts except in the following cases:

(a) When the 10 fathom line is beyond the territorial sea, pilotage waters will be the waters shoreward of the territorial sea boundary.

(b) When the 10 fathom line is inside the headlands at the entrance to bays, rivers, or harbors, pilotage waters will be shoreward of a line drawn between the headlands.

(c) The navigable waters of the United States east of the line drawn from the northernmost point of Angeles Point, Washington, to the Traffic Lane Separation Lighted Buoy JA (Latitude 48°14.2′ N, Longitude 123°28.9′ W) in the Strait of Juan de Fuca, are pilotage waters.

(d) Pilotage waters for the navigable waters of the United States within Prince William Sound, Alaska, are only as follows:

(1) Northeast of a line drawn from Point Freemantel (Latitude 60°55.7′ N, Longitude 146°58.3′ W) to Rocky Point Light 10 (Latitude 60°57.1′ N, Longitude 146°46.0′ W) in Valdez Arm.

(2) East of a line drawn from Sheep Point (Latitude 60°36.9′ N, Longitude 146°00.5′ W) to position Latitude 60°34.4′ N, Longitude 145°58.2′ W on the headlands of Windy Bay, Hawkins Island.

(3) West of a line drawn from Point Pigot (Latitude 60°48.1′ N, Longitude 148°21.3′ W) to Point Cochrane (Latitude 60°46.0′ N, Longitude 148°21.7′ W).

(e) Pilotage waters for the navigable waters of the United States within Southeast Alaska are as follows: the navigable waters within the territorial sea between Dixon Entrance and Cape Spencer.

3. By revising paragraphs (a), (c), (d), and (g), and adding paragraphs (b), (f) and (i) of § 157.20–40 to read as follows:

§ 157.20–40 Pilots.

(a) The following vessels, when underway and not sailing on register, must be under the direction and control of a pilot:

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and seagoing tank barges subject to inspection under 46 U.S.C. Chapter 37, except when seaward of pilotage waters.

(2) Vessels operating on the Great Lakes, if propelled by machinery, or tank barges subject to inspection under 46 U.S.C. Chapter 37.

(b) Every vessel in excess of 1,600 gross tons propelled by machinery and subject to inspection for certification, operating exclusively on pilotage waters of the United States, must be under the direction and control of a pilot licensed by the Coast Guard.

(c) The requirements of paragraph (a) of this section are satisfied when the vessel is under the direction and control of either:

(1) A First Class Pilot holding a valid license issued by the Coast Guard, acting within the restrictions of his or her license, or

(2) An individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel, within the restrictions of his or her license and the limitations of paragraphs (d) and (e) of this section, provided he or she:

(i) Has reached the age of 21 years;

(ii) Complies with the currency of knowledge provisions of 46 CFR 10.07–13, and

(iii) Complies with the physical examination requirements of 46 CFR 10.07–9.

(d) A licensed individual qualifying under subparagraph (c)(2) of this section may serve as pilot of a coastwise seagoing vessel or a Great Lakes vessel, of not more than 1,600 gross tons propelled by machinery and subject to inspection for certification, provided the individual has four round trips, over the route to be traversed, 1 of which must be made during the hours of darkness if the route is to be traversed during darkness, while in the wheelhouse as watchstander or observer.

* * * * *

(f) No first class pilot may serve as pilot on any vessel of more than 50,000 gross tons unless the individual pilot has twelve round trips, 3 of which must be made during the hours of darkness, as pilot or observer over the route to be traversed on vessels of more than 40,000 gross tons.

(g) In any instance when the qualifications of a person discharging the requirements for pilotage through the provisions of this section are questioned by the Coast Guard, the individual shall provide the Coast Guard with documentation proving compliance with paragraph (c) and the applicable portion(s) of paragraphs (d), (e) or (f) of this section.

* * * * *

Dated: June 18, 1985.

J.S. Gracey,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 85–15027 Filed 6–21–85; 8:45 am]

BILLING CODE 4910–14–M

federal register

Monday
June 24, 1985

Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Equipment Leaks of VOC From Onshore Natural Gas Processing Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2788-3]

Standards of Performance for New Stationary Sources; Equipment Leaks of VOC From Onshore Natural Gas Processing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates standards of performance for equipment leaks of volatile organic compounds (VOC) in onshore natural gas processing plants. The standards were proposed in the **Federal Register** on January 20, 1984 (49 FR 2636). These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from the crude oil and natural gas production industry cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of the standards is to require all newly constructed, modified, and reconstructed facilities in the natural gas production industry to reduce emissions to the level achieved by the best demonstrated system of continuous emission reduction for equipment leaks of VOC, considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: June 24, 1985. These standards of performance become effective upon promulgation and apply to affected facilities for which construction, reconstruction, or modification commenced after January 20, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in this action effective on June 24, 1985.

ADDRESSES: *Background Information Documents.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Equipment Leaks of VOC from Onshore Natural Gas Processing Plants—Background Information for Promulgated Standards" (EPA-450/3-82-024b). The BID contains (1) a summary of the public comments made on the proposed standards and EPA's responses to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement. The BID for the proposed standards may be obtained from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. Please refer to "Equipment Leaks of VOC in Natural Gas Production Industry—Background Information for Proposed Standards," EPA-450/3-82-024a (NTIS PB84-155126).

Docket. A docket, number A-80-20B, containing information considered by EPA in the development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Mr. James F. Durham, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671. For information on the regulatory decisions and the promulgated standards, contact Ms. Dianne Byrne or Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5578. For information concerning the enforcement and reporting aspects, contact Mr. Richard Biondi, Stationary Source Compliance Division (EN-341), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460; or, contact the appropriate Regional Office contact as listed in 40 CFR 60.4

SUPPLEMENTARY INFORMATION:

Summary of Standards

Standards of performance for equipment leaks of VOC from onshore natural gas processing plants were proposed on January 20, 1984 (49 FR 2636). The promulgated standards for equipment leaks of VOC from onshore natural gas processing plants (Subpart KKK) incorporate by reference many of the provisions of Subpart VV, the standards for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (48 FR 48328, October 18, 1983; amended at FR 49 22607, May 30, 1984). The promulgated standards apply to two types of "affected facilities," which include specific equipment with the potential to leak VOC. Each gas plant compressor is an affected facility. Each process unit is also an affected facility. A process unit is defined as equipment (other than compressors) assembled for the extraction of natural gas liquids from fields gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products.

Equipment covered by the standards are compressors and groups of valves, pumps, pressure relief devices, flanges and connectors, and open-ended lines in VOC service (that is, contains or contacts a process fluid that is at least 10 percent VOC by weight) or in wet gas service (that is, contains or contacts inlet gas to the plant extraction process). The standards require (1) a leak detection and repair program for valves in gas/vapor and light liquid service, for pumps in light liquid service, and for pressure relief devices in gas/vapor service and (2) equipment for compressors and open-ended valves or lines. Flanges and other connectors, pressure relief devices in liquid service, and pumps and valves in heavy liquid service are excluded from the routine leak detection requirements but are subject to the same repair requirements as the equipment subject to the routine leak detection and repair requirements. For valves, pumps, and pressure relief devices, an owner or operator may use certain control equipment instead of implementing the standards described above. Alternative standards for valves and a procedure for determining the equivalency of other alternative control measure are also provided.

A gas plant that does not fractionate natural gas liquids and that also processes less than 283,000 standard cubic meters per day (scmd) of field gas is exempt from the routine leak detection and repair requirements for valves, pumps, and pressure relief devices.

In response to comments on the proposed standards, EPA has exempted valves, pumps, and pressure relief devices within process units located in the North Slope of Alaska from the routine leak detection and repair requirements. In addition, for all gas plants EPA has allowed up to 3 percent of the valves in new process units to be

designated as difficult-to-monitor valves, thereby exempting them from the routine leak detection and repair requirements for valves. The EPA has also exempted all reciprocating compressors in wet gas service from the compressor control requirements of the standards based on an analysis of cost effectiveness. The EPA has also changed the definition of "in VOC service" from a concentration of 1 weight percent VOC to 10 weight percent VOC, while adding a provision that all equipment "in wet gas service," regardless of percent VOC content, is covered by the standards. This is consistent with the intent of the proposed standards. The EPA has provided an alternative procedure for determining "capital expenditures" for the purpose of determining whether a modification has occurred under the provisions of 40 CFR 60.14.

Flare requirements for velocity and heating values have been changed since proposal to allow flares burning gas streams with high heating values to use high velocities. An equation has been added to the final standards for calculating the maximum permitted velocity for flares to provide for velocities up to 122 meters per second (m/sec) depending on the gas heat content. The purpose of the equation is to allow streams with heat contents greater than 11.2 megajoules per standard cubic meter (MJ/scm) to be flared at higher velocities, while ensuring a VOC reduction efficiency that reflects best demonstrated technology (BDT).

Owners and operators of facilities covered by these standards should note that some of the releases covered by these standards might be covered by requirements developed under the Comprehensive Environmental Response, Compensation, and Liability Act (See 48 FR 23552).

The final standards include semiannual reports to enable enforcement agencies to assess compliance with the standards. These reports may be waived for affected facilities in States where the regulatory program has been delegated, if EPA, in the course of delegating such authority, approves reporting requirements or an alternative means of source surveillance adopted by the State. In these cases, such sources would be required to comply with the requirements adopted by the State.

Compliance with the leak detection and repair program and equipment requirements will also be assessed through review of records and inspections. Records of leak detection, repair attempts, and maintenance are required. Notifications are also required as described in the General Provisions for new source standards (40 CFR 60.7).

Summary of Impacts of the Standards

The standards will cover about 180 newly constructed facilities and up to 40 modified or reconstructed facilities in the fifth year after the standards are in effect.

Emission Reductions

The standards will reduce VOC emissions from affected facilities by approximately 73 percent, or 16,100 megagrams (Mg) per year, in the fifth year after the standards are in effect. These impacts are compared to current industry practices including requirements associated with State implementation plans.

Cost and Economic Impacts

The standards will require an industry-wide capital investment over the initial 5-year period of approximately $6.2 million. The industry-wide net annualized cost is estimated to be approximately $1.5 million in the fifth year after the standards are in effect. The standards are expected to increase average prices by less than 0.1 percent.

Other Impacts

These standards of performance will not increase the energy usage of gas plant process units. In general, the controls required by the standards do not require significant additional energy. Furthermore, the effect of the standards will be to decrease production losses of raw materials so that a net positive energy impact will result. Implementation of the standards will have no adverse impact on solid waste within the natural gas industry.

The promulgated standards, changes since proposal, EPA's responses to comments received by mail and comments made at a public hearing on March 7, 1984, and environmental, energy, and economic impacts are discussed in greater detail in the BID for the promulgated standards. (See the **ADDRESSES** section of this preamble.)

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industry involved to identify and locate documents so that they can participate effectively in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review, except for interagency review materials (Section 307(d)(7)(A)).

Miscellaneous

In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared and is included in the BID's. Cost was carefuly considered in determining BDT.

The resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 3 years would be about 6.6 person-years annually. The resources required by EPA and State and local agencies to process the reports and maintain records for the first 3 years would average about 0.8 person-years annually.

Prior to proposal, the information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The OMB did not approve the proposed requirement that owners or operators submit notification of their election to comply with one of the alternative valve standards because they believed that it was unnecessary. The Agency believes that the notification is essential for enforcement personnel to enforce adequately the standards. Compliance with either the primary work practice standard for valves or with one of the two alternative standards is demonstrated according to different schedules for leak detection and repair (monthly, semiannually, or annually). Enforcement personnel could not enforce the appropriate compliance schedule without knowing whether the owner or operator has elected to meet the primary work practice standard, with its monthly monitoring requirement, or one of the alternatives with their less frequent monitoring requirements. Because the notification is considered essential for enforcement

personnel to enforce the standard, and because the burden associated with the one- to two-sentence notification is minimal, the notification requirement has not been removed from the standards. These requirements were approved; the OMB control number is 2060-0120.

"Major Rule" Determination

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The Administrator has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." Fifth-year annualized costs of the standards would be about $1.5 million for the projected 200 newly constructed, modified, and reconstructed natural gas production facilities that could be affected by the standards during the first 5 years. The standards result in no adverse impact on profitability, would have a potential to increase slightly the consumer price of natural gas or natural gas products (0.1 percent or less), and would have no adverse impact on capital availability for construction of gas plants. The Administrator has concluded that this rule is not "major" under any of the criteria established in the Executive Order.

This regulation was submitted to the OMB for review as required in Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection in Docket No. A-80-20B, Central Docket Section, at the address given in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Analysis Certification

The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small entities be identified. According to current Small Business Administration guidelines, a small entity in the natural gas processing industry is one that has 500 employees or fewer. There are many small companies that process natural gas and employ fewer than 500 persons. However, even if facilities owned by small businesses do become subject to the standards, none is expected to be adversely affected. This can be said because the price and profitability impacts previously described have been estimated from the perspective of the "smaller" gas processing units in operation. Thus, the economic impact for facilities owned by small businesses is not considered significant. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Petroleum.

Dated: May 10, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7601(a).

2. By adding a new Subpart KKK as follows:

Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants

Sec.
60.630 Applicability and designation of affected facility.
60.631 Definitions.
60.632 Standards.
60.633 Exceptions.
60.634 Alternative means of emission limitation.
60.635 Recordkeeping requirements.
60.636 Reporting requirements.
60.637–60.639 [Reserved].

Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants

§ 60.630 Applicability and designation of affected facility.

(a) (1) The provisions of this subpart apply to affected facilities in onshore natural gas processing plants.

(2) A compressor in VOC service or in wet gas service is an affected facility.

(3) The group of all equipment except compressors (defined in § 60.631) within a process unit is an affected facility.

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 20, 1984, is subject to the requirements of this subpart.

(c) Addition or replacement of equipment (defined in § 60.631) for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(d) Facilities covered by Subpart VV or Subpart GGG of 40 CFR Part 60 are excluded from this subpart.

(e) A compressor station, dehydration unit, sweetening unit, underground storage tank, field gas gathering system, or liquefied natural gas unit is covered by this subpart if it is located at an onshore natural gas processing plant. If the unit is not located at the plant site, then it is exempt from the provisions of this subpart.

§ 60.631 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of Part 60, or in Subpart VV of Part 60; and the following terms shall have the specific meanings given them.

"Alaskan North Slope" means the approximately 69,000 square-mile area extending from the Brooks Range to the Arctic Ocean.

"Equipment" means each pump, pressure relief device, open-ended valve or line, valve, compressor, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart.

"Field gas" means feedstock gas entering the natural gas processing plant.

"In light liquid service" means that the piece of equipment contains a liquid that meets the conditions specified in § 60.485(e) or § 60.633(h)(2).

"Natural gas liquids" means the hydrocarbons, such as ethane, propane, butane, and pentane, that are extracted from field gas.

"Natural gas processing plant" (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both.

"Nonfractionating plant" means any gas plant that does not fractionate mixed natural gas liquids into natural gas products.

"Onshore" means all facilities except those that are located in the territorial seas or on the outer continental shelf.

"Process unit" means equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

"Reciprocating compressor" means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the driveshaft.

"In wet gas service" means that a piece of equipment contains or contacts the field gas before the extraction step in the process.

§ 60.632 Standards.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of § 60.482-1 (a), (b), and (d) and § 60.482-2 through § 60.482-10, except as provided in § 60.633, as soon as practicable, but no later than 180 days after initial startup.

(b) An owner or operator may elect to comply with the requirements of § 60.483-1 and § 60.483-2.

(c) An owner or operator may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to that achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements of § 60.634 of this subpart.

(d) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of § 60.485 except as provided in § 60.633(f) of this subpart.

(e) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of § 60.486 and § 60.487 except as provided in § 60.633, § 60.635, and § 60.636 of this subpart.

(f) An owner or operator shall use the following provision instead of § 60.485(d)(1): Each piece of equipment is presumed to be in VOC service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VOC service or in wet gas service. For a piece of equipment to be considered not in VOC service, it must be determined that the percent VOC content can be reasonably expected never to exceed 10.0 percent by weight. For a piece of equipment to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction step in the process. For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a piece of equipment, procedures that conform to the methods described in ASTM Methods E169, E168, or E260 (incorporated by reference as specified in § 60.17) shall be used.

§ 60.633 Exceptions.

(a) Each owner or operator subject to the provisions of this subject may comply with the following exceptions to the provisions of Subpart VV.

(b) (1) Each pressure relief device in gas/vapor service may be monitored quarterly and within 5 days after each pressure release to detect leaks by the methods specified in § 60.485(b) except as provided in § 60.632(c), paragraph (b)(4) of this section, and § 60.482-4(a)-(c) of Subpart VV.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) (i) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 60.482-9.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(4) (i) Any pressure relief device that is located in a nonfractionating plant that is monitored only by nonplant personnel may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days as specified in paragraph (b)(1) of this section and § 60.482-(b)(1) of Subpart VV.

(ii) No pressure relief device described in paragraph (b)(4)(i) of this section shall be allowed to operate for more than 30 days after a pressure release without monitoring.

(c) Sampling connection systems are exempt from the requirements of § 60.482-5.

(d) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283,000 standard cubic meters per day (scmd) (10 million standard cubic feet per day (scfd)) or more of field gas are exempt from the routine monitoring requirements of § 60.482-2(a)(1), § 60.482-7(a), and § 60.633(b)(1).

(e) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located in the Alaskan North Slope are exempt from the routine monitoring requirements of § 60.482-2(a)(1), § 60.482-7(a), and § 60.633(b)(1).

(f) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of § 60.482-3.

(g) In addition to the requirements for flares at § 60.482-10(d)(4), the following are allowed:

(1) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.485(g)(4), equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122m/sec (400 ft/sec) if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

(2) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.485(g)(4), less than 122 m/sec (400 ft/sec) and less than the velocity, ^{V}max, as determined by the following equation:

$$\mathrm{Log}_{10}(^{V}max) = (H_T + 28.8)/31.7$$

^{V}max = Maximum permitted velocity, m/sec.
28.8 = Constant.
31.7 = Constant.
H_T = The net heating value as determined in § 60.485 (g)(3).

(h) An owner or operator may use the following provisions instead of § 60.485(e):

(1) Equipment is in heavy liquid service if the weight percent evaporated is 10 percent or less at 150 °C as determined by ASTM Method D86 (incorporated by reference as specified in § 60.17).

(2) Equipment is in light liquid service if the weight percent evaporated is greater than 10 percent at 150 °C as determined by ASTM Method D86 (incorporated by reference as specified in § 60.17).

§ 60.634 Alternative means of emission limitation

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under any design, equipment, work practice or operational standard, the Administrator will publish, in the Federal Register a notice permitting the use of that alternative means for the purpose of compliance with that standard. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after notice and an opportunity for a public hearing.

(c) The Administrator will consider applications under this section from either owners or operators of affected facilities, or manufacturers of control equipment.

(d) The Administrator will treat applications under this section according to the following criteria, except in cases where he concludes that other criteria are appropriate:

(1) The applicant must collect, verify and submit test data, covering a period of at least 12 months, necessary to support the finding in paragraph (a) of this section.

(2) If the applicant is an owner or operator of an affected facility, he must commit in writing to operate and maintain the alternative means so as to achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under the design, equipment, work practice or operational standard.

§ 60.635 Recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of § 60.486.

(b) The following recordkeeping requirements shall apply to pressure relief devices subject to the requirements of § 60.633(b)(1) of this subpart.

(1) When each leak is detected as specified in § 60.633(b)(2), a weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment. The identification on the pressure relief device may be removed after it has been repaired.

(2) When each leak is detected as specified in § 60.633(b)(2), the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

(i) The instrument and operator identification numbers and the equipment identification number.

(ii) The date the leak was detected and the dates of each attempt to repair the leak.

(iii) Repair methods applied in each attempt to repair the leak.

(iv) "Above 10,000 ppm" if the maximum instrument reading measured by the methods specified in § 60.635(a) after each repair attempt is 10,000 ppm or greater.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(vi) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(vii) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(viii) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(ix) The date of successful repair of the leak.

(x) A list of identification numbers for equipment that are designated for no detectable emissions under the provisions of § 60.482–4(a). The designation of equipment subject to the provisions of § 60.482–4(a) shall be signed by the owner or operator.

(c) An owner or operator shall comply with the following requirement in addition to the requirement of § 60.486(j): Information and data used to demonstrate that a reciprocating compressor is in wet gas service to apply for the exemption in § 60.633(f) shall be recorded in a log that is kept in a readily accessible location.

(Approved by the Office of Management and Budget under control number 2060–0120)

§ 60.636 Reporting requirements.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of § 60.487.

(b) An owner or operator shall include the following information in the initial semiannual report in addition to the information required in § 60.487(b)(1)–(4): number of pressure relief devices subject to the requirements of § 60.633(b) except for those pressure relief devices designated for no detectable emissions under the provisions of § 60.482–4(a) and those pressure relief devices complying with § 60.482–4(c).

(c) An owner or operator shall include the following information in all semiannual reports in addition to the information required in § 60.487(c)(2)(i)–(vi):

(1) Number of pressure relief devices for which leaks were detected as required in § 60.633(b)(2) and

(2) Number of pressure relief devices for which leaks were not repaired as required in § 60.633(b)(3).

(Approved by the Office of Management and Budget under control number 2060–0120)

3. By revising paragraphs (a) (34), (35), (36), and (40) of § 60.17 of Subpart A—General Provisions to read as follows:

§ 60.17 Incorporation by reference.

(a) * * *

(34) ASTM E169–63 (Reapproved 1977), General Techniques of Ultraviolet Quantitative Analysis, IBR approved for § 60.485(d), § 60.593(b), and § 60.632(f).

(35) ASTM E168–67 (Reapproved 1977), General Techniques of Infrared Quantitative Analysis, IBR approved for § 60.485(d), § 60.593(b), and § 60.632(f).

(36) ASTM E260–73, General Gas Chromatography Procedures, IBR approved for § 60.485(d), § 60.593(b), and § 60.632(f).

(40) ASTM D86–78, Distillation of Petroleum Products, IBR approved for § 60.593(d) and § 60.633(h).

[FR Doc. 85–15099 Filed 6–21–85; 8:45 am]

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federal register

Monday
June 24, 1985

Part V

Environmental Protection Agency

40 CFR Part 468

Copper Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 468

[FRL 2823-4]

Copper Forming Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA proposes to amend 40 CFR Part 468 which limits effluent discharge to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that form copper and copper alloys. EPA agreed to propose these amendments in a settlement agreement to resolve a lawsuit challenging the final copper forming regulation promulgated by EPA on August 15, 1983 (48 FR 36942).

The proposed amendments include modifications to the applicability of the copper forming regulation. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted on or before July 24, 1985.

ADDRESS: Send comments to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background
A. Rulemaking and Settlement Agreement
B. Effect of the Settlement Agreement
III. Proposed Amendments to the Copper Forming Regulation
IV. Environmental Impact of the Proposed Amendments to the Copper Forming Regulation
V. Economic Impact of the Proposed Amendments
VI. Solicitation of Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 468

I. Legal Authority

The regulation described in this notice is proposed under authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-217).

II. Background

A. Rulemaking and Settlement Agreement

On November 12, 1982, EPA proposed a regulation to establish effluent limitations guidelines for existing direct dischargers based on the best practicable control technology currently achievable ("BPT") and the best available technology economically achievable ("BAT"); new source performance standards ("NSPS") for new direct dischargers; and pretreatment standards for existing and new indirect dischargers ("PSES" and "PSNS", respectively) for the copper forming point source category (47 FR 51279). EPA published final effluent limitations guidelines and standards for the copper forming category on August 15, 1983 (40 CFR Part 468; 48 FR 36942) and technical corrections to the final rule on November 3, 1983 (48 FR 50717). This regulation establishes one subcategory that applies to all wastewater discharges resulting from the forming of copper and copper alloys. See, 40 CFR 468.01. The preamble to the final copper forming effluent limitations guidelines and standards contains a complete discussion of the development of the regulation.

Following promulgation of the copper forming regulation, Brush Wellman, Inc. ("Brush") and Cerro Copper Products Company together with the Village of Sauget ("Cerro") filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Seventh Circuit (*Cerro Copper Products Company, et. al.* v. *EPA*, Nos. 83-3053 and 84-1087.) At the request of all parties, the two cases were subsequently deconsolidated since each raised distinctly different issues.

On September 29, 1984, EPA and Brush executed a Settlement Agreement to resolve all issues raised by Brush with respect to the copper forming effluent limitations guidelines and standards. The Agreement applies only to the challenges made by Brush; it does not resolve challenges made by Cerro nor is Cerro a party to the Agreement. On October 5, 1984, the United States Court of Appeals for the Seventh Circuit entered an order holding Brush's petition for review in abeyance pending implementation of the Settlement Agreement. The challenges made by Cerro are being litigated.

Brush challenged the copper forming regulation on the grounds that this regulation and single subcategory were not appropriate as applied to its facilities for two related reasons. First, Brush forms beryllium copper alloys that differ from other copper alloys because the beryllium oxide coating formed on the surface of the metal during heat treating is both tenacious and abrasive and must be removed by special treatment before the alloys can be further processed. Second, one facility owned by Brush produces exclusively very thin guage beryllium copper strip and wire products. Brush claims this causes the volume of wastewater and mass of pollutants discharged to vary significantly from other copper forming plants.

Subsequent data and information submitted by Brush which was not available to EPA before promulgation support its contention that beryllium copper forming involves technical considerations not adequately addressed by the single subcategory of the copper forming regulation. In addition, substantial quantities of beryllium will be present in wastewaters from the removal of the beryllium oxide coating which were not taken into account during the copper forming rulemaking.

Because of these differences, EPA has determined that discharges from beryllium copper forming are best handled as a separate subcategory. Accordingly, EPA has agreed to propose to exclude the forming of beryllium copper alloys from the existing copper forming regulation and to create a new subcategory in the regulation reserved for effluent limitations guidelines and standards for the forming of beryllium copper alloys. EPA has also agreed to proposed that the term "beryllium copper" shall mean copper that is alloyed to contain 0.1 percent or more beryllium. The minimum amount of beryllium to be present in a beryllium copper alloy was set at 0.1 percent to cover all beryllium copper alloys that are manufactured or will be manufactured within the foreseable future. In addition, any alloy with beryllium present in this amount is expected to have the unique properties characteristic of all beryllium copper alloys. We use the term "alloyed to

contain" to specify that the beryllium must be intentionally added.

B. Effect of the Settlement Agreement

Under the Agreement, EPA has agreed to propose to amend the copper forming regulation to exclude discharges from the forming of beryllium copper from Subpart A of the existing copper forming regulation, 40 CFR Part 468, and to solicit comment on the amendments. If, after EPA has taken final action under the Settlement Agreement, the provisions of the copper forming amendments are consistent with the Settlement Agreement, Brush will voluntarily dismiss its petition for review and withdraw its request for a "fundamentally different factors" variance which it also submitted pursuant to 40 CFR Part 125, Subpart D. Brush has also agreed not to seek judicial review of any final amendments that are consistent with the Settlement Agreement. The Agency also agreed to propose to amend 40 CFR Part 468 to create a new subpart reserved for beryllium copper forming effluent limitations guidelines and standards.

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Seventh Circuit to stay the effectiveness of 40 CFR Part 468 as it applies to discharges from beryllium copper forming pending final action by EPA on the amendments. On November 8, 1984, the court denied the joint motion. EPA and Brush subsequently filed a joint motion to reconsider the denial. The court granted the motion and entered the stay described above on March 5, 1985. Therefore, 40 CFR 468, Subpart A, does not apply to discharges from beryllium copper forming. Copies of the Settlement Agreement and the court's stay have been sent to EPA Regional Offices and State NPDES Permit issuing authorities.

III. Proposed Amendments to the Copper Forming Regulation

Below is a list of those sections of the copper forming regulation subject to the proposed amendments. All limitations and standards contained in the final copper forming regulation published on August 15, 1983 which are not specifically listed below are not affected by the proposed amendments. EPA is not proposing to delete or amend any of the limitations and standards not specifically addressed in this proposal.

A. Section 468.01 Applicability: EPA is proposing to correct a typographical error changing the CFR unit from subpart to part.

B. Section 468.02 Specialized Definitions: EPA is proposing to add a definition for the term beryllium copper alloy to mean an alloy of copper which is alloyed to contain 0.10 percent beryllium or greater.

C. Section 468.10 Applicability; description of the copper forming subcategory: Section 468.10 of the final copper forming rule contains only one subcategory to cover discharges from the forming of all copper and copper alloys. This was based on information available to the Agency at the time of promulgation which indicated that wastewater generated by forming any copper alloy contained similar pollutant constituents in amounts effectively controlled by the same model wastewater pollution control technology. Accordingly, EPA established a single subcategory in the copper forming effluent limitations guidelines and standards.

After promulgation, Brush submitted information indicating that copper alloys containing beryllium have unique properties requiring different forming techniques than the forming of other copper alloys. These differences are discussed in the preceding section of this preamble. Because of these differences, the Agency proposes to exclude beryllium copper forming from the existing regulation and to create a new subcategory reserved for effluent limitations guidelines and standards for all beryllium copper alloys. In the Settlement Agreement, EPA agreed to propose to exclude discharges from beryllium copper forming from the subcategory covering all other copper alloys. The Agency is proposing to make this change by adding "except beryllium copper alloys" at the end of § 468.10, Applicability of Subpart A.

The unique physical properties of beryllium copper alloys, which cause unique forming problems, also apply to other metal alloys containing significant quantities of beryllium and pure beryllium metal. Therefore, as discussed in the notice of new data in the nonferrous metals forming category (50 FR 4872, February 4, 1985), the Agency may decide to combine the forming of all alloys that are alloyed to contain beryllium at 0.1 percent or greater under one subcategory. Since the beryllium copper alloy is the largest volume beryllium alloy produced, it would be appropriate to include forming of other beryllium alloys and pure beryllium metal together with the beryllium copper forming in one subcategory of the copper forming category.

D. Subcategorization: The final copper forming regulation includes beryllium copper alloys in the copper forming subcategory. EPA is proposing to establish a new subpart B reserved for a separate subcategory for beryllium copper forming to account for significant process differences from the forming of other copper alloys. The Agency has already begun gathering data relative to beryllium copper forming and expects to propose limitations and standards for this subcategory in the near future.

IV. Environmental Impact of the Proposed Amendments to the Copper Forming Regulation

This amendment will not increase the discharge of pollutants generated by copper forming plants who continue to be covered by the copper forming requirements of Subpart A. EPA estimates that five to nine plants will be covered by this proposed rule. Until beryllium copper forming effluent limitations guidelines and standards are established, these plants will be regulated on a case-by-case basis. The Agency does not expect a significant increase of pollutants discharged.

V. Economic Impact of the Proposed Amendments

The proposed amendment will not alter the recommended technologies for complying with the copper forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (See 48 FR 36948). These proposed amendments will not alter the determinations with respect to the economic impact to copper forming plants other than beryllium copper forming and since these amendments do not propose to establish any effluent requirements, they should have no impact on beryllium copper forming plants.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. We are particularly interested in receiving comments on the possibility of including other beryllium alloys and pure beryllium in the beryllium copper subcategory. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, like the regulation

promulgated August 15, 1983, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

VIII. Regulatory Flexibility Analysis

Public Law 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 15, 1983 final copper forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (48 FR 36950). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

List of Subjects in 40 CFR Part 468

Copper forming, Water pollution control, Waste treatment and disposal.

Dated: June 11, 1985.

Lee M. Thomas

Administrator.

PART 468—COPPER FORMING POINT SOURCE CATEGORY

For the reasons stated above, EPA is proposing to amend 40 CFR Part 468 as follows:

1. The authority citation for Part 468 continues to read as follows:

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

General Provisions

2. 40 CFR 468.01 is revised to read as follows:

§ 468.01 Applicability.

The provisions of this part are applicable to discharges resulting from the manufacture of formed copper and copper alloy products. The forming operations covered are hot rolling, cold rolling, drawing, extrusion, and forging. The casting of copper and copper alloys is not controlled by this part. (See 40 CFR Part 451.)

3. 40 CFR 468.02 is amended by adding a new paragraph (x) to read as follows:

§ 468.02 Specialized definitions.

In addition to the definitions set forth in 40 CFR Part 401 and the chemical analysis methods in 40 CFR Part 136, the following definitions apply to this part:

* * * * *

(x) The term "beryllium copper alloy" shall mean any copper alloy that is alloyed to contain 0.10 percent or greater beryllium.

Subpart A—Copper Forming Subcategory

4. 40 CFR 468.10 is revised to read as follows:

§ 468.10 Applicability; description of the copper forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of copper and copper alloys except beryllium copper alloys.

* * * * *

5. 40 CFR Part 468 is amended by adding a new Subpart B as follows:

Subpart B—Beryllium Copper Forming Subcategory

§ 468.20 Applicability; description of the beryllium copper forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introduction of pollutants into publicly owned treatment works from the forming of beryllium copper alloys.

§§ 468.21–468.26 [Reserved]

[FR Doc. 85–15128 Filed 6–21–85; 8:45 am]

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federal register

Monday
June 24, 1985

Part VI

Department of Education

34 CFR Parts 515 and 562

Bilingual Education Fellowship Program; Proposed Rule

Bilingual Education Fellowship Program; Invitation To Apply for New and Continued Participation; Notices

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 515 and 562

Bilingual Education: Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations under section 743 of Part C of the Bilingual Education Act, as amended by Pub. L. 98-511. Recent amendments to the Act necessitate the changes incorporated in the proposed regulations. Institutions of higher education (IHEs) are eligible to apply for participation in the Fellowship Program. The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

DATES: Comments must be received on or before July 24, 1985.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Ave., SW. (Room 421, Reporters Building), Washington, D.C., 20202.

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

FOR FURTHER INFORMATION CONTACT: Ramon M. Chavez, Jr., Education Program Specialist, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245-2595.

SUPPLEMENTARY INFORMATION: The authority for the Fellowship Program is under section 743 of Part C of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, enacted on October 19, 1984 (20 U.S.C. 3221-3262).

Although not eligible for funds, an IHE may apply for participation in the Fellowship Program. An individual submits an application for a fellowship to an IHE which is approved for participation in the Fellowship Program. A participating IHE forwards to the Secretary names of individuals nominated for fellowships. The Secretary selects Fellows from among the names nominated.

The proposed regulations include:

(a) *Subpart A—General.*

Section 562.1 of the proposed regulations describes the scope and purpose of the program.

Section 562.2 identifies the parties eligible for assistance under this program.

Section 562.3 indicates what regulations apply to this program.

Section 562.4 indicates the definitions that apply to this program. The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

Section 562.5 describes allowable costs under the Fellowship Program.

(b) *Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?*

Section 562.10 describes how the Secretary approves IHEs. The Secretary determines whether to approve an IHE for participation in the Fellowship Program with regard to each language curriculum. The selection criteria the Secretary uses are listed in § 562.11. The Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at the IHE.

(c) *Subpart C—How Does an Individual Apply for a Fellowship?*

Section 562.20 indicates how a participant applies for a fellowship award.

(d) *Subpart D—How Does the Secretary Select New Fellows?*

Section 562.30 contains the criteria the Secretary considers in selecting Fellows. The Secretary gives preference to individuals intending to study in certain specialized areas. The Secretary may also give preference to second- and third-year recipients.

Section 562.31 addresses the period of a fellowship award.

(e) *Subpart E—What Conditions Must Be Met by Fellows?*

Section 562.40 requires that Fellows, within 6 months of completion of their studies, must work in an activity related to programs of bilingual education.

Section 562.41 requires repayment of the fellowship assistance if the recipient does not work in one of the activities discussed in § 562.40.

Section 562.42 describes the repayment schedule for a fellowship award. Repayments begin within 6 months of the date that the Fellow ceases to be enrolled as a full-time student in the Fellowship Program, unless a deferment has been approved in accordance with § 562.44. If the Fellow ceases to work in an approved activity, he or she must repay a prorated amount of the fellowship.

Section 562.43 provides that the Secretary charges a recipient interest on the unpaid balance of a fellowship award in accordance with 31 U.S.C. 3717.

Section 562.44 describes circumstances under which repayment of a fellowship award is deferred.

Section 562.45 describes the length of deferment of repayment.

Section 562.46 describes circumstances under which repayment is waived.

Section 562.47 describes how a fellowship recipient shall account for his or her obligation.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the entent that these proposed regulations affect individuals, the Regulatory Flexibility Act does not apply. Participating IHEs are authorized to establish their own procedures for the receipt of applications from individuals. The criteria the Secretary uses in reviewing applications for participation require the minimum amount of information necessary for a fair appraisal of the qualifications and project activities proposed by the IHE.

Paperwork Reduction Act of 1980

Section 562.47 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these propsed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 562

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: June 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by removing Part 515 and adding a new Part 562 as follows:

PART 515—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM—[REMOVED]

1. Part 515 is removed.

2. A new Part 562 is added to read as follows:

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.
562.1 Fellowship Program.
562.2 Who is eligible to apply for assistance under the Fellowship Program?
562.3 What regulations apply to the Fellowship Program?
562.4 What definitions apply to the Fellowship Program?
562.5 What does a fellowship award include?

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

562.10 How does the Secretary approve IHEs for participation?
562.11 What criteria does the Secretary use in reviewing applications for participation?

Subpart C—How Does an Individual Apply for a Fellowship?

562.20 Where does an individual apply?

Subpart D—How Does the Secretary Select New Fellows?

562.30 How does the Secretary select new Fellows?
562.31 What is the period of a fellowship?

Subpart E—What Conditions Must Be Met by Fellows?

562.40 What is the service requirement for a fellowship?
562.41 What are the requirements for repayment of the fellowship?
562.42 What is the repayment schedule?
562.43 What interest is charged?
562.44 Under what circumstances is repayment deferred?
562.45 What is the length of the deferment of repayment?
562.46 Under what circumstances is repayment waived?
562.47 How shall the recipient account for his or her obligation?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 562.1 Fellowship Program.

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

(20 U.S.C. 3253)

§ 562.2 Who is eligible to apply for assistance under the Fellowship Program?

(a) An institution of higher education (IHE) that offers a program of study leading to a degree above the bachelor's level as described in § 562.1 may apply for participation in the Fellowship Program.

(b) An individual is eligible to apply for a fellowship under this program if the individual—

(1)(i) Is a citizen, a national, or a permanent resident of the United States;

(ii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iii) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands;

(2) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in this program.

(20 U.S.C. 3253)

§ 562.3 What regulations apply to the Fellowship Program?

The following regulations apply to the Fellowship Program:

(a) The regulations relating to proof of nonprofit status in 34 CFR 75.51.

(b) The regulations in this Part 562.

(20 U.S.C. 3253)

§ 562.4 What definitions apply to the Fellowship Program?

The following definitions apply to Part 562:

(a) "Program of bilingual education" means any instructional program authorized under Part A of the Act.

(b) The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(20 U.S.C. 3231-3262)

§ 562.5 What does a fellowship award include?

(a) *Allowable costs.* A student may use Fellowship funds under the program for—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study site; and

(4) A stipend, subject to the restrictions in paragraph (b) of this section.

(b) *Stipends.*

(1) An individual may receive a Fellowship stipend if he or she is—

(i) A full-time student in a program of study which was approved by the Secretary in accordance with § 562.10; and

(ii) Not gainfully employed more than 20 hours a week or the annual equivalent.

(2) A stipend for an individual participating in the Fellowship Program may not exceed $450 per month.

(20 U.S.C. 3255)

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

§ 562.10 How does the Secretary approve IHEs for participation?

(a) (1) The Secretary determines whether to approve an IHE for participation with regard to each proposed language curriculum based on the quality of the application using the criteria listed in §562.11.

(2) The Secretary awards up to a maximum of 100 points for all the criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for each criterion.

(b) After the IHE's application has been evaluated according to the selection criteria, the Secretary rank orders the application.

(c) Following the rank order, the Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency within the geographic area.

(20 U.S.C. 3253(a), 3254)

§ 562.11 What criteria does the Secretary use in reviewing applications for participation?

(a) *Institutional commitment.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the IHE's graduate program of study.

(2) The Secretary looks for information that shows—

(i) The extent to which the program has been adopted as a permanent graduate program of study;

(ii) The organizational placement of the program;

(iii) The staff and resources which the IHE has committed to the program; and

(iv) The IHE's demonstrated competence and experience in programs and activities such as those authorized under Title VII of the Elementary and Secondary Education Act of 1965, as amended.

(b) *Quality of faculty members.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the faculty in the academic area.

(2) The Secretary looks for information that shows that the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(c) *Quality of the instructional program.* (20 points)

(1) The Secretary looks for information that shows the quality of the applicant's program of instruction.

(2) The Secretary looks for information that shows—

(i) In the case of projects designed to prepare educational personnel for bilingual education programs that use English and a language other than English, the project incorporates the use of both English and a language other than English, to the extent necessary to develop the participants' competencies as bilingual education personnel;

(ii) The quality of the standards used to determine satisfactory progress in and completion of the program; and

(iii) The interdisciplinary aspects of the program.

(d) *Field based experience.* (15 points) The Secretary reviews each application for information that shows the extent to which the program provides field based experience through arrangements with local educational agencies (LEAs), State educational agencies (SEAs) and persons or organizations with expertise in programs of bilingual education.

(e) *Evidence of local or national need.* (10 points) The Secretary reviews each application for information that justifies the need for more individuals trained above the bachelor's level in proportion to the needs of various groups of individuals with limited English proficiency in the local area, and throughout the country.

(f) *Recruitment plan.* (10 points) The Secretary reviews each application for information that describes the IHE's plans for recruiting and selecting nominees using the criteria listed in § 562.30(d) and (e).

(20 U.S.C 3253 (a))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 562.20 Where does an individual apply?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(20 U.S.C. 3253(a))

Subpart D—How Does the Secretary Select New Fellows?

§ 562.30 How does the Secretary select new Fellows?

(a) The Secretary selects Fellows taking into consideration the rank orders prepared by the IHE, subject to the maximum number of fellowships per language curriculum designated for that IHE.

(b) The Secretary gives preference to individuals intending to study programs of bilingual education for limited English proficient students in the following specialized areas:

(1) Vocational education.

(2) Adult education.

(3) Gifted and talented education.

(4) Special education.

(5) Education technology.

(6) Literacy.

(7) Mathematics and science education.

(c) In recommending nominees, an IHE shall consider the following criteria:

(1) *Academic record.* The quality of the academic record of the applicant.

(2) *Language proficiency.* The applicant's proficiency in English and, if applicable, the language(s) to be studied.

(3) *Experience.* The extent of the applicant's experience in providing services to, teaching in, or administering programs of bilingual education.

(20 U.S.C. 3253(a))

§ 562.31 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section—

(1) Fellowships may be awarded for a maximum of two one-year periods to a student who maintains satisfactory progress in a post-baccalaureate program of study; and

(2) Fellowships may be awarded for a maximum of three one-year periods to a student who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(c) A recipient of a fellowship who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new students.

(20 U.S.C. 3253 (a))

Subpart E—What Conditions Must Be Met by Fellows?

§ 562.40 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work for a period equivalent to the period of time that the recipient receives assistance under the fellowship in one of more or the following activities:

(1) Training personnel to develop and conduct programs of bilingual education or teacher training programs at IHEs.

(2) Conducting research related to programs of bilingual education.

(3) Administering programs of bilingual education.

(4) Conducting evaluations of programs of bilingual education.

(5) Developing curriculum materials designed for programs of bilingual education.

(6) Working in any other activity, approved in advance by the Secretary, in accordance with the procedures in § 562.47, which is related to programs and activities such as those authorized under Title VII.

(b) A recipient shall begin working in one or more of the activities listed in paragraphs (a)(1)–(6) of this section within six months of the date the recipient ceases to be enrolled at an IHE as a full-time student.

(20 U.S.C. 3253(c))

§ 562.41 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in § 562.40(a)(1)–(6), he or she shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(20 U.S.C. 3253(c))

§ 562.42 What is the repayment schedule?

(a) A recipient required to repay all or part of the amount of a fellowship shall—

(1) Begin repayments within six months of the date he or she ceases to be enrolled as a full-time student at an IHE in the Fellowship program; or

(2) Begin repayments on a date and in a manner established by the Secretary, if he or she ceases to work in an authorized activity, of the prorated amount of his or her obligation.

(b) A recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary. This period may be extended if the Secretary grants a deferment under § 562.44.

(20 U.S.C. 3253(c))

§ 562.43 What interest is charged?

(a) The Secretary charges a recipient interest on the upaid balance owed by the recipient in accordance with 31 U.S.C 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 562.44.

(20 U.S.C. 3253(c))

§ 562.44 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in one of the activities described in § 562.40(a)(1)–(6);

(b) Demonstrates to the Secretary's satisfaction that he or she is conscientiously seeking but unable to secure employment in one of the activities described in § 562.40(a)(1)–(6);

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(20 U.S.C. 3253(c))

§ 562.45 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(20 U.S.C. 3253(c))

§ 562.46 Under what circumstances is repayment waived?

The Secretary may waive repayment if the recipient demonstrates the existence of extraordinary circumstances that justify a waiver.

(20 U.S.C. 3253(c))

§ 562.47 How shall the recipient account for his or her obligation?

(a) Within six months of the date a recipient ceases to be enrolled as a full-time student at an IHE, the recipient shall submit to the Secretary one of the following items:

(1) A description of the employment in an activity listed in § 562.40(a)(1)–(6) in which he or she is employed.

(2) Repayment required under §§ 562.41–562.42.

(3) A request to repay the obligation in installments.

(4) A request for a deferment or waiver as described in §§ 562.44–562.46 accompanied by a statement of justification.

(b) A recipient who submits a description of employment under paragraph (a)(1) of this section employment under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that he or she was employed in the activity.

(c) A recipient shall inform the Secretary of any change in his or her employment status.

(d) A recipient shall inform the Secretary of any change in his or her address.

(20 U.S.C. 3253(c))

[FR Doc. 85-15177 Filed 6-21-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Bilingual Education Fellowship Program for Fiscal Year 1985; Application Notice for Continued Participation

AGENCY: Department of Education.

ACTION: Application Notice for Continued Participation under the Bilingual Education Fellowship Program for Fiscal Year 1985.

SUMMARY: Applications are invited for continued participation under the Bilingual Education Fellowship Program.

Authority for this program is contained in Section 743 of Part C of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511.

(20 U.S.C. 3221-3262)

The purpose of this program is to provide financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applicants should mail or hand deliver their applications on or before July 24, 1985.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for continued participation and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.003F), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

Application Forms

Application forms and program information packages are expected to be ready for mailing to IHEs currently participating in the Fellowship Program that have one or more year(s) remaining of an approved multi-year project period on June 24, 1985.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for participation under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1885-0001).

Available Funds

There is authorized $2.5 million for continued participation under the Fellowship Program for Fiscal Year 1985. The estimated average fellowship continuation award is $10,000. The estimated number of fellowship continuations is 250. IHE participation in the Fellowship Program is approved for 36 months for a doctoral program.

These estimates do not bind the U.S. Department of Education to a specific number of fellowships or to the amount of any fellowship, unless that amount is otherwise specified by statute or regulations.

Applicable Regulations

Regulations applicable to this program include the following:

(1) Regulations governing the Fellowship Program as proposed to be codified in 34 CFR Part 562. (Applications are being accepted based on the notice of proposed rulemaking for the Fellowship Program which is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(2) The regulations relating to proof of nonprofit status in 34 CFR 75.51.

Further Information

For further information contact Ramon M. Chavez, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone: (202) 245-2595.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: June 19, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-15176 Filed 6-21-85; 8:45 am]

BILLING CODE 4000-01-M

Bilingual Education Fellowship Program for Fiscal Year 1985; Application Notice for New Participation

AGENCY: Department of Education.

ACTION: Application Notice for New Participation under the Bilingual Education Fellowship Program for Fiscal Year 1985.

SUMMARY: New Applications are invited for participation under the Bilingual Education Fellowship Program.

Authority for this program is contained in Section 743 of Part C of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511. (20 U.S.C. 3221-3262)

Institutions of higher education (IHEs) are eligible to apply for participation in the Fellowship Program. IHE participation in the Fellowship Program is 36 months for a doctoral program and 24 months for a post-baccalaureate program.

The purpose of this program is to provide financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

Closing Date for Transmittal of Applications

Applications for participation must be mailed or hand delivered on or before July 24, 1985.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.003F), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

An IHE which meets the requirements in 34 CFR 562.2(a) may apply for participation in the Fellowship Programs. An individual who meets the requirements in 34 CFR 562.2(b) is eligible to apply for a fellowship.

This program provides financial assistance to full-time students who are in pursuant of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

After completion of the program of study, a fellow is required to work in an authorized activity equivalent to the period of time for which he or she received assistance under the fellowship, or to follow procedures for repayment or deferment of repayment of the fellowship as described in the regulations.

Application Forms

Application forms and program information packages are expected to be available by June 24 1985. These may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Reporters Building, Room 421), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for participation under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1885-0001).

Available Funds

There is authorized $2.5 million for new fellowships for Fiscal Year 1985. The estimated average new fellowship award is $10,000. The estimated number of new fellowships is 250. IHE participation in the Fellowship Program is 36 months for a doctoral program and 24 months for a post-baccalaureate program.

These estimates do not bind the U.S. Department of Education to a specific number of fellowships or to the amount of any fellowship unless that amount is otherwise specified by statute or regulations.

Applicable Regulations

Regulations applicable to this program include the following:

(1) Regulations governing the Bilingual Education Fellowship Program as proposed to be codified in 34 CFR Part 562. (Applications are being accepted based on the notice of proposed rulemaking for the Fellowship Program which is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(2) The regulations relating to proof of nonprofit status in 34 CFR 75.51.

Further Information

For further information contact Ramon M. Chavez, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Reporters Building, Room 421), Washington, D.C. 20202. Telephone: (202) 245-2595.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: June 19, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-15179 Filed 6-21-85; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
June 24, 1985

Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 52
United States Standards for Grades of Canned Carrots and Canned Beets; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Carrots and Canned Beets

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Canned Carrots and U.S. Standards for Grades of Canned Beets. This final rule was developed by the United States Department of Agriculture (USDA) at the request of major segments of the food processing industry. This final rule will lower the recommended minimum drained weights for all styles of canned carrots and canned beets packed in the No. 10 can size. Its effect would be to update the standards to reflect current manufacturing practices and promote orderly and efficient marketing of canned carrots and canned beets.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Floyd M. Haugen, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 447-6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

On April 19, 1985, a proposed rule was published in the **Federal Register** (50 FR 15568) that provided for the reduction of the recommended minimum drained weights for all styles of canned carrots and canned beets packed in the No. 10 container size by two ounces, except julienne style which would be lowered by four ounces. The No. 10 container is a large container (approximately 6 lbs. 10 oz.) designed primarily for the institutional market.

Three comments were received to the proposed rule. All comments were favorable. Comstock Foods, a subsidiary of Curtice-Burns, Incorporated supports the revision stating three basic reasons: (1) Critical processing factors include a maximum put-in weight. The proposed minimum drained weight reduction, while insignificant, will afford improved reliability in meeting this processing requirement; (2) certain styles of No. 10 canned beets and carrots are very difficult to fill and maintain current USDA minimum drained weight recommendations. The reduction in minimum drained weights will provide a means of improved adherence to minimum recommended drained weights by USDA and also improve quality with less mechanical damage occurring while filling containers; and (3) the reduction in minimum drained weights should lead to a general quality improvement due to the fact that less product will be processed in the head space portion of the sealed No. 10 can which leads to scorching discoloration, often mistaken as oxidation in both beets and carrots.

National Food Processors Association (NFPA), a trade association representing about 600 member companies that pack processed prepared fruits, vegetables, meats, fish, and specialty products commented favorably on behalf of their members. NFPA commented that their members have experienced difficulties in meeting the drained weight recommendations for canned carrots and canned beets of the present grade standards to the extent that even under optimum operating conditions a significant portion of the pack processed in the No. 10 size container fails to meet these recommendations. Attempts at overpacking have not been successful in correcting the problem and have contributed to other problems. Such overpacking contributes to a high incidence of defective seams caused by excess product being trapped between the container flange and lid at the time of closing. In addition, overfilling containers increases damage to the product which may be crushed as the lid is forced down on the container. Crushing lowers the quality and grade of the product, and is counterproductive to the intent of the voluntary grading program.

NFPA further states the revision will help eliminate waste and downgrading of product and will decrease the incidence of spoilage caused by defective seams. The Association urges the adoption of the previously proposed amendments to the voluntary grade standards for canned carrots and canned beets at the earliest possible date.

The food processor, Draper-King Cole, also commented favorably for the revision of the canned beets and canned carrots grade standards.

It is found that good cause exists for making this document effective upon publication in the **Federal Register** (5 U.S.C. 533) because: (1) The 1985 crop season begins in late June and this final rule should be effective by the time new crop deliveries from growers to processors begin; and (2) postponing the effective date of this final rule would serve no useful purpose and could cause administrative problems in the application of U.S. grade standards for canned beets and canned carrots.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

PART 52—[AMENDED]

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

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, 1090 as amended (7 U.S.C. 1622, 1624).

§ 52.675 [Amended]

2. Accordingly, section 52.675 of Subpart—United States Standards for Grades of Canned Carrots (7 CFR 52.675) is amended in Table No. 1 by revising the last line to read as follows:

§ 52.675 Recommended minimum drained weight.

* * * * *

Table I.—Recommended Minimum Drained Weights, in Ounces, of Carrots

Container size or designation	Whole [1]		Sliced [1]		Diced	Quartered and cut	Julienne
	Less than 1½ inch in diameter	1½ inch in diameter and over	Less than 1½ inch in diameter	1½ in diameter and over			
* * * * * * *							
No. 10	67	66	67	66	70	68	64

[1] Mixed sizes to be based on drained weight for predominate size of individual units.

3. Accordingly, § 52.525 of Subpart—United States Standards for Grades of Canned Beets (7 CFR 52.525) is amended in Table No. I by revising the last line to read as follows:

§ 52.525 Recommended minimum drained weight.

* * * * *

Table I.—Recommended Minimum Drained Weights, in Ounces, of Beets

Container size or designation	Whole [1]		Sliced [1]		Diced	Quartered and cut	Julienne
	Size Nos. 1 thru 3	Size Nos. 4 thru 6	Small	Medium and Large			
* * * * * * *							
No. 10	67	66	67	66	70	68	64

[1] Mixed sizes to be based on drained weight for predominate size of individual units.

Done at Washington, D.C. on: June 18, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-15019 Filed 6-21-85; 8:45 am]

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CFR CHECKLIST

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Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
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