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Determination of World Price for Certain Commodities; Upland Cotton

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
Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to (1) prescribe a formula by which the Secretary of Agriculture will determine the prevailing world market price [adjusted to United States quality and location] for the 1986 through 1990 crops of upland cotton (hereinafter referred to as the "adjusted world price") and (2) provide a mechanism by which such adjusted world price will be announced periodically. These actions are required by section 103A(a)(5)(E)(i)-(iii) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

EFFECTIVE DATE: June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major". It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this rule and a final Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12292 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act"), provides that the Secretary of Agriculture shall prescribe by regulation:

(a) A formula to define the prevailing world market price for cotton; and

(b) A mechanism by which such prevailing world market price shall be announced periodically.

The prevailing world market price for upland cotton, adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price"), as determined in accordance with the formula set forth in this final rule, shall be utilized under several provisions of the upland cotton program for the 1986 through 1990 crops.

A notice of proposed rulemaking was published in the Federal Register on March 11, 1986, at 51 FR 8330, requesting comments with respect to the proposed formula for determining the adjusted world price for upland cotton and the proposed mechanism for periodically announcing such price. The proposed rule provided for a 15-day comment period which ended March 26, 1986.

The Department received a total of 10 comments with respect to the proposed rule. The Department has considered all comments received in developing this final rule. All comments received are on file and available for public inspection in Room 3741, South Building, 14th and Independence Avenue SW., Washington, DC 20250.

Discussion of Comments

Four respondents opposed the provision in the proposed rule which provided for the use of a single day northern Europe price quotation as the basis for determining the prevailing world market price for upland cotton. Instead, they proposed that a longer period be used. The respondents asserted that use of a longer period would help smooth out aberrations in prices. After reviewing the comments submitted on this issue, it has been determined that § 26.2 of the proposed rule should be changed to provide for the use of a 5-day average of the northern Europe price quotations as the basis for determining the prevailing world market price for upland cotton.

In addition, § 26.2 of the proposed rule provided that if no price quotations of the northern Europe price were available for any Thursday, the prevailing world market price would be based upon the latest available price quotations. It has been determined that this would not provide the Secretary sufficient flexibility to adjust the prevailing world market price to accurately reflect changing market conditions if no northern Europe price quotations are available. Therefore, § 26.2 of the proposed rule has been changed to provide that if no northern Europe price quotations are available during any Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

Three respondents suggested that price quotations for a 52-week period, rather than for a 52-week period, should be used to adjust the Northern Europe price to average designated U.S. spot market location. The respondents felt that the use of a longer period would smooth out aberrations in the adjustment and would more nearly reflect the anticipated costs of transporting cotton during the 1986/87 marketing year. After reviewing the comments received on this issue, it has been determined that § 26.3(b)(1) of the proposed rule should be changed to...
provide that price quotations for a 156-week period will be used to adjust the Northern Europe price to average designated U.S. spot market location.

Two respondents requested that price quotations for the period when the Northern Europe quotations for Memphis territory and California/Arizona territory change from old crop to new crop price quotations in the period immediately preceding August 1, the beginning of the new crop marketing year. U.S. designated spot market quotations are for current shipment of upland cotton. The respondents assert that price data from weeks when shipment periods do not correspond should be disregarded in calculating the adjustment in the Northern Europe price to average designated spot market location. After reviewing the comments submitted on this issue, it has been determined that price quotations during June, July and August will be disregarded in making this adjustment. It has been determined that it is necessary to exclude these months from the calculation in order to ensure that the transition from old crop price quotations to new crop price quotations does not cause undue aberrations in the adjustment calculation.

Six respondents recommended an additional adjustment for qualities of upland cotton which are distinctly lower in grade and shorter in staple than Middling (M) 1 3/4 inch cotton. They suggested that the adjusted world price be further adjusted in order to make U.S. growths of such cotton competitive in world markets. They suggested that the additional adjustment be made by deducting the difference between the Northern Europe price and the prices quoted for the three lowest-priced growths of such cotton.

Six respondents recommended an additional adjustment to be made in the adjusted world price for any grade of upland cotton with a staple length of one inch or shorter or for any length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA's Agricultural Marketing Service (AMS). The additional adjustment will not be made if no such official classification is available. Such additional adjustment shall be made by deducting from the adjusted world price the difference between the Northern Europe price and the average of the price quotations for the corresponding Friday through Thursday period of the Northern Europe "coarse count" price, from which there has been subtracted the difference between the applicable loan rate for a crop of upland cotton M 1 3/4 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for Strict Low Middling (SLM) 1 inch (micronaire 3.5 through 4.9) cotton. The additional adjustment will not be made if the amount of the adjustment is less than 1.0 cent per pound.

In determining the Northern Europe coarse count price, if no quotes are available for one or more days of the five-day period, the available quotes will be used except that if quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration. In addition, if quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined for the latest available week will continue to be applicable.

One respondent urged that the Northern Europe price and the components from which it is derived be made publicly available at the earliest possible opportunity in order to avert potential market disruption stemming from early access to the components of the Northern Europe price. After reviewing the comments submitted on this issue, it has been determined that § 26.3 of the proposed rule should be changed to provide that the adjusted world price and the new additional adjustment for any grade of upland cotton with a staple length of 1-inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or more will be announced as soon as possible after 4:00 p.m. Eastern time each Thursday beginning July 3, 1986 instead of on or before 10:00 a.m. Eastern time each Friday beginning August 1, 1986.

One respondent felt that the proposed formula would result in too much of an adjustment thereby resulting in unjustified Government expenditures. The respondent generally disagreed with most components of the proposed world price formula and suggested instead a different set of adjustments. After reviewing this comment, it has been determined that the formula set forth in this final rule will result in the best possible approximation of the world market price for upland cotton.

No further changes have been made in the proposed rule.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Final Rule

Accordingly, 7 CFR Subtitle A is amended by adding a new Part 26—Determination of World Market Price for Certain Commodities as follows:

PART 26—DETERMINATION OF WORLD MARKET PRICE FOR CERTAIN COMMODITIES

Subpart A—Determination of World Market Price for Upland Cotton

§ 26.1 Applicability.

§ 26.2 Determination of the prevailing world market price for upland cotton.

Authority: Sec. 103A(a)[5][E], Pub. L. 81-439, 63 Stat. 1031, as amended, (7 U.S.C. 1444-1(a)[5][E]).

Subpart A—Determination of World Market Price for Upland Cotton

§ 26.1 Applicability.

This subpart sets forth the procedures for determining the prevailing world market price for upland cotton and the mechanisms for periodically announcing such price as required by section 103A(a)[5][E] of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act").

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be be determined by the Secretary of Agriculture based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-second inch (M1/32 inch) cotton C.I.F. (cost, insurance, and
§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted to average U.S. quality and location (hereinafter referred to as the "adjusted world price"), determined in accordance with paragraph (b) of this section, shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2, adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 156-week period between:

(i) The average of price quotations from the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday from M1 3/4 inch cotton C.I.F. Northern Europe; and

(ii) The average price of M1 3/4 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (b)(1) of this section shall be adjusted by deducting the price of Strict Low Middling (SLM) 1% inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by the difference, as announced by the Secretary of Agriculture, between the applicable loan rate for a crop of upland cotton for M 1% inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (b)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary of Agriculture.

(c) In determining the average difference in the 156-week period as provided in paragraph (b)(1) of this section:

(1) Price quotations made during the months of June, July and August of each year will not be taken into consideration; and

(2) If Thursday price quotations are not available for either the Northern Europe or the spot market quotations for any week, that week will not be taken into consideration.

(d) The adjusted world price for upland cotton, as determined in accordance with paragraph (b) of this section and the amount of the additional adjustment, as determined in accordance with paragraph (e) of this section, shall be determined weekly by the Secretary of Agriculture and shall be announced as soon as possible after 4:00 p.m. Eastern time each Thursday, beginning July 3, 1986, and continuing through the last Thursday of July 1991. In the event that Thursday is a nonworkday, the determination will be announced the next workday.

(e)(1) The adjusted world price, as determined in accordance with paragraph (b) of this section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 inch or shorter or for any staple length of upland cotton with a grade which has a price support loan discount of 8.0 cents per pound or higher based upon the Schedule of Premiums and Discounts for Grade and Staple Length as announced in accordance with the upland cotton price support loan program for a crop of upland cotton. Grade and staple length must be determined by an official classification issued by USDA’s Agricultural Marketing Service (AMS). If no such official classification is presented, the adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price and the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count price"), minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1% inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 inch (micronaire 3.5 through 4.9) cotton.

(f) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (e)(2)(i) of this section:

(1) If no quotes are available for one or more days of the five-day period, the available quotes will be used;

(2) If quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and

(3) If quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(4) If the difference determined in accordance with paragraph (e)(2)(ii) of this section is not more than 1.0 cents higher than the difference determined in accordance with paragraph (e)(2)(ii) of this section, the adjustment provided for by this paragraph shall not be made.

(f) The adjusted world price, determined in accordance with paragraph (b) of this section, shall be subject to further adjustments, as determined by the Executive Vice President, Commodity Credit Corporation, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop of upland cotton.

Signed at Washington, DC on May 19, 1986.

Richard E. Lyng,
Secretary.

[F.R. Doc. 86-12706 Filed 6-5-86; 8:45 am]

BILLING CODE 5410-05-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 366]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 366 establishes the quantity of such fruit that may be shipped to market during the period June 8-12, 1986. 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 366 (§ 908.666) is effective for the period June 6–12, 1986.

**For Further Information Contact:**

**Supplementary Information:** This rule has been reviewed under Secretary's Memorandum 1912–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

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 1985–86. The committee met publicly on June 3, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is fair.

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 (§ 908.666), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given 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 the effective date.

**List of Subjects in 7 CFR Part 908**
Marketing agreements and orders, California, Arizona, Oranges, Valencias.
1. The authority citation for 7 CFR Part 908 continues to read:

2. Section 908.666 is added to read as follows:
§ 908.666 Valencia Orange Regulation 366.
The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 6, 1986, through June 12, 1986, are established as follows:
(a) District 1: 360,000 cartons;
(b) District 2: 390,000 cartons;
(c) District 3: Unlimited cartons.
Dated: June 4, 1986.
Thomas R. Clark,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

**SUMMARY:** In this action, EPA is approving the New Source Review (NSR) and monitoring plan for visibility as a revision to the Montana State Implementation Plan (SIP). This action results from rulemaking on October 23, 1984, (49 FR 42870) in which EPA proposed to disapprove SIPs of states not complying with the provisions of 40 CFR 51.305 (Visibility Monitoring) and 51.307 (Visibility NSR).

The Governor of Montana submitted a SIP Revision for Visibility Protection and the Visibility Regulation on August 21, 1985. EPA proposed to approve the Montana Visibility SIP and regulations for NSR and monitoring on January 2, 1986, at 51 FR 38. No comments were received. Review of the plan and regulations indicates that Montana has
met the criteria of 40 CFR 51.305 and 51.307.

DATE: This action will be effective July 7, 1986.

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

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 1300, 999 16th Street, Denver, Colorado 80202

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

The Office of the Federal Register, 1100 L Street, NW., Room 4001, Washington, DC

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 1300, 999 16th Street, Denver, Colorado 80202, (303) 293-1757.

SUPPLEMENTARY INFORMATION:

Background

Section 189A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-437.) Section 169A specifically directs EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. These regulations required the States to submit revised SIPs to satisfy such provisions no later than September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, a judicial stay was granted pending EPA action on related administrative petitions for reconsideration of the visibility regulations.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A settlement agreement between EPA and EDF outlined a schedule for the promulgation of visibility SIPs. It required EPA to incorporate Federal regulations in states where SIPs were found deficient with respect to the 1980 Visibility New Source Review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement did allow an opportunity to avoid Federal promulgation if the state submitted a SIP no later than May 6, 1985. Montana is one of the states listed in 49 FR 42670 as having an inadequate New Source Review (NSR) and monitoring plan for visibility protection. On August 21, 1985, the Governor of Montana submitted a Visibility SIP and regulations for visibility monitoring and New Source Review.

The SIP declares that the States will implement a comprehensive visibility protection program in order to meet the objectives of the Clean Air Act. The SIP is to be reviewed from time-to-time (but not less frequently than three years) for the purpose of assessing progress toward meeting the national goal of visibility protection.

On January 2, 1986, 51 FR 38, EPA proposed to approve the Montana SIP and regulations for visibility monitoring and new source review. No comments were received.

The monitoring strategy section of this Visibility SIP consists of a statement of goals, a list of monitoring objectives, and the provision for future plan revisions.

The Montana Plan combines new visibility rules and existing regulations to meet the requirements of 40 CFR 51.307. A new rule, ARM 18.8.1001, Visibility Requirements Applicability, incorporates existing permit regulations and clearly states that the visibility requirements apply to major sources locating in any attainment or nonattainment area. The incorporated regulations, Administrative Rules of Montana, Title 16, Chapter 8, Subchapters 9 (PSD) and 11 (Permits), specify the standard requirements for any permit application and permit approval.

The Visibility Regulation provide for the Department (Montana Bureau of Air Quality permit issuing authority) to consider any analysis performed by the State and the FLM and to deny a permit if the proposed source or modification would have adverse impact in any Federal Class I area.

If the Department does not agree with the FLM that adverse impact will result, it will provide written notification to the effected FLM within 5 days of its final decision on the permit. The notification will include an explanation of the Department's decision or give notice as to where the explanation can be obtained. Notification to the public is originally made by the applicant; the Department will then notify the applicant and interested parties of its determination and the location of the analysis of the application.

The State of Montana has afforded the FLM (through the National Park Service (NPS) and the Forest Service (FS)) opportunities to participate and comment on its visibility SIP and regulations. Comments by the NPS and FS were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. As appropriate, the plan may be modified in accordance with proper public review in order to attain and maintain the national goal. The State has agreed to notify the FLM of any advance notification or early consultation with a major new or modified source that may affect Federal Class I area visibility; such notification will be made prior to the submission of the permit application.

Summary of action

The August 21, 1985 submittal by the Governor of Montana includes an adequate visibility plan and regulation to meet the requirements of 40 CFR 51.305 and 51.307 and the criteria discussed in 49 FR 42670. (One should reference Federal Register notices on October 23, 1984, 49 FR 42670, July 12, 1985, 50 FR 28544, and January 2, 1986, 51 FR 38, for additional information.)

The SIP is deficient for all the other requirements of Subpart P (except 51.305 and 51.307). See 51 FR 3046, January 23, 1986.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons. Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.
Dated May 5, 1986.
Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

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

Subpart BB—Montana

1. The authority citation for Part 52 continues to read as follows:
Authority: 42 U.S.C. 7401-7642.
2. Section 52.1370 is amended by adding paragraph (c)(20) as follows:
§ 52.1370 Identification of Plan.

(c) • • • •

(20) A revision to the SIP was submitted by the Governor on August 21, 1985, for visibility monitoring and new source review.

(i) Incorporation by reference.

(A) Revision to the Montana SIP was made on July 19, 1985, for visibility new source review and monitoring.

(B) Revision to the Administrative Rules of Montana (ARM) was made on July 19, 1985, for visibility which includes new regulations ARM 16.8(1001-1008 and revising ARM 16.8(1107(3).

[F.R. Doc. 86-12716 Filed 6-5-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[6-6-FRL-3026-9]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On October 19, 1984, the State of New Mexico requested a delegation of authority for the implementation and enforcement of the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has reviewed the laws of New Mexico and the rules and regulations of the New Mexico Environmental Improvement Division (NMEID) and has determined that the State's regulations and resources are adequate for the implementation and enforcement of the Federal standards. Based on this evaluation, EPA granted the authority to the State as requested.

applicable in certain areas of the State. This delegation of authority does not apply to the sources located in the Bernalillo County, New Mexico, or to the sources on Indian governed lands as specified in the delegation agreement and in this notice.


ADRESSES: The related material in support of these delegations may be requested by writing to one of the following addresses:

Chief, SIP New Source Section (6T-AN), Air Programs Branch, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, P.O. Box 986, Crown Building, Santa Fe, New Mexico 87504-0968

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR Part 60 and 40 CFR Part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities in New Mexico should be sent directly to the State of New Mexico at the above address.

FOR FURTHER INFORMATION CONTACT:
Mr. J. Rehnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-9870.

SUPPLEMENTARY INFORMATION: On August 17 and August 30, 1982, partial delegation authority was granted to New Mexico by EPA for the technical and administrative portions of the NSPS and NESHAP programs. On October 19, 1984, New Mexico requested full delegation authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19 letter. These delegation requests were granted to the State subject to the conditions and limitations specified in the delegation agreement which is reprinted in this notice.

Introduction

On October 19, 1984, the Governor of New Mexico requested that the U.S. Environmental Protection Agency (EPA) delegate full authority to New Mexico for the New Source Performance Standards (NSPS) program and for the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. The Governor based his request upon the adoption by the New Mexico Environmental Improvement Board of Air Quality Control Regulation 750 (New Source Performance Standards), and Air Quality Control Regulation 751 (Emission Standards for Hazardous Air Pollutants) on July 13, 1984.

Under the New Mexico Air Quality Control Act, the City of Albuquerque and Bernalillo County have established a program for the local administration and enforcement of the Air Quality Control Act, in lieu of the New Mexico Environmental Improvement Board. The authority delegated in this document excludes all sources located within the boundaries of Bernalillo County.

Full Delegation

EPA has reviewed the Governor's request, Air Quality Control Regulations 750 and 751, and all other available information on the New Mexico Environmental Improvement Division (NMEID), including its implementation of the partial delegation of these programs. EPA finds that the NMEID has an adequate and effective procedure for implementing and enforcing the NSPS and NESHAP programs in the State of New Mexico, except for Indian lands, as defined at 18 U.S.C. 1151. Therefore, EPA hereby delegates the following authority for the implementation and enforcement of the NSPS and NESHAP to the State of New Mexico, subject to the conditions and limitations specified below:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NSPS promulgated in 40 CFR Part 60 through March 14, 1984.

2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to the NESHAP promulgated in 40 CFR Part 61 through December 9, 1983.

Conditions and Limitations

1. Implementation and enforcement of NSPS and NESHAP in the State of New Mexico, outside Indian lands, will be the primary responsibility of the NMEID. If the State of New Mexico or the NMEID determines that such implementation or enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the NMEID shall, within 30 days, notify EPA Region 6 of such impossibility or infeasibility so that EPA may timely exercise its concurrent authority with respect to sources within the State of New Mexico.
2. Acceptance of this delegation constitutes agreement by the State of New Mexico and the NMEID to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61, including determinations of applicability. Prior EPA concurrence shall be obtained on any matter involving the interpretation of sections 111 or 112 of the Clean Air Act or 40 CFR Parts 60 or 61 to the extent that the application, implementation, administration, or enforcement of these sections have not been covered by prior EPA determinations or guidance.

3. The State of New Mexico and the NMEID are not authorized to approve or disapprove any application, exemption, variance, or grant waiver of compliance with any provision of 40 CFR Part 61. The State of New Mexico or the NMEID are, however, authorized to receive, review, evaluate, and recommend to EPA approval or disapproval of an application, exemption, variance or waiver.

4. The Federal NSPS regulations in 40 CFR Part 60, as amended, do not have provisions for granting waivers by class of testing requirements or variances. Hence this delegation does not convey to the State of New Mexico or the NMEID authority to grant waivers by class of testing requirements or variances from NSPS regulations.

5. The State of New Mexico and the NMEID shall utilize the methods specified in applicable Appendices and Subparts of 40 CFR Parts 60 or 61 in determining compliance with the regulations, including requiring tests at the times required by the regulations. Authority is delegated to approve minor modifications to the reference test methods in 40 CFR Parts 60 and 61, during either a pre-test meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the reference method results. Approval of these minor modifications should be based on sound engineering judgment. Under no circumstances are modifications to be used which might result in the non-uniform application of the standards.

6. If at any time there is a conflict between any State regulation and any provision of 40 CFR Parts 60 and 61, the Federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of New Mexico or the NMEID does not have the authority to enforce the more stringent Federal regulation, the NMEID shall immediately notify EPA Region 6 pursuant to Condition 1 above. This delegation may be revoked by EPA, in whole or in part, in the event any such conflict makes implementation or enforcement of NSPS or NESHAP administratively impractical.

7. If a claim of confidentiality or any other reason should ever legally prevent the State of New Mexico and the NMEID from providing to EPA any or all information required by or pertaining to the implementation of NSPS and NESHAP, the NMEID shall, upon request, assist EPA Region 6 in obtaining the information directly from the source. At a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information which the State cannot provide. In the absence of such a legal reason, the State and the NMEID shall make available to any designated representative of EPA upon request all records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of 40 CFR Parts 60 or 61.

8. All matters in process at the time of delegation of authority may be processed through to completion by EPA Region 6, at the request of the NMEID and at the discretion of EPA, be transferred to the NMEID for completion. Appropriate reproduction of pertinent material in the EPA Region 6 files in relation to source regulation under NSPS and NESHAP shall be provided through mutual cooperation of the staffs of the respective offices.

9. Existing monthly reports normally submitted to EPA Region 6 for the Compliance Data System (CDS) shall be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 or 61. As a minimum, the following information must be provided to EPA: the name, address, type and size of each facility; date that operation at the facility commenced and dates of most recent compliance test; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities because of violations of 40 CFR Parts 60 or 61; surveillance actions undertaken for each facility; and the results of all reports relating to emissions data, including excess emissions reports.

10. Emission data, as defined in 40 CFR 2.301(a)(2), shall be made available to the public. Emission data is to be correlated with applicable emission limitations or other measures in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions which are allowable under the applicable emission limitations. If any information which is defined as emission data is found to be not available to the public by reason of State law or other legal requirement, the NMEID shall so notify EPA, Region 6, so that EPA may take the action necessary to release such data.

11. No authority is granted to the State or the NMEID to take any action which would require rulemaking by EPA. This limit on authority includes the grant of a waiver of testing requirements for any class of sources.

Partial Delegation

The NMEID has requested that it have partial delegation for sources for which new regulations or revised regulations are promulgated, except for sources in Indian lands, as defined at 18 U.S.C. 1151. EPA hereby delegates the following partial authority for the implementation of the NSPS and NESHAP to the State of New Mexico subject to the following conditions and limitations:

1. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS promulgated in 40 CFR Part 60 after March 14, 1984, for which full delegation has not been granted above.

2. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP promulgated in 40 CFR Part 61 after December 9, 1984, for which full delegation has not been granted above.

3. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NSPS for which full delegation is granted above, when part or all of that NSPS has been revised after March 14, 1984.

4. Authority for all sources located in the State of New Mexico, outside Indian lands, subject to NESHAP for which full delegation is granted above, when part or all of that NESHAP has been revised after December 9, 1983.

Conditions and Limitations

1. The NMEID shall conduct only the technical and administrative review including determination of applicability, review and evaluation of NSPS and NESHAP applications, review and evaluation of requests for waivers of compliance under 40 CFR 61.11 and/or waivers of emission tests under 40 CFR 61.13, performance and evaluation of inspections, and observance and evaluation of compliance tests and continuous emission monitoring tests.

2. All conditions and limitations specified above for full delegation apply also to this partial delegation.

Effective immediately, all reports required pursuant to the Federal NSPS and NESHAP [40 CFR Part 60] and 40 CFR Part 61] by sources located in the State of New Mexico should be
submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, P.O. Box 906, Crown Building, Santa Fe, New Mexico, 87504-0906. Any such reports which may be received by EPA, Region 6, after the effective date of this delegation will be promptly transmitted to the NMEID.

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

This delegation is issued under the authority of sections 111(c) and 112(d) of the Clean Air Act, as amended [42 U.S.C. 7411(c) and 7412(d)].

List of Subjects

40 CFR Part 60


40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Radionuclides, Vinyl chloride.


Frances E. Phillips, Regional Administrator.

IN THE MATTER OF:

47 CFR Part 73

Radio Broadcasting Services; Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 217A to Barstow, CA, as that community's first noncommercial educational FM broadcast service, in response to a petition filed by the First Assembly of God Church. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 8, 1986.

FOR FURTHER INFORMATION CONTACT:

Nancy V. Joyner, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-177, adopted April 17, 1986, and released April 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense, Federal Acquisition, Regulation Supplement; Limitation of Progress Payments

AGENCY: Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: This document corrects language contained in a final rule which was published April 21, 1986 (51 FR 13513) and corrected by 51 FR 18042 of April 30, 1986 and 51 FR 18587 of May 21, 1986.

FOR FURTHER INFORMATION CONTACT:
Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)[MRS], Room 3C841, The Pentagon, Washington, DC 20301-3082, telephone (202) 697-7266.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

The Department of Defense is correcting language to read as follows:

Section 1.301(b), 13513)

The Department of Defense is amending to reflect major changes as defined by FAR 1.301(b), or FAR 1.501, or E.O. 12291.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 702, 731, 752, and Appendices

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:


PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170-3 [Amended]

2. In section 702.170–3, Contracting activities, paragraph (a) is amended by removing the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

702.170–10 [Amended]

3. In section 702.170–10, Head of the contracting activity, paragraph (a) is amended by removing the reference to "Director, Office of Acquisition and Assistance Management", replacing it with a reference to "Director, Office of Procurement", and by removing the reference to "M/SER/AAM approved forms", replacing it with a reference to "M/SER/PPE approved forms".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

8. In section 752.7002, Travel and transportation, paragraph (d), Alternate 73, the contract clause titled “Travel Expenses and Transportation and Storage Expenses” is amended by:

a. Changing the date of the clause from “(Nov. 1985)” to “(May 1986)”; and

b. Amending subparagraph (o)(1) of the clause to remove the reference to “Office of Acquisition and Assistance Management”, replacing it with a reference to “Office of Procurement”.

Subpart 731.2—Contracts With Commercial Organizations

731.205–6 [Amended]

5. In section 731.205–6, Compensation for personal services, paragraph (b)(2) is amended by removing the reference to “Office of Acquisition and Assistance Management” appearing at the end of the paragraph, replacing it with a reference to “Office of Procurement.”

Subpart 731.3—Contracts With Educational Institutions

731.371 [Amended]

6. In section 731.371, Compensation for personal services, paragraph (a) is amended by removing the reference to “Office of Acquisition Assistance Management” appearing at the end of the paragraph, replacing it with a reference to “Office of Procurement”.

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 [Amended]

7. In section 731.770, OMB Circular A–122, Cost Principles for Nonprofit Organizations; AID implementation, paragraph (a) is amended by removing all references to “Office of Acquisition Assistance Management”, replacing it with a reference to “Office of Procurement”.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

731.109 [Amended]

4. Section 731.109, Advance agreements, is amended by removing the reference to “Office of Acquisition and Assistance Management”, replacing it with a reference to “Office of Procurement”.

Subpart 731.2—Contracts With Commercial Organizations

731.205–6 [Amended]

5. In section 731.205–6, Compensation for personal services, paragraph (b)(2) is amended by removing the reference to “Office of Acquisition and Assistance Management” appearing at the end of the paragraph, replacing it with a reference to “Office of Procurement.”

Subpart 731.3—Contracts With Educational Institutions

731.371 [Amended]

6. In section 731.371, Compensation for personal services, paragraph (a) is amended by removing the reference to “Office of Acquisition Assistance Management” appearing at the end of the paragraph, replacing it with a reference to “Office of Procurement”.

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 [Amended]

7. In section 731.770, OMB Circular A–122, Cost Principles for Nonprofit Organizations; AID implementation, paragraph (a) is amended by removing all references to “Office of Acquisition Assistance Management”, replacing it with a reference to “Office of Procurement”.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

8. In section 752.7002, Travel and transportation, paragraph (d), Alternate 73, the contract clause titled “Travel Expenses and Transportation and Storage Expenses” is amended by:

a. Changing the date of the clause from “(Nov. 1985)” to “(May 1986)”; and

b. Amending subparagraph (o)(1) of the clause to remove the reference to “Office of Acquisition and Assistance Management”, replacing it with a reference to “Office of Procurement”.

752.7004 [Amended]

9. In section 752.7004, Source and Nationality Requirements, the contract clause titled “Source and Nationality Requirements for Procurement of Goods and Services” is amended by:
a. Changing the date of the clause from "[Nov. 1985]" to "[May 1986]"; and
b. Amending paragraph (b)(2) of the clause to remove the reference to "Office of Acquisition and Assistance Management", replacing it with a reference to "Office of Procurement".

APPENDICES TO CHAPTER 7

Appendix B—Notice to Cost- Reimbursement Type Contractors of Changes in Applicable Standardized Government Regulations

10. Paragraph 5, Duties and Responsibilities, of Appendix B is amended as follows:
   a. Subparagraph 5(a)(1) is amended by removing the reference to "the Office of Acquisition and Assistance Management Acquisition Support Division, Support Services Branch (SER/ AAM/A/SUP)", replacing it with a reference to "the Office of Procurement, Procurement Support Division, Support Services Branch (SER/OP/PS/SUP)";
   b. Subparagraph 5(b) is amended by changing the subparagraph title from "SER/AAM/A/SUP" to "SER/OP/PS/SUP";
   c. Subparagraph 5(c) is amended by removing the reference "SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP"; and
   d. Subparagraphs 5(c)(2) and 5(c)(3) are amended by removing the references to "SER/AAM/A/SUP", replacing them with references to "SER/OP/PS/SUP".

Appendix C—Logistic Support Overseas to AID-Direct Contractors

11. Subparagraph 2(b)(3) of Appendix C is amended by removing the reference to "SER/AAM", appearing in the last sentence, replacing it with a reference to "SER/OP".

Appendix F—Use of Collaborative Assistance Method for AID-Direct Contracts for Technical Assistance

12. Subparagraph 4(d)(3)(iii) of Appendix F is amended by removing the reference to "AAM/A/OCC", replacing it with a reference to "OP/PS/OCC".

Appendix G—Approval and Reporting Procedures for Contractor Salaries

13. Appendix G is amended as follows:
   a. Subparagraph 1(c) is amended by removing the reference to "SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP";
   b. Paragraph 3 is amended by removing the references to "SER/AAM" appearing in the paragraph title and the second sentence of the paragraph, replacing them with references to "SER/OP" and by removing the reference to 

"SER/AAM/A/SUP", replacing it with a reference to "SER/OP/PS/SUP"; and

Appendix H—Responses to Audit Recommendations

14. Appendix H is amended as follows:
   a. References to "SER/AAM", appearing in paragraphs 2 and 6, and in subparagraphs 5(b), 5(b)(1)(b), 5(b)(1)(c), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), 5(b)(4)(a), and 7(a) are removed and replaced with references to "SER/OP"; and
   b. References to "AAM/A/SUP", appearing in subparagraphs 5(b)(1)(b), 5(b)(1)(c), 5(b)(1)(d), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c)(iii), and 5(b)(4)(a), and in paragraph 6, are removed and replaced with references to "OP/PS/SUP".

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675
[DOCKET NO. 80598-6098]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Emergency interim rule.

SUMMARY: The North Pacific Fishery Management Council (Council) has determined, and the Secretary of Commerce (Secretary) has concurred, that an emergency exists in the groundfish fishery in the Bering Sea. This emergency results from extremely low abundance of the Tanner crab species Chionoecetes bairdi and the red king crab, Paralithodes camtschatica. Incidental catches of these crab species in the trawl fisheries for yellowfin sole and other flatfish could depress the populations of these crab species to dangerously low levels and retard their population growth to levels capable of sustaining productive commercial fisheries. This rule (1) closes an area of the exclusive economic zone (EEZ) in the Bering Sea to all commercial fishing with trawl gear; (2) sets incidental catch limits for C. bairdi Tanner crabs in the foreign and domestic commercial trawl fisheries and for red king crabs in the domestic trawl fisheries operating in other parts of the Bering Sea; and (3) requires that fishing be terminated if and when the incidental catch limits are achieved. The incidental catch limits established by this action reflect a compromise between the need to curtail commercial fishing effort detrimental to depressed crab populations while achieving the optimum yield from the domestic trawl fishery. This action is necessary to provide the Council and the Secretary additional time to evaluate alternative long-term solutions. The intended effect of this action is to provide immediate interim conservation protection for the crab species identified while allowing continued commercial fishing to the maximum extent practicable.

EFFECTIVE DATES: June 3, 1986 until September 2, 1986. Public comments are invited for the duration of this rule.

ADDRESS: Copies of documents supporting this action may be requested from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1666, Juneau, AK 99802. Comments may be sent to the same address.


SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ (conterminous with the fishery conservation zone) in the Bering Sea and Aleutian Islands area are managed in accordance with the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands area (FMP). The FMP was developed by the Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 and Part 675.

At its meeting of January 15–17, 1986, the Council determined that two species of commercially important crabs in Bering Sea Area I are at dangerously low levels of population abundance. Concern was expressed that commercial trawl fishing for groundfish, particularly yellowfin sole and flounder species, is contributing to Tanner and king crab mortality through incidental catches in trawl nets and mutilation from trawl gear as it passes over the sea bottom. Additional concern was expressed about incidental catches of halibut from
trawl fishing. Although regulations governing foreign trawl fishing in this area provide certain closed areas and prohibited species catch (PSC) limits for Tanner and king crabs and halibut, domestic trawl fishing vessels have not been similarly restricted. Domestic trawl fishing for groundfish includes U.S. vessels working in joint ventures with foreign processing vessels (JVP) and U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP). Together, JVP and DAP fisheries account for the domestic annual harvest (DAH).

The Council recommended emergency regulations that would close a part of Bering Sea Area I to all commercial trawling with an exception for trawl fishing for Pacific cod, establish PSC limits for Tanner crab (C. bairdi), red and blue king crabs, and halibut, close a fishery that achieves a PSC limit, and provide for NMFS-approved observers on domestic fishing vessels in certain areas. Because the council voted not unanimous, the Secretary has discretion in implementing the recommended emergency regulations under section 305(e)(2)[B] of the Magnuson Act. Accordingly, this emergency rule provides for the following restrictions on commercial trawling for groundfish.

1. Closed Area

Domestic and foreign trawl fishing is not permitted in the EEZ north of the Alaska Peninsula, south of 58° N. latitude, west of 160° W. longitude, and east of 162° W. longitude (area B in Figures 1 and 2). The Secretary may allow domestic trawl fishing for Pacific cod in a portion of this area lying south of a line generally conforming to the 25-fathom depth contour, provided that such fishing is conducted under a data gathering program approved by the Regional Director after consultation with the Council. The program would be designed to provide data useful for management of the trawl and Tanner and king crab fisheries, and would be monitored to prevent overfishing of Tanner and king crab stocks in the area. All such trawl fishing would cease when a PSC limit of 12,000 red king crabs had been taken in the area.

This part of the rule is as originally recommended by the Council with one exception. The Council originally recommended an exception to the ban on trawl fishing in the area for Pacific cod trawling in waters shallower than 25 fathoms by any domestic vessel carrying an observer approved by NMFS, subject to an incidental catch rate of 2 red king crabs per metric ton of groundfish (for a total estimated incidental mortality of 12,000 king crabs). When it proved impracticable to provide the observer coverage that was envisioned in this exception, the Council recommended that the ban be implemented without an exception.

There was some possibility that an alternative means may be found to provide additional data and to provide sufficient monitoring to prevent overfishing of Tanner and king crab stocks in the area by Pacific cod trawlers. In order to provide for this, the rule authorizes the Secretary to allow such trawling in the area under the conditions described above. If data will not be obtained from each participating vessel, the Secretary will consult with the Council when considering whether to authorize trawling for Pacific cod.

The area closed by this rule contains the highest concentrations of legal male and large female C. bairdi Tanner crabs and red king crabs. The closure will protect about 70 percent of the female spawning stock of red king crabs, according to NMFS scientists, and will effectively keep the incidental fishing mortality rate of these crabs to a minimum.

Finally, the foreign trawling prohibition in the Bristol Bay "pot sanctuary" (described at § 611.93(c)(2)(ii)(A)) is expanded to encompass the area closed by this rule. This is to ensure protection of crab stocks to the full extent envisioned by the Council.

2. Incidental Catch Limits

The PSC limits for C. bairdi Tanner crabs and red king crabs implemented by this rule are as recommended by the Council and apply equally to JVP and DAP fisheries.

The DAH fishery for yellowfin sole and other flatfish is limited to a PSC of 80,000 C. bairdi Tanner crabs and to a PSC of 135,000 red king crabs in the EEZ north of the Alaska Peninsula, south of 58° N. latitude, and east of 165° W. longitude, which is zone 1 (area A in Figure 2).

The area described as zone 1 is important to directed fishing for yellowfin sole and other flatfish, especially during April, May, and June when sea ice prevents fishing farther north. Although the area closed by this rule protects the highest concentration of legal male and large female C. bairdi Tanner crabs and red king crabs, significant numbers of these crabs occur outside of the closed area but east of 165° W. longitude. The PSC limit for this larger area will provide necessary additional protection for these crabs. Foreign fishing with trawl gear is already prohibited in a large portion of this area known as the "pot sanctuary" under § 611.93(c)(2)(ii)(A).

A PSC limit of 326.00 C. bairdi Tanner crabs applicable to the domestic fishery for yellowfin sole and other flatfish is established in the area of the EEZ bounded by straight lines beginning at 54°30' N. latitude and 165° W. longitude, extending north to 56° N. latitude, west to 58° N. latitude and 171° W. longitude, north to 60° N. latitude, west to 179°20' W. longitude, south to 59°25' N. latitude, then extending on a diagonal straight line southeast to the intersection of 167° W. longitude and 54°30' N. latitude, and then extending eastward along 54°30' N. latitude to 165° W. longitude, which is zone 2 (area C in Figure 2).

This zone 2 encompasses a large majority of the population of small female and pre-recruit male C. bairdi Tanner crabs. The combined PSC limits for zones 1 and 2 (406,000 C. bairdi Tanner crabs) will provide protection for 98 percent of the C. bairdi stocks.

A PSC limit of 64,000 C. bairdi Tanner crabs applicable to the foreign directed fisheries for yellowfin sole and other flatfish is established in the combined areas of zones 1 and 2 (areas A and C in Figure 1). This PSC will provide greater protection to C. bairdi Tanner crabs specifically taken by the foreign fishery for flounder than is provided by the less restrictive Bering Sea and Aleutian Islands area-wide PSC for Tanner crabs contained in § 611.93(c)(2)(ii)(E) of the foreign fishing regulations.

3. Closure Due to Catch Limits

Continued fishing by the domestic and foreign fisheries for yellowfin sole and other flatfish is not allowed in any area after the fishery has achieved its fishery-specific PSC limit and foreign directed fishing for these species is not allowed in zone 1 (area A in Figures 1 and 2) after it is closed to domestic fishing due to achievement of the PSC limit for red king crabs.

Domestic and foreign directed fishing for yellowfin sole and other flatfish in any area in which a fishery-specific PSC limit is achieved is prohibited, as the Council recommended, by this rule. An exception is provided to give the Secretary some discretion in carrying out closures due to PSC limits. This will allow some management latitude in imposing restrictions on domestic fishermen in areas and under circumstances where continued fishing can be determined to have insignificant deleterious effects on either crab stock. This discretionary authority is designed to strike a balance between conservation of depressed crab stocks and excessive regulatory burden on the
domestic groundfishery. Allowing continuation or resumption of domestic fishing for yellowfin sole and other flatfish in an area that is otherwise closed due to a PSC limit will permit the domestic industry to use groundfish resources more fully. However, a thorough assessment and consideration of existing conditions within domestic fisheries and the biological and socioeconomic risks involved will be made and relevant findings published before this discretionary authority can be fully exercised. This authority does not extend to foreign fisheries. If a closure of the DAH fishery occurs in zone 1 due to the red king crab PSC limit, then this rule also provides for closing foreign directed fishing for yellowfin sole and other flatfish when domestic fishing for these species is closed.

The closure of either or both zones 1 and 2 (areas A and C in figures 1 and 2) due to achievement of a PSC limit will not preclude either the domestic or the foreign fishery from continuing to fish for yellowfin sole and other flatfish in the remainder of the Bering Sea and Aleutian Islands Management Area, which has no domestic PSC limits.

Prohibiting foreign fishing with trawl gear in the area defined at § 611.93(c)[2][ii][F] (area B in Figure 1) effectively extends the existing closure to foreign trawlers in the Bristol Bay "pot sanctuary" (area D in figure 1) under § 611.93(c)[2][i][A]. The purpose of this rule is to close the entire area specified by the Council (south of 58° N. latitude, between 160° and 162° W. longitude, and north of Alaska Peninsula) to commercial groundfishing. Failure to extend the "pot sanctuary" closure in this rule would unfairly allow foreign fishing in an area closed to domestic fishing and undermine the conservation of C. bairdi Tanner crabs and red king crabs in the area of their greatest concentration.

The Council's recommendations for halibut PSC limits are not included in this rule because they cannot be justified as a conservation emergency in light of the 19 percent increase in the halibut quota from 1985 to 1986 by the International Pacific Halibut Commission. This omission does not deny the concern that uncontrolled incidental catches of halibut by the growing JVP and DAP fishing fleets could result in decreased halibut abundance in the future. In the absence of a well-documented resource emergency involving halibut, the question of halibut PSC limits should bear the analysis and discussion of a regular amendment to the FMP.

These restrictions of fishing vessels trawling for yellowfin sole and other flatfish species are intended to reduce the deleterious effects of this fishing on C. bairdi Tanner crab and red king crab stocks. Recent data suggest that C. bairdi red king crabs have declined to extremely low abundances (Report to Industry on the 1985 Eastern Bering Sea Crab Survey, NMFS Northwest and Alaska Fisheries Center Processed Report 85–20, November 1985). A summary of these data follows:

1. C. Bairdi Tanner Crabs

The abundance of this species has declined to its lowest level since 1975. The number of legal-sized male crabs is estimated to have decreased from about 210 million in 1975 to about 4.4 million in 1985, the lowest historical record. The estimated abundance of legal-sized males declined 24 percent between 1984 and 1985, continuing an almost steady trend over the past decade. The decrease in abundance from 1984 to 1985 was more severe in other segments of the population. Between these years the abundance of sublegal males, mature females, and immature females declined by 50 percent, 55 percent, and 77 percent, respectively. Preliminary data from the commercial fishery indicate that 3.2 million pounds of C. bairdi was landed in 1985. Based on the NMFS crab survey, the 1986 harvest would be in the range of 2.0 to 5.0 million pounds, had it occurred. These harvest levels are substantially below the optimum yield range of 5.0-28.5 million pounds specified for C. bairdi in the fishery management plan for Tanner crabs. For this reason, the Secretary delayed indefinitely the scheduled January 15 opening of the 1986 commercial fishing season for C. bairdi (51 FR 20982, January 22, 1986).

2. Red King Crabs

The abundance of legal-sized male red king crabs is low. Estimated numbers have dropped 93 percent from 1980 through 1986. Sublegal male crabs have decreased in abundance an estimated 50 percent during the same period. The estimated abundance of female crabs also is at a record low. The abundance of mature female crabs declined from about 17.6 million to 6.8 million from 1984 to 1985. This estimated abundance is substantially below the range of 20 million to 40 million fecund females considered optimal for future fisheries production. Commercial catches of red king crabs in Bristol Bay reflect the declining abundance estimates. In 1980, 130 million pounds was landed. This harvest decreased to 34 million pounds in 1982. The Alaska Department of Fish and Game closed the commercial red king crab fishery in Bristol Bay in 1983 due to low abundance estimates. The fishery was reopened in 1984 and landed 4.2 million pounds. However, abundance estimates of legal males decreased again from 1984 to 1986 by 14 percent.

The 1985 fishery opened September 25 on an estimated legal stock of 12.5 million pounds (approximately 2.5 million crabs). The fishery closed October 2 with final landings exceeding 4.1 million pounds. These data show that from 1984 to 1985, the abundance of pre-recruit and legal males decreased by 17 percent and 14 percent, respectively, and that the 1985 legal male abundance was the second lowest since 1980.

In addition to commercial catches in the directed Tanner and king crab fisheries, incidental catches in other fisheries also contribute to fishing mortality of these species. For example, observer data indicate that 700,000 to 800,000 female red king crabs would have been captured during the C. bairdi fishery. These king crabs would be subject to handling mortality as they are removed from pots and returned to the sea. Consequently, the Secretary intends to keep closed the 1986 fishery for C. bairdi in Bristol Bay south of 58° N. latitude and east of 164° W. longitude to preclude this source of mortality.

Substantial numbers of crabs are taken also in the JVP trawl fishery. About 814,000 Tanner crabs (C. bairdi and C. opilio) and 870,000 king crabs (all species) were harvested incidentally in the 1985 JVP trawl fishery in Bering Sea Area 1. Despite being returned immediately to the sea, a portion of these incidentally harvested crabs probably die, especially if caught during the molting period when their shells are soft. The actual number of crabs killed may be higher, considering those struck and run over by non-capturing portions of the trawl gear.

For these reasons, the Council has determined and the Secretary has concurred that an emergency exists involving the C. bairdi Tanner crab and red king crab species and directed fishing for yellowfin sole and other flatfish in the Bering Sea Area 1. Despite being returned immediately to the sea, a portion of these incidentally harvested crabs probably die, especially if caught during the molting period when their shells are soft. The actual number of crabs killed may be higher, considering those struck and run over by non-capturing portions of the trawl gear.
management actions. Other commercial fisheries using nets, pots, or longline gear are not apt indirectly to catch Tanner and king crabs.

For purposes of enforcing a prohibition against directed fishing for yellowfin sole and "other flatfish" after a PSC limit is reached, a definition of directed fishing is added to § 611.93.

3. Classification
The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553(h) and (d) of the Administrative Procedure Act. The Secretary will consider comments on this rule during its effective period. He also will consider comments from the Council and public during the Council meeting scheduled for June 25–27, 1986.

The Assistant Administrator has determined that this rule will be impracticable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this rule and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the address above.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comments. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

List of Subjects
50 CFR Part 611
Fisheries, Foreign relations.
50 CFR Part 675
Fisheries.

Dated: June 3, 1986.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

1. The authority citation for Parts 611 and 675 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

PART 611—[AMENDED]

2. Section 611.93 is amended by adding new paragraphs (b)(1)(iii), (c)(2)(ii)(E)(2)(iv), and (c)(2)(ii)(F) and (G), and figure 1 to be effective from June 3, 1986 to September 2, 1986, as follows:

§ 611.93 Bering Sea and Aleutian islands groundfish fishery.

(b) * * *

(iii) Directed fishing, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish and amount to 20 percent or more of the total amount by weight of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more by weight of the catch, take, or harvest, or 20 percent or more of the total amount by weight of fish or fish products on board at any time, such fishing was directed fishing for such fish.

(c) * * *

(ii) * * *

(E) * * *

(iv) When, during the fishing year, the trawl vessels of foreign nations conducting directed fishing for yellowfin sole and other flatfish in either zone 1 or zone 2 (areas A and C in Figure 1) catch the PSC limit of 64,000 C. bairdi Tanner crabs, the Regional Director will publish a notice in the Federal Register prohibiting foreign trawling for yellowfin sole and other flatfish in both of these areas for the remainder of the fishing year. For this purpose, zone 1 is defined as that part of the management area south of 58° N. latitude and east of 165° W. longitude exclusive of other closed areas specified under this part (area A in Figure 1), and zone 2 is defined as that part of the management area bounded by straight lines connecting the following coordinates in the order listed and exclusive of other closed areas specified under this part (area C in Figure 1):

54°30' N. latitude, 165°00' W. longitude; 58°00' N. latitude, 165°00' W. longitude; 58°00' N. latitude, 171°00' W. longitude; 60°00' N. latitude, 171°00' W. longitude; 60°00' N. latitude, 179°20' W. longitude; 59°25' N. latitude, 179°20' W. longitude; 54°30' N. latitude, 180°00' W. longitude; 54°30' N. latitude, 185°00' W. longitude;

(F) At all times in the area enclosed by straight lines connecting the following coordinates: 57°30' N. latitude, 162°00' W. longitude; 58°00' N. latitude, 162°00' W. longitude; 58°00' N. latitude, 160°30' W. longitude (area B in Figure 1).

(G) When the domestic fishery for yellowfin sole and other flatfish is prohibited under § 675.21(a) of this chapter, the directed fishery for yellowfin sole and "other flatfish" is prohibited in the same area specified in § 675.21(a) exclusive of other closed areas specified under this part.

BILLING CODE 3510-22-M
FIGURE 1

A. Zone 1 area defined at §611.93(c)(2)(ii)(E)(iv) and §611.93(c)(2)(ii)(G).

B. Closed area defined at §611.93(c)(2)(ii)(F).

C. Zone 2 area defined at §611.93(c)(2)(ii)(E)(iv).

D. Bristol Bay "pot sanctuary" defined at §611.93(c)(2)(ii)(A).

BILLING CODE 3510-22-C
§ 675.21 Prohibited species catch (PSC) limitations.

(a) Tanner crab (C. bairdi). (1) If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 C. bairdi Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude, which is zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section.

(2) If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 326,000 C. bairdi Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea bounded by straight lines connecting the following coordinates in the order listed, which is zone 2 (area C in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in zone 2 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section.

(b) Red king crab. If, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude, which is zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the year, subject to paragraph (c) of this section.

(c) When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute overfishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and "other flatfish" under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to United States fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(1) A determination by the Regional Director of the risk of biological harm to Tanner and king crab stocks and of socioeconomic harm to authorized crab users posed by authorizing continued or resumed directed fishing for yellowfin sole and "other flatfish";

(2) A determination by the Regional Director of the extent of incidental catches of Tanner and king crabs in specific areas;

(3) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Tanner and king crabs;

(4) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources; and

(5) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and "other flatfish" will not lead to overfishing of prohibited species.

BILLING CODE 3510-22-M
FIGURE 2

A. Zone 1 area defined at §675.21(a)(1).

B. Closed area defined at §675.22.

C. Zone 2 area defined at §675.21(a)(2).
6. A new § 675.22 is added, to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of the Area I of the Bering Sea subarea that is south of 59°00' N. latitude, east of 162°00' W. longitude and west of 160°00' W. longitude (area B in Figure 2).

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43' N. latitude, 160°00' W. longitude, and 56°00' N. latitude, 162°00' W. longitude, provided that such fishing is in accordance with a data gathering program approved by the Regional Director after consultation with the Council designed to provide data useful in the management of the trawl fishery and the Tanner crab and king crab fishery and which will be monitored to prevent overfishing of the Tanner and king crab stocks in the area.

(c) The owner or operator of each vessel which fishes in Area B pursuant to an approved data gathering program must agree with the Secretary to comply with all requirements of that program.

(d) If the Regional Director determines that vessels fishing with trawl gear in the area described in paragraph (a) of this section will catch the share of the sablefish OY that has been allocated to that gear type, thereby providing for bycatch, and (2) to allow continued fishing for other groundfish species in a regulatory area or district when the OY of any groundfish species has been reached, if the Director, Alaska Region, NMFS (Regional Director), determines that the resulting mortality inflicted on the species for which the OY had been reached would not constitute overfishing. Public comments are invited on this emergency rule and will be considered in the promulgation of a final rule permanently implementing these measures. The emergency rule is necessary to promote the full utilization of all groundfish species without biological harm to any one species and without inhibiting the development of fisheries that are dependent on sablefish and other groundfish species. It is intended as a conservation and management measure to optimize groundfish yields from the fishery in 1986 and subsequent years.

Effective date: June 3, 1986, until September 2, 1986. Written comments on this rule and its supporting documents must be received on or before July 3, 1986.

Address: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 700 West Ninth Street, Juneau, Alaska. Copies of this rule and its supporting documents may be obtained from Mr. McVey.

For further information contact:
Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

Supplementary information:
Background
The domestic and foreign groundfish fishery in the fishery conservation zone (3–200 miles offshore) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations at 50 CFR part 672.

At its January 15–17, 1986, meeting, the Council reviewed regulations at §§ 672.20(b) and 672.24(b) with respect to the FMP's objectives for groundfish management, and recommended to the Secretary that these regulations be amended in two ways. First, § 672.20(b) should be amended to authorize the Secretary to allow fishing for other species to continue if the OY for a single species in a regulatory area or district has been reached, on the condition that such fishing will not result in overfishing of the single species. Second, § 672.24(b) should be amended to reduce the potential for exceeding sablefish OYs by allowing the Secretary to close directed fishing for sablefish by pot, hook-and-line, or trawl vessels prior to their taking the share of the sablefish OY assigned to any gear type for any area and any area or district, leaving an amount of sablefish available for bycatch in fishing other species. Upon such closure, sablefish could continue to be landed by that gear type only as an incidental catch until that portion of the OY allocated to it had been achieved, after which sablefish would be treated as a prohibited species. Each of the Council's recommendations and the action taken by the Secretary is discussed below:

Recommendation to Amend 50 CFR 672.20

Ten species (or species groups) of groundfish are managed under the FMP, which establishes OYs for each species. Each OY represents the best estimate of an annual harvest level for that species, taking into account biological, ecological and economic factors. Since the FMP was implemented, OYs for each species have constituted a "cap" above which additional fishing would not be allowed. Such management has been in response to: (1) Management Objective A of the FMP, "Rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole", and (2) National Standard 1 of the Magnuson Act, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery". Overfishing is considered to be the level of fishing mortality that jeopardizes the capacity of a stock to recover to a level at which it can produce maximum biological or economic value on a long-term basis under prevailing biological and environmental conditions.

Both the foreign and domestic regulations implementing the FMP at §§ 619.82(c)(2)(ii) and 672.20(b)(1)
contain measures that require closure of entire regulatory areas or districts to all fishing whenever an OY for any species is reached, with the exception that foreign hook-and-line fisheries for Pacific cod and sablefish may continue until the OY for each of these species is achieved.

Both domestic and foreign regulations recognize that hook-and-line gear takes few, if any, target groundfish species of other fisheries, thereby justifying continued fishing with this gear when the OYs for those target species have been reached. Only when the OYs for Pacific cod or sablefish have been reached is hook-and-line gear in a regulatory area also prohibited, at which time all fishing would finally be prohibited.

The Council did not recommend that the emergency rule amend the foreign fishing regulations. Most of the groundfish resources in the Gulf of Alaska are being fully utilized, or will be fully utilized, by U.S. fishermen in wholly domestic (DAP) or joint venture (JVP) operations. As a result, directed foreign trawling in the Gulf of Alaska has greatly diminished since 1979 and none is expected in 1986. Foreign hook-and-line fishing for Pacific cod could be eliminated in future years.

Certain species groups, such as sablefish, are available only in relatively small amounts each fishing year which, depending on market demand, could be fully harvested within a short period of time. In 1985, the OYs for sablefish in all regulatory areas and districts were reached a few weeks after active sablefish fishing began. The required closure of the entire area or district to all fishing would have created a severe economic hardship on fishermen who otherwise could have continued to fish for underutilized species. In the Central Regulatory Area, the economic hardship would have been especially severe, because the sablefish OY was reached on June 8. Domestic fishermen had almost six months of fishing time left in which they potentially could have harvested about 117,000 metric tons (mt) of other groundfish in DAP fisheries and 49,800 mt in JVP fisheries. To avoid making U.S. fishermen forego these amounts, the Secretary promulgated an emergency rule under section 305(e) of the Magnuson Act that amended the applicable rules on an interim basis to allow continued fishing for sablefish for Pacific cod whenever an OY for any species is reached in a regulatory area also prohibited, at which time all fishing would finally be prohibited.

Emergency rule expired on December 31, 1985.

The original regulations are again in effect for the 1986 fishing year and could result in U.S. hook-and-line and trawl vessels being denied access to large amounts of available groundfish species. Pot vessels are expected to harvest only sablefish and would not be affected similarly once the pot vessel share of sablefish had been reached. Gross revenues lost by hook-and-line and trawl vessels could be substantial. These revenues are estimated in the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA), using actual numbers of vessels and price data from 1985. The EA/RIR/IRFA shows that, in the extreme, each of 46 trawl vessels targeting on pollock, Pacific cod, flounders, and the trawl share of the sablefish OY could potentially forego gross revenues of $129,000, $471,000, $79,000, and $37,000, respectively, from these catches. Each of 440 hook-and-line vessels targeting on Pacific ocean perch, rockfish, thornyhead rockfish, and their share of sablefish could potentially forego gross revenues of $7,000, $11,000, $10,000 and $34,000, respectively from catch of each species. Processing, wholesale, and retail industries would also suffer losses in revenues. Because the total amount earned at these three levels is three to five times the exvessel value, more revenues would be foregone by the U.S. fishing industry.

The EA/RIR/IRFA contains data on the size of bycatches expected in the various target fisheries. Although DAP catches are by themselves too small to provide adequate information, data from JVP fisheries do yield adequate information. In the JVP fishery for pollock, in the Shelikof Strait, off-bottom trawl gear is known to take relatively small amounts of other groundfish species. On-bottom trawl gear used to harvest pollock and Pacific cod takes larger numbers of other species, but the bycatches are still relatively small. However, when bottom trawl gear is used to harvest flounders, bycatches of other groundfish species can be quite large. Bycatches of “other rockfish”, thornyhead rockfish, and squid are low whether on- or off-bottom gear is used during any month of the year. After reviewing the bycatch rates of all groundfish species in the various fisheries, the Secretary has determined that certain groundfish fisheries take small to insignificant amounts of other groundfish species as bycatch. He has also determined that further bycatches of such species for which the OY had already been attained, in most cases, would not necessarily constitute over-fishing under the Magnuson Act. He has concluded, therefore, that prohibiting all fishing in a regulatory area or district, or part thereof, when the OY for a single species is reached is not justified in all cases, and that such unqualified closures would impose unacceptable, negative economic effect on the fishing industry.

The likelihood of unqualified closures early in 1986 is great. The 1986 sablefish season for hook-and-line gear throughout the Gulf of Alaska and for pot gear in the Western and Central Regulatory Areas of the Gulf of Alaska started on April 1. The season for trawl gear started on January 1. Substantial fishing effort for sablefish by all gear types should harvest the OYs in all areas/districts within a few weeks, forcing the Secretary to impose general and unqualified closures.

**Secretarial Action**

The Secretary, therefore, is promulgating this emergency rule to amend, on an interim basis, the current rules at § 672.20(b) to authorize species-specific fishery closures. The Secretary requests public comment on this rule because he anticipates effecting this change permanently by a subsequent final rule.

**Recommendation To Amend 50 CFR 672.24**

Amendment 14 to the FMP (50 FR 43193, October 24, 1985) contained seven parts. One part established that legal commercial fishing gear types for use in the directed sablefish fishery are pots, hook-and-line, and trawls. This part also allocates percentages of the sablefish OY for each regulatory area and district to each gear type and establishes a schedule for phasing out pot gear (Table 1).

**TABLE 1.-PERCENTAGES OF SABLEFISH ALLOCATED BY YEAR AMONG HOOK-AND-LINE (H and L), POT, AND TRAWL GEAR USERS FOR EACH REGULATORY AREA IN THE GULF OF ALASKA**

<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Eastern:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H and L</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>Pot</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Trawl</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Central:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H and L</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>Pot</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Trawl</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Western:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H and L</td>
<td>55</td>
<td>55</td>
<td>55</td>
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<tr>
<td>Pot</td>
<td>25</td>
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<td>25</td>
</tr>
<tr>
<td>Trawl</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

* 1987 and subsequent years—same as 1986.
* 1986 and subsequent years—same as 1985.
* 1990 and subsequent years—same as 1989.
Under current regulations implementing Amendment 14, when the share of the sablefish OY assigned to any gear type for any year and any area or district has been taken, the Regional Director is required to close that regulatory area or district to all fishing for groundfish with that gear type for the remainder of that year. The Council considered the effects that this measure would have on other segments of the groundfish industry and determined that the potential negative economic effects on the industry are of the same type as discussed above under the recommendation to amend § 672.20. The Council, on a recommendation from its Advisory Panel, recommended that directed fishing should be prohibited for sablefish by any gear type prior to full attainment of the portion of the OY allocated to that gear type to assure that a portion of the sablefish OY would remain to support an adequate bycatch of sablefish in fisheries for other groundfish species. Thus, the Council recommended that the Regional Director close directed fishing for sablefish by any gear type in a regulatory area or district if he determines that the share of sablefish OY assigned to that gear type in that regulatory area or district may be taken before the end of the year.

"Directed fishing" is defined at § 672.20 to mean fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. Sablefish could continue to be landed only as incidental catch until the portion of the OY allocated to that gear type is achieved. At that time, further sablefish catches by that gear type would have to be treated as a prohibited species under this section, unless closure of all fisheries were necessary to prevent overfishing of sablefish. Again, the likelihood that a specific gear type will harvest all of its sablefish allocation early in 1986 is great. The season for trawl gear started on January 1. Over half of the sablefish OY allocated to trawlers in the Central Regulatory Area has already been harvested. The 1986 sablefish season for hook-and-line gear throughout the Gulf of Alaska and for pot gear in the Western and Central Regulatory Areas of the Gulf of Alaska started on April 1. Substantial fishing effort for sablefish by each gear type could harvest the OYs in each area or district within a few weeks, forcing the Regional Director to impose general area or district closures on any gear type that had reached its sablefish allocation.

Secretarial Action

The Secretary, therefore, is promulgating this emergency rule to amend, on an interim basis, the current rules at § 672.24 to authorize closure of the directed fishery for sablefish by any legal gear type prior to reaching its share of the OY and retaining a portion of the sablefish OY for bycatch to support groundfish fishing for other species with that gear type. The Secretary also requests public comment on this rule because he anticipates effecting this change permanently by a subsequent final rule.

Summary of the EA/RIR/IRFA

The amendment to § 672.20 recommended by the Council and implemented by this emergency rule is superior among alternatives considered, because certain fisheries for other groundfish species could be allowed to continue after the OY for a single species had been reached, providing that overfishing would not occur. Although the nature of the Gulf of Alaska groundfish fisheries is changing, target fisheries by each gear type in 1986 are expected to be similar to those in 1985. Fisheries using trawl gear will target primarily on pollock, Pacific cod, flounder, and sablefish, and possibly Atka mackerel. Fisheries using hook-and-line gear will target primarily on sablefish, Pacific ocean perch, rockfish, and thornyhead rockfish. Pot gear might target primarily on sablefish.

Benefits under the proposed action presented in Table 2 below are those accruing to fishermen on a per-boat basis by gear type as a result of being able to fully harvest OYS for all groundfish species, as estimated for 1986, using 1985 price data and 1986 available amounts of groundfish. Independent price effects are assumed. Processing, wholesale, and retail industries also earn income. Because the total amount earned at these three levels is three to five times the exvessel value, i.e. the value paid to fishermen, additional revenues would accrue to the U.S. fishing industry if the Secretary implements this alternative.

Without this measure, U.S. fishermen might be forced to forego earnings equal to the amounts of available groundfish multiplied by the exvessel values of fish unharvested as a result of a regulatory area being closed after the OY for any one species had been reached (Table 2); existing and newly developing fisheries in the Gulf of Alaska could be substantially harmed.

<table>
<thead>
<tr>
<th>Gear Type</th>
<th>Western Central</th>
<th>Eastern</th>
<th>Pacific cod: Western Central</th>
<th>Central</th>
<th>Eastern</th>
<th>Flounders: Central</th>
<th>Eastern</th>
<th>Sablefish: Western Central</th>
<th>Central</th>
<th>Eastern</th>
<th>Atka mackerel: Western Central</th>
<th>Central</th>
<th>Eastern</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pollock:</td>
<td>110,900</td>
<td>19,400</td>
<td>188,200</td>
<td>207,600</td>
<td>75,400</td>
<td>29,000</td>
<td>27,100</td>
<td>21,800</td>
<td>5,200</td>
<td>1,000</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
</tr>
<tr>
<td>Pacific cod:</td>
<td>188,200</td>
<td>207,600</td>
<td>75,400</td>
<td>29,000</td>
<td>27,100</td>
<td>21,800</td>
<td>5,200</td>
<td>1,000</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flounders:</td>
<td>29,000</td>
<td>27,100</td>
<td>21,800</td>
<td>5,200</td>
<td>1,000</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sablefish:</td>
<td>21,800</td>
<td>5,200</td>
<td>1,000</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atka mackerel:</td>
<td>1,000</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>1,300</td>
<td>27,100</td>
<td>1,300</td>
<td>1,300</td>
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</tbody>
</table>

1 Price data not available.

The amendment to § 672.24 recommended by the Council and implemented by this emergency rule would allow the Regional Director to prohibit directed fishing for sablefish by a gear type in order to provide sufficient amounts of the sablefish OY to support a bycatch of sablefish in target fisheries for other groundfish species. Bycatch amounts of sablefish could still be retained and sold. The same total amount of sablefish would be harvested by each gear type as was assigned to that gear type as its share of the sablefish OY. In 1986, the gear types that receive shares of the sablefish OYs in the management areas are hook-and-line gear, trawl gear, and pot gear. On a per-boat basis, each vessel could potentially realize the maximum returns (assuming independent price effects) for sablefish, as shown in the table above. For purposes of this analysis, however, fishing for each species is considered independent of fisheries for other species. Besides targeting on sablefish, vessels using trawl gear might target primarily on pollock, Pacific cod, flounder, and possibly Atka mackerel. Vessels using hook-and-line gear might target primarily on Pacific ocean perch, rockfish, and thornyhead rockfish. Vessels using pot gear will, however, target only on sablefish.
Without this measure, each trawler, which might have targeted on pollock, Pacific cod, or flounder in the Western Area, could forego a maximum of $111,000 for pollock in the combined Western/Central Area, $188,000, and $29,000, respectively, or a total of $328,000. Each trawler that might have targeted on Pacific cod or flounder in the Central Area would forego a maximum of $207,000, and $27,000, respectively, or a total of $234,000 per vessel. Each hook-and-line vessel that might have targeted on Pacific ocean perch would forego a maximum of $2,000 in the Western Area and $3,000 in the Central Area. If each vessel targeted on other rockfish, it would forego about $10,000 in the Gulf and $1,000 in the Central Southeast Outside District. If each vessel targeted on thornyhead rockfish, it would forego about $10,000. Each pot vessel will likely have targeted only on sablefish and would not be expected to forego any additional revenues after it has reached its share of the sablefish OY.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act. The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, as required by section 553(b) and (d) of the Administrative Procedure Act. Early implementation of this rule will benefit groundfish fishermen who otherwise might have to forego substantial amounts of other groundfish species if the OY for a species is caught. Similarly, sablefish fishermen might have to forego substantial amounts of other groundfish species if the share of the OY allocated to a legal gear type is reached. The Regional Director prepared an environmental assessment for this rule as part of the EA/RIR/IRFA, and concluded that no significant impact on the human environment would result from this rule, either from implementing it for the interim under section 305(e) or for subsequently amending it permanently by final rule under section 305(g). You may obtain a copy of this document from the address above.

The Administrator of NOAA determined that this emergency rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on the socioeconomic analysis contained in the EA/RIR/IRFA, which is summarized above. This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 6(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Aleaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the regulatory impact review, which concludes that this rule, if adopted permanently, would potentially have significant beneficial economic effects on small entities. You may obtain a copy of this analysis at the address above. The socioeconomic analysis contained in the EA/RIR/IRFA upon which the determinations that this rule is non-major and significant were based is summarized above. The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under section 604(a) of the Regulatory Flexibility Act no final regulatory flexibility analysis has to be or will be prepared.

This rule contains no collection of information for purposes of the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: June 2, 1986.

Carmen J. Blondin,
Deputy Assistant Administrator For Fisheries
Resource Management, National Marine
Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 672.20, paragraph (b) is suspended from June 3, 1986 until September 2, 1986 and a new paragraph (f) is added to be effective from June 3, 1986 until September 2, 1986 to read as follows:

§ 672.20 Optimum yield.

(f) Notices.

(1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table 1 of paragraph (a) of this section has been or will be reached, the Secretary will issue a notice of closure under § 672.22(a) closing fishing for that species in that area or district, or part thereof, declaring that species in that area or district to be a prohibited species for purposes of paragraph (d) of this section. During the time that such a notice is in effect, the operator of every vessel regulated by this part must minimize its catch of that species in the area or district, or part thereof, to which the notice applies.

(2) When the Regional Director determines that continued fishing for other groundfish species in an area or district, or part thereof, may lead to overfishing of a species for which an OY has been or will be reached, the Secretary will, by notice in the Federal Register, close or limit such fishing for other groundfish species by methods, including time, area, or gear adjustments, that will prevent overfishing of the species for which the OY is taken.

(3) When making closures or imposing limitations under paragraph (f)(1) of this section, the Regional Director will take into account the following considerations and may allow continued fishing with certain gear types, issuing findings relevant to these considerations:

(i) The risk of biological harm to a groundfish species for which the OY has been reached;

(ii) The risk of socioeconomic harm to authorized users of the groundfish for which the OY has been reached;

(iii) The impact that a continued closure might have on the socioeconomic wellbeing of other domestic fisheries.

3. In § 672.24, paragraphs (b)(1) and (b)(2) are suspended from June 3, 1986 until September 2, 1986 and new
paragraphs (b)(3), (b)(4), and (b)(5) are added, to be effective from June 3, 1986 until September 2, 1986 to read as follows:

§ 672.24 Gear limitations.

(b) Sablefish gear restrictions and allocations.

(3) Eastern Area. No person may use any gear other than hook-and-line and trawl gear when fishing for groundfish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested as bycatch 5 percent of the OY for sablefish during any year, further trawl catches of sablefish must be treated as a prohibited species as provided by paragraph (b)(5)(ii) of this section.

(4) Central and Western Areas. During 1986 in the Central Area, and during 1986, 1987, and 1988 in the Western Area, hook-and-line gear may be used to take up to 25 percent of the sablefish OY and trawl gear may be used to take up to 20 percent of that OY. After the years specified above, hook-and-line gear may be used to take up to 80 percent of the sablefish OY in each area and trawl gear may be used to take up to 20 percent of that OY. No person may use any gear other than hook-and-line, pot, or trawl gear in fishing for groundfish in these areas during the years specified above. After those years, no person may use any gear other than hook-and-line or trawl gear in fishing for groundfish in the Gulf of Alaska.

(5) Sablefish bycatch amounts. (i) When the Regional Director determines that the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph may be taken before the end of that year, the Regional Director, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by notice in the Federal Register, prohibit directed fishing for sablefish by persons using that type of gear for the remainder of that year.

(ii) If the share of the sablefish OY assigned to any type of gear for any year and any area or district under this paragraph is reached, further catches of sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

[FR Doc. 86-12726 Filed 6-3-86; 3:03 pm]

BILLING CODE 3510-22-M
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 Parts 907 and 908

[DOCKET NO. AQ-245-A9 & AQ-250-A7]

Naval Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Notice of Hearing on Proposed Amendment of Marketing Orders 907 and 908, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Order No. 907 (7 CFR Part 907) and Marketing Order No. 908 (7 CFR Part 908). These marketing orders regulate handlers of navel and Valencia oranges grown in Arizona and part of California, respectively, and are hereinafter referred to collectively as the "orders."

The purpose of the hearing is to receive testimony on proposals to amend those provisions of the orders concerning the structure of the committees established to administer the programs.

DATE: The hearing will begin at 9:00 a.m., June 10, 1986.

ADDRESS: The hearing will be held at the Holiday Inn, 9000 West Airport Drive, Visalia, California 93272.

FOR FURTHER INFORMATION CONTACT: Ronald L. Gioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250; telephone: (202) 447-5697 or David B. Fitz, Officer-In-Charge, Fresno Marketing Field Office, 5150 N. 6th St., Suite 100, Fresno, California 93710; telephone: (209) 487-5837.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 558 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-554), effective January 1, 1981, seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small business.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The hearing is being held to receive testimony on proposals to amend those provisions of the orders concerning the structure of the Navel Orange Administrative Committee and the Valencia Orange Administrative Committee. These committees are established under their respective order for the purpose of administering the programs. Proposals under consideration concern committee composition, eligibility to serve, nomination and selection procedures, procedures for filling committee vacancies, order definitions relevant to committee structure, or order provisions directly affected by committee structure such as quorum requirements and number of concurring votes required to carry committee motions.

Proposals have been received from the Sequoia Orange Company, Mr. R.E. Herrick of Belridge Farms and Packing Company, the Navel Orange Administrative Committee, and Valencia Orange Administrative Committee. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the orders concerning committee structure; (ii) determining whether there is a need to amend those provisions of the orders concerning committee structure; and (iii) determining whether the proposed amendment concerning committee structure or appropriate modifications of them will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

List of Subjects in 7 CFR Parts 907 and 908

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

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:


2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PARTS 907 AND 908—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA, VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

PROPOSALS SUBMITTED BY SEQUOIA ORANGE COMPANY

Proposal No. 1

Amend § 907.20 as follows:

Section 907.20 Establishment and membership

(a) There is hereby established a Navel Orange Administrative Committee consisting of 13 members, for each of whom there shall be one alternate. Reference to "member" hereafter shall be deemed to include "alternate" and "additional alternate" unless the context indicates otherwise. Nine of the members shall be growers. Three of the members shall be handlers, employees of handlers, or employees of central marketing organizations. The grower and handler members shall represent the prorate districts in which they were nominated. One member of the committee and an alternate shall be known as the "public" member of the committee.

(b) Except as otherwise provided by § 907.22(i), the grower and handler members of the committee shall be nominated by prorate district and group, in accordance with the following schedule:
Proposition No. 2

Amend Section 907.21 by adding the following two sentences at the end of §907.21:

The failure of any member to maintain the qualifications required for nomination and selection shall result in disqualification of the member and his position shall become vacant. Such vacancy shall be filled as provided in §907.26.

Proposition No. 3

Amend Section 907.22 as follows:

Section 907.22 Nominations.

(a) With respect to paragraphs (c) and (d) of this section, the time and manner of nominating members of the committee shall be prescribed by the Secretary. With respect to paragraph (e) of this section, the Secretary shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member, and (2) the conducting of such nominations by mail ballot.

(b) Grower and handler members shall be nominated from each prorate district by the growers in that district and the number nominated from each district shall be in direct proportion to the average of the volume of fresh domestic shipments in each district handled during the two preceding fiscal years, provided however, that in each district with 5% or more of the total fresh domestic shipments, at least one member shall be nominated. A district having less than 5% of total fresh domestic shipments shall be combined, for purposes of nomination and representation, with a district having the most comparable production and marketing conditions.

(c) The major cooperative marketing organization, or the growers affiliated therewith, which handled, during the fiscal year in which nomination for members and alternates are made:

(1) 50 percent or more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) More than 3 but less than 10 percent of the total fresh domestic shipments may nominate one member of the committee; or

(7) 3 percent or less of the total fresh domestic shipments shall be deemed to be non-affiliated growers.

(e) All growers which are not qualified under paragraphs (c) and (d) of this section shall nominate that portion of the nine grower and three handler members and alternates not nominated by cooperative marketing organizations.

(f) In order to qualify as a nominee from a district such nominee must be a grower with a growing operation in that district or be employed by a first handler operating in that district.

(g) When voting for nominees from each district, each grower not affiliated with a cooperative marketing organization shall be entitled to cast one vote for each position, which vote shall be cast on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Such vote shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. The votes of cooperative marketing organizations under paragraph (d) of this section shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. Provided, that, to the extent practicable, each cooperative marketing organization shall be entitled to have representation on the committee.

(h) The public member (and alternate) of the committee shall be selected by the Secretary pursuant to §907.23 and shall not be a grower or handler, or employee, agent, or representative of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(i) A cooperatively owned packinghouse shall not be considered a cooperative marketing organization.

(j) The Secretary, upon recommendation of the committee, or upon other information, shall reappoint the number of grower or handler members, or both, to be nominated pursuant to this section and, may realign the number of grower or handler members in and between districts. Any such change shall be based, insofar as practicable, upon the proportionate amounts during the fiscal year of domestic fresh shipments of the respective groups, domestic fresh shipments from each district, and the number of marketing organizations within each group.

Proposition No. 4

Amend Section 904.23 as follows:

Section 907.23 Selection.

From the nominations made pursuant to §§ 907.22 (c), (d), and (e), or from other qualified growers and handlers, the Secretary shall select from the district nominations nine grower and three handler members of the committee and their alternates. The Secretary shall select one public member and one alternate public member of the committee from qualified persons suggested by the committee, the public, and industry at large.

Proposition No. 5

Amend Section 907.29 by deleting paragraph (n).

Proposition No. 6

Amend Section 907.30 as follows:
Section 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes, provided however, that eight concurring votes shall be required in order to recommend size or volume regulation, and ten concurring votes shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation.

(b) Except to recommend size or volume regulation, the committee may vote by telegraph, telephone or any other means of communication; and any votes so cast shall be confirmed promptly in writing. Provided, that if an assembled meeting is held, all votes shall be cast in person.

Proposal No. 7

Proposals 1, 2, 3, 4, 5, and 6 to amend the Navel Orange Marketing Order shall also apply to the Valencia Orange Marketing Order, except for the schedule in Proposal 1 which is revised as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>Major co-op marketing organizations</th>
<th>All other coop marketing organizations</th>
<th>Nonaffiliated growers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Grower Handler</td>
<td>Grower Handler</td>
<td>Grower Handler</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Nominations.

(a) With respect to paragraphs (c) and (d) of this section, the time and manner of nominating members of the committee shall be prescribed by the Secretary. With respect to paragraph (e) of this section, the Secretary shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member, and (2) the conducting of such nominations by mail balloting.

(b) Grower and handler members shall be nominated from each prorate district by the growers in that district and the number nominated from each district shall be in direct proportion to the average of the volume of fresh domestic shipments in each district handled during the two preceding fiscal years, provided however, that in each district with 8% or more of the total fresh domestic shipments, at least one member shall be nominated. A district having less than 8% of total fresh domestic shipments shall be combined, for purposes of nomination and representation, with a district having the most comparable production and marketing conditions.

(c) The cooperative marketing organization, or the growers affiliated therewith, which handled the largest percentage of the total fresh domestic shipments handled by all cooperative marketing organizations during the fiscal year in which nomination for members are made, shall nominate members in accordance with the following schedule. Such major cooperative marketing organization which handled:

(1) 50 percent or more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(d) All cooperative marketing organizations, or the growers affiliated therewith, which market oranges and which are not qualified under paragraph (c), and which together handled, during the fiscal year in which nomination for members and alternates are made:

(1) 50 percent or more of the total fresh domestic shipments may nominate
five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) More than 3 but less than 10 percent of the total fresh domestic shipments may nominate one member of the committee; or

(7) 3 percent but less of the total of the fresh domestic shipments shall be deemed to be non-affiliated growers.

(e) All remaining growers which together accounted, during the fiscal year in which nominations for members and alternates are made, for:

(1) 50 percent of more of the total fresh domestic shipments may nominate five grower and one handler member of the committee; or

(2) More than 40 but less than 50 percent of the total fresh domestic shipments may nominate four grower and one handler member of the committee; or

(3) More than 30 but less than 40 percent of the total fresh domestic shipments may nominate three grower and one handler member of the committee; or

(4) More than 20 but less than 30 percent of the total fresh domestic shipments may nominate two grower and one handler member of the committee; or

(5) More than 10 but less than 20 percent of the total fresh domestic shipments may nominate one grower and one handler member of the committee; or

(6) 10 percent or less of the total fresh domestic shipments may nominate one member of the committee.

(f) If the nominations pursuant to paragraphs (c), (d) and (e) of this section result in less than 12 in number, additional nominees shall be nominated as follows: If one additional member is to be nominated, the right to make such nomination shall go to the group in paragraph (c), (d), and (e) which has the percentage of domestic fresh shipments close to qualifying for an additional nomination. If a second additional member is to be nominated, the right to make such nomination shall go to the group which was second closest to qualifying for an additional nomination. If a third additional member is to be nominated, the right to make such nomination shall go to the group which was third closest to qualifying for an additional nomination. Any further additional nominees shall be nominated in the above sequence.

(g) In order to qualify as a nominee from a district such nominee must be a grower with a growing operation in that district, an employee of such grower, or be employed by a first handler operating in that district.

(h) When voting for nominees from each district, each grower not affiliated with a cooperative marketing organization shall be entitled to cast one vote for each position, which vote shall be cast on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Such vote shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. The votes of cooperative marketing organizations under paragraph (d) of this section shall be weighted in accordance with the volume of fresh domestic shipments in each district in the fiscal year in which nominations are made. Provided, that, to the extent practicable, each cooperative marketing organization shall be entitled to have representation on the committee.

(i) The public member (and alternate) of the committee shall be selected by the Secretary pursuant to § 907.23 and shall not be a grower or handler, or employee, agent, or representative of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(j) A cooperatively owned packinghouse shall not be considered a cooperative marketing organization.

(k) The Secretary, upon recommendation of the committee, or upon other information, shall reappoint the number of grower or handler members, or both, to be nominated pursuant to this section and may realign the number of grower or handler members in and between districts. Any such change shall be based, insofar as practicable, upon the proportionate amounts during the fiscal year of domestic fresh shipments of the respective groups, domestic fresh shipments from each district, and the number of marketing organizations within each group.

Proposal No. 11

Amend § 907.23 as follows:

Section 907.23 Selection.

From the nominations made pursuant to §§ 907.22 (c), (d), and (e), or from other qualified growers and handlers, the Secretary shall select from the district nominations nine grower and three handler members of the committee and their alternates. The Secretary shall select one public member and one alternate public member of the committee from qualified persons suggested by the committee, the public, and industry at large.

Proposal No. 12

Amend § 907.29 by deleting paragraph (n).

Proposal No. 13

Amend § 907.30 as follows:

Section 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least seven concurring votes, provided however, that eight concurring votes shall be required in order to recommend size or volume regulation, and ten concurring votes shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation. In any vote to recommend regulation, only the votes of members whose districts are to be regulated by the proposed regulation shall be counted. In this event a majority plus one concurring votes of those eligible to vote shall be required in order to recommend size or volume regulation, and a majority plus two concurring votes of those eligible to vote shall be required to recommend size or volume regulation for any week following ten consecutive weeks of size or volume regulation. Provided, that if an assembled meeting is held, all votes shall be cast in person.

Proposal No. 14

Proposals 1, 2, 3, 4, 5, and 6 to amend the Navel Orange Marketing Order shall also apply to the Valencia Orange Marketing Order, except for the schedule in Proposal 1 which is revised as follows:
PROPOSALS SUBMITTED BY THE
NAVEL ORANGE ADMINISTRATIVE
COMMITTEE

Proposal No. 15
Amend § 907.20 to read as follows:
Section 907.20 Establishment and
membership.
There is hereby established a Navel
Orange Administrative Committee
consisting of 11 members, for each of
whom there shall be one alternate, and
for each grower and handler member an
additional alternate. Ten of the members
and their respective alternates shall be
growers, employees of growers,
handlers, or employees of handlers or of
central marketing organizations. One
member of the committee and an
alternate of such member shall be
nominated as provided in § 907.22(g).

Proposal No. 16
Amend § 907.21 to read as follows:
Section 907.21 Term of office.
(a) The term of office of each member
and alternate member of the committee
shall be for a period of two years, and
such terms shall begin on October 1 of
each even-numbered year. Provided,
that such members and alternates shall
serve in such capacities for the portion
of the term of office for which they are
selected and qualify and until their
respective successors are selected and
have qualified. The consecutive terms of
office of members, not including
alternate members or additional
alternate members, shall be limited to
three terms. No person having served
three consecutive terms as a member of
the committee shall serve as a member,
alternate member, or additional
alternate member for the next
succeeding term of office.
(b) A member, alternate member and
additional alternate member, including
persons nominated in accordance with
§ 907.22(g), shall be disqualified if such
person ceases to be affiliated as a
grower or an employee of a grower or
handler, or as an employee of a handler
or central marketing organization with
the group that nominated him or her.

Proposal No. 17
Amend § 907.22 to read as follows:
Section 907.22 Nominations.
(a) Nominations for member, alternate
member, and additional alternate
member positions on the committee may
be made by the following entities only:
(1) The cooperative marketing
organization, or the growers affiliated
therewith, which handled the largest
percentage of the total volume of navel
oranges handled by all cooperative
marketing organizations in all outlets
during the fiscal year preceding the
period for which nominations are being
made.
(2) A handler or declared handler
grouping not affiliated with the
organization eligible to nominate under
(a)(1) of this section.

50%-(excess over 50%) = Percentage required to nominate one member plus alternates

(b) The body of growers affiliated with
those handlers not participating in the
nominations proceedings referred to
herein.

ten of nominations which any nominating entity may make
shall be determined by its volume
percentage, as follows:

| Percentage | Number of members, plus
|-------------|--------------------------|
| 0.00 to 9.99 | 1
| 10.00 to 19.99 | 2
| 20.00 to 29.99 | 3
| 30.00 to 39.99 | 4
| 40.00 to 49.99 | 5
| 50.00 or above | 5

1 See Subsection (b)(2).

Provided, that if any nominating entity's
percentage exceeds 50%, percentage
defines in the above schedule shall
change according to the following
formula:

Provided further, that no handler may
participate as a member of more than
one nominating group.

(2) A handler or declared handler
grouping not affiliated with the
organization referred to in paragraph
(a)(1) which did not handle a
sufficient quantity of oranges to meet
the requirement to nominate under
paragraph (b)(1) shall be considered for
eligibility to nominate under
paragraph (b)(3).

(3) If nominations for member
positions pursuant to paragraph (b)(1)
total less than ten in number, eligibility
to make the remaining nominations shall
be determined as follows: If one
additional member, plus alternates, is to
be nominated under this section, the
right to make such nominations shall go
to that nominating entity which comes
the closest to qualifying for the right to
make the additional nomination. If a
second member, plus alternates, is to be
nominated under this subsection, the
right to make such nominations shall go
to that nominating entity which is
second closest to qualifying for the right
to make an additional nomination, and
so forth.

(c)(1) Nominating procedures shall be
in accordance with rules and regulations
adopted by the committee with the
approval of the Secretary.

(2) Each nomination made by an
entity authorized by paragraph (a)(2) to
nominate must be approved by growers.
Approval shall be determined by mail
balloting. To be eligible to participate in
the approval process, a grower must
have delivered oranges to one or more
of the entity's handlers in the then-
current fiscal year and must be
committed to deliver oranges to one or
more of said handlers in the following
fiscal year. A nomination shall be
deemed to have the requisite growers
approval if it is approved by the growers
of more than 50% of the total quantity of
oranges handled for participating
eligible growers in the then-current
fiscal year by the handler or handlers
comprising the nominating entity.

(3) Nominations authorized by
paragraph (a)(3) shall result from the
conduct of mail balloting proceedings
wherein candidates for committee
membership are voted on by the
growers.

(d) Nominations by the entities
authorized by paragraphs (b)(1) and
(a)(2) to nominate shall be submitted no
later than September 1 of each even-
numbered year. Thereafter, the
Secretary shall determine the
pursuant to §907.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in §907.23.

**Proposal No. 20**

Amend §907.25 to read as follows:

*Section 907.25 Acceptance.*

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

**Proposal No. 21**

Amend §907.26 to read as follows:

*Section 907.26 Vacancies.*

To fill any vacancy occasioned by the failure of any persons selected as a member or as an alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in §907.22 by the same nominating entity which nominated such person for the term, or from other qualified persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in §907.22.

**Proposal No. 22**

Amend §907.27 to read as follows:

*Section 907.27 Alternate members.*

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member. Provided That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

**Proposal No. 23**

Delete §907.29(n) Duties.

**Proposal No. 24**

Amend §907.30 to read as follows:

*Section 907.30 Procedure.*

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: Provided That if an assembled meeting is held, all votes shall be cast in person.

(c) A grower member or producer member, including an alternate, is eligible to vote on a volume regulation recommendation under §907.51 only if such member produces or handles oranges, or is an employee of a producer, handler, or central marketing organization which produces or handles oranges, in one or more districts in which volume regulation is being recommended or for which volume regulation was considered in developing such recommendation. An alternate member nominated from the same entity which was authorized to nominate the member and who is eligible to cast a vote on recommendations for volume regulation shall act for the member when such member is not eligible to vote on such recommendations.

**PROPOSAL SUBMITTED BY THE VALENCIA ORANGE ADMINISTRATIVE COMMITTEE**

**Proposal No. 25**

Amend §908.20 to read as follows:

*Section 908.20 Establishment and membership.*

There is hereby established a Valencia Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Ten of the members and their respective alternates shall be growers, employees of growers, handlers, or employees of handlers or of central marketing organizations. One member of the committee and an alternate of such member shall be nominated as provided in §908.22(g).

**Proposal No. 26**

Amend §908.21 to read as follows:

*Section 908.21 Term of office.*

(a) The term of office of each member and alternate member of the committee.
shall be a period of two years, and such terms shall begin on February 1 of each even-numbered year: Provided, That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified.

(b) A member, alternate member and additional alternate member, including persons nominated in accordance with § 908.22(g), shall be disqualified if such person ceases to be affiliated as a grower or an employee of a grower or handler, or as an employee of a handler or central marketing organization with the group that nominated him or her.

Proposal No. 27

Amend § 908.22 to read as follows:

Section 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions on the committee may be made by the following entities only:

(1) The cooperative marketing organization, or the growers affiliated therewith, which handled the largest percentage of the total volume of Valencia oranges handled by all cooperative marketing organizations in all outlets during the fiscal year preceding the period for which nominations are being made.

(2) A handler or declared handler grouping not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section.

(3) The body of growers affiliated with those handlers not participating in the nominations proceedings referred to herein.

(b)(1) The number of nominations which any nominating entity may make shall be determined by its volume percentages, as follows:

<table>
<thead>
<tr>
<th>Nominating entity's percentage of total volume of Valencia oranges handled by all handlers in all outlets during previous fiscal year</th>
<th>Number of members, plus alternates and additional alternates, which may be nominated</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00 to 9.99</td>
<td>(1)</td>
</tr>
<tr>
<td>10.00 to 19.99</td>
<td>1</td>
</tr>
<tr>
<td>20.00 to 29.99</td>
<td>2</td>
</tr>
<tr>
<td>30.00 to 39.99</td>
<td>3</td>
</tr>
<tr>
<td>40.00 to 49.99</td>
<td>4</td>
</tr>
<tr>
<td>50.00 or above</td>
<td>5</td>
</tr>
</tbody>
</table>

1See subsection (b)(2).

Provided, That if any nominating entity's percentage exceeds 50%, percentage figures in the above schedule shall change according to the following formula:

\[
50\% - \text{(excess over 50\%)} = \text{percentage required to nominate one member plus alternates.}
\]

Provided Further, That no handler may participate as a member of more than one nominating group.

(2) A handler or declared handler grouping not affiliated with the organization referred to in paragraph (a)(1) and which did not handle a sufficient quantity of oranges to meet the requirements to nominate under paragraph (b)(1) shall be considered for eligibility to nominate under paragraph (b)(3).

(3) If nominations for member positions pursuant to paragraph (b)(1) total less than ten in number, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternates, is to be nominated under this subsection, the right to make such nominations shall go to that nominating entity which comes the closest to qualifying for the right to make the additional nomination. If a second member, plus alternates, is to be nominated under this subsection, the right to make such nominations shall go to that nominating entity which is second closest to qualifying for the right to make an additional nomination, and so forth.

(c)(1) Nominating procedures shall be in accordance with rules and regulations adopted by the committee with the approval of the Secretary.

(2) Each nomination made by an entity authorized by paragraph (a)(2) to nominate must be approved by growers. Approval shall be determined by mail ballot. To be eligible to participate in the approval process, a grower must have delivered oranges to one or more of the entity's handlers in the then-current fiscal year and must be committed to deliver oranges to one or more of said handlers in the following fiscal year. A nomination shall be deemed to have the requisite grower approval if it is approved by the growers of more than 50% of the total quantity of oranges handled for participating eligible growers in the then-current fiscal year by the handler or handlers comprising the nominating entity.

(3) Nominations authorized by paragraph (a)(3) shall result from the conduct of mail ballot proceedings wherein candidates for committee membership are voted on by the growers.

(d) Nominations by the entities authorized by paragraphs (a)(1) and (a)(2) to nominate shall be submitted no later than January 1 of each even-numbered year. Thereafter the Secretary shall determine the percentage applicable to the nominating entity referred to in paragraph (a)(3), shall determine the eligibility of the various entities to make the remaining nominations, and shall administer the mail ballot procedures referred to in paragraphs (c)(2) and (c)(3).

(e)(1) Persons nominated under this section shall be nominated as grower members or handler members, according to the following schedule:

<table>
<thead>
<tr>
<th>Number of members nominated by a nominating entity</th>
<th>Type of membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Grower.</td>
</tr>
<tr>
<td>2</td>
<td>Grower, 1 Handler.</td>
</tr>
<tr>
<td>3</td>
<td>Growers, 1 Handler.</td>
</tr>
<tr>
<td>4</td>
<td>Growers, 2 Handlers.</td>
</tr>
<tr>
<td>5</td>
<td>Growers, 2 Handlers.</td>
</tr>
</tbody>
</table>

(2) Nominees for grower positions shall be growers or employees of growers. Nominees for handler positions shall be handlers, employees of handlers, or employees of central marketing organizations.

(f) The committee shall notify each handler by December 1 of each odd-numbered year of the handling percentages that are to be ascribed under paragraph (b)(1) to: (1) The cooperative marketing organization qualifying under paragraphs (a)(1); and (2) the handler receiving the notice.

(g) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate a member and an alternate member of the committee, which persons shall not be growers or handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

Proposal No. 28

Amend § 908.23 to read as follows:

Section 908.23 Selection.

From the nominations made pursuant to § 908.22(a) through (f) or from other qualified growers and handlers, the Secretary shall select ten members of the committee, and an alternate and additional alternate for each member. From the nominations made pursuant to § 908.22(g) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.
Section 908.25 Acceptance.

The members and alternate members of the committee shall be selected by the Secretary from nominations made in the same manner specified in § 908.22. If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 908.23.

Proposal No. 29

Amend § 908.24 to read as follows:

Section 908.24 Failure to Nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee to qualify or in the event of failure of any person selected as a member or as an alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

Proposal No. 30

Amend § 908.25 to read as follows:

Section 908.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

Proposal No. 31

Amend § 908.26 to read as follows:

Section 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the same manner specified in § 908.22 by the same nominating entity which nominated such person for the term, or from other qualified persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 908.22.

Proposal No. 32

Amend § 908.27 to read as follows:

Section 908.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member: Provided, That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

Proposal No. 33

Delete § 908.29(n) Duties.

Proposal No. 34

Amend § 908.30 to read as follows:

Section 908.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: Provided, That if an assembled meeting is held, all votes shall be cast in person.

(c) A grower member or producer member, including an alternate, is eligible to vote on a volume regulation recommendation under Section 908.51 only if such member produces or handles oranges, or is an employee of a producer, handler, or central marketing organization which produces or handles oranges, in one or more districts in which volume regulation is being recommended or for which volume regulation was considered in developing such recommendation. An alternate member nominated from the same entity which was authorized to nominate the member and who is eligible to cast a vote on recommendations for volume regulation shall act for the member when such member is not eligible to vote on such recommendations.

PROPOSAL SUBMITTED BY THE FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE

Proposal No. 35

Make such changes as may be necessary to make both marketing orders conform with any amendment thereto that may result from the hearing.

Dated: June 4, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

(SWH-FRL-3027-1)

Solid Waste Disposal; Public Meeting on Revisions to Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Environmental Protection Agency (EPA) will hold a public meeting on the issues and options being considered by the Agency in the development of the revisions to the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These revisions, which are mandated by the Hazardous and Solid Waste Amendments (HSWA) of 1984, will apply to solid waste disposal facilities that receive household and small quantity generator hazardous wastes, including municipal waste landfills.

DATES: The public meeting will be held on June 27, 1986, from 9:00 a.m. to 4:00 p.m. The meeting will be adjourned earlier if there are no remaining comments. Written comments on the material presented at the meeting should be submitted on or before July 18, 1986.

ADDRESSES: The public meeting will be held at the Vista International Hotel, 1400 M Street, SW., Washington, DC (202) 429-1700. A block of rooms has been reserved at the Vista for the convenience of attendees requiring lodging. When making reservations, indicate that you will be attending the EPA Solid Waste Meeting.

Written comments on the issues and options presented at the meeting should be submitted to: Michael Flynn, Office of Solid Waste (WH-565E), U.S. EPA, 401 M Street, SW., Washington, DC 20460.


SUPPLEMENTARY INFORMATION: In 1979, under the authority of sections 1008(a)(3) and 4004(e) of Title D of the Resource Conservation and
Recovery Act (RCRA). EPA promulgated the “Criteria for Classification of Solid Waste Disposal Facilities and Practices” (40 CFR Part 257). These Criteria include environmental performance standards that are used for determining which solid waste spoilage disposal units and practices pose a reasonable probability of adverse effects on human health or the environment. Those facilities that violate the Criteria are deemed “open dumps.” The Criteria are currently enforced by the States or through citizen suits.

In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), which include several major provisions regarding the solid waste regulatory program. The Amendments require the Agency, by November 8, 1987, to submit a report to Congress addressing whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment, and recommending whether additional authorities are needed to enforce the Criteria. Further, EPA is required to revise the Criteria, by March 31, 1988, for facilities that may receive household hazardous waste or small quantity generator (SQG) hazardous waste. These revisions must include, at a minimum, ground-water monitoring, location criteria, and corrective action, as appropriate. HSWA also requires the States to have a permit program for the existing Criteria by November 1987 and to have a revised permit program 18 months after the revised Criteria are promulgated.

In response to these Congressional mandates, the Agency is currently gathering extensive data for both the report to Congress and the Criteria revisions. In addition, the Agency is evaluating numerous issues and developing options for the Criteria revisions. In order to meet the statutory deadline for the Criteria revisions of March 31, 1988, EPA’s schedule calls for publication of proposed revisions by March 1987.

The purpose of this public meeting is to brief the public on the issues and options EPA is considering in the development of the revised Criteria, and to solicit comments on these issues and options. Due to the potential significant impacts of this rulemaking, EPA is particularly interested in early public input on the direction of this program.

The morning session of the meeting will include a briefing by EPA Officials on the issues and options developed to date on the revised Criteria. In the afternoon session, an opportunity will be provided for the public to present oral comments, and time will also be provided for questions and answers. Those wishing to make oral comments should contact Ms. Geraldine Wyer at the above address.

EPA is currently evaluating numerous general and specific issues regarding the revised Criteria. The key general issues EPA is considering include:

1. What overall regulatory approach should be taken in the revised Criteria (e.g., risk-based, performance, or design and operating standards, or combination)?

Recognizing the importance of site-specific factors, EPA is considering several alternative regulatory approaches that would allow for various levels of control depending on site-specific conditions. These alternative approaches will be presented and discussed in detail at the meeting. Included in this presentation will be a discussion of issues pertaining to how various site-specific factors, such as quality and usage of ground water, may be addressed in the revisions.

2. What should be the scope of the revised Criteria?

* HSWA of 1984 requires that the revised Criteria include, at a minimum, ground-water monitoring, location criteria, and corrective action, as appropriate. It is expected that the revised Criteria will also include certain of the basic requirements (or modified version of these requirements), such as landfill gas control, now contained in the existing Criteria. EPA is evaluating the need to include additional requirements in the revisions. Additional regulatory areas being considered include waste restrictions (including liquids), closure, post-closure care, financial responsibility, liners, and run-on and run-off controls.

3. What approach should be taken to new, existing, and closed waste management units?

EPA is evaluating whether different regulatory approaches should be taken for new versus existing waste management units. For example, certain requirements, such as any liner requirement that may be included, may only apply to new units. Also, the Agency is considering whether any requirements should apply to solid waste disposal units (that received household or SQG hazardous wastes) that close or stop receiving these wastes prior to the effective date of the rule.

4. What approach should be taken to different types of solid waste land disposal facilities?

HSWA requires that the revised Criteria apply to those solid waste disposal facilities that receive household hazardous waste and SQG hazardous waste. This universe includes municipal waste landfills (which receive household hazardous wastes and, in some cases, SQG hazardous wastes), as well as industrial landfills, surface impoundments, land application units, and hazardous waste piles that receive SQG hazardous waste. The Agency is evaluating whether different regulatory approaches should be taken for municipal waste landfills versus industrial facilities that receive SQG hazardous waste.

5. Should the revised Criteria be phased in over time?

EPA is examining whether some or all of the requirements in the revised Criteria should be phased in over a period of time. The issue depends, to a large extent, on the resolution of the issues pertaining to the overall approach to the rule and the scope of the rule.

The Agency is also evaluating many significant issues in each of the following specific regulatory areas:

- Ground-water protection standards
- Ground-water monitoring
- Corrective action
- Location criteria
- Landfill gas
- Liners
- Waste restrictions/liquids management
- Closure and post-closure care
- Financial responsibility

The key issues pertaining to ground water (ground-water protection standard, ground-water monitoring, and corrective action) and landfill gas are identified below. The issues in the remaining areas, as well as the options being considered in all of the above areas, will be presented at the public meeting.

The key questions pertaining to ground water and landfill gas include:

**Ground-Water Protection Standard**

- What constituents should be included in the ground-water protection standard?
- What should be the limits for the constituents in the ground-water protection standard?
- Where should the ground-water protection standard be applied?

**Ground-Water Monitoring Program**

- What should be the overall structure of the ground-water monitoring program? (i.e., include three phases?)
- What regulatory approach should be taken to the selection of indicator parameters for detection monitoring?
- What regulatory approach should be taken to determine the number and placement of wells, monitoring frequency, and sample size?


**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

**Child Support Enforcement Program; Prohibition of Federal Funding of Costs of Incarceration and Counsel for Indigent Absent Parents**

**45 CFR Part 304**

**AGENCY:** Office of Child Support Enforcement (OCSE), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend 45 CFR 304.23 to reflect longstanding agency policy that Federal funding under the Child Support Enforcement (IV-D) program for costs of incarceration of absent parents in child support enforcement cases and costs of counsel for indigents in IV-D actions is not available. In addition, 45 CFR 304.27, which concerns Federal funding prior to December 31, 1975, would be deleted because it is obsolete.

**DATES:** Consideration will be given to comments received by August 5, 1986.

**ADDRESSES:** Send comments to Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852.

Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in Room 1010 of the Department's office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joyce Linder or Betsy Matheson (301) 443-5350.

**SUPPLEMENTARY INFORMATION:**

**Background**

**Costs of Incarceration and Providing Counsel for Indigent Absent Parents**

The Senate Committee on Finance, in its report on H.R. 4325, which became the Child Support Enforcement Amendments of 1984, stated: "It is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program. For example, the Committee believes Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents." (See S. Rep. No. 98-387, 98th Cong., 2d Sess., p. 23.)

Periodically, through the years, States have requested that the costs of incarceration of delinquent obligors and of defending indigent absent parents in IV-D cases should be reimbursed. OCSE's policy since the inception of the program has been that costs of incarceration of delinquent obligors and costs of defense counsel are not necessary and reasonable costs associated with the proper and efficient administration of the title IV-D program, are a general expense of State or local governments, and therefore do not meet the cost principles found in OMB Circular No. A-87, Attachment A, section C.1.a. (Cost Principles for State and Local Governments). Furthermore, there is no statutory authority for payment of such costs. Because program regulations do not explicitly include this longstanding policy, we propose to modify those regulations to incorporate this policy.

**Federal Funding in the Operation of the Child Support Enforcement Program in the Absence of an Assignment**

Current regulations at 45 CFR 304.27 make Federal funding available at the 70 percent rate for expenditures made under an approved IV-D State plan until December 31, 1975, irrespective of the requirement of an assignment of rights to support. Furthermore, § 304.27(b) states that this section remains in effect until December 31, 1975. Because it was repealed as of the close of business on that date, we propose to delete this obsolete section.

**Statutory Authority**

This regulation is proposed under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 requires the Secretary to publish the regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

**Regulatory Provisions**

In enacting title IV-D of the Act in 1975, Congress did not intend that every expense incurred by the State in enforcing child support obligations would be reimbursable by Federal funding. In fact, Congress expected "the States to continue to devote to this purpose [law enforcement] at least as much non-Federal funding as they currently provide." S. Rep. No. 93-1356, 93rd Cong., 2nd Sess., p. 50.

Incarceration is a punishment for violation of State and local laws in general, not just those related to child support enforcement. Imposing a jail sentence for willful refusal to abide by a court order to pay support promotes respect for the laws and the judicial decisions of the State and its courts. Therefore, we believe that payment for the costs of incarceration is entirely a responsibility of State and local governments and should not be subject to Federal funding under the IV-D program.

Title IV-D of the Act was enacted for the purpose of enforcing the support obligations owed by absent parents. Nowhere in the Act nor in any legislative history explaining the IV-D program is there language providing funding for costs incurred in connection with the defense of absent parents who have failed to support their children. In fact, as stated previously, Congress indicated in connection with the Child Support Enforcement Amendments of 1984 that Federal funding should not be available for these costs. Such funding would be antithetical to the purpose of the program, i.e., to ensure that children receive the support to which they are entitled. A defense attorney's function is to promote the best interests of the client, which may actually be to limit or avoid imposition of support liability.
To make these policies explicit, we are amending 45 CFR 304.23 by adding a new paragraph (i) which would prohibit Federal funding for expenditures resulting from the jailing of absent parents in IV-D cases and a new paragraph (j) which would prohibit Federal funding for costs of counsel for indigent defendants in IV-D actions.

We are deleting 45 CFR 304.27, Federal financial participation in the operation of the Child Support Enforcement Program in the absence of indigent defendants in IV-D actions.

Section 304.23, Expenditures for which Federal financial participation is not available, is amended to read as follows:

1. The authority citation for Part 304 continues to read as follows:
   Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396d(2), 1396b(o), 1396b(p), 1396(k).

2. 45 CFR 304.23 is amended by adding introductory text and new paragraphs (i) and (j) to read as follows:

§304.23 Expenditures for which Federal financial participation is not available.

Financial federal participation at the applicable matching rate is not available for:

1. Any expenditures for jailing of parents in child support enforcement cases.

2. The costs of counsel for indigent defendants in IV-D actions.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-183, RM-5190]

Radio Broadcasting Services; Camden, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Morgan County Broadcasters, Inc. proposing to allot FM Channel 277 to Camden, Maine. This allotment would provide a second FM broadcast service for the community.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESSSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Samuel J. Buffone, Buffone & Privitera, P.C., 1302 18th Street, NW., Suite 603, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-188, adopted April 29, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3600, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.
47 CFR Part 73

[MM Docket No. 86-184, RM-5156]

Radio Broadcasting Services; Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of Channel 236C1 on Channel 236C2 for Channel 237A at Lincoln, NE, at the request of Sequel Communications, and modification of its license for Station KJUS-FM to specify the higher powered channel. No other expressions of interest in the Lincoln allotment need be considered in light of the recent amendment of Section 1.240(g) by Report and Order, MM Docket 86-313, released April 29, 1986, FCC 86-181.

DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kirk Tollett, National Communications Consultants, First National Bank Building, Liberty Square, Suite 1340, Nashville, Tennessee (consultant to Northern Light Broadcasting).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 843-5530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-184, adopted April 30, 1986, and released May 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Hailer,

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

[FR Doc. 86-12746 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M
See 47 CFR 1.1231 for rules governing permissible ex parte contact.
For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.
Federal Communications Commission.
Ralph A. Haller, Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-12745 Filed 6-5-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73
[MM Docket No. 86-185, RM-5189]
Radio Broadcasting Services; Clearfield, PA
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.
SUMMARY: This document proposes the substitution of Channel 230B1 for Channel 230A at Clearfield, PA, and the modification of Station WQYX (FM)'s license to specify the higher powered channel at the request of Clearfield Broadcasters, Inc. No other expressions of interest in the Clearfield allotment need be considered in light of the recent amendment of §1.420(g) by Report and Order, MM Docket No. 85-313, released April 29, 1986, FCC 86-181.
DATES: Comments must be filed on or before July 14, 1986, and reply comments on or before July 29, 1986.

In addition to filing comments with the FCC, interested parties should serve the petitioner, their counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NE., #203, Washington, DC 20036 (Counsel to petitioner).
FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 834-0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rule Making, adopted May 20, 1986 and released May 27, 1986 (RM-5208). The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20037.

47 CFR Part 97
[PR Docket No. 86-207; RM-5208; FCC 86-262]
Amateur Radio Service; Proposed Amendment To Permit the Transmission of Emission F8E on Frequency Band 0.35 Meters and Above (1240 Mhz and Above)
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.
SUMMARY: The proposed rule would allow amateur operators to use emission F8E on frequency band 0.35 meters and above (1240 MHz and above). The proposed rule is necessary so that amateur operators can experiment with a new transmission mode and utilize the spectrum more efficiently. The effect of the proposed rule is to permit several different channels of information to be transmitted simultaneously from one location to another.
DATES: Comments must be filed on or before August 15, 1986, and reply comments on or before September 15, 1986.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rule Making, adopted May 20, 1986 and released May 27, 1986 (RM-5208). The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission’s copy contractor, International Transcription Services Inc., (202) 837-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making
1. In response to a petition for rule making filed by the Southern California Repeater and Remote Base Association (SCRRBA), the FCC proposes to amend the Amateur Rules to allow the use of frequency modulated complex emission F8E on amateur frequencies in the 0.35-meter band and above (1240 MHz and above). Authorization of F8E emission would serve the dual purpose of permitting amateur operators to experiment with a new transmission mode on these frequencies, and to utilize the spectrum efficiently when several different channels of information must be transmitted simultaneously from one location to another. The proposed rule is set forth at the end of this document.
2. This is a non-restricted notice and comment rule making proceeding. See §1.1231 of the Commission’s Rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.
3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because such entities may not use the Amateur Radio Service for commercial radio communication and because use of the proposed additional emission for frequencies in the 0.35-meter band and above is optional rather than mandatory.
4. 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
锻件允许要求，并将不会增加或减少对公众的负担。

5. 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 15, 1986 and reply comments on or before September 15, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(f) and 303 (g) and (r).

7. A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clause

8. Rule Making petition RM-5208 filled by SCRRBA is granted.

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Frequencies, Radio.

Federal Communications Commission.

William J. Tricarico,
Secretary.

PART 97—[AMENDED]

Part 97 of Title 47 of the Code of Federal Regulations would be amended as follows:

9. The authority citation for Part 97 would continue to read as follows:


10. Section 97.61(c) would be revised to read as follows:

§ 97.61 Authorized emissions.

(c) Above 144.1 MHz: Amateur stations are authorized to transmit the following emissions on amateur frequencies above 144.1 MHz, N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F2A, F3E, G3E, F5C, F1F, H1E, J3E, and R3E. PN emission (the emission letters, "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars) may be transmitted on all amateur frequencies above 2300 MHz, except in the 3.0-10.5 GHz band. FSE emission may be used on amateur frequency band 0.35 meters and above.

[FR Doc. 86-12742 Filed 6-5-86; 8:45 am]

BILLING CODE 6712-01-M
March and opened to public comment. These proposals are supplemented, as necessary, with additional Federal Register documents. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the Federal Register. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the Federal Register, amending Subpart K of 50 CFR Part 20, to establish specific seasons, limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 21, 1986, the Service published in the Federal Register (51 FR 9854) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits and other regulations for migratory game birds under §§20.101 through 20.107, 20.109 and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. All comments on the March 21 proposal received through May 2, 1986, have been considered in developing this document. Comment periods on this second document are specified above under "DATES". Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for publication on or about July 18, 1986, and those for early seasons in other areas of the United States on August 4, 1986; and those for late seasons on September 11, 1986.

On June 19, 1986, a public hearing will be held in Washington, DC, as announced in the Federal Register of March 21, 1986 (51 FR 9854), to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails moorhens and gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species and migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. Statements or comments are invited.

On August 1, 1986, a public hearing will be held in Washington, DC, as announced in the Federal Register of March 21, 1986 (51 FR 9854), to review the status of and proposed hunting regulations for waterfowl not previously discussed at the June 19 public hearing. On January 24, 1986, in Alaska Fish and Wildlife Federation and Outdoor Council, Inc., et al. v. Jantzen, et al., No. J84-013 CIV, the U.S. District Court in Alaska ruled that:

Until such time as the Secretary of the Interior adopts regulations pursuant to section 3(h)(2) of the Fish and Wildlife Improvement Act, the Congress has authorized Alaska Natives to harvest migratory waterfowl under the Alaska Game Act of 1926 (as amended) during any season of the year, including but not limited to spring and summer months, when they or members of their family are in need of food and other sufficient food is not available.

In that ruling, the court found that Congress intended the 1926 Game Act to comprehensively regulate all game and bird hunting in Alaska and replace the Migratory Bird Treaty Act as a source of authority for issuing regulations in Alaska. As a result of the court's finding, the Service finds need to propose to amend Title 50 Code of Federal Regulations Part 20—Migratory Bird Hunting by revising the authority citation to include the Alaska Game Act of 1925, as amended.

As noted in the March 21, 1986, Federal Register (at 51 FR 9858), the Service is assessing the District court's decision in order to determine what action is needed for the 1986 and 1987 spring and summer subsistence hunting seasons in Alaska. The Service will announce any actions to be taken in a future Federal Register notice(s).

This supplemental proposed rulemaking describes a number of changes which have been proposed by commentors on the original framework proposals published on March 21, 1986, in the Federal Register.

Review of Public Comments and the Service's Response

Written Comments Received

As of May 2, 1986, the Service had received comments on proposals published in the March 21, 1986, Federal Register (51 FR 9854) from 10 correspondents, including three individuals, three State agencies and four waterfowl flyway councils. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The comments are discussed below with particular attention to new proposals and modifications or clarifications to previously described proposals. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 21, 1986, Federal Register. Comments received subsequent to May 2, 1986, as well as those received at the June 19, 1986, public hearing will be addressed in the next supplemental proposal to be published in the Federal Register in early July.

General Comments

The Central Flyway Council has recommended adoption of the proposed basic regulations frameworks for 1986-87 hunting seasons on weebles and waterfowl species pertinent to the Central Flyway except for specific recommendations given in the numbered headings that follow.

The Pacific Flyway Council has recommended that no change be made in frameworks for waterfowl and sandhill crane seasons in Alaska and for mourning dove, white-winged dove and band-tailed pigeon seasons pertinent to the Western Management Unit and the Pacific Flyway from those of 1985-86 except as identified below. The Council also recommended that in order to accommodate hunting and depredation control of ravens and magpies, 50 CFR 20.133 "Hunting regulations for crows" be amended by adding ravens and magpies, and § 21.43 "Depredation order for blackbirds, cowbirds, grackles, crows and magpies" be amended by adding ravens. The Service solicits comments on these recommended amendments to § 20.133 and 21.43 and requests the Council provide justifications for both amendments.

2. Frameworks for ducks in the conterminous United States—outside dates, season lengths and bag limits. (a) The Central Flyway Council has recommended that the 1986-87 framework opening date for duck hunting in the Flyway be returned to the Saturday nearest to October 1. The Mississippi Flyway Council's Upper Region Regulations Committee has recommended that the 1986-87 framework opening and closing dates for duck hunting be the Saturday nearest October 1 and the Sunday nearest January 20, respectively, with the exception that Wisconsin would always...
employ a fixed October 1 opening date, and that in subsequent years no changes be made to these framework dates without full discussion through the flyway council process. The Council's Lower Region Regulations Committee has recommended that the 1986–87 framework opening and closing dates for duck hunting be October 1 and January 20, respectively, and the Committee reaffirmed the Council's 1985 position that changes in harvest opportunities be made equitably among flyways.

Response. Floating framework dates are of long standing in the Pacific and Central Flyways and have been a feature of the Mississippi Flyway opening framework date since 1979, but the Atlantic Flyway has always operated under fixed framework dates. However, in 1985 the framework dates were compressed and established as fixed dates in all flyways as one element of generally restrictive duck hunting regulations.

The Service notes the recommendations from the Central and Mississippi Flyway Councils for a return to outside framework dates similar to 1984 but extended compared to the framework dates of 1985. Although there was considerable objection to the compressed framework dates in 1985, the Service notes that shortened framework dates were used during a previous drought cycle in the 1960s and notice was given in the Federal Register dated February 15, 1985 (50 FR 6386), that framework dates were one of the tools available for managing harvest. The Service intends to retain this harvest management option.

The Service will not make a decision on framework dates until the 1986 status information for ducks is available, reviewed and considered during the late-season regulations cycle. However, in order to provide maximum notice the Service announces it is considering uniform framework dates (for ducks) for the four flyways. States may of course be more restrictive but not more liberal.

(b) The Central Flyway Council has also recommended that the Service require that the extra duck hunting days allowed in the High Plains Mallard Management Unit be taken starting no earlier than the Saturday nearest December 10. The Service intends to utilize all available biological data in the development of equitable harvest regulations for the 1986–87 waterfowl season.

(c) Massachusetts has requested that in order to provide 40 days of waterfowl hunting in the State, the Service allow compensatory waterfowl hunting season days for those season days lost because of the State's prohibition on Sunday hunting.

Response. The Service notes that the loss of hunting days because of a ban on Sunday hunting is the result of a regulation imposed by the State rather than the Federal Government. Therefore, the Service feels it is the responsibility of Massachusetts to remove the restriction as it is the State's action that is causing the loss of hunting opportunity.

(d) A sportsman from New York requested the duck season length be increased from the 40 days permitted in 1985–86 to 75 days in 1986–87.

Response. As noted in an earlier response, the Service will not make a decision on duck season frameworks until the 1986 status information for ducks is available, reviewed and considered during the late-seasons regulations cycle. At that time, the request from the New York sportsman and all other requests/comments received will be brought to the attention of the Service Regulations Committee.

(e) During the 1985–86 regulations development process the Atlantic Flyway Council and several member States requested the establishment of a Northeast Management Unit in the Flyway. They argued that many ducks in the requested Unit originate from more eastern breeding grounds, that several of the ducks important in the harvest there, are species for which annual breeding ground harvest information is limited or not available, and that mallard numbers in the Unit are increasing.

Response. The Service weighed those arguments against evidence that many ducks in the requested unit are transients and subjected to hunting pressure there and elsewhere in the Flyway and that two species important in the harvest presently warrant concern and are covered by restrictive regulations, and subsequently established a Northeast Management Unit, consisting of Maine, New Hampshire, Vermont, Massachusetts and Rhode Island, on an experimental basis. The Service did not accept the Council's request to include Connecticut and parts of New York and New Jersey in the Unit.

Although the Service established the Unit, it noted that in the coming year (1986) the Flyway Council and Service must strive to better define the management objectives and boundaries of the Unit. The Atlantic Flyway Council is again reminded to develop and submit to the Service a detailed proposal, before the late-season regulations meetings, that provides justification, management objectives and an evaluation plan for a Northeast Management Unit. The Service solicits additional information and/or comments from all sources regarding a Northeast Management Unit in the Atlantic Flyway.

3. American black ducks. The Atlantic Flyway Council has recommended that black duck harvest restrictions initiated in the Flyway in 1983 to reduce black duck harvest 25 percent from the 1977–81 average harvest level be continued, but that additional black duck harvest restrictions be developed for those States that have not achieved an average 25 percent reduction (1983–85) from the 1977–81 level.

Response. In the March 21, 1986, Federal Register (at 51 FR 9861) the Service noted its intent to assess the effect of the black duck harvest management program in the Atlantic and Mississippi Flyways, and indicated that the strategies of those States that have not reached the program's harvest reduction goal will be reviewed and additional restrictions imposed.

8. Experimental September duck seasons. The Mississippi Flyway Council's Upper Region Regulations Committee has recommended continuation of the experimental September duck season in Iowa in 1986. The Council's Lower Region Regulations Committee has recommended continuation of the experimental September duck hunting seasons in Kentucky and Tennessee in 1986, with modification if deemed necessary after evaluation of the final reports.

Response. As noted in the March 21, 1986, Federal Register (at 51 FR 9862), the Service proposes to continue the September duck season in Iowa, Kentucky, Tennessee and Florida as experimental in 1986–87 unless final or progress reports provide evidence of a detrimental effect on any segment of the duck resource.

12. Canvasback and redhead ducks. In the March 21, 1986, Federal Register (at 51 FR 9862) the Service indicated that when the 1986 canvasback breeding population survey data and the harvest data from the 1985–86 hunting season become available, the Service, in coordination with the flyway councils,
will consider specific changes, including a closure on hunting, in the 1986-87 regulations frameworks for canvasbacks. New Jersey has indicated it favors canvasback regulations that provide for a limited harvest in traditional canvasback areas rather than a return to regulations based on an area closure system.

**Response.** New Jersey’s comments will be considered during the development of the 1986-87 regulations frameworks for hunting canvasbacks.

13. **Duck zones.** The Upper Region Regulations Committee of the Mississippi Flyway Council has endorsed requests from Michigan, Indiana and Missouri for duck zone boundary changes as follows:

**Michigan**

North Zone: The Upper Peninsula.
South Zone: That portion of the Lower Peninsula south of a line running east from the western shore of Lake Michigan, north on Highway M-20 to U.S. Highway 10; east on U.S. Highway 10 to the mouth of the Saginaw River.
Middle Zone: The remainder of the State.

**Indiana**


Ohio River Zone: That portion of the State south of a line running east from the Illinois border on Interstate 94 to State Route 62 at New Albany; east on State Route 62 to State Route 56; east on State Route 56 to State Route 156 at Vevay; northeast on State Route 156 to State Route 56; north on state Route 56 to U.S. Highway 50; northeast on U.S. Highway 50 to the Ohio border.
South Zone: That portion of the State between the North and Ohio River Zone boundaries.

**Missouri**

North Zone: That portion of the State north of a line running west from the Illinois border on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 55; north on U.S. Highway 55 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas border.
South Zone: The remainder of the State.

**Response.** In the March 21, 1986, Federal Register (at 51 FR 9662) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made.

14. **Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.** (a) The Atlantic Flyway Council has recommended that frameworks be developed that permit Georgia to establish, in cooperation with the Service, a Canada goose hunting season on Eufaula National Wildlife Refuge (NWR) concurrent with the State’s duck hunting season and governed by refuge-specific regulations for migratory game birds on Eufaula NWR.

**Response:** The Service understands this hunt is based almost entirely on the annual recruitment from a group of resident Canada geese introduced on the Refuge beginning in 1985. The Service defers final action until the late-seasons regulations cycle.

(b) Delaware has requested approval to conduct an experimental 10-day snow goose hunt in certain coastal marshes in October to disperse early migrants and thereby reduce destruction of marsh habitat by snow geese. The 10-day experimental season would be in addition to the State’s regular 90-day snow goose season.

**Response:** The Service notes this request should receive Atlantic Flyway Technical Section and Council reviews and recommendations. However, the Service believes the existing frameworks for a 90-day snow goose hunting season, an opening date of October 1 and the option to split the season provide Delaware ample opportunity to test its dispersal proposal without resorting to an experimental season or additional days of hunting.

(c) The Central Flyway Council has recommended that a 3-year experimental snow goose hunting season (107 days, 5 snow goose daily and 20 in possession) and management unit with the following description be established in New Mexico: the Central Flyway portion of New Mexico that lies west of a line beginning at the intersection of U.S. Highway 54 and the New Mexico-Texas State line, north on U.S. Highway 54 to its intersection with U.S. Highway 60; thence west on U.S. Highway 60 to its intersection with U.S. Highway 285; thence north on U.S. Highway 285 to its intersection with the New Mexico-Colorado State line.

**Response:** The Council indicated that the size of the population of snow geese (70,000 to 80,000) now using the Middle Rio Grande Valley (MRGV) far exceeds the available habitat, and severe crop depredations by the geese continue in New Mexico. The Council expects the increase in season length will provide additional protection against crop depredations and along with the possession limit increase (plus ten geese), may slow the growth of the MRGV snow goose population.

**Response:** The Service seeks additional comment and information on this recommendation. Final action is deferred until the late-seasons regulations cycle.

(d) The Mississippi Flyway Council’s Upper Region Regulations Committee has endorsed requests from Illinois for (a) five additional days to its 20-day goose season in the Tri-County Area as part of the State’s giant Canada goose management efforts. The season would open concurrently with the duck season in the State’s Central Duck Zone in October prior to the peak migration of Mississippi Valley Population (MVP) Canada geese through the zone; and (b) two 9-day Canada goose hunting seasons in the northeastern nine counties of Illinois (McHenry, Lake, Kane, Cook, Du Page, Kendall, Will, Grundy and Kankakee counties) to harvest local giant Canada geese. The first season would open in early October or possibly late September while the second season would open in late December-early January. The bag limit would be 2 Canada geese daily during both seasons. The seasons are timed to avoid migrant Canada goose.

**Response:** The Service notes there is concern that late-September and early-October seasons aimed at giant Canada geese may result in the harvest of MVP Canada geese. The Service seeks additional information and/or comment on Illinois’ request. Of particular interest would be survey information relating to goose numbers in Illinois by area during the September-December period.

(e) The Upper Region Regulations Committee has also endorsed Michigan’s request for a 9-day early-September (6th-14th) Canada goose season. The daily bag limit would be 3 geese. The purpose of the hunt is to provide control over local giant Canada goose populations. The season would be statewide with the exceptions of the Alleghan and Shiawasee River State Game Areas and the Fish Point Wildlife Area.

**Response:** The Service questions inclusion of such a large area in the proposal to harvest giant Canada geese. The Service defers action on the Michigan request and solicits additional
a State's regular Canada goose season. Second, the potential adverse impact of special, resident-goose hunting seasons on geese migrating into or through the area is of concern to the Service. In addition, there is a practical limit to the number of seasons and/or areas for hunting migratory birds that can be described in the Federal Register. There also is a limit to the number of experimental hunting programs that can be evaluated by the Service and States. Pending development of criteria for special resident-goose seasons, the Service will require that prior to approval of such a season, the requesting State must provide in its proposal acceptable evidence (survey data, neck collar observations, etc.) that the area to be hunted does not receive appreciable numbers of migrant geese; or if migrant geese use the area they would not be expected during the special season. If approved by the Service, the respective State will be required to monitor the season by gathering goose population and harvest data.

18. Sandhill cranes. (a) The Central Flyway Council has endorsed New Mexico's request for a 16-day sandhill crane hunting season between October 10 and November 5 with daily bag and possession limits of 3 and 6 cranes, respectively, within the following boundary:

The part of the Rio Grande Valley bounded on the north by the south boundary of Isleta Pueblo; on the west by Interstate 25, but including all portions of Bosque del Apache and Sevilleta National Wildlife Refuges lying west of I-25; on the south by the southern boundary of Bosque del Apache NWR; on the east by the Bosque del Apache NWR boundary from I-25 southeast then north to the refuge's northeast corner, then by a dirt road running southeast approximately 0.5 miles from that corner to the western boundary of the White Sands Missile Range Extension Co-Use area. (WSMREC), then by the WSMREC boundary north then east to the southeastern corner of Sevilleta NWR, then by the eastern boundary of Sevilleta NWR north to U.S. 60, by U.S. 60 west to N.M. 47, and then by N.M. 47 north to the south boundary of Isleta Pueblo.

The hunting season will be an additional management method for controlling crop depredations by sandhills and will aid in the control of an increasing crane population that now exceeds management objectives. 

Response. The Service notes that the option to select zones as a woodcock harvest strategy is only available to New Jersey. As stated in the July 5, 1985, Federal Register (at 50 FR 27642) the 10-day penalty in season length normally taken by them for selecting zoning as a woodcock harvest strategy, or that at the very least the penalty be only 7 days in order to remove what the State views as a disproportionate penalty when compared to other Atlantic Flyway States.

Response. The Service notes that the option to select zones as a woodcock harvest strategy is only available to New Jersey. As stated in the July 5, 1985, Federal Register (at 50 FR 27642) the 10-day penalty in season length normally taken by them for selecting zoning as a woodcock harvest strategy, or that at the very least the penalty be only 7 days in order to remove what the State views as a disproportionate penalty when compared to other Atlantic Flyway States.

Response. The Service notes the option to select zones as a woodcock harvest strategy is only available to New Jersey. As stated in the July 5, 1985, Federal Register (at 50 FR 27642) the 10-day penalty in season length normally taken by them for selecting zoning as a woodcock harvest strategy, or that at the very least the penalty be only 7 days in order to remove what the State views as a disproportionate penalty when compared to other Atlantic Flyway States.
length because from his personal hunting experiences the past 25 years, he feels that the status of the woodcock population is good.

Response. The Service notes that the number of woodcock in the Atlantic Flyway has significantly declined since the 1960s and reiterates the statement made in the March 21, 1986, Federal Register (at 51 FR 9664) that no changes in seasons and bag limits for woodcock from those in effect in 1985–86 are anticipated at this time pending an evaluation of the restrictive changes implemented in the Atlantic Flyway.

22. Band-tailed pigeons. The Pacific Flyway Council has recommended that the mandatory permit requirement for hunting band-tailed pigeons in Nevada be removed.

Response. The Service believes the requirement for a permit in previous years established the fact that bandtail seasons in Nevada had little or no impact on the resource. Therefore the Service concurs with the Pacific Flyway Council’s recommendation and proposes to remove the mandatory permit requirement for band-tailed pigeon hunting in Nevada.

24. White-winged and white-tipped doves. The Central Flyway Council has recommended that the 1988–87 regulations for white-winged doves provide for resumption of a 4-day white-winged dove season in the special white-winged dove area of Texas’ South Dove Zone. The Council indicated that continuing recovery of citrus nesting habitat and the anticipated recovery of the white-winged dove breeding population during the 1986-87 season warrants a return from the 2-day special season permitted in 1985–86 to a 4-day season in 1986–87.

Response. In the March 21, 1986, Federal Register (at 51 FR 9663) the Service noted that the normal 4-day white-winged dove season in Texas’ special white-winged dove area of its South Zone was shortened to 2 days in 1985 because of declines in white-winged dove numbers as a result of reduced citrus nesting habitat. The Service defers a decision on a 4-day season in 1986 pending receipt of additional status information on whitewings and their nesting habitat.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year’s status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate in the rulemaking process by submitting written comments to the Director, U.S. Fish and Wildlife Service, MBMO—Matomac Building, Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service’s office in Room 536, Matomac Building, 1717 H Street, NW., Washington, DC.

All relevant comments on proposals will be considered provided those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands are received no later than June 19, 1986; those on early-season proposals (except Alaska, Hawaii, Puerto Rico, and the Virgin Islands) are received no later than July 14, 1986; those on late season proposals are received by August 25, 1986; and those on the proposal to revise the authority cited by 50 CFR are received by July 19, 1986.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of flyway councils:

Atlantic Flyway—Williamsburg, Virginia (Williamsburg Lodge) July 27–30

Mississippi Flyway—Des Moines, Iowa (Holiday Inn South) July 28–29

Central Flyway—Tulsa, Oklahoma (Holiday Inn) July 28–29

Pacific Flyway—Reno, Nevada (Sundowner Hotel—Casino) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

The “Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)” was filed with the Council on Environmental Quality of June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service at the address indicated above.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that the Secretary “shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act,” and shall take “such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical.”

Section 7 consultation are presently underway regarding both the early- and late-season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications that may be desirable will be reflected in the final frameworks for Alaska, Puerto Rico, and the Virgin Islands, scheduled for publication in the Federal Register on or about July 18, 1986; those for other early-seasons on or about August 4, 1986; and for later seasons on or about September 11, 1986.
Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service’s biological opinions resulting from its consultation under Section 7 are considered public documents and are available for public inspection in the Office of Endangered Species, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the Federal Register dated March 21, 1986, (51 FR 9654), the Service reported measures it has undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above Federal Register publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

Accordingly, it is proposed to amend Part 20 of Chapter 1 of Title 50 of the Code of Federal Regulations as set forth below:

PART 20—[AMENDED]

1. The authority citation for Part 20 would be revised to read as follows and the authority citations following their sections in part 20 would be removed:


   Dated: June 6, 1986.

   William P. Horn,
   Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-12758 Filed 6-5-86; 8:45 am]
BILLING CODE 4310-55-M
DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKET NO. 17-86]

Foreign-Trade Zone 22, Chicago, IL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of Foreign-Trade Zone 22, requesting authority to expand its zone to include a site located in Manteno Township, Kankakee County, Illinois, adjacent to the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 15, 1986.

On October 29, 1975, the Board authorized the Chicago Regional Port District to establish a foreign-trade zone in the Lake Calumet Harbor area of Chicago, Illinois (Board Order 108, 40 FR 51242, Nov. 4, 1975). The project currently covers a 25-acre industrial park site within the 2,250-acre Lake Calumet Harbor area, within the Chicago Customs port of entry.

The proposed expansion involves a 578-acre planned industrial/commercial complex, located on Bernard Road at County Highway 9 in Manteno Township, Kankakee County, some 18 miles south of Chicago. The facility would be operated by the Illinois Diversatech Campus Corporation.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph E. Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Dept. of Commerce, Washington, DC 20230; Larry Shirik, Assistant Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Lt. Col. Frank R. Finch, District Engineer, U.S. Army Engineer District Chicago, 219 S. Dearborn St. Chicago, IL 60604–1797.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 11, 1986.

A copy of the application is available for public inspection at each of the following location:

U.S. Department of Commerce District Office, 1406 Mid Continental Plaza Building, 55 East Monroe Street, Chicago, IL 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 2, 1986.

Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 86-12759 Filed 6-5-86; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[DOCKET NO. 1614-02]

Anatoli Tony Maluta, Respondent; Order

On May 21, 1986, the Administrative Law Judge issued his Decision and Order in the matter of Anatoli Tony Maluta, which was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.8[a] for final action.

Pursuant to a charging letter of August 5, 1983, Anatoli Tony Maluta was charged with multiple violations of the Export Administration Act of 1979. He was found to have shipped illegally a variety of controlled electronic equipment to the Federal Republic of Germany and to the Netherlands, having failed to obtain the required validated licenses. He had also submitted export control documents containing false representations of material facts.

Pursuant to the findings of the Administrative Law Judge, Anatoli Tony Maluta is hereby denied all export privileges for a period of 20 years. In addition, a civil penalty of $110,000 is imposed which is suspended for 5 years. This suspension is conditioned upon his committing no further violations of the Export Administration Act or any of its successors. If no further violation occurs, then this civil penalty will be vacated.

Having reviewed the record and based on the facts addressed in this case, I affirm the Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: June 2, 1986.

Paul Freedenberg,
Assistant Secretary, for Trade Administration.

[FR Doc. 86-12759 Filed 6-5-86; 8:45 am]
BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In FR Doc. 86-11270 beginning on page 10475 in the issue of Tuesday, May 20, 1986, make the following correction:

On page 10475, in the third column, the table of Countervailing duty Proceedings should read as follows:

<table>
<thead>
<tr>
<th>Countervailing duty</th>
<th>Periods to be reviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wool from Argentina</td>
<td>01/85–12/86.</td>
</tr>
<tr>
<td>Leather Wearing Apparel from Colombia</td>
<td>07/84–12/85.</td>
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<td>Leather Wearing Apparel from Mexico</td>
<td>07/84–12/85.</td>
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BILLING CODE 1505-01-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: June 25, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Ave. NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COMCON control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of this Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6028, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: June 3, 1986.
Margaret A. Cornejo,
Director, Technical Support Staff, Office of Technology and Policy Analysis.
[FR Doc. 86-12731 Filed 6-5-86; 8:45 am]
BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Mr. Richard C. Connor (P376)

On April 9, 1986, notice was published in the Federal Register (51 FR 12190) that an application had been filed by Mr. Richard C. Connor, Division of Biological Sciences, University of Michigan, Ann Arbor, Michigan 48109, for a permit to import bottlenose dolphins (Tursiops sp.) specimen materials for scientific research.

Notice is hereby given that on May 27, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415;
Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg 1C1700, Seattle, Washington 98115.
Henry R. Beasley,
Director, Office of International Fisheries, National Marine Fisheries Service.

Marine Mammals; Issuance of Permit; Dr. Gerald L Kooyman (P16H)

On March 4, 1986, notice was published in the Federal Register (51 FR 7494) that an application had been filed by Dr. Gerald L Kooyman, Scripps Institution of Oceanography, University of California, La Jolla, California 92039, to conduct scientific research on fifteen (15) Weddell seals (Leptonychotes weddellii) in Terra Nova Bay, Antarctica.

Notice is hereby given that on May 22, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.
Dated: June 30, 1986.
Henry R. Beasley,
Director, Office of International Fisheries, National Marine Fisheries Service.

Marine Mammals; Permit Modification; Dr. Daniel P. Costa, Mr. John M. Francis and Ms. Carolyn B. Heath; Modification No. 1 to Permit No. 422

Notice is hereby given that pursuant to the provisions of §§ 218.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 422 issued to Dr. Daniel P. Costa, Mr. John M. Francis and Ms. Carolyn B. Heath, Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064 on June 22, 1985 (40 FR 29936) is modified as follows:

Section B.1 is replaced by:
"1. The research shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification request."

This Modification is effective on May 28, 1986.
Documents submitted in connection with the above modification are
COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Restraint Limits for Certain Cotton and Man-Made Fiber Textiles Produced or Manufactured in Thailand

June 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986.


Background

In consultations held in April 1986, the Governments of the United States and Thailand agreed, under the terms of their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of July 27 and August 8, 1983, as amended, on the disposition of charges for overshipments in the cotton and man-made fiber apparel group (Categories 330-359 and 630-659), which occurred during the previous agreement period. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to reduce the cotton and man-made fiber apparel group limit, established for imports during the thirteen-month period which began on December 1, 1985, and extends through January 30, 1986, at a level of 331,332 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, which are anticipated but not yet scheduled, further notice will be published in the Federal Register.


Leonard A. Mobley,
Acting Chairman, Committee for the Implementation of Textile Agreements.


Henry R. Beasley,
Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-12761 Filed 6-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius


The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986.


On February 19, 1986, a notice was published in the Federal Register (51 FR 6025) which announces that, on January 31, 1986, the Government of the United States had requested the Government of Mauritius to enter into consultations concerning exports to the United States of cotton trousers in Category 347/348, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 31, 1986, and extends through January 30, 1987. Inasmuch as no solution was reached during consultations between the two governments, the United States Government has decided to control imports in Category 347/348, exported during the twelve-month period which began on January 31, 1986, and extends through January 30, 1987 at a level of 331,332 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, which are anticipated but not yet scheduled, further notice will be published in the Federal Register.

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius


The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On March 26, 1986, a notice was published in the Federal Register (51 FR 10421) which announced that, on February 28, 1986, the Government of the United States had requested the Government of Mauritius to enter into consultations concerning exports to the United States of cotton textile products produced or manufactured in Mauritius and exported during the twelve-month period which began on February 28, 1986 and extends through February 27, 1987. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States Government has decided to control imports in Category 341, exported during the twelve-month period which began on February 28, 1986, at a level of 118,584 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, further notice will be published in the Federal Register.


In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico. The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III.
Chairman, Committee for the Implementation of Textile Agreements.
ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 6, 1986.

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: On February 21, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 6295) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is 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 commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Mat, Sleeping. Cold weather . 8465-01-100-3289.
C.W. Fletcher, Executive Director.
[FR Doc. 86-12734 Filed 6-5-86; 8:45 am]
BILLING CODE 6020-33-M

Procurement List 1986; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: July 9, 1986.

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 actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Smock, Medical Assistant's 6532-00-117-7487
6532-00-117-7488
6532-00-117-7489
6532-00-117-7543
6532-00-117-7546

Vest, Ammunition Carrying 8415-00-146-1978
8415-00-146-1987
8415-00-146-1988

Belt, Trousers 8440-01-167-7246
8440-01-175-7553
8440-01-175-7554
8440-01-175-7555
8440-01-204-2810
8440-01-175-7554
8440-01-175-7552
8440-01-181-4410
8440-01-181-4411

Tray, Canvas PS Item No. 0-1046-T

Services

Repair of Air Cargo Pallet Top and Side Nets, Norton Air Force Base, California.

Deletion

It is proposed to delete the following commodities from Procurement List 1986, October 15, 1985 (50 FR 41809):

Liner, Coat. Cold Weather 8415-00-782-2886
8415-00-782-2887
8415-00-782-2888
8415-00-782-2889
8415-00-782-2890
8415-00-062-0679

(All Government requirements except for the Mechanicsburg Depot, Mechanicsburg, Pennsylvania)

C.W. Fletcher, Executive Director.
[FR Doc. 86-12735 Filed 6-5-86; 8:45 am]
BILLING CODE 6020-33-M

CONSUMER PRODUCT SAFETY COMMISSION


AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a Complaint under the Federal Hazardous Substances Act.


Printed below is a Complaint issued in the matter of Johnson & Johnson Baby Products Company, Inc., a corporation.

Dated: June 3, 1986.
Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC No. 86-1]

In the matter of Johnson & Johnson Baby Products Co., Inc., a corporation.

"Complaint Nature of Proceedings"


jurisdiction

2. The Consumer Product Safety Commission (hereinafter, the "Commission" or "CPSC") has jurisdiction over the subject matter of
Articles Intended for Use

1274(f).

them in interstate commerce within the and "Triplets Marching Band" as "Soft Triplets" (hereafter, "Triplets"), introduced into commerce toys known

Skillman, New Jersey, the State of New Jersey, with corporate organized and existing under the laws of

Johnson & Johnson Baby Products Company, Inc. (hereafter, 

this proceeding pursuant to section 15 of the FHSA, 15 U.S.C. 1274.

Respondent

3. Respondent Johnson & Johnson Baby Products Company, Inc. (hereafter, Johnson & Johnson) is a corporation organized and existing under the laws of the State of New Jersey, with corporate offices located at Grandview Road, Skillman, New Jersey, 08558 and 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

4. Respondent imported and introduced into commerce toys known as "Soft Triplets" (hereafter, "Triplets"), "Piglet Crib Gym" (hereafter, "Piglets"), and "Triplets Marching Band" (hereafter, "Marching Band"), and sold them in interstate commerce within the meaning of 15 U.S.C. 1261(b) and 1274.

5. Respondent is a "manufacturer" of the toys as that term is defined in section 15(f) of the FHSA, 15 U.S.C. 1274(f).

Articles Intended for Use by Children

6. The Triplet and Marching Band toys consist of three soft figures attached together by means of elastic with a plastic ring at each end. The Piglet toy is constructed in the same way, but has, in addition, two attachment devices of plastic and elastic bands that can be separated from, but are supplied with the toy. (See Exhibits 1, 2, and 3.)

7. All of the toys were sold for use by children from birth to 24 months. All of the toys were sold as multi-use toys. All of the toys can be hung across a crib or playpen.

8. Between 1979 and 1986, Respondent imported and distributed in interstate commerce approximately 1.6 million Triplets; 62,000 Piglets; and 3,000 Marching Band toys.

9. The Triplets were sold by mail and Respondent has the names and addresses of purchasers with the exception of approximately 250,000.

10. The toys are "toys" or "other articles intended for the use of children" within the meaning of 15 U.S.C. 1274(c), as amended.

Substantial Risks of Injury

11. Children can become caught on the toy itself or entangled in the strings or cords that may be used to hang or tie it over a crib or playpen and strangle or suffer serious injury.

12. In October, 1984, a ten month old boy strangled to death when he became entangled in cords used to tie a Triplet toy to his crib.

13. In December of 1985, a seven month old girl was asphyxiated when she became caught on the Triplet toy which was hung over the crib.

14. The toys contain a defect or defects which, because of the pattern of defect, the number of defective toys distributed in commerce, the severity of the risk of injury or otherwise, create a substantial risk of risk of injury to children within the meaning of section 15(c) of the FHSA, 15 U.S.C. 1274(c).

Relief Sought

Wherefore, Complaint Counsel requests that the Commission:

A. Determine that the toys contain a defect or defects which create a substantial risks or risks of injury to children within the meaning of section 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2).

B. Determine that public notification under section 15(c)(1) of the FHSA, 15 U.S.C. 1274(c)(1), is required to adequately protect the public from the toys.

C. Order Respondent under section 15(c)(1), FHSA, 15 U.S.C. 1274(c)(1), to

1. Give public notice that the toys contain a defect or defects which create a substantial risk or risks of injury to children and of the remedies available to remove the risk[s] of injury.

2. Mail such notice to each person who is a manufacturer, distributor, or dealer of the toy.

3. Mail such notice to every person to whom Respondent knows the toy was delivered or sold.

D. Specify the form and content of any notice required to be given.

E. Determine in accordance with section 15(c)(2), FHSA, 15 U.S.C. 1274(c)(2), that it is in the public interest to repair the toys so that they will not contain a defect which creates a substantial risk of injury to children, to replace the toys with a like or equivalent product which is not defective, or to refund to consumers the purchase price of the toys.

F. Order Respondent under section 15(c)(2) [FHSA, 15 U.S.C. 1274(c)(2)], to repair the toys so that they do not contain a defect which creates a substantial risk of injury to children; replace the toys with a like or equivalent toy or article which is not defective; or refund to consumers the purchase price of the toys.

G. Specify that refunds must be made to consumers if refunds are given.

H. Order Respondent to make no charge to consumers and to reimburse them for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any order issued under section 15(c) FHSA, 15 U.S.C. 1274(c), as provided for in section 15(d)(1) of the FHSA, 15 U.S.C. 1274(c)(1).

1. Order Respondent to reimburse distributors and dealers for expenses in connection with carrying out any orders issued under sections 15(c)(1) or (c)(2) with regard to the toys as provided for in section 15(d)(2) of the FHSA, 15 U.S.C. 1274(d)(2).

1. Prohibit Respondent from manufacturing the toys; from selling and distributing the toys in commerce; and from importing the toys into the customs territory of the United States, in accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2).

K. Order Respondent to submit a plan satisfactory to the Commission within 15 days of the issuance of the Final Order directing the actions specified in paragraphs C through J above in accordance with section 15(c)(2) of the FHSA, 15 U.S.C. 1274(c)(2).

L. Order Respondent to keep records of their actions taken to comply with paragraphs C through K above, and to supply these records to the Commission staff for a period of three years after entry of a Final Order issued by the Commission requiring notice and remedial action, for the purpose of monitoring compliance with the Final Order.

M. Order Respondent to notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale, or by petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, the creation or dissolution of subsidiaries, the dissolution of the corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission requiring notice and corrective action for a period of three years after issuance of said Final Order.

N. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the FHSA.


Issued by order of the Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director for Compliance and Administrative Litigation.

Johnson & Johnson Inc., a Corporation;

List and Summary of Documentary Evidence

1. In-Depth Investigation 860210CACA3053.

2. In-Depth Investigation 841013NYC5004.
DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

AGENCY: Department of Energy, DOE.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant in the amount of $25,000 for fiscal year 1987, as the first of three projected awards of $25,000 each in partial support of the United Nations Institute for Training and Research. Pursuant to § 600.7(b) of the DOE Financial Assistance rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to the United Nations Institute for Training and Research.

Procurement request number: 01-86 FE00300.000.

SUPPLEMENTARY INFORMATION: The United Nations Institute for Training and Research (UNITAR/UNDP) is preparing to publish the Catalogue of Heavy Crude and Tar Sands Resources, and World Legislation on Heavy Crude Oil.

UNITAR is the organization in the world dedicated to promoting international cooperation concerning heavy crude and tar sands resources and developing and distributing related information. The DOE is vitally interested in helping meet the world's demands of the future. Therefore, the DOE has determined that this award to the UNITAR/UNDP on a restricted eligibility basis is appropriate.


Issued in Washington, DC, on May 30, 1986.

David G. Newman, Director, Office of Procurement Operations.

BILLCING CODE 6450-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).


Times of meeting: 0900-1830.

Places: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Helicopter Lift Capabilities in Europe will meet to review Army models and processes for determination of requirements and capabilities of helicopters. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix I, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner, Administrative Officer, Army Science Board.

BILLCING CODE 2710-00-M

National Petroleum Council, Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues indentified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its third meeting on Friday, June 20, 1986, starting at 10:00 a.m., in the Odessa Room of the DuPont Hotel, DuPont Conference Center, Eleventh and Market Street, Wilmington, Delaware.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Review the factors affecting petroleum supply and demand.

3. Discuss the Group assignments.

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 29, 1986.

Donald L. Bauer, Acting Assistant Secretary for Fossil Energy.
Federal Energy Regulatory Commission

(Docket No. RM85-1-000)

Regulation of Natural Gas Pipelines, After Partial Wellhead Decontrol (Cranberry Pipeline Corp.; Order Denying Request for Clarification)

Issued: June 2, 1986.
Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeeve.

On March 20, 1986, Cranberry Pipeline Corporation (Cranberry) filed a request for clarification to confirm that its transportation arrangement on behalf of Columbia Gas Transmission Corporation would qualify under the transitional rules of Order No. 436. We deny Cranberry's request.

Cranberry is an intrastate pipeline company in the State of West Virginia and an affiliate of Cabot Corporation. Cabot has a producer certificate and a transportation rate schedule on file at this Commission. Under color of that authority it has transported gas for Columbia Gas Transmission Corporation (Columbia). On February 28, 1982, pursuant to a reorganization plan approved by the Public Service Commission of West Virginia, Cabot was authorized to convey its gathering and pipeline facilities to Cranberry. Cabot became an intrastate pipeline, and Cranberry acquired the intrastate pipeline functions and became a local distribution company.

Cabot has a producer certificate and a transportation rate schedule on file at this Commission. Under color of that authority it has transported gas for Columbia Gas Transmission Corporation (Columbia). On April 9, 1985, Cranberry executed an agreement with Columbia to transport gas on behalf of Cranberry, as its high-priority end users. Cranberry was not transporting gas pursuant to section 311 and Part 284, and neither was Cabot.

Cranberry argues that it should be accorded transition treatment because Cranberry's corporate parent, Cabot, was transporting gas on behalf of Columbia long before the issuance of Order No. 436. Cranberry argues that it should be construed as a successor in interest to Cabot. We disagree.

Section 284.105 specifically limits transitional treatment to transportation arrangements that were authorized and commenced on or before October 9, 1985. As of that date, Cranberry had not commenced transportation. Cranberry's 'successor in interest' argument is devoid of merit. Cranberry cannot substitute itself for Cabot in any event and, more to the point, Cabot performed the transportation for Columbia pursuant to a certificate under the Natural Gas Act, not pursuant to section 311 and Part 284. Therefore, there is no basis for any claim of a right to transitional treatment; as of October 9, 1985, there was no section 311 transportation arrangement in existence, and therefore nothing to be accorded transitional treatment.

By the Commission.
Kenneth F. Plumb,
Secretary.

[FR Doc. 86-2782 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

(Docket No. RM85-1-000)

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Natural Gas Pipeline Co. of America); Order Granting Request for Clarification

Issued: June 2, 1986.
Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeeve.

On January 17, 1986, Natural Gas Pipeline Company of America (Natural Gas) filed a request for clarification of § 284.223(g)(1) of the regulations adopted in Order No. 436. Specifically, Natural seeks clarification that the volume of high-priority end-use gas, which was eligible for continued transportation authorization under the transitional provisions of § 284.223(g)(1) is the highest daily volume of gas actually transported for high-priority end uses prior to October 9, 1985. In other words, Natural seeks clarification that this high-priority "peak" is the permissible level of transportation service for high-priority end users on § 284.223(g)(1).

Natural also seeks clarification that it may rely on "later-in-time affidavits" from its high-priority end users to establish this "peak" or permissible volume of transportation under § 284.223(g)(1). We grant the clarification request.

Natural reports that it haled transportation of certain transactions originally authorized under former § 157.209(e) (which authorized transportation for any end use regardless of priority) as of November 1, 1985, because of uncertainty as to whether those transactions would be "grandfathered" pursuant to § 284.223(g)(1). Natural states that under some of those transportation arrangements, both high-priority and low-priority end-use volumes were transported. However, the percentage of gas transported for high-priority end uses did not remain constant and may have fluctuated on daily basis.

In the order granting rehearing in Midwest Solvents Company, the Commission adopted in Order No. 436, we stated that gas which would have qualified for transportation under former § 157.209(a)(1) for high-priority end use, and for which transportation had commenced prior to October 9, 1985, was eligible for the transitional provisions of § 284.223(g)(1) to the extent of the high-priority use, even though not all of the gas flowing to the end user was for such high-priority uses. The transitional provisions limit transactions qualifying thereunder to the operative terms and conditions that...
existed on October 9, 1985. The transitional rule for high-priority transportation arrangements (18 CFR 284.223(g)(1)) states:

In the case of transportation authorized under § 157.209(a)(1) which commenced on or before October 9, 1985, such transportation is deemed to be authorized under this section for the full term originally certified subject to the provisions of § 284.7 of this chapter. In all other respects, the terms and conditions existing prior to November 1, 1985, shall continue for this period. (Emphasis added.)

The purpose of this provision was to allow a transporter to continue its high-priority transportation service as that service existed on and prior to October 9, 1985. Transporters, like Natural, which have transactions where an end user consumed gas for both high- and low-priority uses, are authorized under the transitional rule to continue their high-priority transportation at pre-October 10, 1985 levels.

We grant Natural’s request for clarification that the highest daily volume of gas actually transported for a high-priority use prior to October 10, 1985, may be used to measure the volume eligible for continuation under § 284.223(g)(1). Further, Natural’s proposal to accept “Later-in-time affidavits” supplied by those end users to verify the highest daily volume of high-priority gas actually transported prior to October 10, 1985, is acceptable.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12783 Filed 6-5-86; 8:45 am]

BILLY CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines, After Partial Wellhead Decontrol (Natural Gas Pipeline Co. of America—Texoma); Order Denying Petition for Clarification

Issued: June 2, 1986.

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

On March 12, 1986, Natural Gas Pipeline Company of America filed a petition for clarification or waiver of Order Nos. 436 and 436–A to enable it to perform transportation services under Order No. 436 on a physically isolated segment of its system without subjecting the rest of its system generally to the requirements of Order No. 436. This order denies the petition.

Specifically, Natural states that it has acquired 39 miles of pipeline that is physically isolated from Natural’s system. The pipeline segment was part of a crude oil pipeline purchased and converted to gas service by Houston Pipeline Company (HPL), Transok, Inc., and Natural (or their affiliates). The remaining portions other than the 39-mile segment are owned and operated by Transok as part of its Oklahoma intrastate system and by HPL as part of its Texas intrastate system. Natural further states that in the October 18, 1984 order authorizing it to acquire and operate the 39-mile segment, the Commission established an initial rate based on the incremental cost of service of that segment. That order also requires Natural to keep all costs associated with that segment separate from its integrated system costs, to maintain separate accounts and to support all costs if Natural later seeks to integrate that segment into its general system.

Natural states that, based on the foregoing, this segment is physically isolated from its general system. It has separate customers, tariffs and gas supplies, none of Natural’s own system supply gas is transported through this segment, and no sales are made by Natural from this segment. Therefore, Natural contends that it should be permitted to obtain a blanket transportation certificate under Subpart G of Part 284 limited to this segment without affecting Natural’s general system or customers on that system. It requests that the Commission clarify or waive Order Nos. 436 and 436–A, to assure Natural that it may provide Order No. 436 transportation through this 39-mile segment without subjecting its general system to the requirements of Order No. 436.

On April 16, 1986, Transok filed a statement supporting Natural’s petition. Transok states that as an intrastate pipeline, it has already submitted its system to the open access provisions of Order No. 430, and that granting Natural’s petition will broaden Transok’s access to transportation.

1 The Commission authorized Natural’s acquisition, operation and transportation of gas through that facility in its October 18, 1984 order. Natural gas Pipeline Company of America, 29 FERC ¶ 61,073 (1984).

2 Natural states that a pipeline is currently pending in Docket No. CP85-600-000 to interconnect its Amarillo and Gulf coast mainline systems to the new Texoma pipeline, thereby physically integrating the 39-mile segment (and the remaining portion of the oil pipeline) with its general

transactions under section 311 of the Natural Gas Policy Act of 1978.

We deny Natural’s petition. When we issued Order No. 436, we contemplated that pipelines would file blanket certificate applications for their entire systems and not merely some parts of their systems. Natural cites our order in Midwestern Gas Transmission Company, 34 FERC ¶ 61,007 (1988) as support for its application. In that decision, we permitted Midwestern to perform transportation services under Order No. 436 on its Northern System without subjecting its Southern System to the requirements of Order No. 436. However, we made clear in that order that Midwestern’s application was unique in that these two systems had been treated as two separate pipelines since their inception in 1969. Moreover, Midwestern’s bifurcated system came into existence only after the Commission rejected an earlier Midwestern proposal to construct a single, integrated pipeline from Tennessee to the Canadian border. That application was rejected because, as the Commission stated at that time, “the system was not designed so that the two sources of supply [one Canadian, the other domestic] could be used alternatively for the greater part of the customer at either end.”

The history and design of Natural’s system is significantly different than that of Midwestern’s. Unlike Midwestern, connection of the 39-mile segment to Natural’s general system was contemplated when Natural first sought authorization to acquire and operate this segment. As Natural notes in its petition, Natural currently has pending an application in Docket No. CP85-600-000 to interconnect its Amarillo and Gulf coast mainline systems to the new Texoma pipeline, thereby physically integrating the 39-mile segment (and the remaining portion of the oil pipeline) with its general

9 Indeed, there was some concern that some pipelines might attempt to circumvent the conditions of Order No. 436 by seeking blanket certificate authorization only for part of their systems while exempting the remaining portions of their systems, and thereby disadvantage some of their customers. 50 FR 42408, 42432 (1985). Order No. 430, opinion at IV. A. 41.

10 See Midwestern, 34 FERC ¶ 61,007 (1985).

11 See Docket No. CP84-433-000. Letter from Henry S. May, Jr. to Robert J. Cuptina, September 24, 1984, with attached agreement among Houston Natural Gas Corp., Transok, Inc. and Midcon, Inc. dated April 3, 1984. In that agreement, Midcon (Natural’s parent company) explicitly reserves “the right to interconnect the Amarillo system and the Gulf Coast system of Natural to the interstate segment” as part of a Phase II expansion plan of its acquisition.
system. In light on Natural's demonstrated intent to connect the systems physically as soon as approval can be obtained, and in light of the fact that one jurisdictional entity currently comprises both systems, we see no justification for treating the systems separately for purposes of Order No. 436.

By the Commission.
Kenneth F. Plumb, Secretary.

[FR Doc. 86-12784 Filed 6-5-86; 8:45 am]
BILLING CODE 6177-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Tennessee Gas Pipeline Co., a Division of Teneco, Inc.); Order Denying Petition for Extension

Issued: June 2, 1986.

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

On April 30, 1986, Tennessee Gas Pipeline Company, a division of Teneco, Inc., filed a petition for extension of time to correct imbalances arising from certain transportation services. In United Gas Pipeline Company, et al., 34 FERC ¶ 61,207 (1986), we established, among other things, (1) an April 30, 1986 deadline for correcting imbalances for inactive contracts (contracts which have terminated or ceased to be authorized under the transition rules, beyond October 31, 1985), and (2) a deadline for correcting imbalances for active contracts (contracts authorized under §§ 284.105 and 284.223(g)) of 90 days from the date the transportation arrangement terminates.

Tennessee contends that this rolling time period is unnecessarily brief and inconsistent with current industry practice. Tennessee contends that, due to the time involved in receiving, compiling, verifying and analyzing raw data, time is required to allow for confirmation of imbalances and negotiation of a method to eliminate the imbalances. With respect to volumes transported by other pipelines, Tennessee states that data becomes available from 45 days to 105 days after the month in which the activity occurs, depending on the complexity of the agreements. In view of the complexity and difficulties associated with correcting imbalances, Tennessee requests that (1) the April 30, 1986 deadline be extended until June 30, 1986, for inactive contracts, and (2) that the 90 day rolling period for active contracts be extended to 180 days from the date the transportation arrangement terminates.

We are denying Tennessee's petition. We established the current deadlines in the United order based on requests filed by United Gas Pipeline Company and Tennessee Gas Pipeline Company. Both petitioners in that proceeding requested a rolling time period of approximately 90 days for active contracts. For inactive contracts, United requested a deadline until March 31, 1986, and Natural requested a deadline until April 30, 1986. We granted both requests, and in order to give the industry the benefit of the doubt, we permitted corrections for inactive contracts until April 30, 1986.

That order was issued on February 18, 1986, and Tennessee did not seek rehearing. Now, on the day of the April 30 deadline and more than two months after its issuance, Tennessee complains that "[c]urrent industry practice requires longer periods of time." Based on the statement in both Statements in both United's and Natural's earlier petitions which resulted in our February 18, 1986 order, we see no compelling reason to grant Tennessee's petition. If the current deadlines are satisfactory not only to these two pipelines, but also other pipelines that did not file petitions for extension of time, we fail to understand why the "current industry practice" is any different for Tennessee. Nor does Tennessee set forth any compelling reasons unique to it that justifies a waiver of the deadline. Absent a compelling reason to extend the current deadlines, we see no reason to modify our United order.

For the reasons stated above, Tennessee's petition is denied.

Kenneth F. Plumb, Secretary.

[FR Doc. 86-12786 Filed 6-5-86; 8:45 am]
BILLING CODE 6177-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (TransAmerican Natural Gas Corp.); Order Dismissing Request for Waiver

Issued: June 2, 1986.

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

On February 7, 1986, TransAmerican Natural Gas Corporation (TransAmerican) filed a request for waiver of the restrictions in the transitional provisions of § 284.105(a) of the regulations adopted in Order No. 438. TransAmerican seeks the waiver to permit the transportation of gas by Natural Gas Pipeline Company (Natural) on behalf of TransAmerican until such time as Natural is issued a certificate, pursuant to section 7 of the Natural Gas Act, authorizing the transportation of gas for TransAmerican. On November 1, 1985, Natural filed an application for the certificate in Docket No. CP86-131-000. On May 1, 1986, the Commission issued a certificate to Natural in that docket. We are, therefore, dismissing TransAmerican's request for waiver as moot.

By the Commission.
Kenneth F. Plumb, Secretary.

[FR Doc. 86-12788 Filed 6-5-86; 8:45 am]
BILLING CODE 6177-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (U.S. Steel); Order Denying Rehearing

Issued: June 2, 1986.

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

On February 13, 1986, the Commission issued an order denying a request by U.S. Steel Corporation for clarification and waiver of Order No. 438. On March 14, 1986, U.S. Steel filed a request for rehearing. This order denies the petition.

In our February 13, 1986 order, we denied U.S. Steel's petition for clarification or waiver to permit Natural Gas Pipeline Company of America to continue transporting gas under the transition provisions of Order No. 436. Briefly, U.S. Steel's transportation contract references transportation authorization under § 157.209(a)(1) and (e)(2) of the Commission's regulations, even though the transportation qualified for high priority authorization under § 157.209(a). The February 13, 1986 order denied U.S. Steel's petition on the basis that U.S. Steel's contract authorized transportation for 120 days from the date of first delivery, and for a period of two years after receiving prior authorization under § 157.209(e). Since neither U.S. Steel nor Natural filed for § 157.209(e) authorization, we concluded that the two year provision of the contract never took effect and that the transportation was only authorized for 120 days.

1 Tennessee states that the United order did not expressly include exchanges, but that Tennessee assumes that the discussion therein of the deadlines for correcting imbalances also applies to imbalances arising out of exchanges. Tennessee's interpretation is correct.

2 33 FERC ¶ 61,007 50 FR 42408 (October 18, 1985).

3 35 FERC ¶ 61,142 (issued May 1, 1986).
On rehearing, U.S. Steel has raised a number of arguments why the transportation should be authorized for the full two year term. First, it argues that the issuance of Order No. 436 constituted a condition of force majeure as defined in the contract and that this event suspended the contract. Since the agreement was never terminated, but was in effect on November 1, 1985, U.S. Steel contends that the transportation qualifies for transitional treatment under §284.223(g).

We decline to decide whether the issuance of Order No. 436 constituted a force majeure event as defined in U.S. Steel's contract since it is irrelevant. We denied U.S. Steel's petition on the basis that the two year provision never took effect because neither U.S. Steel nor Natural filed the prior notice application required by their contract to extend its term. Thus, the contract terminated after the expiration of the 120 day period. However, even if the contract had been suspended by the issuance of Order No. 436 as U.S. Steel contends, neither U.S. Steel nor Natural could activate the two year provision since the provisions in §157.209(e) are no longer effective. In either case, it is irrelevant whether Order No. 436 constituted a force majeure event because the condition precedent to activate the two year provision was not, and cannot now, be satisfied.

U.S. Steel further contends that the intent of the parties was to have a contract for a term of two years, once the necessary regulatory approval was secured. It cites a number of cases and treaties for the proposition that contracts should be interpreted to effectuate the intent of the parties and that the Commission should therefore permit the two year term to take effect. However, the parties may well have intended to have a two year transportation arrangement. However, in order for the two year term to take effect, we would have to ignore the clear language of the condition the parties inserted as a predicate. In our view, it would be inappropriate in these circumstances to ignore one provision in the contract merely to permit another provision to take effect, or to rewrite a contract to conform it to our presumption of what the parties may have intended.

U.S. Steel argues that Natural's subsequent actions ratified their transportation agreement and that the agreement has therefore remained in effect. Specifically, U.S. Steel contends that on October 31, 1985, the same day that Natural ceased transportation to the Gary Works plant, that application was based on the same transportation agreement at issue in this clarification. U.S. Steel contends that by filing the section 7(c) application based on the same transportation contract, Natural ratified its agreement with U.S. Steel and that the contract therefore remains in effect beyond the 120 day period.

We are not convinced by this argument. It seems to us a matter of semantics whether the contract is no longer in effect, or whether the contract remains in effect but the two year authorization is not effective because the condition precedent has not been satisfied. In either case, there is no contractual authorization to continue transportation. While Natural's application for a section 7(c) certificate indicates its willingness to transport gas for U.S. Steel, the fact remains that, under the transition provisions, this contract does not provide that authorization.

In a similar vein, U.S. Steel contends that even if the Commission's interpretation is correct, the Commission should grant relief because both Natural and U.S. Steel made a mutual mistake of fact—that a prior notice application would be filed in a timely manner. U.S. Steel contends that when such a mistake goes to a material term of the contract—in this case, the duration—the Commission should reform the contract to accommodate the intent of the parties to the extent that other parties would not be unfairly affected.

The problem with this argument is that U.S. Steel requests us to reform the contract to the extent that other parties would not be unfairly affected. However, the means for determining whether any party is unfairly affected is the prior notice procedure, the condition U.S. Steel requests us to reform. If we were to reform the contract to effectuate the two-year term without the prior notice procedure, there would be no way of knowing whether other parties would be unfairly affected.

For the reasons stated above, U.S. Steel's petition for rehearing is denied.

By the Commission.

Kenneth F. Plumb, Secretary.

[FR Doc. 80-12787 Filed 6-5-86; 8:45 am]
BILLING CODE 0717-01-M

[1] We note that this denial does not result in economic harm to U.S. Steel's plant in Gary, Indiana. On May 1, 1986, the Commission issued an order authorizing Natural to transport gas under section 7(c) of the Natural Gas Act to the Gary plant. 35 FERC § 61,142 (1986). That authorization extends for one year from the date of issuance. While we are denying U.S. Steel's petition, U.S. Steel will still be able to receive its required gas supplies.

[Docket No. RP86-90-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Black Marlin Pipeline Company [Black Marlin] on May 30, 1986, tendered for filing as part of its FERC Gas Tariff, the following Tariff Sheets:

Original Volume No. 1

Cover Sheet
1st Revised Sheet No. 1
2nd Revised Sheet No. 3
1st Revised Sheet No. 102
1st Revised Sheet No. 105
1st Revised Sheet No. 106
Original Sheet No. 106A
Original Sheet No. 109
Original Sheet No. 110
Original Sheet No. 111
Original Sheet No. 112
Original Sheet No. 113
Original Sheet No. 114
1st Revised Sheet Nos. 115-119
Original Sheet No. 219
1st Revised Sheet Nos. 220-299

Original Volume No. 2

Cover Sheet

Revised Cover Sheets to both volumes of Black Marlin's FERC Gas Tariff are being filed to change the name to whom communications concerning the tariff should be addressed.

Sheet Nos. 1 and 3 are being revised to update the Table of Contents and the system map, respectively.

Sheet 102 is being revised to delete references to Original Sheet No. 104 which has been suspended.

Sheet Nos. 105 and 106 are being revised and Sheet Nos. 106A and 109 are being submitted to make service rendered under existing Rate Schedule T-2 equal to service rendered under new Rate Schedule T-3 for the purpose of allocation of available capacity; and to provide for Maximum and Minimum Rates.

Sheet Nos. 219 and 220-299 are being revised to update the index showing delivery points and shippers.

The remaining tariff sheets are being in order to implement a new Rate Schedule T-3, which is applicable to existing transportation service rendered by Black Marlin pursuant to Part 284, Subpart G, of 18 CFR, Chapter I, as such Subpart G was effective prior to November 1, 1985 (hereinafter referred to as "Subpart G")

On October 9, 1985, the Federal Energy Regulatory Commission in Docket No. RM85-1-000 (Parts A-D), issued Order No. 436 (Final Rule). §284.105 of the Commission's
Regulations provide for the "grandfathering" of self-implementing transportation service authorized and commenced under Subparts B and G prior to October 9, 1985. The applicable regulations also provide that such services may not be discontinued after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect on October 9, 1985, or (2) October 9, 1987. The Final Rate Rule provides that the § 284.7 rate conditions apply to previously authorized transactions by interstate pipelines but that a pipeline could utilize the rates in existence on October 9, 1985 on an interim basis. The Final Rate Rule also requires pipelines offering transportation service pursuant to Subpart B, G of Part 284 (including grandfathered transportation arrangements) to file rates to be effective no later than July 1, 1986 in conformance with the rate conditions of § 284.7.

Prior to October 9, 1985, Black Marlin commenced transportation service for Florida Gas Transmission Co. pursuant to § 284.222 of 18 CFR, Chapter I. The rate applicable to this service was established in Black Marlin's in Docket No. RP81-67-000. Black Marlin has, however, never filed a rate schedule applicable to such transportation arrangement.

Also prior to October 9, 1985, Black Marlin commenced transportation service for Lone Star Gas Co. and Humble Gas Transmission Company under Rate Schedule T-2 pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 ("NGPA").

Black Marlin is a Nonmajor natural gas company whose transmission system consists of a fifty-four (54) mile sixteen-inch (16") pipeline extending from a point near Texas City, Texas to the Shell Offshore, Inc. platform in HI Block 136 and a thirteen (13) mile sixteen-inch (16") extension from the Shell Platform in HI Block A-6 to the point of interconnection with the mainline in HI Block 137. Black Marlin' system does not include any mainline compressor facilities. (Black Marlin also owns a two mile, two-inch gathering system in Webb County, Texas used to deliver company owned production to Transco which is not a part of its transmission system). Because of the nature of its system and the services it renders, Black Marlin experiences no material variation in the cost of providing service whether the service is provided during peak or off-peak periods nor are there significant differences in cost in providing transportation over the entire length of its system or only a portion thereof. Also, primarily because of the absence of compression facilities, Black Marlin has no material variable costs which can be segregated and identified to establish a minimum rate as provided for in § 284.7. However, for the purpose of complying with the requirement contained in § 284.7(d)(5)(i) that any rate schedule filed under this section must state a maximum rate and a minimum rate, Black Marlin proposes to establish one cent (1¢) per Mcf as the minimum rate to be charged under Rate Schedule T-2 and T-3. Black Marlin at this minimum rate, would not be charging less than the average variable costs incurred to provide the transportation service.

Black Marlin proposes that the revised tariff sheets filed herein become effective on July 1, 1986, which date is not less than thirty (30) days after receipt of this filing by the Commission. By Order issued April 29, 1986 in Black Marlin Pipeline Company, Docket No. CP86-397-003, the Commission amended its Order of May 28, 1981 in Docket No. CP80-397 (15 FERC ¶ 61,183), which authorized Black Marlin to transport up to 25,000 Mcf of natural gas per day for Northern Natural Gas Company ("Northern") from Galveston Area Block 99, Offshore, Texas, so as to authorize Black Marlin to include up to 15,000 Mcf of gas per day within the existing 25,000 Mcf/d contract quantity for transportation for High Island Area Block 171, Offshore Texas. Accordingly, Black Marlin is filing an executed Service Agreement dated May 3, 1986 between Black Marlin and Northern which covers the transportation of up to 25,000 Mcf/d for Northern from Galveston Area Block 99 and High Island Area Block 171 (including up to 15,000 Mcf/d from High Island Block 171) and suspenses the previously effective Service Agreements dated July 13, 1982 between the parties, covering the transportation for Northern of up to 25,000 Mcf/d from Galveston Area Block 99.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 86-12768 Filed 6-5-86; 8:45 am]

BILLING CODE 8717-01-M

[Docket No. RP86-95-000]

Canyon Creek Compression Co.; Change in FERC Gas Tariff

June 3, 1986.

Take notice that on May 30, 1986, Canyon Creek Compression Company (Canyon) submitted for filing Second Revised Sheet No. 4 and Original Sheet Nos. 9 and 10 as part of its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986.

Canyon states that the purpose of this filing was to (i) establish transportation rates, to be effective July 1, 1986, which comply with § 284.7(b)(2) of the Commission's Regulations; and (ii) submit initial Rate Schedule T-1 (Transitional Transportation) governing transitional interruptible transportation service provided pursuant to Part 284 of the Commission's Regulations. Implementation of Rate Schedule T-1 will allow Canyon to continue its existing grandfathered transportation agreements pursuant to 18 CFR 284.105.

The maximum rate Canyon will charge for interruptible transportation will be based on a 100% load factor of its Rate Schedule T-1 minimum rate. The minimum transportation rate will be each interruptible Customer's allocated share of Canyon's variable electric power costs incurred during the month. Canyon proposes to continue to dispose of any interruptible transportation revenue as provided for by Commission Order issued April 23, 1984, Docket No. CP82-538-002.

A copy of this filing was mailed to Canyon's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file.
with the Commission and are available for public inspection.
Kenneth F. Plumb, Secretary.
[FR Doc. 86-12799 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-2-12-000, 001]
Distrigas Corp., Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision
June 3, 1986.

Take notice that Distrigas Corporation (Distrigas) on May 30, 1986 tendered for filing Nineteenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Nineteenth Revised Sheet No. 3A.
Nineteenth Revised Sheet No. 1 and Nineteenth Revised Sheet No. 3A are being filed pursuant to Distrigas’ and DOMAC’s purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG together with an amortization over the six-month period, July 1, 1986 through December 31, 1986, of the balance of the unrecovered purchased LNG cost account.
The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC’s rates for resale to its distribution customer companies and the amortization over the six-month period, July 1, 1986 through December 31, 1986, of the balance in DOMAC’s unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective July 1, 1986.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211). Such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.
Kenneth F. Plumb, Secretary.
[FR Doc. 86-12799 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-4-2-000, 001]
East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions
June 3, 1986.

Take notice that on May 30, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Nineteenth Revised Sheet No. 4 and Sixth Revised Sheet No. 122 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1986.

East Tennessee states that the purpose of these revised tariff sheets is to reflect PGA rate adjustment based on its anticipated cost of purchased gas and reflects (1) a rate change filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. in Docket No. TA86-3-4-9 and (2) purchases from various local suppliers. East Tennessee respectfully requests that the Commission grant any waivers of its regulations required in order to make these tariff sheets effective as proposed.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure. Such service could continue after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect October 8, 1985, or (2) October 9, 1985. The Final Rule provided that the rate conditions of § 284.7 will apply to previously authorized transactions by interstate pipelines provided however, that any person offering transportation service pursuant to Subpart B, G or H of Part 284 (including grandfathered transportation arrangements) must file rates to be effective no later than July 1, 1986.

Over the past several years, FGT has provided transportation service in the Western portion of its system (facilities west of FGT’s mainline compressor No. 12 located in Santa Rosa County, Florida) for various parties pursuant to Part 284. The rates charged for this service have been established in FGT’s various rate proceedings. Terms and conditions of the transportation service have been pursuant to individual

[Docket No. RP-84-000]
Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff
June 4, 1986.

Take notice that Florida Gas Transmission Company (FGT) on May 30, 1986 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3 the following tariff Sheets:
Original Sheet No. 657
Original Sheet No. 658
Original Sheet No. 659
Original Sheet No. 660
Original Sheet No. 661

The above listed tariff sheets are being filed in order to implement a new Rate Schedule WDTS (Western Division Transportation Service), which is applicable solely to existing "grandfathered" self-implementing transportation service rendered by FGT under Part 284 of the Federal Energy Regulatory Commission’s (Commission) Regulations in effect on October 8, 1985.

- On October 9, 1985, the Commission in Docket No. RM85-1-000 issued Order No. 436 (Final Rule) which substantially changed Commission Regulation of interstate natural gas transportation.

Pursuant to § 284.105, the Commission provided for the "grandfathering" of self-implementing transportation service rendered under Part 284. Such service could continue after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect October 8, 1985, or (2) October 9, 1985. The Final Rule provided that the rate conditions of § 284.7 will apply to previously authorized transactions by interstate pipelines provided however, that any person offering transportation service pursuant to Subpart B, G or H of Part 284 (including grandfathered transportation arrangements) must file rates to be effective no later than July 1, 1986.

Over the past several years, FGT has provided transportation service in the Western portion of its system (facilities west of FGT’s mainline compressor No. 12 located in Santa Rosa County, Florida) for various parties pursuant to Part 284. The rates charged for this service have been established in FGT’s various rate proceedings. Terms and conditions of the transportation service have been pursuant to individual
contracts, rather than to any filed rate schedule.

FGT's currently effective rates for transportation service in the Western portion of its system were established pursuant to FGT's Stipulation and Agreement in Docket No. RP83-104. Such rates became effective on January 1, 1984 and, with the addition of a minimum rate as set forth below, conform substantially to the requirements of § 284.7. Such rates are volumetric in form and consist of a Facility Charge (12.6¢/MMBtu) designed to recover the non-mileage costs allocated to the service and a Service Charge ($5.60/MMBtu/100 miles of forward haul) designed to recover the mileage costs allocated to the service. Such rates were designed to recover on a per unit basis the cost allocated to such service on the basis of projected units of service.

The Service Charge component of the rate is based upon the actual distance the gas is transported. There is no material variation in the cost of providing the service due to peak or off-peak periods.

The rates set forth in Rate Schedule WDTS do provide for a maximum and minimum rate. The maximum rate is the currently effective rate established in Docket No. RP83-104. The minimum rate was derived based upon the average variable costs which were allocated to the service in Docket No. RP83-104. Accordingly, Rate Schedule WDTS and the rates set forth therein are tendered for filing pursuant to the requirements of §284.7, to be applicable to transportation services which are "grandfathered" under Order Nos. 436, et seq.

The proposed effective date of the above tariff sheets is July 1, 1986.

Copies of the filings were served on FGT's customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 2 and 3 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 86-12780 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-M

[Docket No. TA84-1-53-017]

K N Energy, Inc.; Proposed Change in FERC Gas Tariff

June 3, 1986.

Take notice that K N Energy, Inc. ("K N") on May 30, 1986, tendered for filing a proposed change in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in compliance with the Commission's February 23, 1984 order issued in Docket No. TA84-1-53. The filing results from the expiration, as of June 30, 1986, of the 31 month "Mid-La Surcharge" collection period which commenced December 1, 1983. The proposed change would decrease the commodity rate under each of K N Energy's jurisdictional rate schedules by 15.78¢ per Mcf.

Copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 86-12780 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-M

[Docket No. RP86-91-000]

Midwestern Gas Transmission Co., Rate Change and Tariff Revisions

June 4, 1986.

Take notice that on May 30, 1986, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets on Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1986. Substitute Nineteenth revised Tariff Sheet No. 5

Twenty-First Revised Tariff Sheet No. 6

Northern Natural Gas Co., Division of Enron Corp.; Tariff Filing

May 27, 1986.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern) on May 21, 1986, tendered for filing proposed changes to its FERC Gas Tariff. Such changes have been filed to comply with §§ 284.7(a) and 284.7(b)(2) of the Commission's regulations, all as more fully explained in the filing which is available for public inspection.

Northern currently provides transportation services under the transitional provisions of Order No. 436 (grandfathered services). It is stated that, pursuant to § 284.7(b)(2) of the Commission's regulations, Northern must file rates in accordance with § 284.7(e) to be effective not later than July 1, 1986, in order to continue providing such services after that date. In this filing, Northern is proposing to charge rates, for its grandfathered services, equivalent to the rates filed in Northern's Offer of Settlement and Stipulation and Agreement of Settlement (S&A) in Docket No. RP85-206, for interruptible transportation service under Rate Schedule IT-1. These rates are proposed to become effective on July 1, 1986, and to remain in effect until rates filed in the S&A are approved to become effective by a final nonappealable order of the Commission.

Copies of the filing were served upon all of Northern's jurisdictional customers and affected state regulatory commissions:

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of 18 CFR. All such motions or protests should be filed by June 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 86-12780 Filed 6-5-86; 8:45 am]
Third Revised Tariff Sheet No. 32
Fourth Revised Tariff Sheet No. 33
Fourth Revised Tariff Sheet No. 34
Third Revised Tariff Sheet No. 100

Midwestern states that these tariff sheets are filed (1) pursuant to § 284.7 of the Commission’s regulations in order to reflect maximum and minimum rates for service under Midwestern’s Rate Schedules IT-1 and IT-2, and (2) to delete those sections of Rate Schedule IT-1 which reference a now-expired provision of the Settlement Agreement dated February 5, 1985, in Tennessee Gas Pipeline Company, Division of Tenneco Inc. Docket Nos. RP83-4-8 and CP04-441-002.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person wishing to become a party must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission’s rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, 
Secretary.

[FR Doc. 86-12803 Filed 6-5-86; 8:45 am] BILLING CODE 6717-01-M

(Docket No. RP86-87-000)
Mountain Fuel Resources, Inc., Tariff Filing
June 3, 1986.

Take notice that on May 30, 1986, Mountain Fuel Resources, Inc. (MFR) filed, pursuant to Part 154 of the Federal Energy Regulatory Commission Regulations Under the Natural Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

MFR states that consistent with the requirements of Order No. 436 et al., the tendered tariff sheets serve to establish, as part of MFR’s FERC Gas Tariff, the rates, rate schedules, operating terms and conditions and pro forma service agreements applicable to: (1) Transportation service provided pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and 18 CFR 284.102 and 284.7, and (2) transitional transportation transactions performed in accordance with 18 CFR 284.105, 284.223(g) and 284.7(b). MFR proposes that new Original Volume No. 1-A to its currently effective FERC Gas Tariff, which will incorporate new Rate Schedules T-1, T-2, and T-3, become effective July 1, 1986.

It is explained that proposed Rate Schedules T-1 and T-2 will provide for firm and interruptible transportation service, respectively, on behalf of local distribution companies or intrastate pipeline companies pursuant to NGPA section 311. MFR further explains that Rate Schedule T-3 is restricted to interruptible "grandfathered” transportation service that commenced prior to October 9, 1985, and is provided by MFR for certain existing customers.

MFR additionally states it has reached an agreement with its only sale-for-resale customer, Mountain Fuel Supply Company (MFS), concerning MFS’s right to reduce its sale-for-resale maximum daily quantity and, to implement such agreement, is tendering revised rates and tariff provisions to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule CD-1, and a new Sales Service Agreement.

MFR requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all of its sales and transportation customers and all pertinent state regulatory commissions.

Any person wishing to become a party must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission’s rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, 
Secretary.

Appendix

Mountain Fuel Resources, Inc.
First Revised Volume No. 1
Fourth Revised Sheet No. 12
First Revised Sheet No. 15
Original Sheet No. 15-A
Original Sheet No. 15-B

Original Volume No. 1-4
Original Revised Sheet Nos. 1-8
Original Revised Sheet Nos. 18-22
Original Revised Sheet Nos. 40-45
Original Revised Sheet Nos. 65-68
Original Revised Sheet Nos. 79-111
Original Revised Sheet Nos. 115-121
Original Revised Sheet Nos. 130-135

[FR Doc. 86-12804 Filed 6-5-86; 8:45 am] BILLING CODE 6717-01-M
Natural Gas Pipeline Co. of America, Change in FERC Gas Tariff

June 3, 1986.

Take Notice that on May 30, 1986, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective June 1, 1986:

Original Sheet Nos. 5F and 5G
Second Revised Sheet No. 81
First Revised Sheet Nos. 82, 84, and 86

Original Sheet Nos. 91 through 93

Natural states that the purpose of this filing was to (i) submit transportation rates pursuant to § 284.7(b)(2) of the Commission's Regulations; (ii) submit initial Rate Schedule TRT-1 [Transitional Transportation Service] governing transitional interruptible transportation service pursuant to Part 284 of the Commission's Regulations; and (iii) cancel Rate Schedules T-1, T-2, IOST, and EUT-1. Implementation of Rate Schedule TRT-1 would allow Natural to continue its existing grandfathered transportation arrangements in accordance with § 284.105.

A copy of this filing was mailed to Natural's jurisdictional sales customers, applicable transportation customers and to interested state regulatory agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

Appendix—Overthrust Pipeline Company

Overthrust Pipeline Co.; Tariff Filing

June 4, 1986.

Take notice that on May 30, 1986, Overthrust Pipeline Company (Overthrust) filed, pursuant to Part 154 of the Federal Energy Regulatory Commission Regulations under the Natural Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

Overthrust states that the tendered tariff sheets serve to establish a new Rate Schedule T-6, pursuant to 18 CFR § 284.7(b). It is explained that this new rate schedule is proposed to become effective July 1, 1986, and, in accordance with the rate conditions made applicable to "grandfathered" transportation transactions by Commission Order No. 436 et al., will permit the continuation of interruptible transportation service commenced by Overthrust prior to October 9, 1985. Additionally, Overthrust requests waiver of any Commission rules and regulations necessary to permit the tendered tariff sheets to become effective July 1, 1986, and states that copies of the filing have been served upon all of its transportation customers.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

Appendix—Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 4, 1986.

Take notice that Sabine Pipe Line Company (Sabine) on May 30, 1986, tendered for filing its First Revised Volume No. 1, proposing changes to and superseding its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1986. The proposed changes reflect an increase in revenues from jurisdictional transportation of
approximately $1,600,000 based on the 12 month period ending January 31, 1986. Sabine also proposes to: (1) Eliminate its cost-of-service cost formula basis of rate design; (2) adopt a volumetric rate methodology for cost classification, allocation, and rate design; (3) change its depreciation rates for its offshore transmission plant; and (4) provide open-access transportation services pursuant to FERC Order Nos. 436 and 436-A by tendering for filing initial rate schedules as part of its FERC Gas Tariff, First Revised Volume No. 1. Sabine has filed, on this same date, an abbreviated allocation, and rate design; methodology for cost classification, Sabine also proposes to:

- approximately 20700

20700

The purpose of the filing is to incorporate into its FERC Gas Tariff the terms of Amendment No. 3 to the Transportation Agreement dated February 15, 1977 ("Agreement") between Tarpon and its sole customer, Trunkline Gas Company ("Trunkline"). Tarpon states further that Amendment No. 3 extends the availability of the Agreement's rate retirement provision (Article X, Section 10.5) by allowing either Tarpon or Trunkline to request a change in the unit rate utilized to determine Tarpon's monthly charge for transportation service by giving 90 days' written notice to the other prior to the end of the 10th year of the Agreement's primary term (i.e., by giving 90 days notice prior to July 1, 1988). A copy of Amendment No. 3 is included in Tarpon's filing.

Tarpon requests waiver of the notice requirement of the Commission's regulations in order to allow First Revised Sheet No. 19 to become effective on May 28, 1986, the date of filing. Tarpon submits that good cause exists to grant such request because Tarpon and its only customer (Trunkline) concur in the contract amendment which underlies the proposed tariff change.

Tarpon states that copies of its filing have been served upon Trunkline.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary. 
FR Doc. 86-12811 Filed 6-5-86; 8:45 am] 
BILLING CODE 6717-01-M

[Docket No. RP86-81-000] 
Tarpon Transmission Co.; Proposed Change in FERC Gas Tariff 
June 3, 1986.

Take notice that on May 28, 1986, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-511-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of natural gas for Cennergy Exploration Company (Cennergy), all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 5,000 dt equivalent of natural gas per day, which Cennergy is said to have available for transportation from reserves in the South East Saturday Island Field, Plaquemines Parish, Louisiana, pursuant to a transportation agreement dated
May 19, 1986. Tennessee would receive the gas at the existing interconnection between the facilities of Cenergy and Tennessee at Tennessee's Meter No. 1-1764 in South East Saturday Island Field, Barataria Bay, Plaquemines Parish, Louisiana.

Tennessee would deliver the gas at (1) the existing interconnection of Creole Gas Company and Tennessee at Tennessee's Meter No. 2-0361, at the tailgate of the Yscloskey plant, in St. Bernard Parish, Louisiana (Yscloskey); (2) the existing interconnection between the facilities of Tennessee and Riverway Gas Pipeline Company at Tennessee's Meter No. 2-9003 in LaFourche Parish, Louisiana (Golden Meadows); and/or (3) the existing interconnection between the facilities of Tennessee and Columbia Gulf Transmission Company at Tennessee's Meter No. 1-1054 in Acadia Parish, Louisiana (Egan).

Tennessee states that it is currently transporting on behalf of Monterey Pipeline Company (Monterey), an intrastate pipeline, approximately 4,000 dt per day of casinghead and gas-well gas which Monterey pruchases from Cenergy at Cenergy's offshore statewater platform located in the South East Saturday Island Field, Plaquemines Parish, Louisiana, pursuant to Natural Gas Policy Act of 1978 section 311(a) authority.

Tennessee proposes to charge Cenergy for this transportation service the applicable quantity charge set forth below as well as the effective GRI surcharge is currently 1.32 cents per dt, if applicable:

**Point of Delivery and Rate per dt**

Yscloskey—5.00 cents
Golden Meadows—4.89 cents
Egan—11.22 cents

Additionally, it is stated that Cenergy would either (1) provide to Tennessee, at no cost to Tennessee, a daily quantity of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to the applicable percentages as listed below:

**Point of Delivery and Fuel Percentage**

Yscloskey—0.94 percent
Golden Meadows—0.54 percent
Egan—0.79 percent

or (2) Tennessee may, at its sole option, elect to provide the applicable fuel quantities to Cenergy at a charge to Cenergy equal to Tennessee's actual weighted average cost of gas for the month in which service was rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 1986 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission determines that a grant of the certificate is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb, Secretary.

**[Docket No. TA86-3-9-000,001]**

**Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions**

June 3, 1986.

'Take notice that on May 30, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1986:

**First Revised Volume No. 1**

Original Sheet Nos. 30A through 30H
First Revised Sheet Nos. 20, 21, and 23 through 30

**Sixth Revised Volume No. 2**

Fourth Revised Sheet No. 2AA
Third Revised Sheet No. 2DD

Tennessee states that the revised tariff sheets reflect a decrease of 15.65 cents per dth in Tennessee's Gas Rate, consisting of a negative 29.41 cents per dth Current Cost of Gas Rate Adjustment and a 13.76 cents per dth Gas Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account. Tennessee also indicates that the tariff sheets set forth demand surcharges for recovering retroactive Order No. 94 payments in accord with Article VI of the Settlement Agreement (February 5, 1986) in Docket No. CP84-441, et al.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.
effective not later than July 1, 1986, in order to continue providing such services after that date. Texas Gas requests waivers of all Commission's Rules and Regulations, as necessary, to permit the tendered tariff sheets to become effective on July 1, 1986.

Copies of the filed were served upon all of Texas Gas' jurisdictional customers and its affected state commissions. Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before June 11, 1986.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestors a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[F.R. Doc. 86-12791 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[DOCKET NO. RP86-93-000]

Trailblazer Pipeline Co.; Change in FERC Gas Tariff

June 3, 1986.

Take notice that on May 30, 1986, Trailblazer Pipeline Company (Trailblazer) submitted for filing Third Revised Sheet No. 4 and Original Sheet Nos. 10 and 11 as part of its FERC Gas Tariff. Original Volume No. 1, to be effective July 1, 1986. Trailblazer states that the purpose of the filing was to (i) establish transportation rates pursuant to § 284.7(b)(2) of the Commission's Regulations, and (ii) submit initial Rate Schedule T-1 (Transitional Transportation) governing transitional interruptible transportation service provided pursuant to Part 284 of the Commission's Regulations.

Implementation of Rate Schedule T-1 will allow Trailblazer to continue its existing grandfathered transportation agreements pursuant to 18 CFR 284.105. The maximum rate Trailblazer will charge for interruptible transportation will be based on a 100% load factor of its Rate Schedule T transportation rates. The minimum rate Trailblazer will charge for interruptible transportation will be one cent per Mcf transported. Trailblazer proposes to continue to dispose of interruptible transportation revenues as provided for in Docket No. CP82-498-000.

A copy of this filing was mailed to Trailblazer's jurisdictional customers. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestors a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[F.R. Doc. 86-12790 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-4-11-000, 001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 3, 1986.

Take notice that on May 30, 1986, United Gas Pipe Line Company (United) tendered for filing as part of its Federal Energy Regulatory Commission (FERC or Commission) Gas Tariff, First Revised Volume No. 1, the following tariff sheets: Seventy-Fourth Revised Sheet No. 4; Thirteenth Revised Sheet No. 4-A; Thirteenth Revised Sheet No. 4-B; and Nineteenth Revised Sheet No. 4-C. Tariff Sheets 4, 4-A and 4-B and supporting information are being filed pursuant to Sections 19, 21, 23 and 24 of United's Tariff Sheet No. 4-C is submitted pursuant to the letter order issued by the Office fo Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81-387-000. The proposed effective date of each preceding Tariff Sheet is July 1, 1986.

United reports that it mailed appropriate copies of the proposed Tariff Sheets and supporting data to its jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before June 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestors a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the
Secretary.

revisions to the purchased gas
FERC Gas Tariff, First Revised Volume
74-F3 and 74-F4 for inclusion in United's
United Gas Pipe Line Company (United)
June 4, 1986.

[Revision
20703

Secretary.

Commission and are available for public
inspection.
Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12792 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-83-000]

United Gas Pipe Line Co.; Tariff
Revision
June 4, 1986.

Take notice that on May 30, 1986,
United Gas Pipe Line Company (United)
tendered for filing Original Sheet Nos.
74-F3 and 74-F4 for inclusion in United's
FERC Gas Tariff, First Revised Volume
No. 1. These tariffs reflect
revisions to the purchased gas
adjustment (PGA) clause in Section 19 of
the General Terms and Conditions of
United's tariff.

United is proposing a new § 19.13 to
its PGA to permit United, in addition to
the required semi-annual PGA filings, to
adjust its gas rates on two days notice to
reflect known and measurable changes in its purchased gas costs.

United reports that it mailed
appropriate copies of the proposed
Tariff Sheets and supporting data to its
jurisdictional customers and to
interested state regulatory agencies.

Any person desiring to be heard or to
protest said filing should file a motion to
intervene or protest with the Federal
Energy Regulatory Commission, 825
North Capitol Street, NE., Washington,
DC 20426 in accordance with §§ 385.211
and 385.212 of the Commission's Rules of
Practice and Procedure. All such
motions or protests should be filed on or
before June 11, 1986. Protest will be
determined by the Commission in
determining the appropriate action to be
taken but will not serve to make
protestants parties to the proceeding.
Any person wishing to become a party
must file a motion to intervene. Copies of
this filing are on file with the
Commission and are available for public
inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12795 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-82-000]

Williston Basin Interstate Pipeline Co.;
Tariff Change
June 3, 1986.

Take notice that Williston Basin
Interstate Pipeline Company (Williston
Basin) on May 30, 1986, tendered for
filing, proposed changes to its FERC Gas
Tariff. Such changes have been filed to
comply with §§ 284.7(a) and 284.7(b)(2)
of the Commission's Regulations, all as
more fully explained in the filing which
is available for public inspection.

Williston Basin currently provides
transportation services under the
transitional provisions of Order No. 436
(grandfathered services). It is stated
that, pursuant to § 284.7(b)(2) of the
Commission's Regulations, Williston
Basin must file rates in accordance with
§ 284.7(a) to be effective not later than
July 1, 1986, in order to continue
providing such services after that date.

In this filing, Williston Basin is
proposing to revise its Rate Schedule T-
4 to allow it to charge rates, for its
grandfathered services, in accordance
with the compliance cost of service filed
in Williston Basin's general rate case in
Docket No. RP86-10-000, and on which
its currently effective rates are based.
These rates are proposed to become
effective on July 1, 1986, and to remain
in effect for the remaining term of all
existing grandfathered services.

Copies of the filing were served upon
all of Williston Basin's jurisdictional
customers and affected state regulatory
commissions.

Any person desiring to be heard or to
protest said filing should file a motion to
intervene or protest with the Federal
Energy Regulatory Commission, 825
North Capitol Street, NE., Washington,
DC 20426 in accordance with §§ 385.211
and 385.212 of this chapter. All such
motions or protests should be filed on or
before June 11, 1986. Protest will be
determined by the Commission in
determining the appropriate action to be
taken but will not serve to make
protestants parties to the proceeding.
Any person wishing to become a party
must file a motion to intervene. Copies of
this filing are on file with the
Commission and are available for public
inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-12796 Filed 6-5-86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION
AGENCY

[OPTS-140075; FRL-5026-4]

Access to Confidential Business
Information by Versar, Inc.

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the
Versar, Inc. of Springfield, Virginia for
access to information which has been
submitted to EPA under sections 4, 5, 6
and 8 of the Toxic Substances Control
Act (TSCA). Some of the information
may be claimed or determined to be
confidential business information (CBI).

DATE: Access to the confidential data
submitted to EPA will occur no sooner
than June 20, 1986.

FOR FURTHER INFORMATION CONTACT:
Edward A. Klein, Director, TSCA
Assistance Office (TS-799), Office of
Toxic Substances, Environmental
Protection Agency, Rm. E-543, 401 M
St., SW., Washington, DC 20460, Toll-
free: (800-424-9065).

In Washington, DC: (554-1404).
Outside the USA: (Operator-202-554-
1404).
SUPPLEMENTARY INFORMATION: Under Contract No. 68–03–3339, Versar, 6850 Versar Center, Springfield, Virginia will conduct studies and report information to EPA that will answer questions concerning the appropriate level of treatment necessary to protect humans and aquatic life from exposure and risks caused by discharges, runoffs, and other sources of chemicals to surface waters. Versar’s work under the contract will support exposure and risk assessment work performed under both TSCA and the Clean Water Act (CWA). Some tasks under this contract may require Versar to assist EPA by taking and shipping to designated agents, soil, sediment, and/or fish samples, and helping to write sampling procedures.

Pursuant to 40 CFR 2.308(f)(j), EPA has determined that under EPA Contract No. 68–03–3339, Versar has been authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to successfully perform specific examinations of water quality on selected river reaches and evaluations of toxic pollutants to surface waters. The studies required by Versar will include the collection and analyses of EPA documents as well as other data available in literature concerning chemicals and their sources to waters. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Versar access to these CBI materials at its facilities in Springfield, Virginia and at EPA Headquarters on a need-to-know basis. Upon completing review of the CBI materials, Versar will return all transferred materials to EPA.

Versar will require access to TSCA CBI under this contract is scheduled to expire on May 18, 1987.

Versar has been authorized for access to TSCA CBI at its facilities under the EPA “Contractor Requirements for the Control and Security of TSCA Confidential Business Information” Security manual. EPA has approved Versar’s security plan and has performed the required inspection of their facilities and has found them to be in compliance with the requirements of the manual.

Versar personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 27, 1986.

Edwin F. Tinsworth,
Acting Director, Office of Toxic Substances.

[FR Doc. 86–12722 Filed 6–5–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3026–1]

Environmental Impact Statements; Availability; Weekly Receipts

Responsible Agency
Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.


EIS No. 860196, DSuppl, AFS, CA.


EIS No. 860201, DSsuppl, COE, AL, Black Warrior and Tombigbee Rivers Maintenance and Operation, New Information, Due: July 21, 1986, Contact: Diane Findley (205) 694–3857.

EIS No. 860202, Report, COE, LA, Larose to Golden Meadows, Hurricane Protection Project, Reactivation of an Access Flotation Channel, Lafourche Parish, Contact: E. Scott Clark (504) 802–2521.

EIS No. 860203, Report, COE, OH, North Fork Local Protection Project, Modifications, Selected 90 foot Channel Plan, Licking River, Licking County, Contact: Willard Hunter (304) 529–5634.


EIS No. 860205, Final, FHW, IN, Lynch Road Extension, Oak Hill Road to Telephone Road/IN–62 Intersection, Vanderburgh and Warrick Counties, Due: July 7, 1986, Contact: Lawrence Tucker (317) 269–7492.

EIS No. 860206, Final, BOP, OR, Sheridan Federal Correctional Institution Complex, Construction and Operation, Yamhill County, Due: July 7, 1986, Contact: Loy Hayes (202) 272–8535.

EIS No. 860207, Final, AFS, MT, Jardine Joint Venture Gold Mine Project, Permit Approval, Gallatin National Forest, Park County, Due: July 7, 1986, Contact: Sherman Sollid (406) 587–6709.

Dated: June 3, 1986.

Kenneth P. Mittelholz,
Acting Director, Office of Federal Activities.

[FR Doc. 86–12813 Filed 6–5–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3026–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 19, 1986 through May 23, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/7/8. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4004).

Draft EISs

ERP No. D–AFS–J82003–MT, Rating ECI, Beaverhead Nat’l Forest, Noxious Weed and Poisonous Plant Control Program, MT. Summary: EPA endorses control of noxious weeds and supports the integrated pest management alternative described in this draft EIS. However, there are potential impacts associated with the use of chemical and biological pest controls and caution should be exercised in order to avoid damaging non-target plants or animals. EPA stresses that technical comments and recommendations provided by the Department of Agriculture, Environmental Management Division, should be carefully followed and pesticide applications must be made only by State-certified applicators or operators.

ERP No. D–AFS–J82005–MT, Rating ECI, Lewis and Clark Nat’l Forest, 1986–1990 Noxious Weed Control Program, MT. Summary: EPA supports the decision to use an integrated pest management alternative rather than selecting a strict chemical approach. EPA stresses that technical comments and recommendations provided by the Montana Department of Agriculture, Environmental Management Division, should be carefully followed and pesticide applications must be made only by State-certified applicators or operators.

ERP No. D–COE–K85058–CA, Rating E02, Lighthouse Marine Residential and Commercial Development, Construction and Operation, Permit, CA. Summary: EPA requested a more thorough analysis...
the involved riparian habitat to determine the extent of federally
classified wetlands and more
information regarding how mitigation for
the loss of this habitat will be
accomplished. In addition, EPA
expressed objections because the
removal of riparian vegetation, dredging
and other construction/maintenance
activities could have significant adverse
impacts on water quality and beneficial
uses of the Sacramento River. EPA also
recommended that other alternatives,
including relocating or downsizing both
the marina and residential units, could
reduce adverse impacts and should be
more fully considered. EPA requested
additional discussion of groundwater
impacts resulting from project
construction, maintenance and future
activities. EPA further requested
additional analysis of impacts to air
quality, particularly a more complete
description of project impacts on ozone
concentrations in the area.

ERF No. D1-FHW-B40041-CT, Rating
EO3, CT—11 Improvements, CT—82 in
Salem to I-95 in Waterford, 404 Permit,
CT. Summary: EPA's major
environmental objections relate to the
removal of riparian vegetation, dredging
and other construction/maintenance
activities. EPA requested additional
discussion of groundwater impacts
resulting from project
construction, maintenance and future
activities. EPA further requested
additional analysis of impacts to air
quality, particularly a more complete
description of project impacts on ozone
concentrations in the area.

ERF No. D-IBR-K38003-CA, Rating
EC2, Weasel Water District, Drainage
Disposal Project, Central Valley Project,
CA. Summary: EPA expressed
concerns primarily because of potential impacts
associated with runoff and seepage of
contaminated drainage water; the failure
of septic tank systems; and
contamination of crops with selenium,
due to recycling.

ERF No. D-OSM-L01005-WA, Rating
EC1, Black Diamond Petition Area,
Designation of Lands Unsuitable for
Surface Coal Mining Operations, WA.
Summary: EPA suggested three subareas
for unsuitable designation and identified
Alternative A (Grant the Petition) as the
environmentally preferred alternative.
Denial of the unsuitability petition could result in
moderate air quality impacts,
long-term adverse impacts on a wetland,
and noise, vibration, psychological,
and health-related impacts on area
residents. EPA requested that OSMRE
clarify how conclusions from the NEPA
analysis and petition evaluation will be
integrated in the decision-making for
this project.

ERF No. D-UAF-K85080-CA, Rating
LO, White Point Air Force Space
Division Housing Project, Construction
and Operation, Los Angeles Air Force
Station, CA. Summary: EPA requested
that the final EIS discuss air quality
mitigation measures in more detail and
whether the project is consistent with
regional air quality plans.

Final EISs

ERF No. F-AFS-J65009-MT, Lolo Nat'l
Forest, Land and Resource Mgmt. Plan,
MT. Summary: EPA is pleased in the
final EIS that projects which cannot
meet State water quality standards will
either be redesigned so that they meet
the standards or they will be dropped.
EPA believes that application of best
management practices (BMPs) does not
necessarily guarantee protection of
water quality and stream uses. Strong
water quality, watershed, and fisheries
monitoring programs must be developed
and maintained to assure protection of
water quality and stream uses.

Regulation

ERF No. R-ASC-A99068-00,
Conservation Reserve Program (CRP)—
Interim Rule, 7 CFR Part 704 (51 FR
8790). Summary: EPA supports the
conservation reserve program, but is
concerned that its implementing
regulations do not adequately
incorporate water quality and beneficial
use objectives. Further, the program
should involve appropriate water
quality and fish and wildlife agencies
and should establish an effective
monitoring and evaluation requirement.

Dated: June 3, 1986.

Kenneth P. Mittelholtz,
Acting Director, Office of Federal Activities.
[FR Doc. 86-12814 Filed 6-5-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59767; FRL-3026-61

Certain Chemicals Premanufacture
Notices

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notices.

SUMMARY: Section 5(a)(1) of the Toxic
Substances Control Act (TSCA) requires
any person who intends to manufacture
or import a new chemical substance to
submit a premanufacture notice (PMN)
to EPA at least 90 days before
manufacture or import commences.
Statutory requirements for section
5(a)(1) premanufacture notices are
discussed in EPA statements of the final
rule published in the Federal Register
May 13, 1983 (48 FR 21722). In the
Federal Register of November 11, 1984,
(49 FR 40660) (40 CFR 722.250), EPA
published a rule which granted a limited
exemption from certain PMN
requirements for certain types of
polymers. PMNs for such polymers are
reviewed by EPA within 21 days of
receipt. This notice announces receipt
of three such PMNs and provides a
summary of each.

DATES: Close of Review Period:
Y 86—150 and 86—151—June 8, 1986.

FOR FURTHER INFORMATION CONTACT:
Wendy Cleland-Hamnett.
Premanufacture Notice Management
Branch, Chemical Control Division (TS—
794), Office of Toxic substances,
Environmental Protection Agency, Rm.
E-611, 401 M Street, SW., Washington,
DC 20460, (202) 382—3725.

SUPPLEMENTARY INFORMATION: The
following notice contains information
extracted from the non-confidential
version of the submission by the
manufacturer on the exemptions
received by EPA. The complete non-
confidential document is available in the
Public Reading Room E—107 at the above
address between 8:00 a.m. and 4:00 p.m.,
Monday through Friday, excluding legal
holidays.

Y 86—149

Manufacturer. Confidential.
Chemical. (G) Silicone polyester.
Use/Production. (G) Resin in coatings.
Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No
data submitted.

Y 86—150

Manufacturer. Confidential.
Chemical. (G) 2-propenoic acid
copolymer, potassium salt.
Use/Production. (G) Dispersant. Prod.
range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No
data submitted.

Y 86—151

Manufacturer. Confidential.
Chemical. (G) 2-propenoic acid
copolymer, alkali metal salt.
Use/Production. (G) Dispersant. Prod.
range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No
data submitted.

Dated: May 27, 1986.
Denise Devoe,
Acting Director, Information Management
Division.
[FR Doc. 86-12723 Filed 6-5-86; 8:45 am]
BILLING CODE 6560-55-M
Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:

Written comments by:

ADDRESS: Written comments, identified by the document control number “[OPTS-51625; FRL-3026-5]” and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street. S.W., Washington, DC 20460, (202) 382-3532.


SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1043
Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Use/Production. [S] Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,500 mg/kg; Irritation: Eye—Very mild; Ames test: Non-mutagenic.

P 86-1044
Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Use/Production. [S] Industrial intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 900 mg/kg; Irritation: Eye—Very mild; Ames test: Non-mutagenic.

P 86-1045
Manufacturer. Confidential.
Use/Production. [S] Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.

P 86-1046
Manufacturer. Confidential.
Chemical. [S] Diallyl carbamate.
Use/Production. [S] Industrial lubricant. Prod. range: Confidential.
Toxicity Data. No data submitted.

P 86-1047
Importer. Ciba-Geigy Corporation.
Chemical. [S] Polyaminoamide.
Use/Import. [S] Industrial maintenance and marine coatings architectural. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, inhalation and ocular, a total of 2 workers, up to 4-6 hrs/day.

P 86-1048
Manufacturer. Hach Company.
Chemical. [S] N,N-dimethylethanedithioamide.
Use/Production. [S] Industrial and commercial indicator for determination of platinum and palladium. Prod. range: 5 kg.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 12 workers, up to 2 hrs/day, up to 4 da/yr.
Environmental Release/Disposal. Less than 1 kg released to water. Disposal by publicly owned treatment works (POTW).

P 86-1049
Importer. Lonza Inc.
Use/Import. [S] Material will be experimentally tested as an adhesive to many industries currently being used in medical casting material. Import range: 9-12 metric tons.
Toxicity Data. No data submitted.
Exposure. Import: dermal and inhalation, a total of 3 workers, up to 2 hrs/day, up to 5 da/yr.
Environmental Release/Disposal. Trace to 1 kg/batch released to air.
Disposal by own water treatment works.

P 86-1050
Importer. Confidential.
Chemical. [S] Di(phenoxylethyl)formal.
Use/Import. [S] Industrial and commercial plasticizer for paints. Import range: 1,000-1,200 kg/yr.
Toxicity Data. Acute oral: 8.93 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Distribution fatty tissue test: 1,000 mg/kg.
Exposure. Processing: a total of 10 workers.

P 86-1051
Manufacturer. Confidential.
Chemical. [G] Polyether urethane polymer.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/day, up to 12 da/yr.
P 86-1052

**Importers:** Confidential.

Chemical. (G) Siloxane, dimethyl dihydroxyalkyl terminated reaction product with oxepane.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 10.0 g/kg; Irritation: Skin—Non-irritant. Eye—Slight.


P 86-1053

**Importers:** Confidential.

Chemical. (G) Siloxane, dimethyl dihydroxyalkyl terminated reaction product with oxepane.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 10.0 g/kg; Irritation: Skin—Non-irritant. Eye—Non-irritant.


P 86-1054

**Importers:** Confidential.

Chemical. (G) Substituted polycrylamide.

Use/Import. (G) Non-dispersive use. Import range: 3,500-25,000 kg/yr. Toxicity Data. Acute Oral: >5,000 mg/kg; Irritation: Skin—Non-irritant. Eye—Non-irritant.

Exposure. Processing: dermal and ocular, a total of 2 workers/shift, 1 hr/shift. Environmental Release/Disposal. Disposal by POTW.

P 86-1055

**Manufacturer:** Confidential.

Chemical. (G) Polyester urethane methacrylate blocked.

Use/Production. (G) Industrial component of radiation cure elastomeric printing plate resin. Prod. range: 50,000-120,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, to 6 hrs/day, up to 50 da/yr.

Environmental Release/Disposal. 1 to 8 kg/batch to control technology. Disposal by incineration.

P 86-1056

**Manufacturer:** Confidential.

Chemical. (G) Polyester urethane methacrylate blocked.

Use/Production. (G) Industrial component of radiation cure elastomeric printing plate resin. Prod. range: 50,000-120,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, to 6 hrs/day, up to 50 da/yr.

Environmental Release/Disposal. 1 to 8 kg/batch to control technology. Disposal by incineration.

P 86-1057

**Manufacturer:** Confidential.

Chemical. (G) Poly-[alkoxycarbonyl] alkyl polysulfide.

Use/Production. (G) Commercial and consumer additive for fertilizers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.


P 86-1058

**Manufacturer:** Confidential.

Chemical. (G) Poly-(alkyl) polysulfide.

Use/Production. (G) Commercial and consumer additive for fertilizers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.


P 86-1059

**Manufacturer:** Confidential.

Chemical. (G) Acrylate capped brominated polyether ester of benzphenonetetrahydroxycyclic dihydride.

Use/Production. (S) Electronic photore sist and solder mask. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.


P 86-1060

**Manufacturer:** Confidential.

Chemical. (G) Heterocyclic aminal.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.


P 86-1061

**Manufacturer:** Confidential.

Chemical. (G) Alkoxylated terephthalate glycol ester polymer.

Use/Production. (S) Industrial component for urethane foam insulating product. Prod. range: 16,000,000-28,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, up to 17 hrs/day, up to 2 da/yr, 250 man hrs/yr. Environmental Release/Disposal. 5 to 10 kg/batch released to water with 10 to 30 kg/batch to control technology. Disposal by POTW.

P 86-1062

**Manufacturer:** The Good Year Tire and Rubber Company.

Chemical. (G) Butadiene/bound antioxidant copolymer.

Use/Production. (S) Industrial polymeric antioxidant. Prod. range: 120,000-2,721,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 29 workers, up to 24 hrs/day, up to 272 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW.

P 86-1063

**Manufacturer:** Confidential.

Chemical. (G) Amps co-polymer.

Use/Production. (G) Dispersive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.


P 86-1064

**Importers:** Rohm and Haas Company.

Chemical. (G) Alkyl methacrylate copolymer.

Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 300 da/yr.


P 86-1065

**Importers:** Rohm and Haas Company.

Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.

Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/da, up to 300 da/yr.


P 86-1066

**Importers:** Rohm and Haas Company.

Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.

Use/Import. Additive for petroleum oil products. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal and ocular, a total of 3 workers, up to 8 hrs/day, up to 300 da/year.


P 86–1067

Manufacturer. Confidential.

Chemical. (G) Saturated polyester.


P 86–1068

Manufacturer. Confidential.

Chemical. (G) Cyanocrylate ester polymer.


P 86–1069

Manufacturer. Confidential.

Chemical. (G) Substituted ketone.


P 88–1070

Importer. Marubeni America Corporation.

Chemical. (S) 2-Naphthalenesulfonic acid, 7,7'-(2,4,6-trimethyl-5-sulfo-1,3-phenylene)bis[1H-imino(6-chloro-1,3,5-triazine 4,2-diyli)]imidazo)(2,4-hydroxy-3-(4-methoxy-2-sulphophenyl)azo), pentasodium salt.

Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Negative; TLm 48 hrs (Orange medaka): 1,000 ppm.


P 86–1071

Importer. Marubeni America Corporation.


Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Negative; TLm 48 hrs (Orange medaka): 1,000 ppm.


P 86–1072

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl phosphine.

Use/Production. (G) Ligand for homogenous catalyst. Prod. range: Confidential. Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin-Non-irritant; Eye-Slight.


Denise Devin, Acting Director Information Management Division.

[FR Doc. 86–12724 Filed 5–5–86; 8:45 am]

BILLING CODE 6500–50–M

FEDERAL COMMUNICATIONS COMMISSION


Contemporary Communications Corp. and Microband Corporation of America; for Construction Permits in the Multpoint Distribution Service for a New Station on Channel 2 at Buffalo, NY

Memorandum Opinion and Order

Adopted May 9, 1986.

Released May 29, 1986.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Buffalo, New York. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the service they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

It is further ordered, that Contemporary Communications Corporation, Microband Corporation of America and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,
Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 86–12748 Filed 5–5–86; 8:45 am]

BILLING CODE 6712–01–M


Microband Corporation of America and Broadcast Data Corp.; For Construction Permits in the Multpoint Distribution Service for a New Station on Channel 2 at Birmingham, AL

Memorandum Opinion and Order

Adopted May 9, 1986.


By the Common Carrier Bureau.

I Consideration of these factors shall be in light of the Commission's discussion in Frank K. Spain, 77 FCC 2d 20 (1980).
1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Birmingham, Alabama. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, at a time and place to be specified in a subsequent Order, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission’s Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Microband Corporation of America, Broadcast Data Corporation and the Chief of the Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission’s Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Broadcast Data Corporation, which is a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to reexamination and reconsideration of that company’s qualifications to hold an MDS license following a decision in the hearing designated in A.S.D. Answering Service, Inc., et al., FCC 82–391, released August 25, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,
Chief, Domestic Facilities Division, Common Carrier Bureau.

[F D o c. 88–12749 Filed 6–5–86; 8:45 a.m]
BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD
Seapointe Savings and Loan Association, Carlsbad, CA;
Appointment of Receiver


Jeff Sconyers,
Secretary.

[F D o c. 88–12733 Filed 6–5–86; 8:45 a.m]
BILLING CODE 6720–01–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, DC 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, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.803 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.: 224–004177–002.
Title: Port of Seattle Terminal Agreement.

Parties:
Port of Seattle (port)
Seaport Services of America (SSA)

Synopsis: The proposed agreement would add a copy of Agreement No. 224–010904 between the same parties as an appendix to the basic agreement. The appendix sets forth the procedures followed by the parties to resolve disputes and apportion responsibility for claims, judgments, payments and expenses arising from injury to SSA employees which result in claim against SSA or the Port. The appendix was previously allowed to take effect on April 18, 1986. It would supersede any provision to the contrary in any existing leases, contracts or agreements between the parties. It would also apply only to personal injury claims and any future claims which relate to an event or occurrence which arises on or during the period from January 1, 1986 through December 31, 1986.

DATED: June 3, 1986.

By Order of the Federal Maritime Commission.

John Robert Evers,
Secretary.

[F D o c. 88–12751 Filed 6–5–86; 8:45 a.m]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens and Southern Georgia Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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 section 225.21(a)(1) 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for...
inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commending would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received not later than June 30, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citizens and Southern Georgia Corporation, Atlanta, Georgia; to engage de novo through its subsidiaries, Citizens and Southern Trust Company (Georgia), N.A.; Atlanta, Georgia, Citizens and Southern Trust Company (Florida), N.A., Fort Lauderdale, Florida, and Citizens and Southern Trust Company (South Carolina), N.A., Columbia, South Carolina, in all functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) pursuant to § 225.25(b)(3) of the Board’s Regulation Y. These activities will be conducted throughout the states where each trust company is located.


James McAfee,
Associate Secretary of the Board.

Yesterday's Notice

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:


A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55402:

1. First Bancshares of Valley City, Inc., Valley City, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Valley City, Valley City, North Dakota.


James McAfee,
Associate Secretary of the Board.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:


D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63101:

§ 225.14 of the Board’s Regulation Y (12 CFR 225.14) to acquire 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 June 30, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:


A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55402:

1. First Bancshares of Valley City, Inc., Valley City, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Valley City, Valley City, North Dakota.


James McAfee,
Associate Secretary of the Board.

Yesterday’s Notice

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:


D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63101:

§ 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 June 30, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63101:

§ 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)).
The Summit Bancorp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can “reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.” Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing. Identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

 Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1986.

A. Federal Reserve Bank of New York
   (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:
   1. The Summit Bancorporation, Summit, New Jersey; to engage de novo through its subsidiary, The Summit Mortgage Company, Inc., Summit, New Jersey, in making, servicing, and selling loans such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in New Jersey.

   James McAfee,
   Associate Secretary of the Board.

   [FR Doc. 86-12771 Filed 6-5-86; 8:45 am]

   BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 30, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Food and Drug Administration

Subject: Adverse Drug Experience Reporting (21 CFR 314.80)—Existing Collection.

Respondents: State or local governments; Businesses or for-profit; Non-profit institutions; Small businesses or organizations.

Subject: Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—Extension—(0910-0045).

Respondents: Businesses or other for-profit; Small businesses or organizations.

Office of Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Screening interview for Household Survey)—NEW.

Respondents: Individuals or households.

National Institutes of Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Office of Inspector General

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit; Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Office of Assistant Secretary for Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.

Office of Inspector General

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Office of the Secretary

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit; Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Office of Inspector General

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit; Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Office of Assistant Secretary for Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Office of Inspector General

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit; Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Office of Assistant Secretary for Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of packages.)

Office of Inspector General

Subject: Multiple Prospective Payment Related Studies—NEW.

Respondents: Businesses or other for-profit; Non-profit institutions.

OMB Desk Officer: Judy A. McIntosh.

Office of Assistant Secretary for Health

Subject: Research and Research Training Grant Application and Related Forms—Extension—(0925-0001).

Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations.

OMB Desk Officer: Bruce Artim.
Agreements for the Study of the Transmission of Human T-Lymphotropic Viruses Type III (HTLV-III) Among Prostitutes. Because some of the participants in the study will be incarcerated, the regulations for research involving prisoners as subjects (45 CFR 46.306(C)) apply. The regulatory requirements of 45 CFR Part 46 have been met; therefore, the CDC intends to release funds to commence the research.

FOR FURTHER INFORMATION CONTACT:
James W. Curran, M.D., Director, Acquired Immunodeficiency Syndrome Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: A research study on the transmission of HTLV-III antibody, among female prostitutes, and consider their behavioral characteristics among female prostitutes. Because some of the participants in the study will be incarcerated, the regulations for research involving prisoners as subjects have now been amended. (45 CFR 46.306(C)) apply. The regulatory requirements of 45 CFR Part 46 have been met; therefore, the CDC intends to release funds to commence the research.

The objectives of the study are to determine the prevalence of HTLV-III infection, as measured by HTLV-III antibody, among female prostitutes, and to determine the prevalence of HTLV-III infection, measured by immunofluorescence test (IF), among male prisoners. For purposes of this study, a woman who has provided sexual services for money or other consideration to males in the past 12 months is considered to be a prostitute. The study is being conducted under authority delegated to the Commissioner of Public Health Services Act (42 U.S.C. 241(a)), as amended.

The objectives of the study are (1) to determine the prevalence of HTLV-III infection, as measured by HTLV-III antibody, among female prostitutes, and (2) to compare the seropositivity with behavioral characteristics among female prostitutes. For purposes of this study, a female prostitute is considered to be a woman who has provided sexual services for money or other consideration to males in the past 12 months.

Cooperative Agreements announced in the Federal Register (50 FR 30295) on July 25, 1985, for the support of this study have been awarded to five areas. In two of those areas, Miami and Los Angeles, the cooperative agreements propose to offer participation to women who have been arrested for prostitution. For the purposes of this announcement these women are designated as prisoners. The regulatory requirements of 45 CFR Part 46 pertaining to research involving prisoners as subjects have now been met and CDC intends to release funds to commence these research activities.

Dated: June 2, 1986.
JAMES O. MASON, Director, Centers for Disease Control.
[FR Doc. 86-12707 Filed 6-5-86; 8:45 am]
BILLING CODE 4160-10-M

Food and Drug Administration
[Docket No. 86M-0207]
CILCO®, Inc.; Premarket Approval of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) (Ophthalmic Surgical Aid)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO®, Inc., Huntington, WV, for premarket approval, under the Medical Device Amendments of 1978, of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) (ophthalmic surgical aid). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: July 7, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5000 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

SUPPLEMENTARY INFORMATION: On March 13, 1985, CILCO®, Inc., Huntington, WV 25701, submitted to CDRH an application for premarket approval of VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate). VISCOAT® (Sodium Chondroitin Sulfate-Sodium Hyaluronate) is indicated for use as an ophthalmic surgical aid in anterior segment procedures including cataract extraction and intraocular lens implantation.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 8 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegate to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 27, 1986.
JAMES S. BENSON, Deputy Director Center for Devices and Radiological Health.
National Institutes of Health

National Cancer Institute, Board of Scientific Counselors Division of Cancer Etiology; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 12-13, 1986, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 1:00 p.m. to recess on June 12, and from 9:00 a.m. to adjournment on June 13, for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 1:00 p.m. on June 12, 1986, in accordance with the provisions set forth in section 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 86-12738 Filed 6-5-86; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14874-A]

Alaska Native Claims Selection; NANA Regional Corp., Inc.

In accordance with Departmental regulation 43 CFR 2601.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, 1613, will be issued to NANA Regional Corporation, Inc., U.S. Survey No. 4269, lot 7, block 4, for approximately 1.57 acres. The lands involved are in the vicinity of Kiana, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks in the TUNDRA 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 7, 1986 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 (980), 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.

Joe J. LaBay,
Section Chief, Branch of ANCSA Adjudication.
[FR Doc. 86-12799 Filed 6-5-86; 8:45 am]
BILLING CODE 4310-JA-M

Draft Resource Management Plan/ Environmental Impact Statement and Proposed Areas of Critical Environmental Concern for the San Juan Resource Area, Moab District, Utah

May 27, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/environmental impact statement.

SUMMARY: The draft resource management plan/environmental impact statement (RMP/EIS) for the San Juan Resource Area, Moab District has been prepared for review and comment by the public, federal, state and local agencies, and Indian tribes. The RMP/EIS presents five land use alternatives for management of 1.8 million acres of public land in San Juan County, Utah. Several areas of critical environmental concern (ACECs) are proposed under different alternatives discussed in this document.

The purpose of the RMP is to guide management of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM). A second purpose is to provide a grazing EIS as ordered by the United States District Court.

A 90-day review and comment period will commence with publication of Notice of Availability in the Federal Register by the Environmental Protection Agency. A public meeting will be held July 16, 1986, from 2 to 8 p.m. at the San Juan Resource Area Office, Monticello, UT, to discuss the draft RMP/EIS. To be considered in the final RMP/EIS, comments must be received in the San Juan Resource Area office postmarked no later than Friday, September 5, 1986.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1710.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM, Box 7, Monticello, UT 84755; (914) 967-2201.

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on June 18, 1986, 8:00 a.m. to adjournment, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda, Maryland, 20892, (301) 496-6045, will provide on request an agenda and roster of the members.

Summaries of the meeting may also be obtained by contacting his office.

Betty J. Beveridge,
NIH Committee Management Officer.
[FR Doc. 86-12739 Filed 6-5-86; 8:45 am]
BILLING CODE 4140-01-M
SUPPLEMENTARY INFORMATION: The San Juan RMP/EIS analyzes five alternative multiple use management plans. Each plan provides management guidance for all relevant resource management programs administered by the San Juan Resource Area. Various combinations of special designations are analyzed under the different alternatives.

Alternatives Analyzed: Five alternative plans are analyzed:
1. Alternative A (no action) presents the continuation of current management.
2. Alternative B emphasizes the production of mineral resources and livestock forage.

3. Alternative C emphasizes use of the public lands for recreation, protection of wildlife habitat, and preservation of watershed values.
4. Alternative D emphasizes the preservation of large tracts of public land to protect vegetation resources.
5. Alternative E (the preferred alternative) provides for continuation of livestock grazing at current levels; protection of certain recreational opportunities, wildlife habitats and watershed values; and making public lands available for production of mineral resources.

Proposed ACECs: Sixteen areas are proposed for special management designation under various alternatives analyzed in the RMP/EIS. Special management designations analyzed were ACEC, Research Natural Area (RNA), and Outstanding Natural Area (ONA). Nine of these areas were considered for ACEC designation in at least one alternative; some were considered for RNA or ONA designation. The other seven areas were considered for ONA designation in at least one alternative.

Special management designations are summarized in the accompanying table.

Gene Nodine, District Manager.

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Special Management Designations Considered San Juan RMP/EIS

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<th>Special designation area</th>
<th>Value protected</th>
<th>Resource use limitations</th>
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<td>ACEC</td>
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<td>C, D</td>
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<tr>
<td>Fish and Owl Canyons:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWA</td>
<td>40,300</td>
<td>C, D</td>
</tr>
<tr>
<td>Road Canyon:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWA</td>
<td>24,500</td>
<td>C, D</td>
</tr>
<tr>
<td>Lime Canyon:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWA</td>
<td>25,300</td>
<td>C, D</td>
</tr>
<tr>
<td>Mule Canyon:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWA</td>
<td>6,000</td>
<td>C, D</td>
</tr>
<tr>
<td>Arch Canyon:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWA</td>
<td>4,200</td>
<td>D</td>
</tr>
<tr>
<td>Lookout Basin:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACEC</td>
<td>56,660</td>
<td>C, D</td>
</tr>
<tr>
<td>Cajon Pond:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACEC</td>
<td>40</td>
<td>E</td>
</tr>
</tbody>
</table>

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[FR Doc. 86-12530 Filed 6-5-86; 8:45 am]  
BILLING CODE 4310-DO-M  

Idaho; Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas  

AGENCY: Bureau of Land Management, Interior.  

ACTION: Notice.  

SUMMARY: The Idaho, Bureau of Land Management (BLM), is requesting the public to review combined U.S.

Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been or will be completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Boise, Burley, Idaho Falls, Salmon, Shoshone and Coeur d'Alene.  

DATE: New information will be accepted on the report enumerated in this notice until August 22, 1986.  

ADDRESS: Send information on reports to: Deputy State Director for Minerals, BLM, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.
FOR FURTHER INFORMATION CONTACT:
Bob DeTar or Bill LaVelle, BLM, Idaho State Office, Division of Mineral Resources, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1189.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas in the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the State Director, Idaho is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral surveys reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines assigned to review the information. Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

<table>
<thead>
<tr>
<th>WSA No.</th>
<th>Name</th>
<th>Report No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>46/14/46-14A</td>
<td>Jerry Peak and Jerry Peak West.</td>
<td>MF-1466A, MF-1466B, MF-1466C, MF-1466D, MF-1466E</td>
</tr>
</tbody>
</table>

Reports available for review in BLM offices will not be available for sale or removal from the office.Copies of the listed MF reports may be purchased from: Western Distribution Branch, U.S. Geological Survey, Box 25266, Federal Center, Denver, CO 80222, (303) 236-7477.


Alan B. Tripp, Acting Deputy State Director for Mineral Resources.

[FR Doc. 86-12700 Filed 6-5-86; 8:45 am]

BILLING CODE 4310-GG-M

Land Tenure Adjustment Project; California Desert Plan, Amendment

AGENCY: Bureau of Land Management; Interior.

ACTION: Initiation of public scoping process for a Land Tenure Adjustment Project through a Notice of Intent to amend the California Desert Plan and initiation of a 30-day public comment period for the Planning Criteria through a Notice of Availability.

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (section 206) and 43 CFR 1610.2, a 30-day public comment period is initiated to review the planning criteria for amendments to the California Desert Plan and the San Bernardino County General Plan (to include the development of a County safety overlay) as a part of a Land Tenure Adjustment Project proposed jointly by the Bureau of Land Management (BLM) Barstow and Ridgecrest Resource Areas, California Desert District, and the Department of Defense (DOD) Edwards and George Air Force Bases. The Project includes 2.5 million acres of public and private land within Kern, Los Angeles, and San Bernardino Counties. The China Lake Naval Weapons Center serves as the northern boundary of the project area with Fort Irwin Road and Highway 15 as the eastern, the Angeles National Forest as the southern, and the Tehachapi Mountains as the western boundaries.

SUPPLEMENTARY INFORMATION: The Land Tenure Adjustment Project stems from BLM concerns regarding resource management effectiveness where a checkerboard landownership pattern prevails in the Barstow Resource Area. Valuable resource—from fossils to petroglyphs to tortoise habitat to recreation areas—are essentially unprotectable and unmanageable due to the ownership/authority changing every mile. This checkerboard pattern promotes "leapfrog" development, a land use incompatible with the San Bernardino County General Plan policies of creating a logical and orderly residential pattern, directing new urban development to areas where requisite urban services are available, and supporting an essentially open, rural character of the desert.

To further complicate management, the Department of Defense has three airspace corridors (two existing and one proposed) overlying portions of the project area. These corridors include: (1) Ingress into George Air Force Base; (2) a proposed expanded Precision Impact Range Area; and (3) a supersonic/low flying test area.

A number of preliminary management issues (problems, concerns, opportunities) have been identified for the project. These issues include: (1) Landownership Pattern—the checkerboard pattern results in inefficient and costly management of the public resources as well as unavailability of County utilities and services; (2) Multiple Use Classifications—overlying DOD activities are not considered in the designation of public land under various multiple use classifications; (3) Land Use Categories—overlying DOD activities are not considered in the designation of private land under various land use categories; and (4) Public Health and Safety—no safety overlay has been developed by San...
Bernardino County to address the impacts to public health and safety from the overflying DOD activities. In order to finalize the above issues as well as the planning criteria, the public is invited to submit written comments. Four public workshops have been scheduled to answer questions, discuss the project, and collect any comments available at that time. The workshops are scheduled from 4:00 p.m. to 8:00 p.m. for the following dates and locations in California: June 24, 1986—Quality Inn in San Bernardino at 668 Fairway Drive, June 25—Holiday Inn in Victorville at Interstate 15 and Palmdale Road; June 26—Antelope Valley Inn in Lancaster at 44055 North Sierra Highway; and June 27—Holiday Inn in Barstow at 1520 E. Main.

The planning criteria is available for review at the following locations:

California Desert District Office, 1965 Spruce Street, Riverside, California, 92507, (714) 351-6428; Barstow Resource Area Office, 831 Barstow Road, Barstow, California, 92311, (619) 298-3366; Ridgecrest Resource Area Office, 112 East Dolphine Street, Ridgecrest, California, 93555, (619) 795-7125; Kern County Libraries: 1315 Truxtun Ave., Bakersfield, California, 93301, (805) 360-3121; 9507 California City Blvd., California City, California, 93505, (619) 373-4757, and 131 E. Los Flores, Ridgecrest, California, 93555, (619) 375-7668; Los Angeles County Library, 1150 W. Avenue J, Lancaster, California, 93534, (805) 948-5029; Los Angeles Public Library, 630 W. 5th St., Los Angeles, California, 90071, (714) 629-7461; Palmdale Public Library, 700 E. Palmdale Blvd., Palmdale, California, 93550, (661) 273-2820; Riverside Public Library, 3581 7th St., Riverside, California, 92501, (714) 787-7203; San Bernardino County Libraries: 101 W. Fourth St., San Bernardino, California, 92401, (714) 383-1734; 11744 Bartlett, Adelanto, California, 92301, (619) 248-5601; 22051 Highway 18, Apple Valley, California, 92307, (619) 247-2022; 304 E. Buena Vista, Barstow, California, 92311, (619) 259-9481; 16710 Walnut, Hesperia, California, 92345, (619) 244-4899, and 15011 Circle Dr., Victorville, California, 92392, (619) 245-4222; San Bernardino Public Library, 401 Arrowhead Ave., San Bernardino, California, 92401, (714) 383-5277.

DATES: Written comments on the planning criteria must be received no later than July 7, 1986. Four public workshops are scheduled from June 24-27, 1986 in San Bernardino, Victorville, Lancaster, and Barstow, California (see above for exact times and locations).

ADDRESSES: Written comments should be sent to: Barstow Area Manager, Bureau of Land Management, 831 Barstow Road, Barstow, California, 92311.

FOR FURTHER INFORMATION CONTACT: Wendy Waiwood, Land Use Planner, Bureau of Land Management, 831 Barstow Road, Barstow, California, 92311, (619) 259-5956.

DATED: May 23, 1986.

H. W. Riecken, Acting District Manager.

[FR Doc. 86-12176 Filed 6-5-86; 8:45 am]
BILLING CODE 4310-40-M

[A-21760]

Realty Actions; Arizona; Notice of Reconvene and Order Providing for Opening Lands

Corrections

In FR Doc. 86-11022 appearing on page 18045 in the issue of Friday, May 16, 1986, make the following corrections:

1. In the first column, under Parcel A, ninth line, "South 46' 41' 39" should read "South 46' 42' 39".
2. In the second column, under Parcel B, fifth line, "North 4' K 46' 06" should read "North 4' 46".
3. In the third column, second line, "West" should read "East".

BILLING CODE 1505-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-17 and 18, 701-TA-275 through 276, and 731-TA-327 through 334 (Preliminary)]

Certain Fresh Cut Flowers from Canada, Colombia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 303-TA-17 and 18 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1330) and Nos. 701-TA-275 through 278 (Preliminary) under section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain fresh cut flowers which are alleged to be subsidized by governments of the following countries:

Canada * [Investigation No. 701-TA-275 (Preliminary)].
Chile * [Investigation No. 701-TA-276 (Preliminary)].
Israel * [Investigation No. 701-TA-277 (Preliminary)].
Kenya * [Investigation No. 303-TA-17 (Preliminary)].
Peru * [Investigation No. 303-TA-18 (Preliminary)].

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-327 through 334 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that in industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of certain fresh cut flowers which are alleged to be sold in the United States at less than fair value:

Canada
Chile
Colombia
Costa Rica
Ecuador
Israel
Kenya
Mexico
the Netherlands
Peru

* Fresh cut flowers from Canada subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the Tariff Schedules of the United States (TSUS).
* Fresh cut flowers from Chile subject to investigation include standard carnations, provided for in item 192.21 of the TSUS.
* Fresh cut flowers from Colombia subject to investigation include miniature (spray) carnations and gerbera, provided for in items 192.17 and 192.21, respectively, of the TSUS.
* Fresh cut flowers from Costa Rica subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the TSUS.
* Fresh cut flowers from Israel subject to investigation include miniature (spray) carnations and gerbera, provided for in items 192.17 and 192.21, respectively, of the TSUS.
* Fresh cut flowers from Kenya subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the TSUS.
* Fresh cut flowers from the Netherlands subject to investigation include miniature (spray) carnations, provided for in item 192.17 of the TSUS.
* Fresh cut flowers from Peru subject to investigation include miniature (spray) carnations, provided for in item 192.17 of the TSUS.
Canada * [Investigation No. 731-TA-327 (Preliminary)].
Chile * [Investigation No. 731-TA-328 (Preliminary)].
Colombia * [Investigation No. 731-TA-329 (Preliminary)].
Costa Rica * [Investigation No. 731-TA-330 (Preliminary)].
Ecuador * [Investigation No. 731-TA-331 (Preliminary)].
Kenya * [Investigation No. 731-TA-332 (Preliminary)].
Mexico * [Investigation No. 731-TA-333 (Preliminary)], and Peru * [Investigation No. 731-TA-334 (Preliminary)].

As provided in sections 303, 703(a) and 733(e), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by July 7, 1986. For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 21, 1986.

FOR FURTHER INFORMATION CONTACT:
Lawrence Rausch (202-523-0300) or Daniel Dwyer (202-523-4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background
These investigations are being instituted in response to a petition filed on May 21, 1986 by Floral Trade Council, Davis, California.

Participation in the Investigations
Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List
Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names of addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference
The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 13, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202-523-0300) or Daniel Dwyer (202-523-4618) not later than June 10, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions
Any person may submit to the Commission on or before June 17, 1986 a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6)

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 6, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.
[FR Doc. 86–12862 Filed 6–5–86; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: American Hardware Supply Company, P.O. Box 1510, Butler, PA 16001–1510.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and states of incorporation:

Name and State
Advocate Services, Inc., PA
Total Exposition Concepts, Inc., PA
Speer Hardware Company, AR

B. 1. Parent corporation and address of principal office:

Heritage Container Corp., 454 Livonia Avenue, Brooklyn, New York 11207.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Corrugated Leasing Corp., 454 Livonia Avenue, Brooklyn, New York 11207
State of Incorporation: New York.

C.1. Parent corporation and address of principal office:

Laporte Inc., 3503 Cedar Knoll Drive, Kingwood, Texas 77339
State of Incorporation: Delaware.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of Incorporation:
State of Incorporation: Georgia.
(ii) Mineral Research and Development Corporation, P.O. Box 610 (Highway 49 at Rocky River), Harrisburg, North Carolina 28075.
State of Incorporation: North Carolina.


2. Wholly-owned subsidiaries or sub-subsidiaries which will participate in the operations, and address of their respective principal offices:

(i) United Technologies Automotive Holdings, Inc., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware

(ii) United Technologies Automotive, Inc., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware

(iii) United Technologies Automotive, Trim, Inc., 5200 Auto Club Drive, Dearborn, MI 48126
State of Incorporation: Delaware

(iv) United Technologies Electro Systems, Inc., P.O. Box 2228, McCrory Road, Columbus, MS 39701
State of Incorporation: Delaware

(v) Harding Machine Company, Inc., P.O. Box 97, 13000 State St., Route 287, East Liberty, OH 43319
State of Incorporation: Delaware

(vi) Alma Plastics Company, 303 Valley Avenue, Alma, MI 48002
State of Incorporation: Delaware

(vii) United Technologies Diesel Systems, Inc., 3664 Main Street, Springfield, MA 01107
State of Incorporation: Delaware

(viii) Carrier Corporation, 9304 Carrier Parkway, P.O. Box 4800, Syracuse, NY 13221
State of Incorporation: Delaware

(ix) Carrier International Corporation, P.O. Box 4806, Syracuse, NY 13221
State of Incorporation: Delaware

(x) FES, Inc, RD #5, Board Road, P.O. Box 2398, York, PA 17405
State of Incorporation: Pennsylvania

(xi) Elliott Turbomachinery Co. Inc., North Fourth Street, Jeannette, PA 15644
State of Incorporation: Delaware

(xii) Diamond Wire & Cable Company, 100 Wall Street, Fort Wayne, IN 46804
State of Incorporation: Delaware

(xiii) US Samsca Export, Inc., P.O. Box 848, Rutland, VT 05701
State of Incorporation: Vermont

(xiv) Hamilton Standard Controls, Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware

(xv) Hamilton Test Systems, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware

(xvi) Hamilton Test Systems California, Inc., Bradley Field Road Windsor Locks, CT 06096
State of Incorporation: Delaware

(xvii) Hamilton Test Systems Wisconsin, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware

(xviii) Carrier Service Company, P.O. Box 4800, Syracuse, NY 13221
State of Incorporation: Delaware

(xix) Giffen Service Company, 3422 East Roesser Road, Phoenix, AZ 85040
State of Incorporation: Arizona

(xx) Essex Group, Inc., 1601 Wall Street, Fort Wayne, IN 46803
State of Incorporation: Michigan

(xxi) US Samica Corporation, Rutland, VT 07030
State of Incorporation: Vermont

(xxxii) United Technologies Electro Systems, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware

(xxxiii) United Technologies Diesel Systems, Inc., P.O. Box 115031, 1419 Dunn Drive, Carrollton, TX 75011-5031
State of Incorporation: Delaware

(xxxiv) CTVIP, Inc., Bradley Field Road, Windsor Locks, CT 06096
State of Incorporation: Delaware

(xxxv) Hamilton Test Systems NAO, Inc., Bradley Field Road, Windsor Locks CT 06096
State of Incorporation: Delaware

(xxxvi) Hamilton Standard Digital System, Inc, P.O. Box 115031, 1419 Dunn Drive, Carrollton, TX 75011-5031
State of Incorporation: Delaware

(xxxvii) Homogeneous Metals, Inc., P.O. Box 294, Clayville, NY 13322
State of Incorporation: Delaware

(xxxviii) Norden Systems, Inc., Norden Place, P.O. Box 5300, Norwalk, CT 06856
State of Incorporation: Delaware

(xxxix) Autosense Systems Limited, Bradley Field Road, Windsor Lock, CT 06096
State of Incorporation: Delaware

(XXX) P&W Aircraft Services, Inc., 1150 Airport Dr, South Burlington, Vermont 05401
State of Incorporation: Delaware

(xx) PWA International Services, Inc., P.O. Box 2881, West Palm Beach, FL 33402
State of Incorporation: Delaware

(xxxi) Sikorsky Export Corporation, North Main Street, Stratford, CT 06601
State of Incorporation: Delaware

(xxxii) Turbo Power and Marine Systems, Inc., 3970 RCA Boulevard, Palm Beach Gardens, FL 33410
State of Incorporation: Delaware

(xxxx) USB Booster Production Co., Inc., 3910 S. Washington Avenue, Titusville, FL 32780
State of Incorporation: Delaware

(xxxv) United Technologies Automotive (U.K.) Ltd., 5200 Auto Club Drive, Dearborn, MI 48128
State of Incorporation: Delaware

(xxxvi) Otis Elevator Company, 10 Farm Springs, Farmington, CT 06032
State of Incorporation: Delaware

(xxxx) Pratt & Whitney Aircraft of West Virginia, Inc., Box 16, Route 3, Bridgeport, West Virginia 26330
State of Incorporation: Delaware

(xxxix) Pratt & Whitney Support Services, Inc., P.O. Box 2691,
State of Incorporation: Delaware

(XXX) Sikorsky Support Services, Inc., North Main Street, Stratford, CT 06601
State of Incorporation: Delaware

(XXXI) United Space Boosters, Inc., 140 Sparkman Drive, P.O. Box 1628,
State of Incorporation: Delaware

(XXXII) United Technologies Microelectronics Center, Inc., 1365 Garden of the Gods Road Colorado Springs, 80907
State of Incorporation: Delaware

James H. Bayne,
Secretary.

[FR Doc. 86-12728 Filed 6-5-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR
Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/reporting requirements under review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements
under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone (202) 395-8840, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Miner's Claim for Benefits Under the Black Lung Act; Employment History; Miner Medical Reimbursement Form 1215-0052; CM-911; CM-911a; CM-915 On occasion.
57,500 responses; 20,834 hours, 3 forms

The application form filed by the miner for benefits; the coal miner's work history, request by a miner payee for reimbursement of out of pocket covered medical expenses.

Survivor's Claim for Benefits Under the Black Lung Benefits Act 1215-0066; CM-912
On death of miner
Individuals or households
2,350 responses; 783 hr.; 1 form

A survivor of coal miner must file a claim for benefits under the Black Lung Benefits Act, as amended, in order to receive benefits. The claims and supporting documentation are revised by DCMWC claims examiners to determine the survivor's eligibility for benefits.

Survivor's Notification of Beneficiary's Death 1215-0078; CM-1089
On occasion
Individuals or households
3,000 responses; 250 hours; 1 form

The CM-1089 is used to gather information from a beneficiary's survivor to ensure that benefits due the survivor on behalf of a deceased miner are accurate and continue.

Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study 1215-0090; CM-997; CM-933; CM-933B; CM-988, CM-1159
On occasion
Non-profit institutions; Small businesses or organizations
38,500 responses; 7,700 hours; 5 forms

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, at the address shown below, not later than June 16, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 16, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 29th day of May, 1986.

Reggie Moore,
Acting Departmental Clearance Officer
[FR Doc. 86-12470 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Burlington Industries et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 16, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 16, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of May 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.
APPENDIX

<table>
<thead>
<tr>
<th>Petitioner: Union/workers or former workers of—</th>
<th>Location</th>
<th>Date received</th>
<th>Date of petition</th>
<th>Petition number</th>
<th>Articles produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brower Manufacturing Co. (workers)</td>
<td>Quincy, IL</td>
<td>5/10/86</td>
<td>5/13/86</td>
<td>TA-W-17,439</td>
<td>Animal feeders, waters, brookers, incubators, automatic feed systems.</td>
</tr>
<tr>
<td>Eby's Shoe Warehouse, Inc. (USWA)</td>
<td>Maission, OH</td>
<td>5/16/86</td>
<td>5/15/86</td>
<td>TA-W-17,441</td>
<td>Kitchen pots and pans.</td>
</tr>
<tr>
<td>Florsheim Shoe Co. (workers)</td>
<td>Chicago, IL</td>
<td>5/7/86</td>
<td>5/8/86</td>
<td>TA-W-17,452</td>
<td>Men's shoes.</td>
</tr>
<tr>
<td>J. Lemon Sportswear Inc. (ILGWU)</td>
<td>Morrisstown, TN</td>
<td>5/8/86</td>
<td>5/2/86</td>
<td>TA-W-17,443</td>
<td>Ladies' sportswear.</td>
</tr>
<tr>
<td>Lone Star Steel (USWA)</td>
<td>Lone Star, TX</td>
<td>5/16/86</td>
<td>5/15/86</td>
<td>TA-W-17,445</td>
<td>Oil country tubular goods.</td>
</tr>
<tr>
<td>Nowaco Well Service (workers)</td>
<td>Wooster, OH</td>
<td>5/17/86</td>
<td>5/6/86</td>
<td>TA-W-17,446</td>
<td>Oil well servicing.</td>
</tr>
<tr>
<td>Robertshaw Controls Co., Tennessee Div. (UAW)</td>
<td>Lebanon, TN</td>
<td>5/16/86</td>
<td>5/12/86</td>
<td>TA-W-17,448</td>
<td>Mechanical timing mechanisms.</td>
</tr>
<tr>
<td>Rocket Sales &amp; Rental, Inc. (workers)</td>
<td>Williston, NO</td>
<td>5/17/86</td>
<td>5/6/86</td>
<td>TA-W-17,449</td>
<td>Oilfield service rentals, oil tanks.</td>
</tr>
<tr>
<td>T &amp; N Warehouse (USWA)</td>
<td>Lone Star, TX</td>
<td>5/16/86</td>
<td>5/15/86</td>
<td>TA-W-17,450</td>
<td>Warehousing and distribution of oil country tubular goods.</td>
</tr>
</tbody>
</table>

[FR Doc. 86-12315 Filed 6-5-86; 8:45 am]  
BILLING CODE 4510-30-M

Job Training Partnership Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Employment and Training Administration is republishing the notice of revised Lower Living Standard Income Levels (LLSILs) used in determining whether individuals meet the economically disadvantaged criteria as defined in the Job Training Partnership Act (JTPA) published at 51 FR 12752, April 15, 1986. This republishing is being done to correct errors in the data on 25 selected Metropolitan Statistical Areas (Table 3) and the figures for the family size (Table 4). In computing this data we inadvertently used data for the wrong period of time. Therefore, we are hereby republishing the entire document below.


ADDRESS: Send written comments to: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.


SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those economically disadvantaged individuals . . . who are in special need of such training to obtain productive employment." (Emphasis added.) JTPA Section 2(g) of JTPA Section 4(b)(8) defines, for purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4. Similar definitions of "economically disadvantaged," which also include references to the LLSIL, are provided at JTPA sections 201(b)(3) and 202(a)(3) for JTPA Title II allotment and within-State allocation purposes. See 20 CFR 628.39 and 630.1.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes.

JTPA Section 4(b)(8) defines LLSIL as follows:

The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor based on the most recent "lower living family budget" issued by the Secretary.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under the JTPA, the Employment and Training Administration (ETA), published the 1985 updates to the LLSIL in the Federal Register of June 11, 1985. (50 FR 24506.) ETA has again updated the LLSIL to reflect cost of living increases for 1986, by applying the percentage change in the December 1985 consumer price index (CPI), compared with the December 1984 CPI to each of the June 11, 1985, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(b)(8) of JTPA, those figures are listed as well.

Table 1.—Lower Living Standard Income Level by Region

<table>
<thead>
<tr>
<th>Region</th>
<th>Updated 1986 LLSIL</th>
<th>70 percent of LLSIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeast</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>$18,500</td>
<td>$12,950</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td>16,110</td>
<td>12,660</td>
</tr>
<tr>
<td>North Central</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>$17,920</td>
<td>$12,540</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td>17,460</td>
<td>12,240</td>
</tr>
<tr>
<td>South</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>$17,110</td>
<td>$11,960</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td>16,050</td>
<td>11,240</td>
</tr>
<tr>
<td>West</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolitan</td>
<td>$16,640</td>
<td>$10,050</td>
</tr>
<tr>
<td>Nonmetropolitan</td>
<td>15,010</td>
<td>10,510</td>
</tr>
</tbody>
</table>

* For ease of calculation, these figures have been rounded to the nearest ten.

Jurisdictions included in the various regions, based generally on Census.
**Table 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSAs—Continued**

<table>
<thead>
<tr>
<th>MSA</th>
<th>Updated LL SIL</th>
<th>70 percent of LL SIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detroit, MI</td>
<td>17,340</td>
<td>12,140</td>
</tr>
<tr>
<td>Honolulu, HI</td>
<td>20,410</td>
<td>16,390</td>
</tr>
<tr>
<td>Houston, TX</td>
<td>16,560</td>
<td>12,490</td>
</tr>
<tr>
<td>Kansas City, MO/ KS</td>
<td>17,630</td>
<td>12,840</td>
</tr>
<tr>
<td>Los Angeles/Long Beach/Anaheim, CA</td>
<td>17,680</td>
<td>12,960</td>
</tr>
<tr>
<td>Milwaukee, WI</td>
<td>18,180</td>
<td>13,270</td>
</tr>
<tr>
<td>Minneapolis-St Paul, MN/ St Paul, MN/</td>
<td>17,780</td>
<td>12,960</td>
</tr>
<tr>
<td>New York/ NY, Northeastern, NY</td>
<td>19,850</td>
<td>14,340</td>
</tr>
<tr>
<td>Philadelphia, PA/ NJ</td>
<td>18,180</td>
<td>13,270</td>
</tr>
<tr>
<td>Pittsburgh, PA</td>
<td>19,130</td>
<td>13,920</td>
</tr>
<tr>
<td>San Diego, CA</td>
<td>19,430</td>
<td>13,920</td>
</tr>
<tr>
<td>San Francisco-Oakland, CA</td>
<td>19,360</td>
<td>13,550</td>
</tr>
<tr>
<td>Seattle- Everett, WA</td>
<td>19,450</td>
<td>13,620</td>
</tr>
<tr>
<td>St. Louis, MO/ IL</td>
<td>17,830</td>
<td>12,490</td>
</tr>
<tr>
<td>Washington, D.C./ MD/ VA</td>
<td>18,040</td>
<td>12,630</td>
</tr>
</tbody>
</table>

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1986 LL SIL, by family size.

<table>
<thead>
<tr>
<th>Family Size</th>
<th>One</th>
<th>Two</th>
<th>Three</th>
<th>Four*</th>
<th>Five</th>
<th>Six</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>($4,050)</td>
<td>$6,650</td>
<td>$9,100</td>
<td>$11,240</td>
<td>$13,260</td>
<td>$15,510</td>
</tr>
<tr>
<td></td>
<td>(4,190)</td>
<td>6,700</td>
<td>9,440</td>
<td>11,650</td>
<td>12,750</td>
<td>16,080</td>
</tr>
<tr>
<td></td>
<td>(4,270)</td>
<td>7,000</td>
<td>9,610</td>
<td>11,870</td>
<td>12,870</td>
<td>16,350</td>
</tr>
<tr>
<td></td>
<td>(4,310)</td>
<td>7,070</td>
<td>9,760</td>
<td>11,980</td>
<td>12,890</td>
<td>16,390</td>
</tr>
<tr>
<td></td>
<td>(4,330)</td>
<td>7,100</td>
<td>9,740</td>
<td>12,030</td>
<td>12,890</td>
<td>16,680</td>
</tr>
<tr>
<td></td>
<td>(4,370)</td>
<td>7,160</td>
<td>9,880</td>
<td>12,140</td>
<td>13,330</td>
<td>16,740</td>
</tr>
<tr>
<td></td>
<td>(4,390)</td>
<td>7,180</td>
<td>9,890</td>
<td>12,170</td>
<td>13,360</td>
<td>16,790</td>
</tr>
<tr>
<td></td>
<td>(4,410)</td>
<td>7,220</td>
<td>9,910</td>
<td>12,240</td>
<td>14,440</td>
<td>16,860</td>
</tr>
<tr>
<td></td>
<td>(4,440)</td>
<td>7,260</td>
<td>10,000</td>
<td>12,340</td>
<td>14,560</td>
<td>17,600</td>
</tr>
<tr>
<td></td>
<td>(4,450)</td>
<td>7,290</td>
<td>10,010</td>
<td>12,350</td>
<td>14,580</td>
<td>17,690</td>
</tr>
<tr>
<td></td>
<td>(4,480)</td>
<td>7,380</td>
<td>10,110</td>
<td>12,480</td>
<td>14,730</td>
<td>17,720</td>
</tr>
<tr>
<td></td>
<td>(4,510)</td>
<td>7,400</td>
<td>10,150</td>
<td>12,540</td>
<td>14,800</td>
<td>17,860</td>
</tr>
<tr>
<td></td>
<td>(4,530)</td>
<td>7,420</td>
<td>10,190</td>
<td>12,580</td>
<td>14,840</td>
<td>17,930</td>
</tr>
<tr>
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<td>(4,550)</td>
<td>7,450</td>
<td>10,230</td>
<td>12,630</td>
<td>14,900</td>
<td>17,950</td>
</tr>
<tr>
<td></td>
<td>(4,560)</td>
<td>7,480</td>
<td>10,270</td>
<td>12,690</td>
<td>14,960</td>
<td>17,950</td>
</tr>
<tr>
<td></td>
<td>(4,570)</td>
<td>7,490</td>
<td>10,290</td>
<td>12,690</td>
<td>14,970</td>
<td>17,950</td>
</tr>
<tr>
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<td>12,880</td>
<td>15,200</td>
<td>17,770</td>
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<tr>
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<td>12,950</td>
<td>15,200</td>
<td>17,860</td>
</tr>
<tr>
<td></td>
<td>(4,700)</td>
<td>7,700</td>
<td>10,570</td>
<td>13,050</td>
<td>15,400</td>
<td>18,010</td>
</tr>
<tr>
<td></td>
<td>(4,720)</td>
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<td>10,610</td>
<td>13,120</td>
<td>15,460</td>
<td>18,060</td>
</tr>
<tr>
<td></td>
<td>(4,740)</td>
<td>7,770</td>
<td>10,670</td>
<td>13,170</td>
<td>15,540</td>
<td>18,170</td>
</tr>
<tr>
<td></td>
<td>(4,800)</td>
<td>7,850</td>
<td>10,780</td>
<td>13,310</td>
<td>15,710</td>
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<td>10,980</td>
<td>13,550</td>
<td>15,990</td>
<td>18,700</td>
</tr>
<tr>
<td></td>
<td>(4,900)</td>
<td>8,020</td>
<td>11,020</td>
<td>13,600</td>
<td>16,050</td>
<td>18,770</td>
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<td>11,440</td>
<td>13,920</td>
<td>16,360</td>
<td>21,200</td>
</tr>
<tr>
<td></td>
<td>(5,530)</td>
<td>9,670</td>
<td>13,280</td>
<td>16,390</td>
<td>19,340</td>
<td>22,620</td>
</tr>
<tr>
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<td>9,790</td>
<td>13,430</td>
<td>16,580</td>
<td>19,560</td>
<td>22,560</td>
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<td>17,350</td>
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<td>23,840</td>
</tr>
<tr>
<td></td>
<td>(6,570)</td>
<td>10,750</td>
<td>14,770</td>
<td>18,240</td>
<td>21,520</td>
<td>25,170</td>
</tr>
<tr>
<td></td>
<td>(6,620)</td>
<td>10,940</td>
<td>14,890</td>
<td>18,380</td>
<td>21,690</td>
<td>25,390</td>
</tr>
</tbody>
</table>

**Use of These Data**

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies (SESSAs) and employers in their States to use in determining eligibility for JTPA programs. Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia, MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulation at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the
minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereon, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:

Massachusetts:

Maryland:

New York:

Pennsylvania:

Volume II

Arkansas:

Iowa:

Kansas:

Nebraska:

Ohio:

Volume III

Idaho:

Washington:

Wyoming:

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 80 Regional Government Depository

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended [40 Stat. 1494, as amended, 40 U.S.C. 276a] and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA programs. BLS has not revised the person urban family budget estimates for the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1991 LLSIL but are not in the CPI. Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA.

Signed at Washington, DC this 2nd day of June, 1986.

Roger D. Semerad,
Assistant Secretary of Labor.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume.

Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th Day of May 1986.

James L. Valin,
Assistant Administrator.
[FR Doc. 86-12608 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health, Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on June 26, 27, 1986 in Room N–3437 ABC at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

NACOSH was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. The committee will discuss general issues affecting workplace safety and health. A detailed agenda will be prepared, made publicly available and sent to members prior to the meeting. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent which time permits.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, Third Street and Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–323–8615.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 2nd day of June 1986.

John A. Pendergrass, Assistant Secretary.

[FR Doc. 86-12714 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-20-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATES: Date and Time: June 23, 1986, 9 a.m. to 5 p.m.; June 24, 1986, 8:30 a.m. to 5 p.m.; and June 25, 1986, 8 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room Nos. as noted in the agenda below, 600 Independence Avenue, SW., Washington, DC 20546.


SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA’s Space Applications programs. This committee is chaired by Mr. Leonard Jaffe and is composed of 34 members. The committee operates both through a number of informal subcommittees and as a whole. The sessions on June 24, 1986, from 10 a.m. to 5 p.m., and June 25, 1986, from 8 a.m. to 5 p.m., of the Communications Subcommittee will be closed to the public. The Subcommittee will meet with the U.S. communications industry executives on an individual basis to gather critical information concerning industry plans for the development of advanced communications systems and technology. This information is needed to insure that NASA, in its preparation of a long range space communications plan for the United States, will develop a complementary rather than duplicative plan that will meet the needs of the U.S. industry. Often during individual meetings with an industry leader, views and plans pertaining to potential new markets, new technologies, etc., that are generally proprietary to the organization which the industry leader represents, will be discussed. Discussion of these matters in a public session would constitute release of confidential, commercial and financial information obtained from private industry. Since this meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c) (4), it has been determined that it should be closed to the public.

Type of Meeting: Open—except as noted in the agenda below.

Agenda

Full Committee

June 23, 1986, Room 226A
11 a.m.—Briefing on Space Applications Advisory Committee (SAAC) Charter, Purposes and Procedures for All New Members.
12 noon—Adjourn.
June 24, 1986, Room 226A
8:30 a.m.—Introduction of New Members. Chairperson’s Remarks. Actions Requested of SAAC and subcommittees.
10 a.m.—Recess Full Committee to Convene Subcommittee Meetings.
June 25, 1986, Room 226A
11 a.m.—Wrap-up Session to Receive Subcommittee Reports.
12 noon—Adjourn.

Information Systems Subcommittee

June 23, 1986, Room 226B
9 a.m.—Planning for a 1987 Workshop on “A View From the Future.”
5 p.m.—Adjourn.
June 24, 1986, Room 305 Capitol Gallery Building
1 p.m.—Continue Workshop Planning.
5 p.m.—Adjourn.
June 25, 1986, Room 305 Capitol Gallery Building
8:30 a.m.—Update work plans for 1986/1987.
10 a.m.—Formulate Subcommittee Report.
11 a.m.—Adjourn for Reconvening of the Full Committee.

Remote Sensing Subcommittee
June 23, 1986, Room 226A
1 p.m.—Establish Goals and Objectives for The Long-Range Plan for Remote Sensing Applications.
5 p.m.—Adjourn.
June 24, 1986, Room 226A
10 a.m.—Indepth Review of NASA's Remote Sensing Research Programs.
5 p.m.—Adjourn.
June 25, 1986, Room 226A
8 a.m.—Adopt Remote Sensing Goals.
9 a.m.—Adopt Next Steps on Long-Range Planning.
10 a.m.—Approve NASA/Industry Policy Paper.
11 a.m.—Adjourn for Reconvening of the Full Committee.

Communications Subcommittee
June 24, 1986, Room 770 Capitol Gallery Building
10 a.m.—Closed Session For Industry Hearings.
5 p.m.—Adjourn.
June 25, 1986, Room 770 Capitol Gallery Building
8 a.m.—Closed Session For Industry Hearings.
5 p.m.—Adjourn.

Microgravity Subcommittee
June 24, 1986, Room 226B
10 a.m.—Briefing on Extended Duration Orbiter (EDO).
1 p.m.—Briefings on NASA's Plans to Measure "G-Levels" on The Shuttle.
5 p.m.—Adjourn.
June 25, 1986, Room 226B
8:30 a.m.—Update Workplans for 1986/1987.
10 a.m.—Formulate Subcommittee Report.
11 a.m.—Adjourn for Reconvening of the Full Committee.
Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
June 2, 1986.
[FR Doc. 86-12817 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NEH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

Date: June 20, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315

Program: This meeting will review applications in the fields of the humanities submitted to the Projects category of the Interpretive Research Program, Division of Research Programs, for projects beginning after September 1, 1986.

Date: June 23–24, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430

Program: This meeting will review Challenge Grants applications from small museums, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.

Date: June 25–27, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430

Program: This meeting will review Challenge Grants applications from Professional Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Endowment for the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings 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 about these meetings can be obtained from Mr. Stephen J. McClearay, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McClearay,
Advisory Committee Management Officer.

[FR Doc. 86-12769 Filed 6-5-86; 8:45 am]
BILLING CODE 7510-01-M
NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Periodic Reports to Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 8 No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "as unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the Federal Register (42 FR 10650) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1985. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were two abnormal occurrences at the nuclear power plants licensed to operate. The first involved inoperable main steam isolation valves at Fermi Nuclear Power Station. There were three abnormal occurrences at the other NRC licensees. Two involved diagnostic medical misadministrations and the other involved a therapeutic medical misadministration. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol. 8 No. 4 (or any of the previous reports in this series), may be purchased by calling (202) 275-2080 or (202) 275-2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 29th day of May 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk, Secretary of the Commission.

[For Doc. 85-12735 Filed 5-5-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-456-OL 50-457-OL; ASLB No. 79-410-03-OL]

Commonwealth Edison Co., (Braidwood Station, Unit Nos. 1 and 2); Hearing Changes

June 2, 1986.


Please take notice that the evidentiary hearing in the matter of the Braidwood Station, Unit Nos. 1 and 2, increasing the storage capacities from 270 to 1324 spaces for each of the two spent fuel pools. This expansion is accomplished by reracking the existing spent fuel storage pools with new spent fuel racks composed of individual cells made of stainless steel. The new fuel storage racks will be arranged in two discrete regions within each pool. Region 1 will provide 290 poisoned cell locations which will normally be used for new fuel with an enrichment equal to or less than 4.5% U-235. Region 2 will provide 1034 unpoisoned cell locations which will provide normal storage for spent fuel assemblies with an initial enrichment equal to or less than 4.5% U-235 and meeting required burnup considerations in accordance with the amended Technical Specifications. The existing fuel storage racks have a nominal center-to-center spacing of 21 inch. The new racks will have a nominal 11 inch center-to-center spacing for both regions. The major components of the fuel racks are the fuel assembly cells, gap channels, rack base plate assembly including support legs, a girdle bar around the upper part of the rack assembly, and, in Region 1 only, neutron absorbing (poison) material Boraflex, including cover sheets. The fuel racks are designed to maintain the required subcriticality of Koa equal to or less than 0.95 for Regions 1 and 2.

The letter requesting the license amendments, dated October 30, 1985 (LAR-85-13) includes the requested Technical Specification changes and the licensee's determination on significant hazards consideration. The supporting report on "Reracking of Spent Fuel Pools for Diablo Canyon Units 1 and 2" had been submitted to the staff by letter, dated September 19, 1985.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments. Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was initially published in the Federal Register on January 13, 1986. (51 FR 1451), and in the bi-weekly publication on May 21, 1986 (51 FR 18899). A request
for hearing was filed by (1) Mothers for Peace on February 7, 1986, (2) Sierra Club-Santa Lucia Chapter on February 10, 1986, and (3) Consumers Organized for Defense of Environmental Safety (C.O.D.E.S.) on February 12, 1986.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from persons, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

A separate Environmental Assessment has been prepared pursuant to 10 CFR Part 51. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the Federal Register (51 FR 19430) on May 29, 1986.

For further details with respect to the action see (1) the application for the amendments dated October 30, 1985 and additional information provided by the licensee in letters dated September 19, December 20, and December 24, 1985 and January 28 (2 letters), March 11 and April 24 (2 letters), 1986, (2) Amendment Nos. 8 and 6 to Facility Operating License Nos. DPR-80 and DPR-82, (3) the Commission's related Safety Evaluation and (4) Environmental Assessment and Notice of Issuance of Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 30th day of May 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,
Director, PWR Project Directorate No. 3.
Division of PWR Licensing-A, NRR.

[FR Doc. 86-12757 Filed 6-5-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-445-CPA]

Texas Utilities Electric Co. et al.,
(Comanche Peak Steam Electric Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of May 29, 1986, oral argument on the appeals of the applicants Texas Utilities Electric Company, et al., and the Nuclear Regulatory Commission staff from the Licensing Board's May 2, 1986 Special Prehearing Conference Memorandum and Order will be held at 2:00 p.m. on Wednesday, June 18, 1986, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: June 2, 1986.
For the Appeal Board.

C. Jean Shoemaker,
Secretary to the Appeal Board.
[FR Doc. 86-12704 Filed 6-5-86; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 2, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Tonka Corporation
Common Stock, $0.06% Par Value
(File No. 7-8975)

Albertson's, Incorporated
Common Stock, $1.00 Par Value (File No. 7-8976)

James River Corporation of Virginia
Common Stock, $0.10 Par Value (File No. 7-8977)

Supermarkets General Corporation
Common Stock, $1.00 Par Value (File No. 7-8978)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 23, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollie,
Acting Secretary.

[FR Doc. 86-12707 Filed 6-5-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-24114]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 23, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 23, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/
or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of New Mexico et al. (38-813)

The Public Service Company of New Mexico ("PNM"), Alvarado Square, Albuquerque, New Mexico 82155, a New Mexico corporation, and Sunbelt Mining Co., Inc. ("Sunbelt"), 1650 University Boulevard NE., Albuquerque, New Mexico 87106, a wholly owned New Mexico subsidiary of PNM, have filed with this Commission an application for an order (i) pursuant to section 3(a)(1) of the Act exempting a new holding company from provisions of the Act applicable to it as such and (ii) declaring company from provisions of the Act exempting a new holding company from provisions of the Act applicable to it as such and (ii) declaring

PNM is engaged primarily in the production, transmission, distribution, and sale of electricity, natural gas, and water within the State of New Mexico. PNM makes off-system energy and capacity sales on a contingent basis to other utilities. None of PNM's subsidiaries is a "public utility company" as defined in section 2(a)(5) of the Act.

On December 1, 1985, the total assets of PNM and its subsidiaries, on a consolidated basis, were approximately $3,010,000,000, of which approximately $2,674,000,000 were utility assets attributable to electric and retail natural gas operations. Approximately $657,000,000 of these utility assets were attributable to PNM's investment in the Palo Verde Nuclear Generating Station ("PVNGS") and transmission facilities located in Arizona.

Sunbelt, a wholly owned subsidiary of PNM, either directly or through a subsidiary, conducts coal mining and natural gas gathering operations in New Mexico and holds substantial mineral interests in New Mexico, along with relatively minor interests in other states. On May 20, 1986 the stockholders of PNM were asked to approve a corporate reorganization as a result of which a new holding company organized in New Mexico, would own all of the common stock of PNM. Thereafter, the stock of Sunbelt and another non-utility subsidiary and other non-utility assets would be transferred to the new holding company. PNM would continue to conduct its utility businesses without any other change in its functions or capital structure.

PNM is a 10.2% participant in PVNGS. It has sold to investors and leased back approximately 72% of PNM's 10.2% interest (including related common facilities) in Unit 1 of PVNGS, now in service, in transactions exempt under Rule 7(d).

PNM proposes to sell its remaining 28% interest in PVNGS Unit 1 to Sunbelt, on substantially the same terms agreed upon in the earlier nonaffiliated sale/leaseback transactions. Sunbelt will purchase the interest through a trustee, which will arrange the long term financing for the purchase. The trustee will also take actual title to the PVNGS Unit 1 interest. The trust will then lease the PVNGS Unit 1 interest back to PNM. Under the terms of the lease, neither the trustee nor Sunbelt will have any right of control over any aspect of the operation and maintenance of PVNGS Unit 1. PNM will be responsible for payment of all taxes, insurance premiums, and all other costs associated with the PVNGS Unit 1 interest. The obligation of PNM to make rental payments under the lease will be absolute and in no way based on revenue derived from power sales from PVNGS Unit 1, nor will it be contingent upon the actual operation of the facility. Annual pre-tax lease income from rental payments to be made to Sunbelt under the proposed lease are not expected to exceed 5% of its 1985 gross revenues. Sunbelt will sell no electricity from any source whatsoever. Sunbelt's participation in the sale/leaseback is the subject of a pending application before the New Mexico Public Service Commission.

New Jersey Central Power & Light Company (79-6903)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an amendment to its application-declaration filed with this Commission pursuant to sections 6(b) and 12(c) of the Act and Rules 42 and 50 thereunder.

A notice was issued (HCAR No. 24005, January 28, 1986) with regard to Georgia's proposal to finance certain pollution control facilities in the State of Georgia and/or to issue and sell up to $350 million of first mortgage bonds ("New Bonds"). Georgia, by amendment, now proposes that the restriction on common stock dividends and distributions to be contained in each Supplemental Indenture relating to the New Bonds be identical to that set forth in the Supplemental Indenture, dated June 1, 1984, relating to its outstanding first mortgage bonds of the 16% Series due in 2014. Thus, Georgia proposes: (i) To use March 31, 1984, rather than the respective dates of issuance of the series of the New Bonds, as the starting date for accumulation of earned surplus; and (ii) to use $302 million as the annual dividends allowance.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 86-12768 Filed 6-5-86; 8:45 am]
DEPARTMENT OF TRANSPORTATION

Agreements Filed With the Department of Transportation During the Weeks Ending May 23 and 30, 1986

<table>
<thead>
<tr>
<th>Date filed</th>
<th>Docket No.</th>
<th>Parties</th>
<th>Subject</th>
<th>Proposed effective date</th>
</tr>
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<tbody>
<tr>
<td>May 22, 1986</td>
<td>44047</td>
<td>Members of International Air Transport Association</td>
<td>Rounding Procedures for Europe-Africa fares</td>
<td>July 1, 1986</td>
</tr>
<tr>
<td>May 22, 1986</td>
<td>44048, R-1—R-17</td>
<td></td>
<td>Europe-Africa fares</td>
<td>July 1, 1986</td>
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<tr>
<td>May 22, 1986</td>
<td>44049, R-1—R-2</td>
<td></td>
<td>Europe-SE Asia fares</td>
<td>April 1, 1986</td>
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<tr>
<td>May 29, 1986</td>
<td>44062</td>
<td></td>
<td>Canada—TC2 fares</td>
<td>June 1, 1986</td>
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</table>

Answers may be filed within 21 days from the date of filing.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-12778 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-02-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended May 30, 1986

Subpart Q—Applications

The due for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show cause order, a tentative order, or inappropriate cases a final order without further proceedings.

<table>
<thead>
<tr>
<th>Date filed</th>
<th>Docket No.</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>June 20, 1986</td>
<td>44063</td>
<td>Continental Airlines Corporation, c/o Emory N. Ellis, Fulbright &amp; Jaworski, 1150 Connecticut Avenue, NW., Washington, DC 20036. Application of Continental Airlines Corporation pursuant to section 401 of the Act and Subpart O of the Regulations to amend its certificate for Route 176 by adding Papeete, Tahiti as an intermediate point and by amending or removing a condition attached to the certificate. As amended, Continental’s certificate authority would be as follows: “Between the terminal point Los Angeles, California, the intermediate point Honolulu, Hawaii and Intermediate points within the following areas: American Samoa, Fiji, Tahiti and New Zealand, and intermediate point in Australia.” Conforming Applications, Motions to Modify Scope and Answers may be filed by June 27, 1986.</td>
</tr>
<tr>
<td>May 29, 1986</td>
<td>36034</td>
<td>Kuwait Airways Corporation, c/o G. Joseph Miani, Dickstein, Shapiro &amp; Morris, 2101 L Street, NW., Washington, DC 20037. Amendment to the Application of Kuwait Airways Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations to update the information submitted with respect to the operation and management of KAC. Answers may be filed by June 29, 1986.</td>
</tr>
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</table>

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-12778 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-02-M

[Docket 38978]

Braniff International Airways Employee Protection Program Investigation; Resumption of Hearing

Notice is hereby given that the hearing in the above-entitled matter will resume on July 22, 1986, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, June 3, 1986.
Ronnie A. Yoder,
Administrative Law Judge.

[FR Doc. 86-12779 Filed 6-5-86; 8:45 am]
BILLING CODE 4910-02-M

Federal Aviation Administration

Policy on Use of Airport Improvement Program Discretionary Funds

AGENCY: Federal Aviation Administration (FAA), DOT.

POLICY: The FAA will consider a public airport sponsor’s use of airport revenues to support non-aviation transportation facilities in assessing requests for Federal discretionary grant assistance available under the Airport Improvement Program (AIP) as authorized by the Airport and Airway Improvement Act of 1982 (AAIA). Such diversion of funds from airport use is viewed as evidence of the sponsor’s ability to fund airport projects without discretionary aid.

The policy is not applicable to AIP apportionment funds provided to sponsors of primary commercial service airports or to airport sponsors receiving only state apportionment funds.

Background

Section 511(a)(12) of the AAIA requires that sponsors of airport development projects assure that all revenues generated by the airport, if it is a public airport, be expanded for the capital or operating costs of the airport or the local airport system. This section, however, does allow airport revenues to be used for other local (non-aviation) facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. Since the demand for discretionary money available under section 507(a)(3) of the AAIA far exceeds the discretionary money available in any given year, FAA has determined that it is appropriate to consider the airport sponsor’s use of airport revenues to fund non-aviation transportation facilities as evidence that the sponsor has the ability to fund...
airport projects without Federal discretionary airport grant assistance.

DATE: This policy is effective immediately for AIP projects which have not yet received an allocation of funds.

FOR FURTHER INFORMATION CONTACT:
Mr. Edgar M. Williams, Manager, Program Guidance Branch, APP-510, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, Room 619, Washington, DC 20591, Telephone: (202) 426-3857.

Issued in Washington, DC on June 2, 1986.

Paul L. Gallis,
Director, Office of Airport Planning and Programming.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms
OMB Number: 1512-0115
Form Number: ATF F 5220.4(2140)
Type of Review: Revision
Title: Monthly Report—Export Warehouse Proprietor


Comptroller of the Currency
OMB Number: 1557-0136
Form Number: CC 7029-06
Type of Review: Extension
Title: List of National Bank Directors
Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.


Stephen Bashein,
Departmental Reports Management Office.
Sunshine Act Meetings

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: 2:00 p.m. (eastern time), Monday, June 16, 1986.

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, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Litigation Authorization; General Counsel Recommendations

2. Discussion of Certain Commissioners' Charges

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 in 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 at (202) 634-6748.

Dated: June 4, 1986.

Cynthia C. Matthews,
Executive Officer. Executive Secretariat.
[FR Doc. 86-12901 Filed 6-4-86; 2:34 pm]
BILLING CODE 0750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency

Pursuant to the provisions of the "Government in the Sunshine Act" (5
U.S.C. 552b), notice is hereby given that at 5:00 p.m. on Friday, May 30, 1986, the Board of Directors of the Federal
Deposit Insurance Corporation met in closed session, by telephone conference
Call, to: (1) Receive bids for the purchase of certain assets of and the assumption
of the liability to pay deposits made in Banco de Ahorro, F.S.B., Mayaguez,
Puerto Rico, which was closed by the Federal Home Loan Bank Board on
Friday, May 30, 1986; (2) accept the bids for the transaction submitted by Banco
Popular de Puerto Rico, San Juan (Hato Rey), Puerto Rico, an insured State
nonmember bank; (3) approve the
Application of Banco Popular de Puerto Rico, San Juan (Hato Rey), Puerto Rico,
for consent to purchase certain assets of an assume the liability to pay deposits
made in Banco de Ahorro, F.S.B.,
Mayaguez, Puerto Rico, and for consent to establish the new office of Banco de
Ahorro, F.S.B. as branches of Banco
Popular de Puerto Rico; and (4) provide such financial assistance, pursuant to
section 13(c)(2) of the Federal Deposit
Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L.
William Seidman, seconded by Mr.
Michael Patriarca, acting in the place
and stead of Director Robert L. Clarke (Comptroller of the Currency), that
Corporation business required its
consideration of the matters in 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)(6)(A)(i), and (c)(6)(B) of the
"Government in the Sunshine Act" (5
U.S.C. 552b(c)(6), (c)(6)(A)(i), and (c)(6)(B)).

The meeting was recessed at 5:03 p.m.,
and at 8:42 p.m. that same day the
meeting was reconvened, by telephone
conference call, at which time the Board of Directors:

(A) Adopted a resolution: (1) Making funds available for the payment of insured deposits
made in The First National Bank and Trust
Company of Norman, Norman, Oklahoma,
which had been closed by the Senior Deputy
Comptroller for Bank Supervision, Office of
the Comptroller of the Currency, on
Thursday, May 29, 1986; (2) accepting the bid
of the Liberty National Bank and Trust
Company of Oklahoma City, Oklahoma City,
Oklahoma, for the transfer of the insured and
fully secured or preferred deposits of the
closed bank, and (3) Designating The Liberty
National Bank and Trust Company of
Oklahoma City, Oklahoma City, Oklahoma,
as the agent for the Corporation for the
payment of insured and fully secured or preferred deposits of the closed bank; and

(B)(1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Columbia Falls, Columbia Falls, Montana, which was closed by the Commissioner for Financial Institutions for the State of Montana on Friday, May 30, 1986; (2) accepted the bid for the transaction submitted by First Citizens Bank National Association, Columbia Falls, Montana, a newly-chartered national bank subsidiary of Citizens Development Company, Billings, Montana; and (3) provided such financial assistance, pursuant to subsection (c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board
determined, on motion of Chairman L.
William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in
by Mr. Dean S. Marriott, acting in the
place and stead of Director Robert L.
Clarke (Comptroller of the Currency),
that Corporation business required its
consideration of the matters in 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)(6)(A)(i), and (c)(6)(B) of the
"Government in the Sunshine Act" (5
U.S.C. 552b(c)(6), (c)(6)(A)(i), and (c)(6)(B)).

Dated: June 3, 1986.

Federal Deposit Insurance Corporation.

Wayle R. Robinson,
Executive Secretary.

[FR Doc. 86-12933 Filed 6-4-86; 11:07 am]
BILLING CODE 6714-01-M

3

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 open meeting held at 9:00 a.m. on Tuesday,
June 3, 1986, the Corporation’s Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days’ notice to the public, of the following matter:

**Recommendation regarding the liquidation of a bank’s assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:**
Memorandum and Resolution re: National Bank and Trust Company of Traverse City, Traverse City, Michigan

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration in open session to closed session, the notice of this change in the subject matter of the meeting was practicable. A memorandum and resolution regarding prohibition governing securities subsidiaries and affiliates contained in Part 337 of the Corporation’s rules and regulations, entitled “Unsafe or Unsound Banking Practices.”

By the same majority vote, the Board determined that no notice earlier than May 29, 1986 of this change in the subject matter of the meeting was practicable.

**Notice of the change in the subject matter of the meeting was practicable.**

**5 FEDERAL ENERGY REGULATORY COMMISSION**

**Change 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. 552(b)(2)), notice is hereby given that at its closed meeting held at 9:30 a.m. the same day, of a summary audit report re: Trend Unsound Banking Practices.” Part 4, subsection (e)(2) of the “Government in the Sunshine Act” (5 U.S.C. 552(b)(2)), notice is hereby given that at its closed meeting held at 9:30 a.m. on Tuesday, June 3, 1986, the Corporation’s Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days’ notice to the public, of the following matter:

**Recommendation regarding the liquidation of a bank’s assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:**
Memorandum and Resolution re: National Bank and Trust Company of Traverse City, Traverse City, Michigan

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 3, 1986.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 12385 Filed 6-4-86; 8:45 am]
BILLING CODE 6714-01-M

**4 FEDERAL DEPOSIT INSURANCE CORPORATION**

**Change 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. 552(b)(2)), notice is hereby given that at its closed meeting held at 9:30 a.m. on Tuesday, June 3, 1986, the Corporation’s Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days’ notice to the public, of the following matter:

**Recommendation regarding the liquidation of a bank’s assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:**
Memorandum and Resolution re: National Bank and Trust Company of Traverse City, Traverse City, Michigan

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 3, 1986.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-12634 Filed 6-4-86; 11:08 am]
BILLING CODE 6714-01-M

**Federal Register / Vol. 51, No. 109 / Friday, June 6, 1986 / Sunshine Act Meetings**

**CAP-5.**
Project Nos. 9597-003, 004 and 006, Hazard Creek Conservationists
Project No. 9598-002, 003 and 004, Hard Creek Conservationists

**CAP-6.**
Project No. 9718-001, Hydrodynamics, Inc.

**CAP-7.**
Project No. 9147-000, Baltic Associates
Project No. 9522-001, Swift River/Hafalund Company

**CAP-8.**
Project No. 7802-003, Natural Energy Resources Company

**CAP-9.**
Project Nos. 6810-006 and 6811-006, Douglas Mendenhall

**CAP-10.**
Project No. 2774-003, Modesto Irrigation District, Turlock Irrigation District and the city and county of San Francisco, California

**CAP-11.**
Docket No. ER86-372-002, Virginia Electric and Power Company

**CAP-12.**
Docket Nos. ER86-348-007 and 008, American Electric Power Service Corporation

**CAP-13.**
Docket Nos. ER86-309-002 and ER86-310-002, Arizona Public Service Company

**CAP-14.**
Docket No. ER84-579-005, AEP Generating Company

**CAP-15.**
Docket No. ER86-252-000, Pacific Power & Light Company, an assumed business name of Pacificorp.

**CAP-16.**
Docket Nos. ER86-76-004, 005, ER86-230-002 and 003, Commonwealth Edison Company

**CAP-17.**
Docket Nos. ER86-107-001, 002, ER86-120-001 and 002, Pacific Gas and Electric Company

**CAP-18.**
Docket No. ER86-163-001, Commonwealth Edison Company

**CAP-19.**
Docket Nos. ER86-466-007 and ER65-647-006 (Phase II), New England Power Company

**CAP-20.**
Docket No. QF85-210-000, Pynoyl Corporation

**CAP-21.**
Docket No. QF86-23-000, Freepport-McMoran Inc. and Gunison Capital, Ltd.

**CAP-22.**
Docket No. IR-000-980, California Department of Water Resources

**CAP-23.**
Docket No. EL86-25-000, Arkansas Power & Light Company.

**Consent Miscellaneous Agenda**

**CAM-1.**
Docket No. RM85-1-170 (Parts A-D).
Regulation of natural gas pipelines after partial wellhead decontrol (Lone Star Gas Company)
Docket No. SA80-7-002, Lone Star Gas Company
CAM-2.
Docket No. CP86-2-000, Southern Union Company
CAM-3.
Docket No. RO86-15-000, J.R. Cone

Consent Gas Agenda

CAG-1.
Docket No. RP86-79-000, Northern Natural Gas Company
CAG-2.
Docket No. TA86-5-28-003, Transcontinental Gas Pipe Line Corporation
CAG-3.
Omitted
CAG-4.
Docket No. RP86-76-000, Texas Eastern Transmission Corporation
CAG-5.
Docket Nos. TA85-3-28-005 and TA86-2-28-003, Panhandle Eastern Pipe Line Company
CAG-6.
Docket No. CP85-57-007, Natural Gas Pipeline Company of America
CAG-7.
Docket Nos. RP83-71-018 and TA83-1-59-008, Northern Natural Gas Company, Division of Intermouth, Inc.
CAG-8.
Docket No. RP86-7-002, Mountain Fuel Resources, Inc.
CAG-9.
Docket No. RP86-52-003, Kentucky West Virginia Gas Company
CAG-10.
Docket Nos. RP86-54-002 and 003, Florida Gas Transmission Company
CAG-11.
Docket Nos. RP86-53-002 and 003, Transwestern Pipeline Company
CAG-12.
Docket No. ST85-528-001, Mississippi River Transmission Corporation
CAG-13.
Docket No. TA86-1-28-000, Natural Gas Pipeline Company of America
CAG-14.
CAG-15.
Docket Nos. IS78-1-000, IS80-4-000, IS80-20-000, IS80-28-000, IS80-42-000, IS81-23-000, IS81-56-000, IS81-57-000, IS81-77-000, IS81-115-000, IS81-117-000, IS81-118-000, IS81-123-000, IS81-123-000, IS81-165-000, IS82-6-000, IS82-40-000, IS82-61-000, IS83-99-000, IS83-101-000, IS82-108-000, IS82-176-000 and IS83-1-000, Phillips Pipe Line Company
CAG-16.
Docket Nos. IS85-13-000 and SP85-14-000, Dome Pipeline Corporation
CAG-17.
Docket No. CI86-175-001, Fulmont Oil Corporation and Essex Offshore, Inc.
CAG-18.
Docket Nos. RI74-188-081 and RI75-21-076, Independent Oil & Gas Association of West Virginia
CAG-19.
Docket Nos. RI74-188-082 and RI75-21-077, Independent Oil & Gas Association of West Virginia
CAG-20.
Docket No. CP84-837-002, Northern Natural Gas Company, Division of Enron Corp.
Docket No. CP84-579-003, Northern Border Pipeline Company
CAG-21.
Docket Nos. CP85-621-000, CP85-674-000, CP85-713-000, 001, CP85714-000, 001, CP85-176-000, CP85-029-000, CP85-089-000, CP86-10-000, CP86-53-000 and CP86-85-000, ANR Pipeline Company
CAG-22.
Docket Nos. RP85-14-005 through 015, Columbia Gulf Transmission Company
Docket Nos. RP86-15-005 through 015, Columbia Gulf Transmission Company
CAG-23.
Docket Nos. RP71-29-030 through 037 (Phase III). United Gas Pipe Line Company
CAG-24.
Docket Nos. TC-79-9-002 through 005, Transcontinental Gas Pipe Line Corporation
CAG-25.
Docket No. CP85-82-008, ANR Pipeline Company and Texas Eastern Transmission Corporation
CAG-26.
Docket No. CP82-74-003, Midwestern Gas Transmission Company
CAG-27.
Omitted
CAG-28.
Docket No. CP86-335-000, Northern Natural Gas Company, Division of Intermouth, Inc.
CAG-29.
Docket No. CP86-327-000, Northern Natural Gas Company, Division of Intermouth, Inc.
CAG-30.
Docket No. CP79-58-000, Pacific Interstate Transmission Company
CAG-31.
Docket No. CI64-921-001, Champlin Petroleum Company
Docket No. CI78-849-002, Amoco Petroleum Company
Docket No. CS77-488-001, Robert Klabzuba
Docket No. CS72-753-001, Frank A. Schultz
Docket No. CI80-92-001, Geo. Oil and Gas Company of Houston
Docket No. CI84-921-001, Geo. Oil and Gas Company of Houston and Tennoo Oil Company Operator, et al.

I. Licensed Project Matters

P-1.
Project No. 199-037, South Carolina Public Service Authority

II. Electric Rate Matters

ER-1.
Docket No. EL88-10-000, Kentucky Power Company
ER-2.
Docket No. QF85-541-000, City of New Martinsville

Miscellaneous Agenda

M-1.

Docket No. RM83-57-000, payments for benefits from headwater improvements
M-2.
Reserved
M-3.
Reserved
M-4.
Docket No. RM83-71-039, elimination of variable costs from certain natural gas pipeline minimum commodity bill provisions
M-5.
Docket Nos. RM85-1-172 and 173 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)

I. Pipeline Rate Matters

RP-1.
Docket Nos. ST81-200-006, 007, CP82-200-003 and 004, Mustang Fuel Corporation
RP-2.
Docket Nos. OR78-1-041, 042 and 043, Trans Alaska Pipeline System
Docket No. IS84-13-000, Sohlo Pipe Line Company

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP84-94-004, ANR Pipeline Company
CP-2.
Docket No. CP86-283-000, Columbia Gas Transmission Corporation
CP-3.
Docket No. RP86-74-000, Algonquin Gas Transmission Company v. Texas Eastern Transmission Corporation
CP-4.
Docket No. CP86-349-000, Texas Gas Transmission Corporation

Kenneth F. Plumb, Secretary.

[F]Doc. 86-12807 Filed 6-4-86; 9:03 am]

BILLING CODE 6717-01-M

6

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Wednesday, June 11, 1986.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. Proposed joint policy statement regarding basic banking services by depository institutions.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 4, 1986.
James McAfee,
Associate Secretary of the Board.

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 3:30 p.m., Wednesday, June 11, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 4, 1986.
James McAfee,
Associate Secretary of the Board.

BILLING CODE 6210-01-M
Part II

Department of Labor

Employment Standards Administration

20 CFR Part 10
Claims for Compensation Under the Federal Employees' Compensation Act; Notice of Proposed Rulemaking
DEPARTMENT OF LABOR
Employment Standards Administration
20 CFR Part 10
Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Labor proposes to revise the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to Federal employees injured or killed in the performance of duty. In the process, regulations will be issued governing special categories of employees, sections will be amended which have proven ineffective, the terminology and usage in the existing regulations will be made current, and provisions governing the release of information (Privacy Act and Freedom of Information Act) will be updated.

The chief effects of the proposed rulemaking will be to make the claims process clearer and more orderly, to standardize the application of the Federal Employees' Compensation Act to classes of employees not previously expressly covered and to make more specific the duties and responsibilities of the various parties in the claims process. Major new provisions include restricting the procedures for using COP, defining the term “subluxation,” reducing monetary compensation for failure or refusal to participate in vocational rehabilitation plan development efforts, and defining the procedures for declaring and waiving overpayments.

DATE: Written comments must be submitted on or before July 21, 1986.

ADDRESS: Send written comments to Thomas M. Markey, Associate Director for Federal Employees’ Compensation, Employment Standards Administration, U.S. Department of Labor, Room 5-3228, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 532-7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees’ Compensation, Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: The FECA provides compensation for wage-loss, medical care, and vocational rehabilitation to Federal employees who are injured in the performance of their duties, or who develop illness as a result of factors of their Federal employment, as well as monetary benefits to the survivors of employees who are killed in the performance of duty or die as the result of factors of their Federal employment. The FECA was last amended in 1974, at which time some sweeping changes were made in the benefits structure. The regulations which were promulgated in 1975 to accommodate the changes have been subjected to intense scrutiny in the intervening ten years. As a result of this review, the Department of Labor has determined that many areas of the regulations would benefit from either greater definition or thorough revision.

Recognition of the problems of the FECA and its regulations has existed for years. Various agencies, including the General Accounting Office (GAO), the Department of Labor’s Inspector General, the OWCP Interagency Task Force and the United States Postal Service among others, have identified deficiencies in the regulations and procedures as well as in the FECA itself, and have made recommendations and suggestions for improving the operation of the program. While many of the recommended changes require legislation, the Department has determined that in the absence of new legislation, a majority of the desired improvements can be made by revision of the existing regulations. The summary of the proposed changes which follows addresses the major areas of concern. Other changes are intended to bring the wording of the regulations into conformity with current practice or usage.

Subpart A is revised to delete reference to employees of the District of Columbia, who are no longer covered by the FECA, and to substitute the Panama Canal Commission for the Panama Canal Company and Canal Zone Government (5 U.S.C. 8146; E.O. 12215). Sections dealing with the release of records and the Privacy Act are amended to conform with the general regulatory provisions issued by the Department (20 CFR Part 70 and 70a). Section 10.5 is amended to include the meanings of words and terms commonly used but previously left undefined and to clarify terms already defined.

Subpart B is amended to make more explicit the requirements for filing claims for compensation and the responsibilities of the claimant, the employing agency and the Office of Workers’ Compensation Programs (OWCP). The experience of OWCP as confirmed by investigative reports from GAO and the Office of the Inspector General and the observations of numerous employing agencies, is that the existing regulations are too vague. In addition, many provisions in the existing regulations do not accurately reflect the most desirable or expedient means of furthering a claim to adjudication. Some time frames for the submission and processing of forms have been changed to bring them into concert with Program experience under optimum conditions as observed in client agencies. The combined effects of delineating responsibilities and establishing realistic time limits will result in a faster, easier and more equitable adjudication process.

Agencies should note that sections dealing with the obligations of the injured employee and the employing agency in cases of partial disability have been expanded to accommodate the need for explicit instructions for returning the injured worker to gainful employment as soon as possible. In prescribing the steps to be taken, the proposal allocates the responsibilities equitably and assures that both the claimant and the employing agency are involved in preserving the worker’s position as a Federal employee while permitting the healing process to continue without detrimental effect on the employee.

There was also found to be a lack of adequate and effective sanctions when a permanently disabled employee refuses or fails to participate or continue participation in the early but necessary phases (plan development) of a directed vocational rehabilitation effort. In the early phases of the rehabilitation effort, no decision as to suitable vocational rehabilitation program has been made, no specific program has been offered, and little or no information about the claimant’s aptitudes, knowledge, and skills is available to allow the Office to find that participation would increase the claimant’s earning capacity. Thus, where the injured employee fails or refuses to cooperate and participate in the early phases of the rehabilitation effort, the Office’s ability to apply the existing sanction (i.e., 5 U.S.C. 8113(b)) is hampered. However, to be consistent in the sanction to be applied, § 10.124 as proposed will provide that, lacking evidence to the contrary participation in a directed vocational rehabilitation effort is expected to result in a return to work with no loss of wage-earning capacity, and that a permanently disabled employee fails or refuses to undergo vocational rehabilitation, reduction of monetary compensation will be made under 5 U.S.C. 8113(b) on that basis.

With regard to the necessary proof for continuing entitlement to benefits or augmented benefits, the sections for
both death and disability claims have been revised. For example, § 10.125 and § 10.127 as proposed would clarify the need for periodic reports of earnings and medical status in disability claims as well as for such proofs of continued entitlement as certification of school enrollment for dependent beneficiaries in death claims.

Provisions for the appellate process have been revised to make clear that there is no entitlement to a hearing on a decision of the Office if the claimant first requests a reconsideration of the claim (20 CFR 10.131, as proposed). (See Barney L. Bailey, Jr., 33 ECAB 1243.) In addition, § 10.137 as proposed defines the circumstances under which it shall be deemed that a claimant has abandoned a request for a hearing. In order to provide quicker decisions at this level of the appellate process, § 10.131 as proposed would give a claimant the opportunity to request a hearing on the written record in lieu of an oral hearing. Provisions governing subpoenas, and fees and mileage for subpoenaed witnesses have also been added (§ 10.134).

A major new provision governs the right of an employing agency to attend a hearing requested by one of its employees solely in an observer capacity (§ 10.135). In addition, § 10.140 as proposed makes more explicit the responsibility of an employing agency to submit all relevant and probative factual and medical evidence which it may possess or acquire. These changes have been made in recognition of the role of the employing agency in the claims process, both as a provider of information and as the instrumentality which bears the cost of injury claims. Furthermore, the proposed revisions provide that if an office accepts a claim which has initially been controverted by an employing agency, the office will provide the agency with the reasons for accepting the claim. Such participation will assure full development of claims without resort to adversarial proceedings.

In order to limit what is currently an open-ended process, and to encourage claimants to submit fully documented and prompt requests for reconsideration, § 10.138 as amended provides for review of a decision denying or terminating a benefit provided the application for review is filed within one year of the date of the decision.

A new §§ 10.160—10.166 dealing with the requirements for representative payment has been added in response to inquiries from oversight bodies. The proposal seeks to define the circumstances under which a representative payee may be chosen and the responsibilities of the payees for ensuring proper disbursement of monies received and for reporting to the Office on the disposition of such payments.

Subpart C dealing with Continuation of Pay (COP) as authorized by 5 U.S.C. 8118 has been significantly revised to reflect ten years' experience with a novel provision of the compensation program as well as to reflect the improved claims processing times of the Office. The time for initiating use of COP has been shortened from six months to 90 days from the date of injury. The Department has determined that the six month period was unrealistically remote in time from the occurrence of an injury to the onset of first disability for continuation of pay purposes. In a related change, the period for using COP days remaining after the first return to duty has been shortened from six months to 90 days.

Under § 10.204 as proposed, the employing agency will be authorized to terminate COP if medical evidence substantiating disability is not submitted within 10 days of the filing of a claim for COP, including such claim for recurrence of disability. COP will not be continued where an injured employee refuses suitable alternative duties nor where an employee's period of employment would otherwise be terminated.

As provided in Subpart B for periods of compensable disability, Subpart C will be amended to state explicitly the responsibilities of the claimant and the employing agency during the COP period for completion of forms, submission of evidence and the provision and acceptance of suitable employment during periods of disability for the employee's regular duties. These provisions will eliminate much uncertainty about the purpose of COP and the conditions under which it is payable. Communications between the agency and the employee will be improved, and return to duty will be facilitated.

Subpart D has been amended to incorporate the formula for determining a partially disabled employee's wage earning capacity and the basis for establishing cost-of-living increases. Neither provision is new to the program, and each reflects the practice currently in use by the Office as established either by sanction of the Employees' Compensation Appeals Board or by statute.

It should be noted that the section dealing with overpayments has been greatly expanded to inform beneficiaries of their rights to due process when an overpayment occurs. We have included the basis for requesting waiver, definitions of "equity and good conscience," and circumstances where recovery would defeat the purpose of the FECA. The effect is to bring OWCP into concert with other Federal benefits programs in its handling of overpayments.

Subpart E, which was substantially revised in May 1984 (49 FR 18976–80), is further revised to include a definition of the term "subluxation" (§ 10.400). This change has been made to provide a definition usable by both chiropractors and other physicians. Also, a time limitation on the payment of medical and related expenses submitted by injured Federal employees and medical providers has been added (§ 10.413).

Subpart F dealing with the exclusion of physicians and other providers of medical services and supplies remains unchanged.

Subpart G dealing with identification and recovery of liability by a third party remains substantially unchanged, the primary revision being made for the purposes of clarity and conformity with current usage.

Subpart H has been added, and contains provisions applicable to special classes of employees which were not covered by explicit regulations in the past. The three categories are Peace Corps Volunteers, which were designated Federal employees by the Peace Corps for the purpose of injury and disability compensation (5 U.S.C. 8142); non-Federal law enforcement officers who in certain circumstances are eligible for benefits comparable to what an injured Federal employee would receive (5 U.S.C. 8191), and Federal grand and petit jurors who are afforded the protection of the Act while engaged in certain activities in connection with their duties as jurors (5 U.S.C. 6101(1)(F); 28 U.S.C. 1877). At the present time these beneficiaries are covered solely by means of internal procedures.

The Office of Workers' Compensation Programs has studied the regulations of various other Federal agencies to ascertain how they address particular issues. Where practical, the proposed regulations have been drafted consistent with those of other agencies, especially when providing due process. We have examined the current regulations to determine whether we might best make only minor changes and have concluded that the Program and its beneficiaries would profit from a comprehensive review of all provisions. We believe that the proposed rules will accomplish the major objectives of the FECA and the Program at this time and will correct problems which have come to light since
1975 when the regulations were promulgated.

Classification—Executive Order 12291
The Department of Labor does not believe that the regulatory proposal constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, no regulatory analysis is required.

Paperwork Reduction Act
The information collection requirements entitled by the proposed regulations will not differ significantly from those currently in effect. New forms are required. All forms that are referenced have been submitted previously for approval by the Office of Management and Budget where required.

Regulatory Flexibility Act
The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities, in this case, medical providers and physicians. The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10
Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health profession, Workers' compensation, Employment, Administrative practices and procedures, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney diseases, Lung diseases, and Tort claims.

Accordingly, it is proposed that 20 CFR Part 10 be amended as set forth below.

1. The authority citation for 20 CFR Part 10 is revised to read as follows:

2. By revising the table of contents of Part 10 to read as follows:

I-10-CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED
Subpart A-General Provisions
Introduction
Sec.
10.1 Statutory provision.
10.2 Administration of the Act and this chapter.
10.3 Purpose and scope of this part.
10.4 Applicability of other parts within this chapter.
10.5 Definitions and use of terms.

Information in Program Records
10.10 Custody of records relating to Federal Employees' Compensation Act matters.
10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.
10.12 Protection, release, inspection and copying of records.

Miscellaneous Provisions
10.20 Forms.
10.21 Waiver of compensation rights invalid.
10.22 Exclusiveness of remedy.
10.23 Penalties.

Subpart B-Notice of Injury and Claim for Compensation, Administrative Procedures
Notice of Injury or Death
10.100 How to file a notice of injury or death.
10.101 When a notice of injury or death must be given.
10.102 Report of injury by the official superior.
10.103 Report of death by the official superior.

Claims for Compensation
10.105 Time for filing a claim for compensation.
10.106 How to file a claim for disability compensation.
10.107 Application for augmented compensation for disability.
10.108 How to file an original claim for death benefits.
10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.

Evidence
10.110 Burden of proof.
10.111 Submission of other evidence.

Termination and Continuation of Eligibility
10.120 Report of termination of disability or return to work.
10.121 Recurrence of disability.
10.122 Claim for continuing compensation for disability.
10.123 Official superior's responsibilities in returning the employee to work.
10.124 Employee's obligation to return to work or to seek work when able.
10.125 Affidavit or report by employee of employment and earnings.
10.126 Claims for continuing compensation for death.
10.127 Continuation of compensation for a child, brother, sister, or grandchild who has reached the age of 18.
10.128 Termination of right to compensation for death; reapportionment of compensation.

Determination of Claims, Hearing and Review Procedures
10.130 Processing of claims.
10.131 Request for a hearing.
10.132 Time and place of hearing; prehearing conference.
10.133 Conduct of hearing.
10.134 Subpoenas; witness fees.
10.135 Employment agency attendance at hearings and submission of evidence.
10.136 Termination of hearing; release of decision.
10.137 Postponement; withdrawal or abandonment of request for hearing.
10.138 Review of decision.
10.139 Review by Employees' Compensation Appeals Board.
10.140 Participation in claims process by employing agency.
10.141 Representation of the Director.
10.142 Representation of claimants.
10.143 Qualification of representative.
10.144 Authority of representative.
10.145 Fees for services.
10.146 [Reserved]
10.147 [Reserved]
10.148 [Reserved]
10.149 [Reserved]
10.150 Statement relative to substantive rules.

Representative Payment
10.160 Indications for designation of a representative payee.
10.161 Selection of a payee.
10.162 Responsibilities of a representative payee.
10.163 Use of benefit payments.
10.164 Conservation and investment of benefit payments.
10.165 Termination of representation.
10.168 Accounting for benefit payments.

Subpart C-Continuation of Pay
General
10.200 Statutory provisions.

Procedures
10.201 Right to continuation of pay.
10.202 Election of annual or sick leave.
10.203 Controversy by employing agency.
10.204 Termination and forfeiture of continuation of pay.
10.451 Automatic exclusion.

10.450 Exclusion for fraud and abuse:

Supplies

Subpart F—Exclusion of Physicians and

10.411 Submission of bills for medical

10.410 Recording and submission of medical

10.409 Furnishing of orthopedic and

10.407 Medical examinations.


10.405 Medical treatment if symptoms or


10.403 Medical treatment in doubtful cases.

10.402 Official authorization

10.401 Medical treatment, hospital services, transportation, etc.

10.400 Physician and medical services, etc. defined.

10.399 Employee's responsibilities in continuation of pay cases.

Subpart D—Payment of Compensation

Compensation Rates

10.300 Maximum and minimum compensation rates.

10.301 Temporary total disability rate.

10.302 Permanent total disability rate.

10.303 Partial disability rate.

10.304 Schedule compensation rate.

10.305 Attendant allowance.

10.306 Eligibility for death benefits and death benefit rates.

10.307 Burial and transportation benefits.

Adjustment to Benefits

10.310 Buy back of annual or sick leave.

10.311 Lump sum awards.

10.312 Assignment of claims; claims of creditors.

10.313 Dual benefits.

10.314 Cost-of-living adjustments.

Overpayments

10.320 Definitions.


10.322 Waiver of recovery—defeat the purpose of the subchapter.

10.323 Waiver of recovery—against equity and good conscience.

10.324 Responsibility for providing financial information.

Subpart E—Furnishing Medical Treatment

10.400 Physician and medical services, etc. defined.

10.401 Medical treatment, hospital services, transportation, etc.


10.403 Medical treatment in doubtful cases.


10.405 Medical treatment if symptoms or disability recur.


10.407 Medical examinations.

10.408 Medical referee examination.

10.409 Furnishing of orthopedic and prosthetic appliances, and dental work.

10.410 Recording and submission of medical reports.

10.411 Submission of bills for medical services, appliances and supplies.

10.412 Reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses.

10.413 Time limitation on payment of bills.

Subpart F—Exclusion of Physicians and Other Providers of Medical Services and Supplies

10.450 Exclusion for fraud and abuse: Grounds.

10.451 Automatic exclusion.

10.452 Initiation of exclusion procedures.

10.453 Requests for a hearing.

10.454 Hearings and recommended decision.

10.455 Final decision.

10.456 Effects of exclusion.

10.457 Reinstatement.

Subpart G—Cases Involving the Liability of a Third Party

10.500 Prosecution of third party action by a beneficiary.

10.501 Assignment of third party.

10.502 Refusal to assign or prosecute claim when required by effect.

10.503 Distribution of damages recovered by a beneficiary.

10.504 Distribution of damages where cause of action is assigned.

10.505 Office may require beneficiary to settle or compromise third party suit.

10.506 Official superior's responsibility in cases involving potential third party liability.

10.507 Satisfaction of the interest of the United States.

Subpart H—Special Category Employees

Peace Corps Volunteers

10.600 Definition of volunteer.

10.601 Applicability of the Act.

10.602 When disability compensation commences.

10.603 Monthly pay for compensation purposes.

10.604 Period of service as a volunteer.

10.605 Conditions of coverage while serving outside the United States and the District of Columbia.

Non-Federal Law Enforcement Officers

10.610 Definition of a law enforcement officer.

10.611 Applicability.

10.612 Conditions for eligibility.

10.613 Time for filing a claim.

10.614 How to file a notice of injury or death.

10.615 Benefits.

10.616 Computation of benefits.

10.617 Responsibilities of the claimant, the employing agency and the Office.

10.618 Consultation with Attorney General and other agencies.

10.619 Cooperation with State and local agencies.

Federal Grand and Petit Jurors

10.620 Definition of juror.

10.621 Applicability.

10.622 Performance of duty.

10.623 When disability compensation commences.

10.624 Pay rate for compensation purposes.

3. By revising § 10.1 to read as follows:

§ 10.1 Statutory provisions.

(a) The Federal Employees' Compensation Act, as amended [5 U.S.C. 8101 et seq.] provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The Act has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air

Patrol (5 U.S.C. 8141), members of the Reserve Officer Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees [see 5 U.S.C. 5351, 8144], employees of the Panama Canal Commission and certain employees of the Alaska Railroad (see 5 U.S.C. 8146), certain law enforcement officers not employed by the United States (see 5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The Act provides for the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties in service to the United States. In addition to monetary compensation, eligible employees are entitled to receive, at reasonable expense to the United States, medical and related services made necessary by the compensable condition. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries.

(c) The Act also provides for the payment of monetary compensation to specified survivors of an employee whose death is the result of an employment-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) Each of the types of benefits and conditions of eligibility enumerated in this section is subject to the applicable provisions of the Act and the provisions of this part. This section shall not be construed to modify or enlarge upon the provisions of the Act.

4. By revising § 10.2(b) to read as follows:

§ 10.2 Administration of the Act and this chapter.

(b) In the case of employees of the Panama Canal Commission, the Federal Employees' Compensation Act is administered by the Panama Canal Commission and inquiries pertaining to such coverage should be directed to that Commission.

5. By revising § 10.3 to add a new paragraph (i) which reads as follows:

§ 10.3 Purpose and scope of this part.

(i)
§ 10.4 Applicability of other parts within this chapter.

This revised Part 10 is applicable to Part 25 of this chapter except as modified by Part 25.

7. In § 10.5, paragraphs [a](6), [a](11) through (xx), [a](12), and [a](14) through (a)(20) are revised; paragraphs (a)(21) through (a)(26) are added; paragraph (b) is revised, and paragraphs (c) and (d) are removed to read as follows:

§ 10.5 Definitions.

(a) * * *

(6) "Benefits" or "Compensation" means the money paid or payable under the Act to the employee on account of loss of wages or loss of wage-earning capacity and to enumerated survivors on account of the employee's death, and includes any other benefits paid for from the Employee's Compensation Fund such as scheduled compensation under 5 U.S.C. 8107, medical diagnostic and treatment services supplied pursuant to the Act and this part, vocational rehabilitation services, additional money for services of an attendant or for vocational rehabilitation under 5 U.S.C. 8111, and funeral expenses under 5 U.S.C. 8134, but does not include continuation of pay as provided by 5 U.S.C. 8118.

* * * * *

(11) * * *

(iv) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(v) An individual selected pursuant to Chapter 121 of Title 28, United States Code, and serving as a petit or grand juror;

(vi) Members of the Reserve Officers Training Corps;

(vii) Civil Air Patrol Volunteers;

(viii) Peace Corps Volunteers and volunteer leaders;

(ix) Job Corps enrollees;

(x) Youth Conservation Corps enrollees;

(xii) Members of the National Teachers Corps;

(xiii) Members of the Neighborhood Youth Corps;

(xiv) Student employees as defined in 5 U.S.C. 5351;

(xv) Employees of the Panama Canal Commission;

(xvi) Certain employees of the Alaska Railroad;

(xvii) Law enforcement officers not employees of the United States and Federal law enforcement officers who are pensioned or pensionable under sections 521–535 of Title 4, District of Columbia Code;

(xviii) An individual covered under the provisions of section 105(e)(1) of Pub. L. 93–638 (Indian Self-Determination and Education Assistance Act of 1975); and

(xix) Other persons performing service for the United States within the purview of the Act and all acts in amendment, substitution or extension thereof;

(xx) But does not include:

(A) A commissioned officer of the Regular Corps of the Public Health Service;

(B) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(C) A commissioned officer of the Environmental Science Services Administration.

(12) "Official Superior" means officers and employees having responsibility for the supervision, direction or control of employees, or other employees of the agency designated by the employing agency to carry out the responsibilities vested in the agency under the Act and this part.

(13) * * *

(14) "Injury" means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act. The term "injury" includes damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired; except that eyeglasses and hearing aids shall not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(15) "Traumatic injury" means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.

(16) "Occupational disease or illness" means a condition produced by systemic infections; continued or repeated stress or strain; exposure to toxins, poisons, fumes, etc., or other continued or repeated exposure to factors or conditions of the work environment over a period of time longer than a single work day or shift.

(17) "Disability" means the incapacity, because of employment injury, to perform the duties of the position held at the time of injury.

(18) "Temporary aggravation" means that factors of employment have directly caused an underlying or pre-existing condition, disease or illness to be more severe for a definite limited period of time and thereafter leaves no greater impairment than existed prior to the employment injury.

(19) "Impairment" means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(20) "Pay rate for compensation purposes" means the employee's pay, as determined under section 8114 of the Act, at the time of injury, or at the time disability begins, or at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under section 8113 of the Act with respect to any period.

(21) "Organ" means a part of the body that performs a special function, and for purposes of this part excludes the brain, heart and back.

(22) "United States Medical Officers and Hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Veterans Administration, and United States Public Health Service, and any other medical officers or hospitals designated as a United States medical officer or hospital by the Secretary.

(23) "Representative" means a person authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the Act or this part.

(24) "Surviving spouse" means the husband or wife living with or dependent for support on a deceased employee at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(25) "Student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(i) A school or college or university operated or directly supported by the United States, or by any State or local
government or political subdivision thereof; or

(ii) A school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school or college or university not so accredited but whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an accredited institution; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof providing courses of not less than 3 months duration, that prepares the individual for a livelihood in a trade, industry, vocation, or profession.

An individual continues to be a student during any interim between school years if the interim does not exceed 4 months and the individual shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately after the interim, or during periods of reasonable duration during which, in the judgment of the Office, the individual is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(ii) The 12-month period beginning the month after the individual graduates from high school, provided he or she has indicated an intention to continue schooling within 4 months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance, or

(iii) If the individual has indicated that he or she will not continue schooling within 4 months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

Dependents and survivors. In addition to basic disability benefits for employees the Act provides in section 8133 that certain monthly benefits shall be payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty. Section 8110 of the Act provides that any employee who is found eligible for a basic benefit shall be entitled to have such a basic benefit augmented at a specified rate for certain persons living in the beneficiary's household or who are dependent upon the beneficiary for support. The provisions of 5 U.S.C. 8101, 8110, and 8133 defining the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or augmented benefit shall be applicable as appropriate to the provisions of this part.

8. By revising § 10.10 to read as follows:

§ 10.10 Custody of records relating to Federal Employees' Compensation Act matters.

All records, medical and other reports, statements of witnesses and other papers relating to the injury or death of a civil employee of the United States or other person entitled to compensation or benefits from the United States under the Act and all amendments and extensions thereof, are the official records of the Office and are not records of the agency, establishment or department making or having the care or use of such records.

9. By revising § 10.11 to read as follows:

§ 10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.

Records of the Office pertaining to an injury or death are confidential, and are exempt from disclosure to the public under section 552(b)(6) of Title 5, United States Code. No official or employee of an agency, establishment or department who has investigated or secured statements from witnesses and others pertaining to a claim for benefits, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 29 CFR 70 and 70a).

10. By adding new § 10.12 as follows:

§ 10.12 Protection, release, inspection and copying of records.

(a) The protection, release, inspection and copying of records of the Office pertaining to an injury or death shall be accomplished in accordance with the rules, guidelines and provisions contained in Part 70 and Part 70a of Title 29 of the Code of Federal Regulations and the annual notice of systems of records and routine uses as published in the Federal Register. However, since the records of the Office are contained within a government-wide system of records under the control of the Department of Labor, § 70a.1(b)(3) of Title 29 of the Code of Federal Regulations provides that the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act. Where request to amend such records in possession of the agency is received, the agency shall so advise the Office and shall provide the Office with a copy of any amended record.

(b) When an employee or beneficiary is prosecuting an action for damages under 5 U.S.C. 8131, records may be released as provided for in Part 70a of Title 29 of the Code of Federal Regulations.

11. By amending § 10.20(b) table by revising (11) through (14) and adding (15) to read as follows:

§ 10.20 Forms.

(b) * * *

(11) CA-12—Claim for Continuance of Compensation.

(12) CA-18—Authorization of Examination and/or Treatment.

(13) CA-17—Duty Status Report.

(14) CA-20—Attending Physician's Report.

(15) CA-20a—Attending Physician's Supplemental Report.

12. By revising § 10.23(a) to read as follows:

§ 10.23 Penalties.

(a) Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided by the Act or who knowingly accepts compensation to which that person is not entitled is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions, be punished by a fine not more than $10,000 or imprisonment for not more than five years, or both.

13. By revising § 10.100 to read as follows:
§ 10.100 How to file a notice of injury or death.

(a) Traumatic injury. An employee who sustains a traumatic injury which the employee believes occurred while in the performance of duty shall give written notice of the injury of Form CA-1 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf.

(b) Occupational disease or illness. An employee who has a disease or illness which the employee believes to be employment-related shall give written notice of the condition on Form CA-2 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf. If it is impractical to give written notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office. Form CA-2 must be accompanied by a statement from the employee to include: (1) a detailed history of the disease or illness with identification of part(s) of the body affected; (2) complete details of types of substances or conditions of employment believed responsible for the disease or illness; (3) a description of specific exposures to substances or stressful conditions including locations, frequency and duration, and (4) whether the employee ever suffered a similar condition and, if so, full details of onset, history and medical care received with names and addresses of physicians rendering treatment.

(c) Death. If an employee dies because of a traumatic injury believed to have been sustained in the performance of duty or because of a disease or illness believed to have been employment-related, the employee's survivor(s), or any person acting on behalf of the survivor(s), shall notify the official superior of the death. If it is impractical to give notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office.

14. By redesignating § 10.102 as § 10.101 and revising it to read as follows:

§ 10.101 When a notice of injury or death must be given.

(a) Traumatic injury. Notice of a traumatic injury or death due to a traumatic injury shall be given as soon as possible but, pursuant to 5 U.S.C. 8118, no later than 30 days from the date on which the injury or death occurred. The failure to give notice within 30 days may result in a loss of compensation rights.

(b) Occupational disease or illness. Notice of disease or illness believed to be employment-related shall be given as soon as possible but no later than 30 days from the date on which the employee was first aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the disease or illness and the conditions or factors of employment.

(c) Death. In the case of death, notice shall be given as soon as possible but no later than 30 days from the date of death or the date the employee's survivor first became aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the death and the conditions or factors of employment. The failure to give notice within 30 days may result in a loss of compensation rights.

15. By redesignating § 10.103 as § 10.102 and revising it to read as follows:

§ 10.102 Report of injury by the official superior.

(a) As soon as possible but no later than 10 working days after receipt of written notice of injury from the employee, the official superior shall submit to the Office a written report of every injury or occupational disease or illness which is likely to:

(1) Result in a medical charge against the Office;
(2) Result in disability for work beyond the day or shift of injury;
(3) Require prolonged treatment;
(4) Result in future disability;
(5) Result in permanent impairment or;
(6) Result in a medical charge against the Office.

Portions of Forms CA-1 or CA-2 are provided for this purpose. If the injury does not come under any of the categories enumerated in this paragraph, the Form CA-1 or CA-2 need not be submitted to the Office but shall be retained as a permanent record in the employee's personnel folder.

(b) If the official superior has reason to disagree with any particular of the injury as reported by the employee, the official superior or any agency official shall explore the circumstances of the injury and submit to the Office, at the same time as Form CA-1 or CA-2, a full written explanation specifying the areas of disagreement and the findings upon which the disagreement is based. The report may be accompanied by supporting documentation such as witness statements, medical reports or records, or any other relevant information. If written explanation in support of the disagreement is not submitted, the Office may accept as factual the report of injury made by the employee.

(c) In cases of disease or illness, Form CA-2 must be accompanied by the following from the official superior:

(1) A detailed description of the employee's duty assignments including the nature, extent and duration of exposure to fumes, chemicals, or other irritants or situations;
(2) Copies of all physical examination reports, including x-ray reports and laboratory data, on file for the employee;
(3) A record of the employee's absences from work showing the reason for the absence in each instance, if known;
(4) Statements from each co-worker who has firsthand knowledge about the employee's condition and its cause, and;
(5) The official superior's comments on the accuracy of the employee's statement required by § 10.100(b) of this part.

(d) Other reports shall be submitted by the official superior as described elsewhere in this part or as may be required by the Office.

16. By redesignating § 10.101 as § 10.103 and revising it to read as follows:

§ 10.103 Report of death by the official superior.

If an employee dies because of a traumatic injury or a disease or illness sustained in the performance of duty, the official superior shall immediately report the death to the Office by telephone or telegram. As soon as possible but no later than 10 working days after receipt of knowledge of death, the official superior shall complete and send Form CA-6 to the Office.

17. By adding a new § 10.104 to read as follows:


(a) In all cases reported, the employee must submit, or arrange for the submission of, a medical report to the Office from the attending physician. This report should include: dates of examination and treatment; history given by the employee; findings; results of x-rays and laboratory tests; diagnosis; course of treatment, and the physician's opinion, with medical reasons, regarding causal relationship between the diagnosed condition(s) and the factors or conditions of the employment. This report may be made:

(1) On Part B of Form CA-16;
(2) On Form CA-20 or CA-20a; or
front of Form CA-4 or CA-7 and, unless special circumstances require otherwise, submit the form to the official superior for completion and transmission to the Office.

(c) Upon receipt of Form CA-4 or CA-7 from the employee (or from someone acting on the employee's behalf), the official superior shall complete the appropriate portions of the claim form, items 1–4 on the front of the attached Form CA-20, insert the appropriate Office address on the back thereof, detach the Form CA-20 and send it to the attending physician for completion and submission to the Office. As soon as possible, but not later than 5 working days after its receipt from the employee, the official superior shall forward the completed Form CA-4 or CA-7 to the Office.

20. By revising §10.107 to read as follows:

§ 10.107 Application for augmented compensation.

(a) While the employee has one or more dependents as defined in 5 U.S.C. 8110, the employee's basic compensation for wage loss as provided in section 8105 or 8106(a), or for permanent impairment as provided in section 8107(e), shall be augmented as provided in section 8110. Forms CA-4 and CA-7 include an application for such augmented compensation.

(b) Augmented compensation payable while an employee has an unmarried child as defined by 5 U.S.C. 8110, which would otherwise terminate because the child reaches the age of 18, may be continued while the child is a student as defined by the Act and in §10.5(a)(25) of this part.

(c) The Office may require an employee to submit an affidavit or statement as to any dependents, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to augmented compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to augmented compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time augmented compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such augmented compensation.

(d) An employee augmented compensation shall promptly notify the Office of any event which would terminate the employee's continued entitlement to augmented compensation. Any checks or payments received after such event shall be returned to the Office as soon as possible. Where augmented compensation is paid by the Office beyond the date entitlement terminated, the Office shall make proper adjustment and any difference between actual entitlement and the amount already paid is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129.

21. By revising §10.109 to read as follows:

§ 10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.

(a) If an employee who has sustained compensable impairment within the meaning of 5 U.S.C. 8107, and has filed a valid claim during his or her lifetime, dies from causes other than the injury, which resulted in the compensable impairment before the entire amount due for the schedule was paid, a claim for the unpaid balance may be made on a form approved by the Office by the surviving spouse or child in accordance with 5 U.S.C. 8109(a)(3)(D). If there is no surviving spouse or child, then a claim for the unpaid balance may be made by any other survivors pursuant to 5 U.S.C. 8109(a)(3)(D) and benefits shall be paid in the proportions and under the conditions and in the order as follows:

(1) To the parent or parents wholly dependent for support upon the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(2) To the parent or parents partially dependent for support upon the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(3) To the parent or parents partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

(b) Any survivor referred to in paragraph (a) of this section must be alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in the manner described by §10.126 of this subpart.

(c) The entitlement of any survivor to payment under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right and any necessary
reapportionment shall be governed by § 10.128 of this subpart.

(d) The disposition of any balance not paid under the foregoing paragraphs shall be made in accordance with 5 U.S.C. 8106(a)(D)(v).

22. By redesignating § 10.110 as § 10.125 and revising it to read as follows:

§ 10.125 Affidavit or report by employee of employment and earnings.

(a) While in receipt of compensation for partial or total disability, an employee may be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time or full-time basis. If an employee when required, fails within 30 days of the date of the request to submit such an affidavit or report, the employee's right to compensation for wage loss under section 8105 or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension. If, in making an affidavit or report, an employee knowingly omits or understates any earnings or remuneration, the employee shall forfeit the right to compensation with respect to any period for which the affidavit or report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment or earnings in a required affidavit or report may, in addition to forfeiture, subject the employee to criminal prosecution.

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture may be recovered pursuant to 5 U.S.C. 8129 by deducting the amount from compensation payable in the future. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 3727). Earnings from employment referred to in this section or elsewhere in this part means gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, or any other advantages received in kind as part of the wages or remuneration. In general, earnings from self-employment means a reasonable estimate of the rate of pay it would cost the employee to have someone else perform the work or duties the employee is performing. Where self-employment is in the form of a corporation, partnership, or sole-proprietorship, a lack of profits for such entity does not remove the employee's obligation to report the employment or the rate of pay.

(c) For the purpose of administering the Act, including the making of proper determinations as to an employee's entitlement to benefits, the Office may, with the written consent of the employee, obtain from the Social Security Administration wage information concerning that employee to include the names and addresses of employers for whom the employee worked during a specified period of time, the periods employed, and the gross amount of wages earned.

23. By adding a new § 10.110 to read as follows:

§ 10.110 Burden of Proof

(a) A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the claimed condition and the disability, if any, was caused, aggravated, or adversely affected by the claimant's Federal employment. As a part of this burden, the claimant must specify the employment incident or the factors or conditions of employment to which the injury, disease or disability is attributed, and must submit reliable medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the claimed condition and the Federal employment. The fact that a condition or disease manifests itself during a period of Federal employment by itself does not raise an inference that there is causal relationship between the two. Neither the fact that the condition or disease became manifest during a period of Federal employment, nor the belief of the claimant that the condition or disease was caused or aggravated by employment conditions or factors, is sufficient in itself to establish causal relationship.

(b) If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. Subsequent submissions of evidence still not sufficient to carry the burden of proof will not require another notification of defects. The Office may, in its discretion, undertake to develop either factual or medical evidence for determination of the claim. For example, when the claim is based on exposure to hazardous material or noise at work, or when relevant evidence is in the possession of the Federal government and not accessible to the claimant (e.g., a deactivated employing agency facility), the Office will undertake to develop the necessary evidence.

(c) Once the Office has accepted a claim and paid compensation, it has the burden, before terminating or reducing compensation, of establishing by the weight of the evidence that the disability for which compensation was paid has ceased, or that the disabling condition is no longer causally related to the employment, or that the claimant is only partially disabled, or that its initial decision was in error.

24. By revising § 10.111 to read as follows:

§ 10.111 Submission of other evidence.

The responsibilities of the official superior and the claimant to submit evidence are specified elsewhere in this part. A claimant, a person acting on the claimant's behalf, or the employing agency may submit to the Office any other evidence which is deemed relevant and pertinent to the initial and ongoing determination of the claim.

25. By revising § 10.120 to read as follows:

§ 10.120 Report of termination of disability or return to work.

In all cases reported to the Office the official superior shall notify the Office immediately upon the injured employee's return to work or termination of disability. Form CA-3 is provided for this purpose. It shall be used unless a report of termination of disability is made to the Office on Form CA-1 or CA-2, or CA-4, or CA-7 as appropriate, or in some other manner.

26. By revising § 10.121 to read as follows:

§ 10.121 Recurrence of disability.

(a) The official superior shall notify the Office if, after the employee returns to work, the original injury causes the employee to stop work again. Form CA-2a is provided for this purpose. If the original injury was not previously reported to the Office, notice of the original injury shall be made on Form CA-1 or CA-2, as appropriate, and attached when Form CA-2a is submitted. Medical reports concerning the original injury should also be attached if not previously submitted. The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(b) When the employee has received medical care as a result of the
employee's condition and the original causal relationship between the course of treatment; the physician's analysis of x-ray and laboratory tests; diagnosis; course of treatment; the physician's opinion, with medical reasons, regarding causal relationship between the employee's condition and the original injury; work limitations or restrictions, and prognosis. The employee should also submit, or arrange for the submission of, similar medical reports for any examination and/or treatment received subsequent to returning to work following the original injury.

(c) The employee must also give the reasons for believing the recurrence of disability is related to the original injury. A statement from the employee must accompany Form CA-2a, describing the employee's duties upon return to work after the original injury, stating whether there were any other injuries or illnesses, and giving a general description of the employee's physical condition during the intervening period. The official superior may submit comments concerning the employee's statement.

(d) If the injured employee does not return to duty or does not return to work after the original injury, the return to duty or termination of disability shall be reported to the Office on Form CA-3 unless otherwise reported on Form CA-4 or CA-7 or Form CA-8.

(e) Claim for compensation as a result of the recurrence of disability should be made using Form CA-4 or CA-7, as appropriate, unless such form was previously filed after the original injury. If Form CA-4 or CA-7 was previously filed, compensation must be claimed using Form CA-8. A completed claim form plus a medical report on Form CA-20 or CA-20a (or in narrative form) must be submitted before compensation may be paid.

27. By revising §10.122 to read as follows:

§10.122 Claim for continuing compensation for disability.

Form CA-8 is provided to claim compensation for additional periods of time after Form CA-4 or CA-7 is submitted to the Office. It is the responsibility of the employee to submit Form CA-8. Without receipt of such claim, the Office has no knowledge of continuing wage loss. Therefore, while disability continues, a claim on Form CA-8 should be submitted every 2 weeks until the employee is otherwise instructed by the Office. The employee shall complete and sign the face of the form, and the official superior shall complete the reverse side. The official superior also shall complete items 1-6 on the front of the attached Form CA-20a and insert the appropriate Office address on the back thereof, and then detach the Form CA-20a and send it to the attending physician for completion and submission to the Office. The official superior shall forward the completed Form CA-8 to the Office within 5 working days of receipt from the employee.

28. By redesigning §10.124 as §10.126 and revising it to read as follows:

§10.126 Claims for continuing compensation for death.

A beneficiary to whom an award of compensation has been made on account of an employee's death shall submit additional claims for continuing compensation to the Office once each year, or when required by the Office. Form CA-12 is provided by the Office for this purpose and will be sent to the beneficiary when an additional claim is required. If a beneficiary when required, fails within 30 days of the date of request to submit the form (or an equivalent written statement), the beneficiary's right to compensation, including compensation payable to that beneficiary for or on behalf of another (e.g., compensation payable to a widow or on behalf of a child), shall be suspended until such time as the requested form or equivalent written statement is received, at which time compensation will be reinstated at the appropriate rate retroactive to the date of suspension.

29. By redesigning §10.123 as §10.124 and revising it to read as follows:

§10.124 Employee's obligation to return to work or to seek work when able.

(a) An employee whose disability has ceased and who is able to resume regular Federal employment has the obligation to do so. No further compensation for wage loss is payable once the employee has recovered from the employment injury to the extent that he or she could perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) Where an employee has been advised by the employing agency in writing of the existence of specific alternative positions within the agency, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. Where an agency has advised the employee of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall advise the attending physician and request the physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility of advising the employing agency immediately of the limitations and restrictions imposed.

(c) Where an employee has been offered suitable employment (or reemployment) by the employing agency (i.e., employment or reemployment which the Office has found to be within the employee's educational and vocational capabilities, within any limitations and restrictions which pre-existed the injury, and within the limitations and restrictions which resulted from the injury), or where an employee has been offered suitable employment as a result of job placement efforts made by or on behalf of the Office, the employee is obligated to return to such employment. An employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified.

(d) When a permanently disabled employee who cannot return to the position held at the time of injury due to the residuals of the employment injury has recovered sufficiently to be able to perform some type of work, the employee must seek suitable work either in the Government or in private employment. Such an employee must report the efforts made to obtain suitable employment at such times and in such manner as the Office may require including the names and addresses of the persons or establishments to whom the employee has applied for work.

(e) If a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work has been offered to, procured by, or secured for the employee, the employee is not entitled to compensation provided by sections 8103, 8105, and 8107 of the Act.

(f) Pursuant to 5 U.S.C. 8104(a), the Office may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in a vocational rehabilitation effort when so directed, the Office will, in accordance with 5 U.S.C. 8119(b), reduce prospectively the
employee's monetary compensation based on what would probably have been the employee's wage-earning capacity had there not been such failure or refusal. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in the early but necessary stages of a vocational rehabilitation effort (i.e., interviews, testing, counselling, and work evaluations), the Office cannot determine what would have been the employee's wage-earning capacity had there not been such failure or refusal. It will be assumed, therefore, in the absence of evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and the Office will reduce the employee's monetary compensation accordingly. Any reduction in the employee's monetary compensation under the provisions of this paragraph shall continue until the employee in good faith complies with the direction of the Office.

30. By adding a new § 10.123 to read as follows:

§ 10.123 Employing agency's responsibilities in returning the employee to work.

(a) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and, with respect to alternative work, shall

1) Advise the employee in the same manner as provided by § 10.207(b)(1); and

2) Advise the employee of his or her responsibilities under § 10.124 of this subpart.

(b) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is provided for this purpose.

(c) Where the employing agency is notified in writing that the attending physician has found the employee to be partially disabled, and the employee is able to:

1) Perform in a specific alternative position which is available within the agency and for which the agency has furnished the employee with a written description of the specific duties and physical requirements, the agency shall notify the employee immediately of the date of availability. To facilitate early return to work, the agency may inform the employee of the offer and its availability by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

2) Perform restricted or limited duties, the agency shall determine whether necessary accommodation can be made, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may inform the employee of the offer by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

3) Where the nature and extent of injury prohibit the employee from returning to the duties of the position held at the time of injury, and the agency is unable to accommodate the restrictions and limitations imposed on the employee by the injury, and employment is consequently terminated, the agency may, in cooperation and coordination with the Office, subsequently determine the former employee's current physical condition and offer reemployment in a position suitable to the former employee's capabilities. Such reemployment offer must be in writing and include a description of the duties of the position being offered, the physical requirements of those duties, and the date the former employee is to return to work or, in the alternative, the date by which the former employee must notify the agency of his or her decision with respect to acceptance or refusal of the reemployment offer.

(e) A complete copy of any agency offer of employment or reemployment should be sent to the Office at the same time as it is sent to the employee.

31. By adding a new § 10.127 as follows:

§ 10.127 Continuation of death compensation for a child, brother, sister or grandchild who has reached the age of 18.

Compensation payable on behalf of a child, brother, sister, or grandchild under 5 U.S.C. 8133, which would otherwise be terminated because such individual has reached 18 years of age, shall be continued if and for so long as he or she is not married and is physically or mentally incapable of self-support, or if he or she is a student as defined in § 10.5(a)(25) for so long as he or she is not married and continues as a student. An individual in receipt of compensation under the provisions of 5 U.S.C. 8133 shall furnish, when so required by the Office, proof of continuing entitlement to such compensation, including certification of school enrollment. If a beneficiary when required, fails within 30 days of the date of the request to submit such proof, the beneficiary's right to compensation shall be suspended until the requested information is received, at which time compensation will be reinstated retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

32. By adding a new § 10.128 as follows:

§ 10.128 Termination of right to compensation for death; reapportionment of compensation.

(a) When a beneficiary who is receiving compensation on account of death ceases to be entitled to such compensation by reason of death, remarriage before age 60, marrying, reaching the age of 18, ceasing to be dependent, ceasing to be student, or becoming capable of self-support, the beneficiary or someone acting on the beneficiary's behalf shall immediately notify the Office of such event. If the beneficiary, or someone acting on the beneficiary's behalf, receives a check which includes payment of compensation for any period after the date when entitlement ceased for any of the above reasons, the check shall be promptly returned to the Office. The terms marrying and remarrying include common law marriage as recognized and defined by state law in the state where the beneficiary resides.

(b) An event as described in paragraph (a) of this section which results in the termination of compensation to a beneficiary may also result in a reapportionment of the amount of compensation payable to one or more of the remaining beneficiaries. Similarly, the birth of a posthumous child of the deceased employee may also result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify the Office of the birth and submit a certified copy of the birth certificate.

33. By revising § 10.130 to read as follows:

§ 10.130 Processing of claims.

Claims for compensation for disability and death are processed by claims examiners of the Office, whose duty it is to apply the law to the facts as reported, received, or obtained upon investigation. The Federal Employees' Compensation Act, as amended, requires that a decision with respect to entitlement contain findings of fact and be based on consideration of the claim presented by the claimant, the report by his or her immediate official superior, and the completion of such investigation as the Office may deem necessary. There is no required procedure for the production of evidence but the evidence should be in written form. The final authority in the Office in the determination of a claim is
vested in the Director of the Office. The decision shall contain findings of fact and a statement of reasons. A copy of the decision, together with information as to the right to a hearing, to a reconsideration, and to an appeal to the Employees’ Compensation Appeals Board, shall be mailed to the claimant’s last known address. If the claimant is represented before the Office, a copy of the decision will also be mailed to such representative.

34. By revising §10.131 to read as follows:

§ 10.131 Request for a hearing.

(a) Any claimant not satisfied with a decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative designated by the Director. A hearing must be requested in writing within 30 days of the date of issuance of the decision and be made to the Office set forth in the decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing, or if request is made for a hearing on the written record as provided in paragraph (b) of this section. At an oral hearing, the claimant shall be afforded the opportunity to present oral testimony and/or written evidence in further support of the claim.

(b) In lieu of an oral hearing, a claimant shall be afforded an opportunity for a hearing on the written record by an Office representative designated by the Director. Such a hearing will not involve oral testimony or attendance of the claimant; however, the claimant may submit any written evidence which he or she believes relevant. A hearing on the written record must be requested in writing within 30 days of the date of issuance of the decision, specify the decision and/or issue which is the subject of the request, and be made to the office set forth in the decision. A claimant is not entitled to a hearing on the written record if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing on the written record. By requesting a hearing on the written record under this paragraph, the claimant waives the right to an oral hearing on the same issue. Where timely request for a hearing on the written record is received, the Office shall furnish the employing agency with a copy of the claimant’s request and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Following a review of the record and any evidence submitted, the Office representative shall decide the claim and inform the claimant, the claimant’s representative and the employing agency of the decision.

35. By revising §10.132 to read as follows:

§ 10.132 Time and place of hearing; prehearing conference.

The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant at least 10 days prior to the hearing. When practicable, the hearing will be set at a time and place convenient for the claimant. At the request of the claimant, the Office representative may schedule a prehearing conference to further define or clarify the issues. Request for such a conference must be made to the Office representative in writing at least 5 days prior to the scheduled date of the hearing. The decision whether or not to schedule a prehearing conference shall be solely within the discretion of the Office representative.

36. By revising §10.133(a) to read as follows:

§ 10.133 Conduct of hearing.

(a) In conducting the hearing, the Office representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 5 of the Administrative Procedures Act, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded. The recording, either by magnetic tape or by transcription, shall be made a part of the case record.

37. By redesignating §10.137 as §10.139 without revision.

38. By redesignating § 10.136 as new §10.138 and revising it to read as follows:

§ 10.138 Review of decision.

(a) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation at any time on its own motion and may, as a result of that review, affirm, reverse or modify the previous decision and inform the claimant, the claimant’s representative and the employing agency of the decision.

(b)(1) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant’s application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application. The claimant may obtain review of the merits of the claim by—

(i) Showing that the Office erroneously applied or interpreted a point of law, or

(ii) Advancing a point of law or a fact not previously considered by the Office, or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office.

(2) Any application for review of the merits of the claim which does not meet at least one of the requirements listed in subparagraphs (b)(1)(A)-(C) of this section will be denied by the Office without review of the merits of the claim. Such a denial of application is not an award for or against the payment of compensation and is not subject to review under this section or to hearing under §10.131. Further, the Office will not review a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision. Where proper application is submitted and the Office finds that merit review of the claim is warranted, the Office shall furnish the employing agency with a copy of the claimant’s application for reconsideration and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in
question. The Office shall then review the decision and any agency submission, decide the claim, and inform the claimant, the claimant's representative and the employing agency of the decision.

39. By redesignating §10.135 as §10.137 and revising it to read as follows:

§10.137 Postponement; withdrawal or abandonment of request for hearing.

(a) A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least 3 days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.

(b) A claimant may withdraw a request for a hearing at any time by written notice to the Office representative before the hearing is held, or on the record at the hearing.

(c) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, another hearing will be scheduled. Unless extraordinary circumstances such as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.

40. By redesigning §10.136 as §10.138 and revising it to read as follows:

§10.136 Termination of hearing; release of decision.

The Office representative shall fix the time within which evidence will be received and shall terminate the hearing by mailing a copy of the decision, setting forth the basis therefor, to the claimant's last known address and to the claimant's representative, if any. A copy of the decision will also be mailed to the employing agency.

41. By adding a new §10.135 as follows:

§10.135 Employing agency attendance at hearings and submission of evidence.

The employing agency does not have the right to request a hearing pursuant to 5 U.S.C. 8124. However, the employing agency has an interest in the outcome of the hearing and frequently possesses information pertinent to issues raised at the hearing. Therefore, the employing agency shall be afforded the opportunity to have an agency representative in attendance at the hearing and/or to request that it receive a copy of the hearing transcript. Where the employing agency sends a representative, the representative will attend primarily in the role of an observer without the right to question the claimant or make any argument. However, since the claimant is entitled to present evidence in support of the claim, the agency representative may, upon the specific request of the claimant, be called upon by the Office representative to give oral testimony. Where the employing agency requests that it receive a copy of the hearing transcript, the agency will be allowed 15 days following release of the transcript to submit comments or additional material for inclusion in the record. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant.

42. By adding a new §10.134 to read as follows:

§10.134 Subpoenas; witness fees.

(a) When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A claimant who desires the issuance of a subpoena shall, not less than 20 days prior to the date fixed for the hearing, file with the Office representative a written request therefor, designating the witness or documents to be produced, and describing the address and location thereof with sufficient particularitiy to permit the issuance of a subpoena. Where such witness or documents to be found. The request for a subpoena shall state the pertinent facts which the claimant expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Office hearing representative, and shall be served either in person by an authorized representative of the Office or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. Where service is made in person by an authorized Office representative, such representative shall make an affidavit stating that he or she personally served a copy of the subpoena upon the person named therein. Where service is by certified mail, the signed returned post office receipt shall serve as proof of service.

(b) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the Office (e.g., impartial physicians, rehabilitation specialists, etc.) shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. Fees and mileage requested by such witnesses shall be paid by the Office.

(c) Witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the claimant (e.g., the claimant's attending physician), or who have not submitted evidence into the case record but have testimony which is relevant and material to the issue in question and were subpoenaed at the request of the claimant, shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. Fees and mileage requested by such witnesses shall be paid by the claimant.

43. By revising §10.140 to read as follows:

§10.140 Participation in claims process by employing agency.

Proceedings conducted with respect to claims filed under the Act are nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in Subpart C of this part, to actively participate in the claims adjudication process. However, the employing agency may, under circumstances other than that described in §10.102(b), investigate the circumstances surrounding an injury to an employee and the extent of disability (e.g., an agency may investigate an employee's activities where it appears the employee alleging total disability may be performing other employment or may be engaging in activities which would indicate less than total disability). Further, the agency
has the responsibility to submit to the Office at any time all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means.

All evidence submitted will be considered and acted upon by the Office as appropriate, and the Office will inform the claimant, the claimant's representative and the employing agency of such action. In those instances where an employing agency contests a claim at time of initial submission and the claim is subsequently approved, the Office will notify the agency of the rationale for approving the claim.

44. By revising § 10.141 to read as follows:

§ 10.141 Representation of the Director.

The Director shall be represented in proceedings with respect to any claim conducted before the Employee's Compensation Appeals Board (ECAB) by attorneys from the Office of the Solicitor of Labor.

45. By revising § 10.144 to read as follows:

§ 10.144 Authority of representative.

A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant.

46. By revising paragraphs (c), (d), (g), (h), and (i) of § 10.145 to read as follows:

§ 10.145 Fees for services.

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. The application should be made when the representative has submitted the final piece of information believed necessary for the adjudication of the claim. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

(d) The representative shall arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee. The claimant's written comments should accompany the application for approval of a fee submitted to the Office.

(g) Any claimant aggrieved or adversely affected by an award of a fee may request a hearing or reconsideration by the Office, or may request review by the Employees' Compensation Appeals Board.

§ 10.161 Selection of a Payee.

(a) In approving a payee, the Office shall approve the person, agency, organization or institution which, in its judgment, will best serve the interest of the beneficiary. In making its decision the Office shall consider:

(1) The relationship of the person to the beneficiary;

(2) The amount of interest that the person shows in the welfare of the beneficiary;

(3) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(4) Whether the potential payee has custody of the beneficiary;

(5) Whether the potential payee is in a position to know of and to look after the needs of the beneficiary.

(b) For beneficiaries 18 years old or older, the general order of preference subject to the provisions of paragraphs (a) of this section, shall be:

(1) A legal guardian, spouse or other relative who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary.

(c) For beneficiaries under age 18, the general order of preference subject to the provisions of paragraph (a) of this section shall be:

(1) A biological or adoptive parent who has custody of the beneficiary, or a legal guardian;

(2) A biological or adoptive parent who does not have custody of the beneficiary, but is contributing to the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;

(3) A biological or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support, but is demonstrating strong concern for the beneficiary's well-being;

(4) A relative or stepparent who has custody of the beneficiary;
§ 10.162 Responsibilities of a representative payee.

A representative payee has a responsibility to—
(a) Spend or invest payments received only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines to be in the best interests of the beneficiary, subject to the guidelines contained in §10.163;
(b) Notify the Office of any event that would affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;
(c) Submit to the Office, upon its request, a written report accounting for the benefits received; and
(d) Notify the Office of any change in the payee’s circumstances that would affect performance of the payee’s responsibilities.

§ 10.163 Use of benefit payments.

To assure that the general welfare of the beneficiary is properly served, benefit payments received by a representative payee shall be used in the following manner, and in the prescribed order:
(a) Current maintenance, including costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.
(b) Institutional care, including the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary’s recovery or release from the institution or expenses for personal needs which will improve the beneficiary’s conditions while in the institution.
(c) Support of the beneficiary’s legal dependents after current maintenance needs or institutional care of the beneficiary are met; and
(d) Claims of creditors only if the current and reasonably foreseeable needs of the beneficiary are met.

§ 10.164 Conservation and investment of benefit payments.

If payments either in whole or in part are not needed for any of the purposes listed in §10.163 of this part, they shall be conserved or invested on behalf of the beneficiary in non-speculative accounts. Conserved funds should be invested in accordance with rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. The account should provide for withdrawal upon demand without penalty. The interest and dividends, as well as all other profits, which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 10.165 Termination of representation.

The services of a representative payee may be terminated when:
(a) The payee has not used the funds in the interests of the beneficiary as stipulated in this subpart;
(b) The payee has not discharged other responsibilities described in this subpart, or has not done so in a timely manner;
(c) The payee dies, wishes to be discharged from responsibility, or is unable to carry out the responsibilities of payee;
(d) The Office, after receipt of competent evidence, determines that the beneficiary is capable of managing his or her own funds; or
(e) A minor beneficiary attains majority.

§ 10.166 Accounting for benefit payments.

A representative payee is accountable for the use of benefit payments. The Office may require periodic written reports from the representative payee, and in certain cases, verification of how the funds were used. The representative payee shall keep records of how the funds were used so as to be able to furnish the following information to the Office:
(a) The amount of benefit payments on hand at the beginning of the accounting period;
(b) A description of how the benefit payments were used;
(c) An accounting of the amounts of payments which were saved or invested;
(d) The place(s) of residence of the beneficiary during the accounting period; and
(e) The amount of the beneficiary’s income from other sources during the accounting period so as to assist the Office in evaluating the use of the benefit payments.

48. By revising §10.200 to read as follows:

§ 10.200 Statutory provisions.

(a) Pub. L. 93–416, approved September 7, 1974, significantly revised the Act to provide that specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.

(b) Continuation of pay shall be considered regular income and not compensation and unlike compensation, shall be subject to all taxes and other payroll deductions applicable to regular income.

49. By revising §10.201 to read as follows:

§ 10.201 Right to continuation of pay.

(a) An employee is not entitled to continuation of pay unless:
(1) The employee is one of the types of employees listed in §10.200(a)(1)[(i), (iii), or (v), except that an individual selected pursuant to Chapter 121 of Title 28 and serving as a petit or grand juror but who is not otherwise an employee of the United States is not entitled to continuation of pay;
(2) The employee sustains a traumatic job-related injury;
(3) The employee claims continuation of pay within 30 days of the injury on a form approved by the Secretary. Form CA–1 may be used for this purpose.
(4) The employee’s disability begins within 90 days of the date of injury.
(b) An employee entitled to continuation of pay shall have regular pay continued without a break in time for a period not to exceed 45 calendar days of disability, unless the right to continuation of pay is controverted and pay is terminated under §10.203 or is terminated under §10.204. Where the employee stops work due to the disabling effects of the injury, the 45-day period starts with the first day or shift following the date of shift of injury during which the claimant is disabled, provided the disability begins within 90 days of the occurrence of the injury. With regard to the date of injury, the employing agency will keep the employee in a pay status for any fraction of the day or shift of injury for which the employee was disabled with no “charge” to the 45-day period. If the employee stops work for a part of a day or shift other than the day or shift of
by personnel action has been taken to change the employee to a lower grade, description exists which is classified at personnel action has been taken to against the employee's 45-day job which is normally paid at a lower salary and would otherwise result in loss of income to the employee. Continuation of pay must be charged against the employee's 45-day entitlement when, due to the effects of the injury upon the employee, (1) a personnel action has been taken to assign or detail the employee to an identified position for which a position description exists which is classified at a lower salary level than that earned by the employee when injured; or (2) a personnel action has been taken to change the employee to a lower grade, or to a lower rate of basic pay; or (3) a personnel action has been taken to change the employee to a different schedule of work which results in loss of salary or premium pay (e.g., Sunday pay or night differential) authorized for the employee's normal administrative workweek. If the employee's job-related disability continues after entitlement to continuation of pay ceases, the employee shall be entitled to receive compensation subject to the provisions of 5 U.S.C. 8117.

(c) Where an employee's pay is continued under this subpart, it shall not be terminated or interrupted as a part of a disciplinary action.

(d) The administration and interpretation of the Act, including section 8118 of the Act, is the function of the Office. While the employing agency shall make certain preliminary decisions with respect to an employee's entitlement to pay continuation under this subpart, final determinations as to such entitlement are a function of the Office.

(e) If the Office finds that the employee is not entitled to continuation of pay after it has been paid, the payments, at the employee's option, shall be charged to annual or sick leave or considered overpayments of pay under 5 U.S.C. 5594.

(f) If the Office determines that pay has been continued at an incorrect rate, the Office shall notify the employing agency and the employee of the correct rate of pay, and the employing agency shall make the necessary adjustment.

§ 10.203 [Removed]

50. By removing § 10.203.
Where medical evidence is received by the agency more than 10 calendar days after work stoppage, the agency shall continue the employee's pay retroactive to the date of termination provided that the medical evidence supports injury-related disability beyond the 10 calendar days period. The provisions of this paragraph also apply to periods of recurrent disability as described in § 10.208; or

(2) The employing agency receives evidence that the attending physician has found the employee no longer disabled (i.e., the employee can perform the duties of the position held at the time of injury); or

(3) The employing agency receives evidence that the attending physician has found the employee to be partially disabled (i.e., the employee can perform suitable work which has been offered by the agency in accordance with § 10.207; or

(4) The employee's scheduled period of employment expires or employment is otherwise terminated, except as provided by § 10.201(c); or

(5) The employing agency receives notification from the Office that pay should be terminated; or

(9) The 45-day continuation of pay period expires.

(b) When an employee refuses to submit to or obstructs an examination required by the Office under the provisions of 5 U.S.C. 8123(a), the right to continuation of pay under this subpart may be suspended until the refusal or obstruction stops. Pay otherwise paid or payable under this subpart for the period of the refusal or obstruction may be forfeited and, where already paid, is subject to the provisions of § 10.201(e).

(c) If the Office determines that the employing agency has incorrectly terminated the employee's pay or selected an incorrect date of termination, the Office shall instruct the agency to take appropriate corrective action.

54. By revising § 10.205 to read as follows:

§ 10.205 Pay defined for continuation of pay purposes.

(a) For a full or part-time worker, either permanent or temporary, who works the same number of hours each week but who does work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during the one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week.

(c) For all WAE (when actually employed), intermittent and part-time workers, either permanent or temporary, who do not work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during that one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week. However, the average weekly earnings may not be less than 150 times the average daily wage earned in the employment during the days employed within the one year period immediately preceding the date of injury divided by 52 weeks.

(d) Premium, Sunday and holiday pay, night and shift differential, or other extra pay shall be included when computing wages for continuation of pay, but overtime pay shall not be included.

(e) Changes in pay or salary which would have otherwise occurred during the 45-day period (e.g., promotion, within-grade increase, demotion, termination of a temporary detail, etc.) are to be reflected in the continuation of an employee's pay under this subpart, and are to take effect at the time the event would otherwise have occurred.

55. By revising § 10.206(a) to read as follows:

§ 10.206 Agency accounting and reporting of continuation of pay.

(a) Pending development of a system within the Office for directly capturing and tabulating data on continuing payments to employees under 5 U.S.C. 8118, each agency and instrumentality of the United States having an employee who is in a continuation of pay status during the calendar quarter shall submit a report to this Office within 30 days after the end of each quarter (address: Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210).

56. By revising § 10.207 to read as follows:

§ 10.207 Official superior's responsibility in continuation of pay cases.

(a) Upon receiving notice that an employee has suffered an employment-related traumatic injury, an official superior shall:

(1) Promptly authorize medical care in accordance with Subpart E of this part;

(2) Provide the employee with Form CA-1 for reporting the injury and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury";

(3) Fully advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling;

(4) Advise the employee that medical evidence of a disabling traumatic injury must be submitted to the official superior within 10 calendar days of the date disability begins or pay may be terminated in accordance with § 10.204(a)(1);

(5) Inform the employees whether continuation of pay will be controverted, and, if so, whether pay will be terminated and the basis for the controversion and termination of pay;

(6) Submit Form CA-1, completed by the employee and official superior, and all other available pertinent information to the office as soon as possible, but no later than 10 work days after the official superior has received Form CA-1. If the claim is controverted, the official superior will prove explanation on Form CA-1 or in a separate narrative statement or both.

(b) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and;

(1) Where the agency has specific alternative positions available for partially disabled employees, the agency shall furnish the employee with a written description of the specific duties and physical requirements of those positions;

(2) Where, in addition to any specific alternative positions, the agency is willing to accommodate the limitations and restrictions imposed on the employee by the injury, shall so advise the employee; and

(3) Shall advise the employee of his or her responsibilities under § 10.209 of this subpart.

(c) The employing agency shall monitor the employee's medical progress and duty status by obtaining
periodic medical reports. Form CA-17 is provided for this purpose. Additional information or clarification may be obtained by the agency through telephone contact with the employee's attending physician or nurse who is an employee of the agency.

(d) Where employing agency is notified that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform one of the specific alternative positions referred to in §10.207(b)(1), the employing agency shall notify the employee immediately of the description of the job and its physical requirements and of the date the job will be available. To facilitate early return to work, the agency may contact the employee by telephone, and provide written confirmation of availability as soon as possible thereafter. A complete copy of the offer, including the description of the duties of the job, the physical requirements and the date of availability, should be sent to the Office at the same time as it is sent to the employee.

(2) Perform restricted or limited duties referred to in §10.207(b)(2), the employing agency shall determine whether duties suitable to the employee's limitations and restrictions are available, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of the offer as soon as possible thereafter. A complete copy of any offer made to the employee should also be sent to the Office at the same time as it is sent to the employee.

57. By revising §10.206 to read as follows:

§10.208 Recurrence of disability.

(a) If an employee claims a recurrence of disability, the official superior shall promptly complete Form CA-2a. The employee shall request on Form CA-2a to continue to receive regular pay or to charge the absence to sick or annual leave.

(b) Where the employee requests continuation of pay, the official superior shall continue pay if:

(1) The original claim of disability has not been denied by the Office; and
(2) Pay has not been continued for the entire 45 days; and
(3) The disability recurs within 90 days of the date the employee first returned to work following the initial period of disability.

(c) If the employee's pay has been continued for 45 days, or disability recurs more than 90 days after the employee first returns to work, the employee is entitled to compensation only, provided the claim is approved by the Office, and the employing agency may not continue regular pay. An employee who is no longer entitled to continuation of pay should file a claim for compensation on Form CA-7 or CA-8.

58. By revising §10.209 to read as follows:

§10.209 Employee's responsibilities in continuation of pay cases.

(a) An employee who sustains a traumatic job-related injury, or someone acting on the employee's behalf, shall complete and submit the employee's portion of Form CA-1 to the official superior as soon as possible but no later than 30 days after the date of injury. An employee shall elect on Form CA-1 either to receive an offer of pay or use sick or annual leave while disabled for work as a result of the injury. (See §10.201 and §10.202.)

(b) Where the agency has advised of the existence of specific alternative positions, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. The employee must furnish the employing agency with a copy of the physician's response.

(c) Where the agency has advised of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the attending physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(d) Where an employee has been offered duties within the limitations and restrictions imposed by the physician, the employee is obligated to return to duty. Where an employee refuses such an offer of suitable work, entitlement to continuation of pay ceases as of the effective date of availability of such work.

(e) Where the Office determines that, due to the failure of the employee to meet his or her obligations and responsibilities under this section, pay was continued beyond the date it would otherwise have terminated, the Office will advise the official superior and the employee of the period of disability which is approved, and the official superior may require the employee to resolve any overpayment in accordance with §10.201(e) of this subpart.

(f) Where return to suitable work results in a loss of pay such as premium pay, Sunday pay, holiday pay, night or shift differential, etc., continuation of pay will be granted for the lost elements of pay (see §10.205(d) of this subpart).

59. By revising §10.301 to read as follows:

§10.301 Temporary total disability rate.

(a) Compensation based on loss of wages is payable, subject to the provisions of 5 U.S.C. 8117, after the expiration of continuation of pay as provided by Subpart C of this part or from the beginning of pay loss in all other cases.

60. By revising §10.302 to read as follows:

§10.302 Permanent total disability rate.

When the injury causes permanent total disability, an injured employee is entitled to total disability compensation until death unless the employee is medically or vocationally rehabilitated to either full or partial earning capacity. The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes is prima facie evidence of permanent total disability. However, the presumption of permanent total disability as a result of such loss is rebuttable by evidence to the contrary, such as evidence of sustained work and earnings despite the loss. Compensation for permanent total disability is payable at the rate of 66⅔ percent of the pay rate established for compensation purposes, or at 75 percent when death is a dependent (see §10.301(b) of this section).

61. By revising §10.303 to read as follows:

§10.303 Partial disability rate.

(a) An injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity. Compensation for partial disability is payable at 66⅔ percent (or at 75 percent if the employee has a dependent) of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. A narrative description of the formula used by the Office to compute the compensation payable is contained in paragraph (b) of this section. In determining the compensation payable
for partial disability, an employee’s wage-earning capacity is determined by the employee’s actual earnings if those earnings fairly and reasonably represent the wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee’s wage-earning capacity or if the employee has no actual earnings, the employee’s wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee’s injury, the degree of physical impairment, the employee’s usual employment, the employee’s age, the employee’s qualification for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee’s wage-earning capacity in his or her disabled condition. The salary of such a job shall be considered the employee’s wage-earning capacity. The Office will not secure employment for the claimant in the position selected for establishing an earning capacity. 

(b) For the purpose of describing the formula utilized by the Office for computing the compensation payable for partial disability, the following terms are defined: pay rate for compensation purposes as defined in §10.5(a)(20) of this part; current pay rate means “current” salary or pay rate for the job held at the time of injury; and earnings means the claimant’s actual earnings, or the salary or pay rate of the job selected by the Office as representative of the employee’s wage-earning capacity. An employee’s wage-earning capacity in terms of percentage is obtained by dividing the employee’s earnings by the current pay rate. The comparison of earnings and “current” pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. Any convenient date may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for comparison. The employee’s wage-earning capacity in terms of dollars is computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the employee’s loss of wage-earning capacity. Compensation for partial disability is payable at the rate of 66% of the employee’s wage-earning capacity. The compensation payable shall be increased by applicable cost-of-living adjustments.

62. By revising §10.304 to read as follows:

§ 10.304 Schedule compensation rate.

(a) Compensation is provided for specified periods of time for the permanent loss or loss of use (referred to as impairment) of each of certain members, organs and functions of the body. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. The compensation for scheduled awards will equal 66⅔ percent of the employee’s pay or 75 percent of the pay when there is a dependent. Compensation for loss of wage-earning capacity may be paid after the schedule expires. Proper and equitable compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck if of a character likely to handicap a person in securing or maintaining employment.

(b) Authority is provided under 5 U.S.C. 8107(c)(22) to add other internal and external organs to the compensation schedule. Pursuant to this authority, the following is added:

<table>
<thead>
<tr>
<th>Organ</th>
<th>Weeks</th>
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<tbody>
<tr>
<td>Breast (one)</td>
<td>52</td>
</tr>
<tr>
<td>Kidney</td>
<td>156</td>
</tr>
<tr>
<td>Larynx</td>
<td>160</td>
</tr>
<tr>
<td>Lung (one)</td>
<td>156</td>
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<tr>
<td>Penis</td>
<td>205</td>
</tr>
<tr>
<td>Testis (one)</td>
<td>52</td>
</tr>
<tr>
<td>Tongue</td>
<td>160</td>
</tr>
</tbody>
</table>

(c) Compensation under this schedule is:

(1) Payable regardless of whether the cause of the impairment originates in part of the body other than the impaired member or organ;
(2) Payable regardless of whether the disability also involves another impairment of the body; and
(3) Payable in addition to but, with the exception of compensation for serious disfigurement of the face, head or neck, not concurrently with compensation for temporary total or temporary partial disability.

(d) The period of compensation payable under the schedule in 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for and earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function or for disfigurement; and

(2) The Office finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(e) Where compensation is reduced as provided by paragraph (d) of this section, compensation for continuing wage loss starts on expiration of the schedule period as reduced.

§10.307 [Redesignated from §10.306]

63. By redesigning §10.306 as §10.307 without revision.

64. By redesigning §10.305 as §10.306 and revising it to read as follows:

§ 10.306 Eligibility for death benefits and death benefit rates.

(a) If there is a child entitled to compensation, the employee’s surviving spouse shall receive compensation equal to 50 percent of the employee’s pay until death or remarriage before reaching 60 years of age. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 60 or older, the lump sum payment will not be paid and compensation shall continue until death.

(b) If there is a child entitled to compensation, the compensation for the surviving spouse equal 45 percent of the employee’s pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(c) If there is a child entitled to compensation and no surviving spouse, compensation for one child equals 40 percent of the employee’s pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(d) Parents, brothers, sisters, grandparents and grandchildren dependent upon the deceased employee at the time of death may be entitled to compensation as provided by 5 U.S.C. 8133.

(e) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or the attainment of age 18. Regarding entitlement after reaching age 18, refer to §10.127 of this part.

65. By adding a new §10.305 as follows:

§ 10.305 Attendant allowance.

An employee who has been awarded compensation may receive an additional sum of not more than $500 a month, as the Office considers necessary to pay for the service of an attendant, when the Office finds that the service of an attendant is necessary constantly
because the employee is totally blind or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of any impairment resulting from the injury making the employee so helpless as to require constant attendance.

66. By revising § 10.310 to read as follows:

§ 10.310 Buy back of annual or sick leave.

(a) An employee who sustains a job-related disability may use sick or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness, and a claim for compensation is approved, the employee may, with the approval of the employing agency, "buy back" the used leave and have it recredited to the employee's account. If the employee uses leave during a period of disability caused by a traumatic injury and a claim is approved by the Office, the employee may "buy back" leave taken after the 45-day continuation of pay period. The employee may not repurchase leave taken during the 45-day continuation of pay period unless the employee was not entitled to receive continuation of pay. The computation of the amount due the agency to effect the leave repurchase is the responsibility of the employing agency and is to be done in accordance with the accounting principles and practices of that agency.

(b) If the employing agency does not approve a repurchase of leave, then no compensation may be paid for the period leave was used. Where the agency agrees to the leave repurchase, the employee may elect to have the compensation payable for the period paid directly to the employing agency to be applied against the amount due the agency to effect the repurchase.

67. By revising § 10.311(b) and (c) to read as follows:

§ 10.311 Lump sum awards.

(b) The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health and Human Services, which shall be updated from time to time, but the lump sum payment to a surviving spouse of the deceased employee may not exceed 60 months compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage before age 60, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

68. By revising paragraph (a) and adding paragraph (c) to § 10.313 to read as follows:

§ 10.313 Dual benefits.

(a) Except as otherwise provided by law, a person may not concurrently receive compensation pursuant to the Act and a retirement or survivor annuity under the U.S. Civil Service Retirement Act or a retirement or survivor annuity which stands in lieu of the U.S. Civil Service Retirement Act, such as Foreign Service or Central Intelligence Agency disability and retirement programs. Such beneficiary shall elect the benefit which he or she wishes to receive, and such election, once made, is irrevocable.

(c) The Office may require an employee to submit an affidavit or statement as to the receipt of any Federally funded or Federally assisted benefits, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

69. By removing § 10.314 and adding a new § 10.314 to read as follows:

§ 10.314 Cost-of-living adjustments.

(a) Cost-of-living adjustments shall be made from time to time in accordance with 5 U.S.C. 8149a.

(b) Compensation payable on account of disability or death which occurred more than one year before the effective date of the cost-of-living adjustment shall be increased as determined in accordance with 5 U.S.C. 8149a. In disability cases, a beneficiary is eligible for cost-of-living adjustments where injury-related disability began more than one year prior to the effective date of the adjustment without regard to the fact that for any part of that period of disability the beneficiary may have elected to receive continuation of pay as provided by 5 U.S.C. 8118, or to use sick or annual leave. Where an injury does not result in disability but compensation is payable pursuant to 5 U.S.C. 8107 for permanent impairment of a covered member or function of the body, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the disability recurs. In death cases, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

70. By adding new § 10.320 through § 10.324 under the centerheading Overpayments as follows:

Overpayments

§ 10.320 Definitions.

(a) "Fault" as used in the term "without fault" in 5 U.S.C. 8129(b) and § 10.321(c) of this subpart applies only to the individual who has received a payment in his or her own name or on behalf of a beneficiary. Although the Office may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Office seeks to recover the overpayment from liability for repayment if such individual is not without fault.

(b) "With fault." In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education, and physical and mental condition. An individual is with fault in the creation of an overpayment who:

(1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

(2) Failed to furnish information which the individual knew or should have known to be material; or

(3) With respect to the overpaid individual only, accepted a payment
which the individual knew or should have been expected to know was incorrect.

(c) "Without fault." Whether an individual is "without fault" depends on all the circumstances surrounding the overpayment in the particular case. The Office will consider the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return payments which were not due, and ability to comply with any reporting requirements (e.g., age, comprehension, memory, physical and mental condition).

Although "without fault" is not limited to the overpayment circumstances described below, an individual is "without fault," except as provided in paragraph (b) above, if it is established after consideration of all the factors stated above that failure to report an event that would affect compensation benefits or acceptance of an incorrect payment was due to one of the following:

(1) The individual relied on misinformation given to him or her (or his or her representative) by an official source within the Office (or other governmental agency which the individual had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the Act or the regulations pertaining thereto; or

(2) The Office erred in calculation of cost-of-living increases, schedule award length and/or percentage, and loss of wage earning capacity, unless the claimant had knowledge of the calculation errors.

(d) "Degree of care." An individual will be "with fault" if the Office has evidence which shows either a lack of good faith or failure to exercise a high degree of care in reporting changes in circumstances which may affect entitlement to or the amount of benefits. As indicated in paragraphs (b) and (c) of this section, the degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he or she is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the individual exercised the degree of care necessary to warrant a finding of "without fault."

§ 10.321 Recovery of overpayments.

(a) Whenever by reason of an error of fact or law, an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

(b) Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same.

(c) There shall be no adjustment or recovery under paragraphs (a) or (b) of this section by the United States in any case when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.

(d) Before adjusting future payments or otherwise seeking to recover an overpayment, the Office shall provide the individual with written notice of:

(1) The fact and amount of overpayment;

(2) Its preliminary finding of whether the individual is at fault in the creation of the overpayment;

(3) The individual's right to inspect and copy Government records relating to the overpayment;

(4) The individual's right to request a pre-recoupment hearing within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver;

(5) The individual's right to submit additional written evidence within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver.

(e) Additional evidence must be submitted, or a pre-recoupment hearing requested, within 30 days of the Office's written notice to the individual. Failure to exercise the right to a pre-recoupment hearing within 30 days of the date of notice of overpayment shall constitute a waiver of that right.

(f) Pre-recoupment hearings shall be conducted in all matters in exactly the same manner as provided in § 10.131 through § 10.137.

(g) When an overpayment exists because a claim was accepted in error, or because benefits were otherwise denied or terminated, the Office representative shall determine any and all issues raised at the pre-recoupment hearing, including those regarding the correctness of the decision to deny or terminate compensation. If an employee requests a pre-recoupment hearing as provided by this section with respect to an overpayment, and also requests a hearing as provided by § 5 U.S.C. 8124(b) with respect to the decision denying or terminating benefits and resulting in the overpayment, both requests for a hearing shall be combined and one hearing held on any and all issues.

(h) If additional written evidence is not submitted, or a hearing requested, within the 30-day period, the Office will issue a final decision based on the available evidence and will institute appropriate collection action. The final decision concerning an overpayment, whether rendered subsequent to a pre-recoupment hearing or in the absence of the submission of additional written evidence, is not a "decision for or against the payment of compensation" and, therefore, is not subject to the hearing provision of 5 U.S.C. 8124(b) nor the reconsideration provision of 5 U.S.C. 8128(a). An individual aggrieved or adversely affected by a decision concerning an overpayment may request review by the Employees' Compensation Appeals Board.

§ 10.322 Waiver of recovery—defeat the purpose of the subchapter.

(a) General. Recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of subchapter to the extent that:

(1) The individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(2) The individual's assets do not exceed the resource base of $3000 for an
individual or $5000 for an individual with a spouse or one dependent plus $600 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in (d) below. The first $3000 or more depending on the number of the claimant's dependents is also exempted from recoupment.  

(b) Income. The individual's total income includes any funds which may be reasonably considered available for his or her use, regardless of the source. Income to a spouse will not be considered available to the individual unless the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. Types of income include but are not limited to:  

1. Government benefits such as Black Lung, Social Security, and Unemployment Compensation benefits;  
2. Wages and self-employment income;  
3. Regular payments such as rent or pensions; and  
4. Investment income.  
(c) Ordinary and necessary living expenses. An individual's ordinary and necessary living expenses include:  
1. Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, transportation, insurance (e.g., life, accident, and health insurance);  
2. Medical, hospitalization, and other similar expenses;  
3. Expenses for the support of others for whom the individual is responsible.  
4. Church and charitable contributions made on regular basis. (This shall not include large one-time gifts made after receipt of the preliminary notice of overpayment); and  
5. Miscellaneous expenses (e.g., newspaper, haircuts) not to exceed $25.00 per month.  
(d) Assets. An individual's assets include:  
1. Liquid Assets—cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and the like; and  
2. Non-Liquid Assets—the fair market value of property such as a camper, second home, extra automobile, jewelry, etc.  
Assets for these purposes shall not include the value of household furnishings, wearing apparel, family automobile, burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income producing property if the income from such property has been included in comparing income and expenses.  

§ 10.323 Waiver of recovery—against equity and good conscience.  
(a) Recovery of an overpayment is considered to be "against equity and good conscience" when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in § 10.322.  
(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss. An example of such "detrimental reliance" would be a decision to enroll in college based on the award of benefits. The funds have been spent and cannot be recovered nor can the purchase be liquidated.  

§ 10.324 Responsibility for providing financial information.  
In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in § 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished.  

71. By revising § 10.400(e) to read as follows:  
§ 10.400 Physician and medical services, etc. defined.  
(e) The term "medical services" as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-ray performed by or required by a chiropractor to diagnose a subluxation of the spinal column. The term "subluxation" means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.  

72. By adding a new § 10.413 as follows:  
§ 10.413 Time limitation on payment of bills.  
The Office will reimburse claimants and providers promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the calendar year in which the claim was first accepted as compensable by the Office, whichever is later.  

73. By revising § 10.500 to read as follows:  
§ 10.500 Prosecution of third party action by a beneficiary.  
If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay damages, the Office may require the beneficiary to prosecute an action for damages against the third party. When so required, the cause of action shall be prosecuted in the name of the beneficiary.  

74. By amending § 10.503 by revising the introductory text, and revising paragraphs (b), (c), and (d) to read as follows:  
§ 10.503 Distribution of damages recovered by a beneficiary.  
If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay
damages and, as a result of claim brought by or settlement made by the beneficiary or by someone acting on the beneficiary's behalf, the beneficiary recovers damages or receives money or other property in satisfaction of the liability on account of that injury or death, the proceeds of the recovery shall be applied as follows:

(a) * * *

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted.

(c) There shall then be remitted to the Office the benefits which have been paid on account of the injury including payments made on account of medical treatment, transportation costs, funeral expenses, and any other payments made under the Act on account of the injury or death. If an attorney was employed, the amount to be remitted to the Office shall be reduced by an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States.

(d) Any surplus remaining after proper refund has been made to the Office may be retained by the beneficiary but shall be credited to the Office against future payments of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

75. By adding a new § 10.506 as follows:

§ 10.506 Official superior's responsibility in cases involving potential third party liability.

If it appears that an injury or death for which benefits are payable under the Act was caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages, the official superior or other agency official shall investigate the third party aspect of the injury or death and submit a report of the findings with related documents to the Office.

76. By adding a new § 10.507 as follows:

§ 10.507 Satisfaction of the interest of the United States.

No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or the beneficiary's designee the proceeds of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.

77. By adding a new Subpart H as follows:

Subpart H—Special Category Employees

Peace Corps Volunteers

§ 10.600 Definition of volunteer.

The term "volunteer" means—
(a) A volunteer enrolled in the Peace Corps under 22 U.S.C. 2504;
(b) A volunteer leader enrolled in the Peace Corps under 25 U.S.C. 2505; and
(c) An applicant for enrollment as a volunteer or volunteer leader during a period of training under 22 U.S.C. 2507(a) before enrollment.

§ 10.601 Applicability of the Act.

As excepted by provided 5 U.S.C. 8142 and elsewhere in this subpart, the provisions of the Act are applicable to Peace Corps volunteers.

§ 10.602 When disability compensation commences.

Pursuant to 5 U.S.C. 8142(b), entitlement to disability compensation payments does not commence until the day after the date of termination of the volunteer's service.

§ 10.603 Pay rate for compensation purposes.

(a) The pay rate of a volunteer is the lowest step of grade 7 of the General Schedule.
(b) The pay rate of a volunteer leader is the lowest step of grade 11 of the General Schedule.
(c) The pay rate of a volunteer with one or more minor children as defined in 22 U.S.C. 2504 is the lowest step of grade 11 of the General Schedule.
(d) The pay rate for compensation purposes is defined as the pay rate in effect on the date following separation, provided that it is equal to or greater than the pay rate on the date of injury, and is not subject to the provisions of 5 U.S.C. 8101.

§ 10.604 Period of service as a volunteer.

The period of service of an individual as a volunteer includes any period of training under 22 U.S.C. 2507(a) before enrollment as a volunteer and the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

§ 10.605 Conditions of coverage while serving outside the United States and the District of Columbia.

(a) Any injury suffered by a volunteer during any time when the volunteer is located abroad shall be presumed to have been sustained in the performance of duty and any disease or illness contracted during such time shall be presumed to be proximately caused by the employment, except the presumption will be rebutted by evidence that:

(1) The injury or disease or illness was caused by the volunteer's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication of the injured volunteer;

(2) The disease or illness is shown to have pre-existed the period of service abroad; or

(3) The disease or illness or condition claimed is either a manifestation of symptomatic of or consequent to a pre-existing congenital defect or abnormality.

(b) If an injury is not presumed to have been sustained in the performance of duty as provided by paragraph (a) of this section, the volunteer has the burden of proving by the submission of substantial and probative evidence that the injury was sustained in the performance of duty with the Peace Corps.

(c) If a disease or illness or claimed condition, or episode thereof, comes within exception (a)(2) or (a)(3) of this section, the volunteer has the burden of proving by the submission of substantial, probative and reasoned medical evidence that it was proximately caused by the factors of conditions of Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps Service.

Non-Federal Law Enforcement Officers

§ 10.610 Definition of a law enforcement officer.

For purposes of this subpart, a law enforcement officer is defined as an employee of a State or local government including the governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under Sections 521–535 of Title 4, District of Columbia Code, whose functions include one or more of the following:

(a) The apprehension of persons sought for the commission of crimes, including those sought by a law enforcement agency for such commission, as well as material witnesses sought in connection with criminal cases; or

(b) The protection or guarding of persons held for the commission of crimes or as such material witnesses; or

(c) The prevention of the commission of crimes.

§ 10.611 Applicability.

Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this subpart,
§ 10.612 Conditions for eligibility.

(a) The benefits of the Act are available as provided in 5 U.S.C. 8191 et seq. and this subpart to a law enforcement officer as defined in § 10.610 and his or her survivors if the Office determines that an individual on any given occasion was—

(1) A law enforcement officer and to have been engaged on a given occasion in the apprehension or attempted apprehension of any person:

(i) For the commission of a crime against the United States; or

(ii) Who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States; or

(iii) Who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) A law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such crime; or

(3) A law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States; and to have been on that occasion an employee as defined in 5 U.S.C. 8101(l), and to have sustained on that occasion a personal injury for which the United States would be required under 5 U.S.C. 8101 to pay compensation if the individual has been on that occasion an employee within the meaning of 5 U.S.C. 8101(l) engaged in the performance of duty.

(b) The mere fact that an injury to a law enforcement officer is in some way related to the commission of a Federal crime does not in itself bring the injury within the scope of this subpart. For the purpose of this subpart, being engaged in the apprehension or attempted apprehension of a person for the commission of a crime against the United States requires that the specific criminal activity which caused the officer's response was an actual Federal crime. Further, where the actions which result in an injury to an officer are based solely on a local police matter, the later discovery (i.e., discovery after the arrest has been made) of a Federal crime or potential Federal crime does not in itself bring the injury within the meaning of 5 U.S.C. 8191. For example, coverage under this subpart would extend to an officer who responded to an armed robbery and who was shot by the suspect. (For the purpose of this example, the suspect must be illegally in possession of a firearm in violation of Federal law.) With the officer's knowledge of an armed robbery (and/or the actual viewing of a firearm in the possession of the suspect), the firearm would be both an integral part of a Federal crime and a part of the specific criminal activity to which the officer was reacting. Coverage would be extended in this situation even though the officer may not have been aware at the time that the suspect was in fact in violation of Federal law. However, coverage under this subpart would not be extended to an officer injured while apprehending an individual for a violation of local law where it is discovered during a search of the individual (i.e., after the arrest has been made) that the individual was in violation of Federal law due to illegal possession of a controlled substance. In this situation, even though the individual was in violation of Federal law, the existence of the controlled substance was not a part of the specific criminal activity to which the officer was responding and thus did not play a part in the apprehension. Coverage would be extended in this situation if the officer had been aware of the existence of the substance prior to the arrest being made. To be considered a part of the criminal activity, it would not be necessary for the officer to know the nature of the substance, but only that the officer had reason to believe it was a controlled substance. If later investigation showed that the substance was not in fact a controlled substance, coverage would not be extended since no Federal crime had in fact been committed. Similarly, an officer injured while responding to an alarm of a robbery at a federally insured bank would be entitled to benefits as provided by this subpart. However, coverage would not be extended where the alarm was false since no Federal crime had actually occurred.

(c) Coverage for injuries or death while a law enforcement officer and to have engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States shall not attach unless a Federal crime had been committed or was about to be committed. Whether or not a Federal crime was about to be committed cannot be open to speculation. The threat must be actual and imminent. However, in situations where the officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other individual entitled to be provided or actually provided protection by the United States Secret Service pursuant to 18 U.S.C. 3056(a), 3 U.S.C. 202–209, and the regulations promulgated pursuant to the latter provisions at 13 CFR 13.1–13.8, coverage will be extended for injury or death sustained in such activity, because the threat of Federal crime in those circumstances is presumed to be always imminent.

(d) No person otherwise eligible to receive a benefit under this subpart because of the disability of death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

(e) Coverage for members of the Executive Protective Service, the United States Park Police and those members of the United States Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act is limited to specific activities involving crimes against the United States, and does not include numerous tangential activities of law enforcement, such as reporting for work, changing clothing etc., even though the laws enforced in the job deal solely with crimes against the United States.

§ 10.613 Time for filing a claim.

A claim for benefits under the Act must be received by the Office within 5 years after the injury or death. The five-year limitation is mandatory and is not subject to waiver.

§ 10.614 How to file a notice of injury or death.

(a) A claim for benefits due to the injury or death of an eligible officer shall be made by—

(1) Any eligible officer or survivor of an eligible officer.

(2) Any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his or her estate, or any of his or her survivors.

(3) Any association of law enforcement officers which is acting on behalf of an eligible officer or any of his or her survivors.

(b) The form provided for filing a claim for injury or occupational disease is CA-721.

(c) The form provided for filing a claim for death is CA-722.
(d) A claim for benefits should be submitted to the officer's employing agency for completion and forwarding to the Office of Workers' Compensation Programs.

§ 10.615 Benefits.

(a) In the event of injury the Office shall furnish to any eligible officer the benefits, except for Continuation of Pay, to which he or she would have been entitled under subparts A through H of this Part if, on the occasion giving rise to eligibility, the officer had been an employee as defined in 5 U.S.C. 8101(1) engaged in the performance of duty. However, such benefits shall be reduced or adjusted as the Secretary in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which the officer would have been entitled to receive but for this subpart) by virtue of actual employment on that occasion. When an eligible officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) In the event of death the Secretary shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which the survivor would have been entitled under subparts A through H of this Part if, on the occasion giving rise to eligibility, the officer had been an employee as defined in 5 U.S.C. 8101(1) engaged in the performance of duty on that occasion, and the comparable benefits, if any, received by the survivor (or which the survivor would have been entitled to receive but for this subpart) by virtue of actual employment on that occasion. When a survivor has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

§ 10.616 Computation of benefits.

(a) In determining the amount of benefits payable to an eligible officer or survivors of an eligible officer, the Office shall compute the beneficiaries' entitlement under the Act including applicable cost-of-living adjustments under 5 U.S.C. 8146(a), then reduce the amounts by any comparable benefits payable by a State or local entity for the same injury or death.

(b) Benefits payable under the Public Safety Officers' Benefit Act (42 U.S.C. 3796) for the same death constitute a prohibited dual benefit and any benefits payable under the Act will be reduced commensurate with the amounts payable under 42 U.S.C. 3796. Where a lump sum benefit is paid under 42 U.S.C. 3796, no benefits under the Act will be paid to a beneficiary until the entire amount, or the individual beneficiaries' portions of the entire amount, has been fully recovered.

(c) Where one or more beneficiaries in a death claim is not eligible to receive compensation due to the fact that comparable benefits from a State or local program or benefits payable under another Federal program exceed what is payable to the individual(s) under the Act, no adjustment shall be made to the percentage(s) upon which compensation is computed for other beneficiaries until the happening of an event which would otherwise change the criteria for determining entitlement under the Act, e.g., death or remarriage of a spouse, a child turning 18 or marrying, or the birth of a posthumous child.

§ 10.617 Responsibilities of the claimant, the employing agency and the Office.

(a) The claimant, or someone acting on his or her behalf as specified in § 10.604(a), shall be responsible for fully completing all forms, or portions thereof, which request information of the claimant, as well as for providing any supporting documentation or statements requested in support of the claim for benefits.

(b) The employing law enforcement agency is responsible for fully completing all necessary portions of claim forms designated for the employing agency and for submitting evidence necessary to the Officer's determination of coverage under 5 U.S.C. 8191 including police reports, investigative reports, and records providing or disproving the involvement of a Federal crime or Federal felony.

(c) The Office is responsible for adjudicating any claim, advising of the deficiencies in a claim and requesting supportive information of the claimant and employing agency. Nothing in this subpart shall be construed as placing the burden on the Office to secure the information needed to discharge the responsibilities of the claimant(s) of the employing agency.

§ 10.618 Consultation with Attorney General and other agencies.

The Secretary may refer any application received pursuant to this subpart to the Attorney General for assistance, comments and advice as to any determination required to be made pursuant to 5 U.S.C. 8191. The Secretary may request any Federal department or agency to supply any statistics, data or any other materials deemed necessary to carry out the functions of this subpart. Each such department or agency shall cooperate with the Secretary and, to the extent permitted by law, furnish such materials to him or her.

§ 10.169 Cooperation with State and local agencies.

The Secretary shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subpart and the Act are made available to eligible officers and their survivors with a minimum of delay and difficulty.

Federal Grand and Petit Jurors

§ 10.620 Definition of juror.

The term "juror" means an individual selected pursuant to Chapter 21 of Title 28, United States Code, and serving as a petit or grand juror.

§ 10.621 Applicability.

Except as provided by 28 U.S.C. 1877 and elsewhere in the subpart, the provisions of the Act and subparts A, B, C, and D through G are applicable to Federal grand or petit jurors as defined in § 10.620.

§ 10.622 Performance of duty.

(a) Performance of duty as a juror includes that time when a juror is

(1) In attendance at court pursuant to a summons,

(2) In deliberation,

(3) Sequestered by order of a judge, or

(4) At a site, by order of the court, for the taking of a view.

(b) For the purposes of this subpart, a juror is not in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1)-(4) of this section.

§ 10.623 When disability compensation commences.

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.
§ 10.624 Pay rate for compensation purposes.

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for grade GS-2 of the General Schedule unless his or her actual pay as a Government employee while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Signed at Washington, DC, this 23rd day of May, 1986.
William E. Brock,
Secretary of Labor.

[FR Doc. 86-12616 Filed 6-5-86; 8:45 am]
BILLING CODE 4510-27-M
Small Business Administration

13 CFR Part 108
Loans to State and Local Development Companies; Final Rule and Interim Final Rule
Apart from stylistic changes, the following substantive changes were made:

Section 108.1(b). The term "distressed areas" used in the proposed rule has been amplified by reference to labor surplus areas as listed in the Department of Labor's "area trends." Section 108.2(c) has been expanded to make clear the definition of "small business concern" includes such concern's affiliates.

Section 108.2(d)(3) has been abbreviated by deleting the reference to "certified development company" because the term "504 company" is used throughout the rule instead.

Section 108.2(f) In the proposed rule a definition of "net debenture proceeds" was inadvertently omitted. This definition has been included in this final rule.

Section 108.2(f) proposed as (1), has been abbreviated to omit, as unnecessary, the clause including both industrial and commercial plants.

Section 108.2(m). A new paragraph (m) has been added to the definition section §108.2 which defines independent public accountant as either a CPA or a public accountant licensed on or before December 31, 1971. This definition conforms to that used in other SBA programs and to the "Standard for Audits of Governmental Organizations, Programs, Activities and Functions" published by the General Accounting Office (1981 revision). SBA deems this new definition as "interim final" and invites comments thereon within 60 days of publication. SBA will thereafter publish a change based on comments received, or announce that no change will be made, or both.

DATES: Effective date: June 6, 1986.

Comments on the interim final amendments must be submitted on or before August 5, 1986.

ADDRESS: Written comments on the interim final amendments, in duplicate, may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street, N.W., Washington, DC 20410.


SUPPLEMENTARY INFORMATION: On July 5, 1985, at 50 FR 27754 SBA published proposed amendments to its regulations for development companies under Title V of the Small Business Investment Act of 1958, and especially for companies under section 503 of that Act (15 U.S.C. 697) ("Act"). The comment period ended September 3, 1985. The explanation of the amendments was set forth in the cited publication. This publication sets forth the changes from the proposed rule, and discusses the 31 timely comments received relative thereto.
"other provisions" of this Part to the statement of violations contained in this section, and has eliminated the reference to nonperformance of any condition of a note as a regulatory violation. Also, the word "knowing" has been inserted before "misrepresentation" to make clear that not every error in a document is considered a violation of the regulations.

Section 108.8(a). This rule provides that availability of funds from the personal resources of owners shall not disqualify a concern for assistance. The rationale of this provision was questioned. It is justified by the purpose of the program, which is economic development of an area or community. If a project contributes to such development it should not be disqualified merely because the owners could undertake it, but chose not to do so. For the sake of clarity, this section has been expanded to include § 108.8(h) as published in proposed rulemaking. A comment on the proposed § 108.8(h) criticized the requirement that the availability to the small concern of private funds "on reasonable terms" (Section 505(b)(2) of the Act, 15 U.S.C. 667) be judged by comparison to development company loans. The comment emphasized that such loans have better terms than most private loans. The commenter would require 6 letters from financial institutions explaining why they are not providing the required financing. The lack of availability of private funds on "reasonable terms" is a statutory requirement of the program. SBA views its purpose as one of improving and stimulating the flow of long-term funds to small concerns for the benefit of economic development in a given region or area. (§ 108.1). It is consistent with this purpose to offer terms, such as longer maturities, which are not available to such project from private sources on reasonable terms. On the other hand, SBA does not view this purpose as competitive with, or inimical to, private enterprises. Accordingly, this provision is designed to limit assistance under this Part to viable projects which cannot obtain sufficient private enterprise lending on terms that are reasonable for the projects. SBA feels qualified to make such judgment without the extensive paperwork and time required to obtain explanations from several financial institutions.

Section 108.8(d). Several comments proposed broadening the so called "alter ego" rule to allow several small concerns to share a single project (e.g. a building). SBA rejects this proposal, because the rule is in itself an exception to the principle that passive concerns are ineligible for SBA assistance. Under the proposal, the percentage of ownership of the several small concerns and of the single borrower are not identical.

Section 108.8(c)(6) has been amended in response to comments received to require only the owners of 20% or more of the equity of a small concern to guarantee the 503 loan.

Section 108.8(e). In response to several comments that this proposed subsection governing leases is unduly long and complicated, SBA has simplified it by shortening it and reducing the test of eligibility for a leased project to two criteria: either SBA obtains a lien on the property itself, or SBA's investment is secured by other collateral.

Section 108.503(b)(1). Several comments were critical of the requirement that a 503 project should create one job for each $15,000 guaranteed by SBA, or an average of one job for each $37,500 invested in each project. The criticisms were that such requirement favored labor-intensive industries, that a longer period of years for establishing the job average should be chosen, and that a penalty for failure to attain the job opportunity goal should be prescribed. SBA's position is that economic development implies the creation or maintenance of job opportunities, that a project should accomplish its job objective within two years, and that SBA is without legislative authority to impose a penalty for failure to achieve the required job objective. It should be noted, however, that certain incentives are designed to encourage the attainment of job opportunity goals—see § 108.503(d). As one comment put it: "The true intent of this program should not be liberalized by accepting long-term predictions of job attainment."

Section 108.503(c)(3) has been changed to allow for average job opportunity costs in excess of $15,000 in Alaska, Hawaii, and in labor surplus and redevelopment areas, as approved by SBA on an individual basis.

Section 108.503(d). Several comments criticized the requirement that 503 companies monitor job creation by obtaining and retaining in their records certifications from portfolio concerns supporting job opportunity claims of the 503 company. It was argued that 503 companies do not control their portfolio companies, and could not be held responsible for their failure to supply required data. In response to such criticism SBA has relaxed the requirements of the withholding provisions of § 108.503-3(f)(5) and 108.503-13(d). It must be borne in mind that such records are crucial to the accurate evaluation of the program. A 503 company should remain sufficiently close to its portfolio concerns to obtain essential data on a timely basis—compare § 108.503-1(h)(3). A lack of cooperation between portfolio concern and 503 company may reflect unfavorably on the 503 company's servicing ability. See also comment under the heading "Miscellaneous."

Section 108.503-1(b). One comment finds fault with SBA's decision not to certify any additional for-profit 503 companies in the future. It should be noted that any qualified for-profit company which has applied for certification before the effective date of these regulations will remain eligible to become a full-fledged program member. A requirement that such for-profit companies must comply with all eligibility requirements has been added. The reason for SBA's decision is the desire to emphasize the pro bono publico character of the industry over the profit incentive. The nature of the 503 company is to be a catalyst in fostering economic development, and not a profit center for owners or members. This policy decision should not be interpreted as a reflection on any 503 company now in the program or to be admitted soon, which is organized on a for-profit basis.

Section 108.503-1(b)(2). Several comments took exception to the requirement that a director with commercial lending experience be involved in lending or servicing decisions. They argued that 503 company staff acquires such experience through their review of loan requests. In response, SBA has modified this provision to require that at least one person with commercial lending experience acceptable to SBA participate in each lending and servicing decision. One comment took exception to the requirement that board members be "responsible officials" of the organizations they represent, and to the occupational distribution requirement of the board. The term "responsible official" was chosen to preclude delegation to a token level of representation and is not synonymous with "top executives". The occupational distribution requirement is intended to make the board, as nearly as practical, representative of the membership.

Section 108.503-1(b)(3). A comment objected to the annual SBA approval requirement of external contracts for marketing, packaging, processing and servicing functions of the 503 company,
and proposed to allow for staffing with SCORE and SBI officers. Nothing in the proposed regulations now prohibits such participation, and the annual approval requirement is in line with other SBA programs which also require annual review of arrangements which may become obsolete. See, for example, 13 CFR 107.501. However, a clause has been added to make clear that a management contract (other than an employment contract with an individual) requires SBA's initial prior written approval as well as annual approvals, and has added other approval criteria: (1) Such contract may not adversely affect the financial condition of the 503 company. (2) Compensation under such contracts must be reasonable and customary and billed on an hourly basis. (3) These contracts will be subject to audit by SBA at no cost to the 503 company. SBA considers it useful to publish these approval criteria for greater specificity.

Section 108.503-1(b)(3) and (4). Several comments strongly objected to the requirement of a full-time staff and the ability to provide management services to small concerns. The short answer is that section 503(d) of the Act (15 U.S.C. 697(d)) requires it. Moreover, the phrase, "cause to be provided" allows for avoidance of duplication of otherwise available services.

Section 108.503-1(d)(2). Many comments took issue with the provision that appropriate government economic development organizations be members of the 503 company, stating that such membership would politicize 503 company activity. While SBA recognizes the validity of this concern, it seems to be outweighed by the advantage of governmental cooperation in 503 company projects. The regulations will also provide that the Director of SBA's Office of Economic Development may approve another form of Government participation, e.g. where prohibited by law. Also, many comments objected to major city representation in multi-county 503 companies. SBA has deleted this requirement.

Section 108.503-2(c) has been amended to state that the surrender of a 503 certificate, like a certificate transfer, may not take place without SBA's prior written approval.

Section 108.503-3(b). Objection was made to the portfolio diversification requirement. SBA thinks that economic development requires diversification, and the concentration in any one industry, or on start-up businesses, does not serve the entire business community in a representative way. No change was made as a result of this comment.

Section 108.503-3(d). Two comments took issue with the requirement that a separate file be established for each project. These comments reflect the assumption that only a single folder constitutes a file. The regulation permits an unlimited number of folders to constitute a file. The lead-in paragraph to subsection (d) has been amended to make clear that a photographic copy may replace an original document for record keeping purposes.

Section 108.503-3(e). Numerous comments took issue with the proposed accounting provisions. In response, SBA has determined to reserve this issue to a later time.

Section 108.503-3(f). Several commenters objected to the requirement of an "opinion audit" for the annual financial statements, as exceedingly costly. SBA has raised the threshold for "opinion audits" in response to this objection. 503 company's with a portfolio under $10 million may submit statements on a "review" basis. SBA needs an "audit opinion" from the larger companies because of their stewardship over very substantial assets, but has added a waiver provision for hardship cases. Further, notwithstanding the vital need to measure the effect of the program on the small concerns assisted, SBA has (in response to other comments) relaxed the reporting rule to the extent that a 503 company which can persuade SBA that it has made every conceivable effort to obtain required report information and has failed, may be excused by SBA from filing such reporting items. Subject to § 108.503-13(b), q.v. An editorial change makes clear that this subsection on annual reports does not contain all reporting requirements by referring to the other sections with reporting requirements. Further, the annual report will require regulatory compliance information to be prepared by the independent public accountant as specified in an Annual Report Guide to be provided by SBA in the near future. In addition to being submitted as part of the annual report, a copy of the compliance information will be submitted to SBA's Inspector General. The Inspector General may request related workpapers. 503 companies are not required to furnish the compliance information for fiscal years ending on or before December 31, 1986. Such information needed during this period will be gathered by SBA's Inspector General in special compliance audits; § 108.503-15(d), as needed. 503 companies are required to submit compliance information for fiscal years ending after December 31, 1986.

However, 503 companies with no compliance deficiencies and no change in their eligibility or operations are permitted to submit compliance information on a biennial basis. This method of verifying compliance was chosen in preference to mandatory compliance audits by SBA's Inspector General, in order to rely to a greater extent on the private sector and to give 503 companies the option of avoiding the audit expense otherwise prescribed by § 108.503-15(c). The requirement of compliance reports is published as "interim final". SBA invites comments thereon within 60 days of publication, and will thereafter publish a change based on these comments, or announce that no change will be made.

Section 108.503-3(g). Two comments objected to the flat prohibition on 503 loans to concerns in which the 503 company or its associate hold an equity interest. SBA, however, is persuaded that this situation has a conflict of interest potential which should be avoided.

Section 108.503-3(h) has been amended to allow SBA to transfer the portfolio of a 503 company unable or unwilling to service it, to another 503 company or another entity for servicing.

Section 108.503-4(a). Three comments criticized the limitation to 15% of excess (leasing) space in a newly constructed facility. SBA feels that a greater amount of permissible excess space would derogate from the development purpose of this program.

Section 108.503-4(b)(4). In response to comments this paragraph has been clarified to include as ineligible projects or project components only automobiles, trucks, and airplanes. An exception (in specific circumstances) has been added for Alaska and Hawaii since these states do not possess a road network such as exists in the contiguous 48 States.

Section 108.503-4(c)(3) has been amended to make clear that SBIC investments in 503 projects are subject to Part 107 of these regulations and to differentiate between SBIC's with and without SBA financial assistance; in the latter case, the SBIC financing will qualify as non-governmental for purposes of § 108.503-8(a).

Section 108.503-5(a). In response to a comment, the examples of eligible costs essential to the project have been expanded to include legal and accounting costs directly attributable to the project and not related to underwriting or other financing expenses, but interest charges on interim financing are also eligible. Moving costs, while ineligible, have not
been added to the examples of ineligible costs in subsection (c) of this section because the description is intended to be illustrative rather than all inclusive. The section has also been reorganized, without substantive change, for greater clarity. The reduction of the contingency reserve from 15% to 10% was questioned. SBA reduced that reserve in order to avoid having to reduce the debenture amount if unused contingency funds exceed 2% of that amount. Cost overruns in excess of the reserve must be borne by the small concern.

Section 108.503-5(d). In response to the suggestion that previously acquired land should be eligible as the small concern's or the 503 company's contribution (injection) to the project, SBA has amended the proposed rule to provide that the equity in such land may be included in a new construction project at the lower of cost or market, but no refund of such cost may be made from loan proceeds.

Section 108.503-6(a) has been rewritten in several ways: (1) It is now made clear that the cost of interim financing provided by the 503 Company is not regulated by SBA, (2) instead of the term "administrative costs of the loan", the regulation now enumerates them as "packaging, processing, and non-legal staff functions related to loan closings", (3) since the final rule defines "Net Debenture Proceeds", the processing fee is now based on such proceeds for greater ease of calculation. The prior mode included in the base of the calculation the Reserve Account (two monthly payments). Since the new calculation of the servicing fee (see Fiscal Agent Agreement) results in an increased fee, that increase will compensate for the slight reduction of the processing fee. SBA will consider an increase in the processing fee for future amendments because several commenters consider it too low; (4) the provision for legal fees has been amended in response to comments criticizing the limitation of $2,500 as either too high or too low. The limitation was adopted to indicate that in most instances the legal cost should be kept below that amount. The final rule now provides for SBA approval of a higher fee in cases of unusual complexity. (5) Paragraph (3) concerning the service charge has been amended to remove the erroneous word "original" from "original outstanding balance" and a clause has been added to the effect that the outstanding balance is to be measured in five-year intervals from the original anniversary date.

Section 108.503-6(b) has similarly been amended to base the calculation of the 1% "earnest money" on "net debenture proceeds". Two commenters feel that a 503 company should be permitted to retain all or part of the deposit received with an application if considerable effort has gone into the examination, but resulted in a denial. SBA considers the deposit in the nature of "earnest money", to discourage frivolous applications, not as a source of revenue for the 503 company. Accordingly, SBA favors retention of the deposit only in cases where the applicant rejects a loan offer, but not in cases where the application is rejected.

Section 108.503-6(c) has been amended to permit the 503 company to charge a one-time fee for negotiating a purchase-money mortgage at the request and on behalf of the small concern. In contrast to the 503 company injection, such negotiation is not a nominal function of the 503 company and may be compensated if the parties so agree. While two comments applauded the authority for the 503 company to charge a fee up to 1 1/2% for non-Federal financings procured, one comment found it unjustified, especially in light of the fees charged by the non-Federal lenders themselves. Since such fee may only be charged on the basis of a written agreement for services actually rendered, SBA thinks that it is the borrower's choice whether or not to incur this fee.

Section 108.503-7(a). Several comments took issue with the requirement that the interim lender certify to the 503 company that the small concern has suffered no adverse change since loan approval. It was argued that this requirement would discourage private lender participation and drive up the cost of intermediate financing. In deference to these apprehensions SBA has modified the clause to require only that the interim lender have no knowledge of such change, and has provided the same standards of adverse change as apply to the 503 company itself.

Section 108.503-7(c) has been amended to remove the word "cost" from "the total project cost". The impact of this change is to make clear that it is not the dollar value, but the importance to the project of the missing project component that determines whether the debenture sale can go forward. An item of relatively minor cost may be important to the project; conversely, a rather costly item (e.g. a parking lot) may not be essential to the operation of the new facility. One comment questioned the use of the unexpended project funds which are to be returned to the central fiscal agent after one year. SBA has simplified this provision to make clear that these funds would be credited to the reserve account for eventual return, with interest, to the small concern pursuant to § 108.503-11(b)(2).

Section 108.503-8(a). Several comments objected to the proposed composition of the total 503 financing in terms of Federal, private and non-Federal governmental sources. SBA has therefore rewritten this provision to make clear that at least half of the project cost must originate from sources other than Federal, and the restriction on non-Federal governmental sources has been eliminated. Industrial revenue bonds are considered a non-governmental source of funds.

Section 108.503-8(b)(1). A comment proposed that the term of the first mortgage should exceed the debenture term by no more than five years. SBA thinks that this would limit the flexibility of the 503 company and, since the first mortgage terms are an intrinsic part of the package that SBA and the 503 company must approve. As a special exception to the general ten-year rule, SBA will permit the private sector financing to be for seven years or more where the project does not involve real estate and the debenture is for ten years. Experience has shown that private sector lenders are reluctant to make ten-year loans for purposes not involving real estate, while SBA is willing to go to ten year debenture financing for machinery, etc. in pursuit of its economic development philosophy.

Section 108.503-8(b)(2). SBA has added a provision to this paragraph requiring that seller financing (such as a purchase money mortgage on project property) be subordinate to the 503 loan. Our reason is that, without such subordination, the 503 loan would secure the seller against the default of the purchaser, because in a liquidation SBA would have to pay off the purchase money mortgage. Thus, SBA would be assisting the seller of the project property, instead of the project itself. This subordination requirement was not part of the notice of proposed rulemaking. For this reason, SBA invites comments on this provision at the address shown above and will give careful consideration to such comments.

Section 108.503-8(b)(4). One comment objected to the lack of specificity of the requirement, that SBA approve the terms and conditions of the private financing. Since SBA's acceptance is implicit in the project approval, this requirement is omitted. We have, however, added a provision authorizing use of the private financing for debt
consolidation related to project property. (§ 108.503-8(b)(6)(ii))

Section 108.503-8(b)(7). A comment said that a 30-day notice period before foreclosure sale is adequate. In response, SBA has extended the notice period to 60 days.

Section 108.503-8(f)(2). Two comments objected to the $50,000 minimum for a 503 debenture. SBA feels that, as a general rule, a debenture of less than $50,000 is not cost-effective, because of certain fixed costs, but that in exceptional cases (e.g. in a rural area) a debenture of as little as $25,000 may be authorized. All debentures must be denominated in amounts rounded up to the next one thousand dollars.

Section 108.503-8(a)(4). Nine comments proposed that a new 10-year debenture be authorized for real property, as well as machinery and equipment. SBA has accepted that proposal, and will require in such cases that the private sector financing of projects involving real estate also have a 10-year maturity.

Section 108.503-8(a)(5). Three comments criticized the provisions authorizing subordination of the 503 debenture to other obligations of the 503 company, stating that such debenture should be subordinated to any other debt of the 503 company and of the small business concern. These comments reflect a misunderstanding: the 503 debenture is an obligation of its issuer, the 503 company, and as such cannot be subordinated to the debts of another entity. This provision, moreover, is a paraphrase of the statute, 15 U.S.C. 697(a)(4). If these commenters were correct, the 503 debenture could be subordinated to the small concern’s 503 note securing it, an obvious impossibility. (See also comment on § 108.503-8(b)(1) above.)

Section 108.503-8(c)(6). The provision authorizing the issuance of one debenture secured by two or more loan notes was questioned. It restates prior § 108.503-4(a)(1) (1980) and was then adopted to provide for the case where several small projects would be assisted, and the cost of a debenture for each would be excessive. See comment on § 108.503-4(a)(2) above. In such case it may be advantageous to combine several projects in one debenture. The cost to SBA of the default or prepayment by one of the project concerns would not be greater than it would be under individual debentures.

Section 108.503-8(a)(9). Several comments pointed out a drafting error. As corrected, the provision covering 503 Loan conditions now allows the loan to include the amounts necessary to cover the reserve account and the 503 company and CFA processing fees. Two comments criticized the late payment fee. Its purpose is to encourage prompt payments under the loan contract. It is therefore appropriate that the fee be proportionate to the late amount, and discourage arbitrage between prompt payment and other uses. Late payments cause additional servicing costs, which should be compensated. Section 108.503-8(a)(11) has been rewritten to make clear that any premium on the 503 Debenture occasioned by a prepayment on the part of the small concern is the responsibility of the small concern. Conversely, any discount enures to the benefit of the small concern.

Section 108.503-11(b)(2). Several comments criticized the proposal that funds in the Reserve Account could accumulate (through interest accretions) to unreasonably high amounts. Since this matter requires further study, consideration will be given to a relaxation of the rule in a subsequent amendment. One comment proposed that the small concern be allowed to reduce its monthly payment by the amount of accrued interest in the reserve account. This procedure, however, seems unacceptable since the reserve account including interest thereon is needed for semi-annual debenture payments should the small concern default. In this connection it should be noted that the pricing method for the debenture has been changed. The amount to be placed in the reserve account including interest will henceforth be computed as equal to two percent of the net debenture proceeds, as defined (§ 108.2(i)), instead of equal to two monthly payments, as heretofore. Section 108.503-13(c)(6). One comment proposed that a special 503 company fee of 1% of the outstanding balance be authorized in cases where the responsibility of a 503 borrower is assumed by another company pursuant to § 108.503-13(g). SBA will give this suggestion further study for possible inclusion in a future amendment.

Section 108.503-13(d). SBA has relaxed the provision authorizing withholding of the service fee from the 503 company if the borrower is delinquent. This action responds to several comments that the provision is too harsh. It now provides that the service fee will be paid from payments received, i.e. it will be withheld only during the period and to the extent of delinquency. However, willful or negligent failure of the 503 company to comply with the reporting and servicing requirements will also trigger withholding after 90 days. After 90 days of such uncured failure, the fee will be paid to SBA, to compensate it for its efforts to obtain compliance. In this connection it should be noted that the Note, SBA Form 1249, authorizes the holder with the consent of SBA, to declare all or part of the indebtedness due and payable upon nonperformance by the small concern of any agreement with, or any condition imposed by, the development company.

Section 108.503-13(h) has been expanded to include the standards by which SBA will consent to a deferment. These standards include a finding of the benefits expected from the deferment, and the provision of additional collateral to secure SBA’s additional risk. The small concern must compensate SBA for its cost in making the deferment. The proposed requirement that all other lenders to the project must defer their claims for the same period has been abandoned as too limiting, since it would prevent SBA from saving a project if all lenders do not agree to a like deferment. The provision that the small concern remain liable for deferred payments, and that SBA’s payments on behalf of the small concern be added to the principal balance of the note is now included among the note provisions and need not be stated in the regulations.

Section 108.503-14. This section has been reworded for clarification. The revised version provides that SBA may terminate the servicing functions of the 503 company and the central fiscal agent when the 503 loan is transferred to liquidation, but that SBA may negotiate with and compensate the 503 company for continued servicing or liquidation of the loan, as the case may be.

Section 108.503-15(a) through (d). Many comments took exception to a proposed audit fee for audits by SBA’s Inspector General (at $35 per hour) pursuant to the Inspector General’s Act of 1978, Pub. L. 95-452. In response, SBA has redesigned this section entirely. As explained under § 108.503-3(f) supra, SBA now gives a 503 company the option of having annual compliance audits performed by its own independent public accountant at its own expense, instead of by SBA’s Inspector General. The independent public accountant shall forward the compliance portion of the report directly to the Inspector General. Should the 503 company fail to have their Independent Accountant perform this compliance audit, SBA’s Inspector General will perform the audit at the 503 company’s expense, payable on an hourly basis not to exceed $35 per hour. Special audits conducted at the Inspector General’s initiative shall be conducted free of
charge. In addition, SBA is authorized to conduct operational reviews (as distinguished from compliance audits) by appointment with the 503 company. 

Section 108.503-15(e). The proposed rule, formerly subsection (d), has been rewritten at the request of SBA’s Office of Hearings and Appeals. It now provides that SBA shall give ten (10) days written notice of a proposed suspension, informing the 503 company of its right to a hearing. Revocation proceedings and appeals shall be conducted entirely in conformity with the formal procedures of Part 134 of SBA’s Regulations. SBA has determined that it is not in the public interest to require a suspension to await the outcome of a hearing on the record. The reference to Part 134 naming SBA’s reviewing official in suspension or revocation cases has been changed to § 134.32(b)(7) and § 134.34 for greater accuracy.

Miscellaneous. A comment proposed a minimum capitalization of $1 million for statewide 503 companies. Since § 108.503-1(b) requires each 503 company to demonstrate financial capacity, there is no logical reason why SBA should treat statewide 503 companies differently from local companies. Another comment criticized terms like “significant impact” (§108.1(b)) as too vague. The regulations attempt to amplify this term by enumerating job creation, national objective and similar specifics—see §108.503(b). But in the final analysis, acceptance or rejection of a proposed project requires the exercise of SBA’s informed judgment. The same comment also proposed higher interest rates to discourage “bargain rate” shopping by applicants. This proposal overlooks the economic development purpose of the program—see discussion relating to § 108.8(a). Another comment expressed regret that the new regulations would not reduce the paperwork burden on 503 companies and SBA district offices. Given the continuing need to evaluate the program carefully, and the strict observance of the Paperwork Reduction Act of 1980 by SBA, we believe that our information requirements are reasonable. Two comments advocated respectively: (a) Fewer and bigger and (b) more and smaller 503 companies, reflecting the respective needs of the areas from which these comments came. SBA is confident that over time the program will adjust to the variety of regional needs, possibly with the help of additional legislation. Several comments would require legislation to be implemented, and therefore are not discussed here.

For purposes of compliance with E.O. 12291 of February 17, 1981, SBA hereby certifies that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291. In this regard we believe that the annual effect of this rule on the economy will be less than $100 million. In addition, this final rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., certain provisions of this proposal may have a significant economic impact on a substantial number of small entities. The following analysis of those provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. Section 108.6 incorporates eligibility requirements which are derived from Part 120 of the regulations. Part 120 applies to all SBA financial assistance to businesses other than development company loans. Section 108.8(d) clarifies the agency’s policy regarding development company loans to passive borrowers who rent premises to an economic development company loans to passive borrowers. Because such borrowers are not eligible for assistance, the agency will not approve such a project unless the eligible concern’s ownership is identical with the ownership of the passive borrower.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible.

2. Section 108.9 changes the existing regulation to provide that SBA will not participate in projects which include funds resulting from tax-exempt financings unless the agency’s lien position would be equal or superior to the lien position of the portion of the project so financed. The agency has decided that subordination of its position to such “tax-exempt” portion of the project would result in a double subsidy to such project which is not intended by section 503 of the Small Business Investment Act.

The legal basis for these changes are 15 U.S.C. 687(c) and 697(a)(4). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement. An exemption from coverage of this rule for small entities is not feasible.

3. Section 108.503-4(b) limits 503 eligibility for projects involving “limited use” assets and projects which involve types of businesses found by the agency to have a high rate of failure or low economic impact.

The legal basis for the change are 15 U.S.C. 687(c) and 696(f). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement.

An exemption from coverage of this rule for small entities is not feasible.

4. Section 108.503-6 permits a 503 company to require an applicant small concern to deposit with the 503 company the sum of $1,000 or 1½% of the amount of the requested debenture, whichever is less. This deposit is refunded if the small concern does not voluntarily withdraw its application. The deposit is intended to compensate the 503 company for processing applications which are later withdrawn when an applicant finds other financing or changes its plans.

This section also permits the 503 company to charge a small concern (or the lender) a one-time fee, not to exceed 1 and 1/2% of the non-Federal portion of the permanent financing, for procuring such financing if permitted by a written agreement executed by the 503 company and the small concern.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself involves no bookkeeping or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this requirement.

All other significant changes contained herein affect only the 503 company. The purpose of these rule changes is to adjust the administration of the program based on the Agency’s experience since the inceptions of the 503 program.

The following sets forth the collection of information or recordkeeping requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

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(continued)
List of Subjects in 13 CFR Part 108

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Part 108 is hereby amended as follows:

1. The authority citation for Part 108 is revised to read as follows:


2. The table of contents appearing for Part 108 is amended by adding § 108.4 through 108.15 numerically under the center heading "General", by removing § 108.503 through 108.508.7 and by adding a new center heading entitled "Assistance under Section 503", followed by new § 108.503 through § 108.503–15.

General

Sec.
108.4 Operational requirements.
108.5 Records and reports.
108.6 [Reserved]
108.7 Violations based on false filings and nonperformance of agreements with SBA.
108.8 Borrower requirements and prohibitions.
108.9 Participation with tax exempt financing.
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Assistance Under Section 503

108.503 Program objectives.
108.503–1 Eligibility requirements for 503 companies.
108.503–2 Certification.
108.503–3 Operational requirements for 503 companies.
108.503–4 Project eligibility.
108.503–5 Eligible and ineligible uses of 503 Loan proceeds.
108.503–6 Costs which may be charged to the small concern by the 503 company.
108.503–7 Interim financing.
108.503–8 Private sector financing.
108.503–9 503 Debenture financing.
108.503–10 503 Company injection.
108.503–11 Central fiscal agent.
108.503–12 Loan closing.
108.503–13 Servicing loans and debentures.
108.503–15 Oversight and evaluation: suspension and revocation.

3. Section 108.1 is amended by adding a new paragraph (b) and by redesignating existing paragraph (b) as (c). New paragraph (b) reads as follows:

§ 108.1 Policy.

(b) Financing provided under this part must demonstrate, to SBA’s satisfaction, that it will result in significant impact on the community where the business or project is located and no adverse significant impact outside of the community (see § 108.8(f)(1) of this part). "Significant impact" may be demonstrated on the basis of—

(1) Jobs being created or retained which would not have been possible without such financing;

(2) Community economic development including diversification or stabilization of the economy within the community; or,

(3) Achieving a national objective such as: Increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20–49) and assisting businesses in labor surplus areas as listed by the U.S. Department of Labor in its publication "Area Trends". Loans made to acquire plants, as defined in § 108.503 of this part, shall be made in conformity with the same program objectives as set forth under § 108.503(b)–(d) for this 503 program.

4. Section 108.2 is amended by revising paragraph (c) thereof as follows:

§ 108.2 Definitions.

(c) "Small business concern" or "small concern" means a business concern which, together with its affiliates as defined in § 121.2(a) of this chapter, qualifies as small under Part 121 of this chapter.

5. Section 108.2 Definitions is further amended by adding new paragraph (d)(3) to read as follows:

(d) A "503 Company" is a development company as defined in paragraphs (d)(1) or (2) of this section which meets the requirements of § 108.503–1 of this part and is certified by SBA to operate pursuant to section 503 of the Small Business Investment Act, 15 U.S.C. 631–635.

6. Section 108.2 Definitions is further amended by redesigning paragraph (g) as (j) and revising it. Designating paragraph (b) as (l) and by adding new paragraphs (g), (h), and (i) as follows:

(g) "503 Debenture" means a debenture issued by a 503 company and guaranteed by SBA ("503 guaranty") for sale, the proceeds of which are to be used to make one or more loans to small concerns pursuant to § 108.503 of this part.

(h) "503 Loan" means a loan made to a small business concern from the proceeds of a 503 debenture.

(i) "Net Debenture Proceeds" means the dollar amount remaining after payment of expenses directly associated with the issuance of a debenture.

7. Section 108.4 is further amended by adding two new paragraphs (k) and (l) to read as follows:


(l) "Independent Public Accountant" means a certified public accountant who is certified by the American Institute of Certified Public Accountants, and who has a professional liability insurance policy.

8. Sections 108.4, 108.5, 108.6, 108.7, 108.8, 108.9, and 108.10 are added immediately after § 108.3 to read as follows:

§ 108.4 Operational requirements.

(a) Fiscal year. Each development company shall establish a fiscal year which shall not be changed without SBA prior written approval.

(b) Place of business. Each security company shall maintain a reasonably accessible place of business, shall have a separately listed telephone number, and shall be open to the public during normal business hours.

(c) Good character. A development company shall possess continuing good
character. Such character will be deemed to exist where all the directors, officers, employees and members or shareholders possess good character. Officers, directors, and the manager of day-to-day operations of a development company shall file SBA Form 1081, Statement of Personal History. Good character shall be deemed absent if any one of the listed persons—

(1) Is currently incarcerated; on parole or probation,
(2) Is convicted of a felony,
(3) Suffered an adverse final civil judgment in a case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or relationships; or

(4) Made a misrepresentation or false statement to SBA, as defined in §108.7(a)(2).

Any change affecting this requirement shall be promptly reported to SBA. No application for new development company assistance shall be approved while an officer, director, or owner of 10% or more of such applicant small concern is under indictment for, or formally charged with a felony.

(d) Prohibition of Self-dealing. (1) Self-dealing by the development company, its board of directors, members, employees, and other related parties (as hereafter defined) to the prejudice of the small concern, the development company, or SBA is prohibited.

(2) The development company’s loan application to SBA shall contain a full disclosure statement from the development company and from the small concern relative to all relationships described in §120.102-10 of this chapter, between (i) the small concern, (ii) the development company including any person employed by the development company or regularly serving the company (e.g., professional staff as defined in §108.503-1(b)(3)) or (iii) its associate (as defined in §120.2-2 of this chapter), or any lender providing financing for the development company project, all herein referred to as “related parties”, that exist or have existed within six months prior to the date of the development company’s application. Where no such relationships exist, the development company and the small concern shall so certify.

(3) Without prior written approval of SBA, a development company shall not permit a relationship to exist or to be created between the development company or related parties and a small concern to be assisted under this Part or while such assistance is outstanding, if such relationship could constitute a conflict of interest, or the appearance thereof, as between the development company or related parties and the small concern. As examples of such relationships and for illustrative purposes only, the following relationships are prohibited without prior SBA approval:

(i) A development company shall not, directly or indirectly, provide financial assistance to a small concern in which the development company or a related party has any financial interest, other than pursuant to this part.
(ii) A development company shall not permit a small concern to purchase property or services (including insurance and legal services) from the development company, a related party, or a designee of either.
(iii) A development company shall not provide financial assistance to be used in repaying or refinancing an existing debt due the development company or a related party unless SBA shall have first made a written determination, upon the basis of evidence in the file, that:
(A) The terms of the existing indebtedness are causing undue hardship to the small concern; and
(B) Refinancing, extension or modification of the outstanding indebtedness is not available.
(e) Compliance with other laws. Development companies and projects financed with federal assistance are subject to all applicable laws, including (without limitation) the civil rights laws (see Parts 112, 113, 116, and 117 of these Regulations).

Reporting and recordkeeping requirements in paragraph (c) have been approved by the Office of Management and Budget under control numbers 3245-0178, and 3245-0060:
§108.5 Record and reports.
(a) Records. Financial records of a development company including books of account are to be maintained in accordance with generally accepted accounting principles. All financial records and minutes of meetings of members, stockholders, directors, executive committees, or other officials, and all documents and supporting material relating to a development company’s transactions shall be kept at its principal office and shall be currently posted (within 45 days): Provided, however, That portfolio items held by a custodian pursuant to written agreement shall be exempted from this requirement. Financial records furnished to SBA shall make complete disclosure of matters relevant to the Act and regulations. See also §108.503(d).
(b) Preservation of records. (1) Each development company shall preserve, for the periods required by the Internal Revenue Service and generally accepted accounting practices and in a manner that permits the immediate location of such records, such documents which are the basis for or related to the financial statements (including 503 loans) required from development companies.
(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a miniaturized reproduction of any records may be substituted for the original and preserved for the required time in the manner required. Provided, however, That the development company shall:
(i) Cause a duplicate reproduction to be made on a current basis and stored separately from the original reproduction for the time required; (ii) At all times have available facilities for clear projection and the production of clear facsimile enlargements.

(c) Litigation reports. When a development company becomes a party to litigation or other legal proceedings (including any action by the development company, or by a security holder thereof in a personal or derivative capacity, against an officer, director, employee or other member of such development company in an official capacity), it shall file a written report by certified mail with SBA within 10 working days, describing the proceedings, the identity of and the development company’s relationship to other parties involved and, upon request by SBA, submit copies of the pleadings and other documents specified. Where such proceedings have been terminated by settlement or final judgment, the development company shall promptly advise SBA of the terms thereof.

(d) Changes to be reported. Any change in the articles or by-laws of the development company or in the conditions of the development company’s eligibility to participate in the programs under this part (see §§108.2(d) and 108.503-1, as the case may be), shall be promptly reported to SBA with an SBA Form 1081 where applicable (see §108.4(c)), and shall be subject to SBA’s approval as a condition of the development company’s continued participation in the programs under this part. Any change in the development company’s name, address, or telephone number shall be reported to SBA not later than thirty days after these events. A development company shall submit notice of changes to SBA via certified mail or other form of delivery from which a receipt of acceptance is obtained.

(e) Reports to owners or members. In addition to other specified reporting requirements, the development company
shall furnish the SBA field office with a copy of any general notice, letter, or other publication concerning the financial operations of the development company or any of its portfolio concerns provided to its owners or members. 

1) Expense of documents. A development company shall make available, at its own expense, documents or copies requested by SBA. (Reporting and recordkeeping requirements in paragraphs (a) have been approved by the OMB under control number 3245-0074. Reporting and recordkeeping requirements in paragraphs (b), (c), (d), (e), and (f) have been approved by the OMB under control number 3245-0080)

§ 108.8 [Reserved]

§ 108.7 Violations based on false filings and nonperformance of agreements with SBA.

(a) In addition to the other provisions set forth in this part, the following shall constitute a violation of these regulations:

1) Nonperformance of any requirements of any written agreement with SBA.

2) Document(s) submitted to SBA which include a false statement knowingly made, a knowing misrepresentation, or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made.

(b) A violation of these regulations by a small concern or the development company shall allow SBA to accelerate any indebtedness of such concern issued to, held or guaranteed by SBA or, in the case of a lease assigned to or held by SBA, to terminate such lease.

§ 108.8 Borrower requirements and prohibitions.

(a) Principals of concern receiving assistance. Personal resources of the owner or owners of the small concern shall not disqualify such concern from eligibility under this part. However, applications for financial assistance will not be accepted for processing and no assistance shall be provided unless the development company can demonstrate to the satisfaction of SBA that the desired financing is not available from non-Federal sources on reasonable terms.

(b) Credit requirements. Section 120.103–2 (a) through (e) of this chapter also applies to development company assistance.

(c) Eligible concerns. A development company loan may be approved only to assist an identifiable small concern in accomplishing a sound business purpose. Whether the small concern is a proprietorship, partnership, or corporation is not a determining factor with respect to eligibility. A business may qualify as small, provided it meets the requirements of Part 121 of this chapter.

(d) Eligibility of passive small concerns ("alter ego"). A concern is ineligible if it is a passive business (i.e. one not requiring a regular and continuous activity): Provided, however. That such passive small concern may be assisted if the applicant acquires the Plant with the proceeds of a section 502 loan or a 503 loan and leases it to an otherwise eligible small operating concern, and all of the following conditions are met:

1) The applicant concern is a business that is organized for profit.

2) The operating small concern is an eligible small business and the proposed use of proceeds would be eligible for such assistance if the operating small concern were the owner of the property that is owned or to be owned by the applicant.

3) The proceeds of the loan to be used to benefit directly such applicant will be used only to acquire or improve real or personal property for the exclusive use by such operating small concern of the entire facility.

4) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small business concern, and this identity of interests shall remain unchanged until the section 502 loan or 503 loan is repaid in full or if SBA conveys its interest to a change.

5) Collateral includes an assignment of the lease between the applicant and the operating small concern and a lien on the property itself. The lease shall be for a term not less than the term of the section 502 loan or 503 loan.

6) The operating small concern must be either a guarantor or co-borrower, and any owners with 20% or more of the equity of the operating small concern and of the applicant must also guarantee the loan.

7) The operating small concern must lease the entire facility and may sublease a part under conditions set forth in § 108.503-4(a).

(e) Leasehold improvements. In order to be eligible for development company assistance to construct or modify a facility on leased land, (except as in paragraph (d) of this section or if the land is owned by the development company) the remaining term of the lease must equal or exceed the greater of the useful life of the facility or the term of the debenture. In such instances, financing may be permitted—

1) Where the land owner allows the SBA to secure lien positions on the land and improvements sufficient to fully secure its exposure, or

2) Where other collateral sufficient in value to protect fully the interest of the Government is offered.

(f) Ineligible concerns. A development company shall not assist a small concern:

1) If such small concern, or any part thereof, is to be relocated and such relocation could result in a substantial increase of unemployment in any area of the country or could result in the small concern's avoidance of its obligations;

2) If the loan is intended to finance a plant that is not located in the United States or its possessions;

3) If the loan to be made with the proceeds of a debenture guaranteed by SBA will provide funds to an enterprise primarily engaged in the business of lending or investing; or to any otherwise eligible enterprise for the purpose of financing investments not related or essential to the enterprise. This requirement prohibits the granting of financial assistance to banks, life insurance companies, finance companies, factors, investment companies and other businesses whose stock in trade is money and who are engaged in placing capital or providing financing in a way intended to secure profits from its employment.

(g) Other Loan eligibility requirements. Sections 120.101–2 (except paragraph [e]), 120.102–5 and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

§ 108.9 Participation with tax exempt financing.

A development company may use debenture or loan proceeds to make loans for projects also financed through obligations the income of which is exempt from Federal income taxes: Provided, however. That SBA's lien position shall not be subordinate to loans made from the proceeds of such tax-exempt obligations. Should the development company be authorized to issue such tax-exempt obligations, the SBA loan or debenture shall not be subordinated to such tax-exempt obligation.

§ 108.10 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA
enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

10. Sections 108.503 through 108.503–8 are removed and under a new center heading, "Assistance under Section 503." §§ 108.503 through 108.503–15 are added to read as follows:

**Assistance Under Section 503**

§ 108.503 Program objectives.

(a) Statute. The relevant statutory provisions will be found at 15 U.S.C. 697.

(b) Objectives. The purpose of this program is to foster economic development in both urban and rural areas by providing a portion of long term fixed-asset financing for small business projects through the guaranty by SBA of debentures issued by 503 companies. In order to qualify for such guaranty, the 503 company must demonstrate to SBA’s satisfaction that the project will have significant impact in its community. Subject to paragraph (c) of this section, each project shall achieve at least one of the following three economic development objectives:

(1) **Jobs.** To effect, at a minimum, one "job opportunity" per $15,000 of 503 debenture assistance. The job opportunity estimate shall be based on objective data and the basis for such estimate shall be submitted with the application for guaranty (SBA Form 1244). "Job opportunity" means:

(i) Full time (or equivalent) permanent employment created as a direct result of the project within two years of the sale of the Debenture, or

(ii) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project.

(2) **Community or area development.** A project which is expected to stimulate other business development in the community, bring new income into the area, or assist the community in diversifying and stabilizing its economy. Applications for such projects shall be accompanied by written documentation demonstrating the community impact. Such project may be approved only if the average job opportunity cost for the 503 company’s 503 portfolio do not exceed the standards of paragraph (c) of this section.

(3) **National objectives.** A project which will result in increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20–49), or assisting businesses in labor surplus areas as defined by the U.S. Department of Labor (see paragraph (c) of this section below). Such project may be approved only if the average job opportunity cost for the 503 company’s 503 portfolio do not exceed the standard of paragraph (c) of this section.

(c) **Job opportunity average.** The 503 company shall maintain an average of at least one job opportunity per $15,000 of 503 financing. Provided, however, that the Director, Office of Economic Development, SBA, may permit a job opportunity average higher by up to twenty-five percentum (25%), for good cause shown, in Alaska, Hawaii, or in labor surplus areas listed monthly in the Department of Labor publication "Area Trends", or in "redevelopment areas" as defined in the Public Works Economic Development Act, 42 U.S.C. 3161, or "Urban Jobs and Enterprise Zones", as designated by State law. Such average shall be based on job opportunities actually provided within the first two years after the project is completed and shall be measured at the end of the 503 company’s fiscal year.

(d) Monitoring. Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its annual report the job opportunities actually provided by each project computed in accordance with paragraph (c) of this section, and shall justify an investment average in excess of that permitted by paragraph (c) of this section, setting forth measures to reduce such average (See § 108.503–3(f)(2)). Unless SBA directs otherwise in writing, the 503 company shall obtain, and have available in its records for SBA inspection, a certification from the small business concern assisted, based on its employment data, which supports the job opportunity figures.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 3245–007T. Reporting and recordkeeping requirements in paragraph (d) have been approved by theOMB under control number 3245–007T).

§ 108.503–1 Eligibility requirements for 503 companies.

(a) **General.** SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is pledged to the payment of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, each of the following:

(b) **Organizational requirements.** The purpose of a 503 company shall be to foster economic development in its area of operations; any benefits flowing to shareholders, members or other related parties shall be merely incidental to such purpose. Each 503 company shall be organized as a non-profit corporation under applicable laws and shall be in good standing. Those 503 companies organized on a for-profit basis and certified by SBA or those having an application for certification on a for-profit basis pending prior to June 6, 1986, shall be allowed to continue as participants provided they comply with the applicable eligibility requirements.

Each applicant for certification and each 503 company shall demonstrate to SBA’s satisfaction as a condition of such company’s participation in the program that it has:

(1) **Management.** Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the 503 company. Legal and accounting functions may be contracted out (See also paragraph (b)(3) of this section.

(2) **Board of directors.** The board of directors shall be composed of individuals who are involved in the economic development of the area of operations and chosen from the membership by the stockholders or members to represent at least three of the four elements specified in paragraph (d)(2) of this section. However, no single element shall control. The board members shall be responsible officials of the organizations they represent and, at least one of these directors must possess commercial lending experience. Such board shall meet at least quarterly to make management decisions for the 503 company, and shall be responsible for the loan making and servicing decisions of the staff, as specified in paragraph (b)(3) of this section.

Regardless of the number of board
members, a quorum of such board shall never be less than five members. If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial lending experience, unless the 503 company can document that such director or another person approved by SBA as possessing commercial lending experience has recommended approval of the loan or servicing actions.

(3) Professional staff. Each 503 company shall have a full-time professional staff. The number of personnel may vary but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience, satisfactory to SBA, to market the 503 program throughout its area of operations, package and process loan applications, assist in closing loans, and service the 503 company's loan portfolio. The marketing, packaging, processing, and servicing functions may be contracted out only if those performing the functions have prior related experience and training and are qualified individuals or organizations who reside or do business in the 503 company's area of operations. Any contract for these functions other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self-serving actions which would increase costs to a Small Business borrower or which would adversely affect the financial condition of the 503 company. Compensation under such contracts shall be reasonable and customary for like services by like organizations in the area of operations of the 503 company and be billed on an hourly basis. Such contracts shall be subject to audit by SBA at no cost to the 503 company.

(4) Management service. A 503 company shall have the ability to provide, or cause to be provided, management advice and services to small concerns. Where a 503 company performs such services pursuant to a contract for other then employment of individuals, such contracts shall be subject to audit by SBA at no cost to the 503 company. The conditions set forth for such contracts in paragraph (b)(3) of this section shall also apply.

(5) Financial capability. A 503 company shall have the ability to sustain its operations on a continuous basis from reliable sources of funds, such as income from services rendered, contributions from government or other financial sponsorship or from the 503 company's capital. Applicant shall submit with its application (SBA Form 1246) a budget for the 503 company's operations approved by its board of directors which demonstrates that adequate resources will be available to perform the 503 company functions. Where the professional staff functions are provided by a 503 company's affiliate as defined in §121.3(a), the approved budget of such affiliate may be substituted.

(c) Area of operations. (1) 503 company shall be certified to operate in a defined area which shall not exceed the boundaries of its State of incorporation: Provided, however, That such company may—

(i) Operate in more than one State if a state line bisects a contiguous economic area, as determined by SBA, in which case such company may operate within such area, or

(ii) With SBA prior approval expand its area to include a Territory or possession of the United States.

(2) The proposed area of operations shall be sufficient to support the level of service required by §108.503-3(c) but not greater than can be sustained by their membership and staff, and as permitted by this subsection. An applicant shall demonstrate the need for its services in its proposed area of operations to SBA's satisfaction. Such showing shall discuss why another 503 company is needed in a given area if a 503 company already operates there, provide a plan to avoid duplication or overlap, and demonstrate how the applicant proposes to meet the three objectives specified in §108.503(b) without specialization in a particular industry. The applicant shall also provide evidence that it will receive the active support of the government for its area, e.g., city government for citywide 503 companies, county government for countywide operations, etc.

(3) There shall be no limit on the number of citywide, county, or multi-county 503 companies per State, subject to paragraphs (c)(1) and (2) of this section: Provided, however, That no State shall be permitted more than one statewide 503 company.

(4) Application for expansion of the area of operations. (i) Application for expansion of area of operations shall be written request to the SBA district office or branch office serving the area in which the 503 company's headquarters are located, containing the following:

(A) Definition of the new area of operations.

(B) Justification of the need for expansion to the new area, including:

(1) Identification of existing 503 companies in the area;

(ii) Description of the services the 503 company can provide that others are not providing, and

(3) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(B) Justification of the need for expansion to the new area, including:

(1) Identification of existing 503 companies in the area;

(ii) Description of the services the 503 company can provide that others are not providing, and

(3) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(C) A list of proposed members, by sub-area and groups as proposed.

(D) A certified copy of the resolution of the board of directors to expand as proposed.

(E) A projection of the 503 company's activity in existing and new areas for the next two years.

(iii) Prior to approval, SBA shall provide notice to all 503 companies presently servicing the proposed area, allowing 30 days for comment.

(iii) A 503 company proposing to expand shall also provide public notice as set forth in §108.503–2(b).

(d) Membership. The 503 company must be representative of the State, or subdivision thereof, in which the company operates. Evidence of such representation shall include the following:

(1) The 503 company must have at least 25 members or stockholders. Members or stockholders must be geographically representative of the 503 company's area of operations. No person or concern may own or control more than ten percent of the 503 company's stock or voting membership.

(2) The membership must be representative of the following four groups. A 503 company certified by SBA prior to June 6, 1986, shall have 12 months from that date to comply with this requirement:

(i) Government representation must be from the level of government corresponding to the area of operation, unless otherwise approved by the Director, Office of Economic Development, SBA. Such representation shall be from the government organization responsible for economic development functions. For example, a multi-county 503 company shall have representation or evidence of support from each county government or from a regional government council encompassing its area of operation, and a statewide 503 company shall have representation or evidence of support from the State government department responsible for economic development. With the approval of the Director, Office of Economic Development, another form of active government participation satisfactory to SBA may be chosen.

(ii) Private-sector lending institutions representative of the area of operations such as banks, savings and loan institutions and others in the business of
providing commercial long-term fixed asset financing;

(iii) Community organizations such as chambers of commerce, operating within the area of operations, foundations, trade associations, colleges, universities and other organizations dedicated to economic development;

(iv) Business concerns that are representative of the area and the business population within the area.

(3) Local 503 companies may have a representative in the membership of broader based 503 companies (e.g., Statewide or multi-county) that serve the local 503 company's area of operations.

(e) Permissible functions of a 503 company. A 503 company shall provide financial assistance in participation with SBA only under Title V of the Small Business Investment Act and this part. Such company may also help small concerns obtain other assistance from SBA by preparing loan applications, facilitating management and procurement assistance, and obtain assistance from other government and non-government programs. 503 companies are encouraged to marshall resources for the benefit of small business in a manner that will result in community economic development. A 503 company is not prohibited from participating in the 503 or 502 loan program if such company meets the qualifications set forth in §108.501 or §108.502. A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company.

(f) Required functions of a statewide 503 company. A 503 company operating on a statewide basis shall comply with the eligibility and operational requirements for all 503 companies. In addition, such company shall:

(1) Foster economic development throughout the State;

(2) Demonstrate its compatibility with and relationship to existing 503 companies; and

(3) Provide development company assistance to those areas not being served by a 503 company.

(g) Prohibition. No officer, director, or manager of a 503 company may be an officer, director or manager of any other 503 company, except that the board of directors of a 503 company covering a broader area of operations may include a member or director of a local 503 company within the area of operations.

§108.503-2 Certification.

(a) Application for certification. Application for certification as a 503 company shall be submitted on SBA Form 1246, hereby made a part of these regulations, to the SBA field office serving the area in which the prospective 503 company's headquarters are located. The field office shall forward the application and its recommendation, through the Regional Office, to the Director, Office of Economic Development, for final determination of eligibility. Qualified companies shall receive a certificate evidencing eligibility for participation in this program.

(b) Public notice. The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operations, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include such appropriate information including the name and location of the proposed company, its purpose and area of operations, and the names and addresses of its officers, directors, and members. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

(c) Transfer and surrender of certificate. A certificate may not be transferred without SBA's prior written approval, nor surrendered without such SBA consent. Request for approval or consent shall be accompanied by a plan to transfer the 503 company's portfolio to another 503 company or a participant in another SBA lending program or to SBA for servicing. Upon receipt of the 503 company's request for transfer or in the event the 503 company surrenders its certificate to SBA, SBA may conduct a special audit of the 503 company (see §108.505-15(d)).

The 503 company's name will be removed from the published list of 503 companies. (Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245-0073)

§108.503-3 Operational requirements for 503 companies.

(a) Responsibilities. A 503 company shall:

(1) Offer its services to the business community in its area of operations and cooperate with financial institutions;

(2) Package and process loan applications;

(3) Close and service loans;

(4) Offer management services; and

(5) Maintain the eligibility requirements set forth in §108.503-1 of this part.

(b) Diversified SBIC loan portfolio. A 503 company shall not concentrate its SBIC loan portfolio in any one industry or type of business nor shall such portfolio be concentrated in new businesses. A "new business" is an entity which, together with any predecessor of such entity, has been in business for less than 2 years.

(c) Level of activity. In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns: Provided, however, That written justification for inactivity, acceptable to SBA, may rebut the presumption. Examples of acceptable justification may include recent entry into the program, a large number of small concerns assisted in the preceding fiscal year, or demonstration to SBA's satisfaction that the 503 company has achieved its goals and has had a significant impact on its operating area.

(d) Records. The 503 company shall develop a system to ensure the following information and documents or a photographic copy thereof relating to its SBIC loan portfolio are available for review at its principal office: A separate file for each 503 loan which shall contain all documents and material relating to the loan application submitted to SBA including the loan authorization and all correspondence relating to such Loan prior to closing; all documents relating to the Loan closing, including documents relating to the sale of Debentures, evidence of the 503 company's injection and the amortization schedule; financial statements of the small concern, related correspondence, evidence of field visits, condition of the collateral, and evidence of payment of taxes and insurance, and other items that have been reviewed.

(e) [Reserved]

(f) Reporting requirements. In addition to the requirements of §§108.4(c), 108.5(d) and 108.503(d), each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial statements, operational and management information, and regulatory compliance information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA...
SBA shall not process 503 loan applications from a 503 company while a required report is outstanding or, in the opinion of SBA, incomplete.

(c) (2) Working capital. Proceeds from the 503 loan may not be used for working capital purposes or to refinance prior obligations of the small concern, unless a portion of the funds are needed to replace expenditures made in anticipation of a 503 loan (see §108.503–(d)).

(2) Statutory ceiling. Proceeds from the SBA 7(a) loan program shall not (1) be used to replace working capital invested in the 503 project by the small concern as the 503 company’s injection, nor (ii) be used to finance part of the 503 project. No such loan shall be approved if the total amount outstanding for the benefit of any small concern from the Business Loan and Investment Fund established under section 4(c) of the Small Business Act exceeds $500,000.

(3) Subject to the requirements and prohibitions of the Small Business Investment Act, and Part 107 of these regulations, Small Business Investment Companies (SBICs) may—

(i) Provide joint financing in projects,

(ii) Provide financing to the small concern who then invests in the project, or

(iii) Replace funds invested by the small concern:

Provided, That—

(A) Such funds shall be considered to be from federal sources as defined in §108.503–8(a) where the SBIC has leverage funds (SBA guaranteed or
direct funds including preferred stock purchases;

(B) Such funds shall be subordinated to the 503 loan;

(C) Such funds shall not be repaid at a faster rate than the debenture; and

(D) Where the SBIC has not received leverage funds, such investment will be considered from private funds.

§ 108.503-5 Eligible and ineligible uses of 503 loan proceeds.

(a) Eligible project cost shall include the cost necessary to acquire, construct, convert or expand the plant, including land, site improvements (e.g., grading, streets, parking lots, utilities, landscaping), buildings, machinery and equipment and interest on interim financing (see § 108.503-7). Project costs shall also include professional fees directly attributable and essential to the project (e.g., surveying, engineering, architectural, legal, accounting). In projects involving construction, a contingency reserve not to exceed 10% of construction cost may be added to project cost. Upon completion of the project, if the unused contingency reserve exceeds 2% of the anticipated debenture amount, such amount will be reduced by the amount of such excess.

(b) Eligible administrative costs—Reserve account (§ 108.503-11(b)(2)), and processing fee (§ 108.503-6(a)(1)), closing costs including legal fees (§ 108.503-6(a)(2)), and CFA initiation fee (§ 108.503-11(a))—are not part of the project cost, but may be included in the 503 debenture amount (§ 108.503-9(a)(2)).

(c) Ineligible costs. Costs incurred by the 503 company or the small concern that are not necessary to the acquisition, construction or conversion of the plant are ineligible project costs and may not be financed with 503 debenture proceeds. Examples of such ineligible items, for illustration purposes only, are:

(1) Management services. While a small concern may engage a management firm for continuous assistance or counseling, the cost is ineligible for purposes of 503 project cost determination;

(2) Except as permitted in paragraphs (a) and (b) of this section, financing costs and fees including those associated with tax-exempt financing (e.g., finders fees, commitment fees, application fees, origination fees, trustee fees, advertising cost, underwriting expenses and related legal cost).

(3) Franchise fees and other costs that do not contribute directly to the physical asset.

(d) Expenditures made in anticipation of a 503 loan. (1) Except as provided in paragraph (d)(2) of this section, expenditures made in anticipation of a 503 loan prior to notice to SBA may not be included in project cost unless the applicant files a written notice with the 503 company and SBA within 60 days after expenditure or SBA gives written approval.

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in projects involving new construction. The contribution shall be the equity interest in such land valued at the lesser of cost or market. None of the loan proceeds may be used for reimbursement of the acquisition cost of the land.

(3) When notice is given to SBA prior to an expenditure, there is no time limitation.

§ 108.503-6 Costs which may be charged to the small concern by the 503 company.

(a) Charges and fees. Except as otherwise provided in § 108.503-7(b)(4), the following charges or fees on the 503 loan are permitted:

(1) Loan processing fee. The cost incurred by the 503 company for loan packaging, processing and non-legal staff functions related to loan closings shall be recovered through a processing fee not to exceed one and one-half percent (1.5%) of the net debenture proceeds (§ 108.2(f)), payable at closing (see also paragraph (b) of this section).

(2) Legal fees related to loan closing: Provided, however, That fees of counsel representing the 503 company in excess of $2,500 shall be borne by such company, unless SBA approves in writing a higher fee in a case of unusual complexity. All legal fees shall be based on time and hourly charges and shall be collected by the 503 company and paid to its closing attorney.

(3) A periodic service charge not to exceed 2 percent (2%) per annum on the outstanding balance of the 503 loan measured at 5 year anniversary intervals; Provided, however, That a service charge in excess of one-half of one (0.5) percent shall require the prior written approval of SBA, based on evidence satisfactory to SBA, of substantial need.

(b) Deposits. A 503 company may require a maximum deposit of $1,000 or 1% of the net debenture proceeds, whichever is less, at the time it accepts an application for processing. A written agreement shall specify that the small concern shall receive a refund of the deposit when the 503 debenture proceeds are disbursed by the Central Fiscal Agent (see § 108.503-11), or within 10 days of denial if the loan is not approved. If the small concern decides to withdraw its application prior to funding, the 503 company is authorized to deduct administrative costs incurred in the packaging and processing of the loan request that are reasonable, necessary and documented before refunding any balance of the deposit.

(c) Additional charge for private sector financing. 503 companies may charge a one-time fee not to exceed one and one-half percent (1 1/2%) of the non-Federal permanent financing (exclusive of 503 company injection) for services actually rendered by the 503 company pursuant to a written agreement setting forth the services to be performed by the 503 company. This amount, which is not included in eligible project costs, may be paid by the private sector lender or the small concern, but not both.

(d) Disclosure of charges to SBA. The loan application submitted to SBA by the 503 company shall disclose the full amount of all fees and charges, together with names of the recipients and a description of the services rendered. (Reporting and recordkeeping requirements in paragraph (d) have been approved by theOMB under control number 3245-0071.)

§ 108.503-7 Interim financing.

(a) Certification of Project Completion. Interim financing, except for that portion provided by injection, may be necessary for those projects involving construction or significant remodeling. Except as provided in subsection (c) below, such projects shall be completed in accordance with the terms and conditions of the authorization before SBA issues its guarantee of the 503 debenture. Following completion of the project, the interim lender shall certify to the 503 company that it has no knowledge of an adverse change in the condition of the small concern since the issuance of the 503 authorization (SBA Form 1248). Conversely, if the interim lender has such knowledge, it shall advise the 503 company accordingly. The small concern shall certify to the 503 company whether there has been an adverse change in the condition of the small concern and shall furnish current interim financial statements. Before SBA issues its guaranty of the 503 debenture, the 503 company shall issue an opinion to the best of its knowledge whether an adverse change has intervened since SBA approval, including but not limited to:

(1) Deterioration of the borrower's financial condition to the extent that it would endanger the borrower's ability to meet debt service on the 503 loan.

(2) Fraud or misrepresentation as defined by § 108.7(a)(2) of this part by
Obligations issued from non-Federal sources, which are not
percent of the cost of each project, as
project. Financing for at least
participation shall be required in each
§ 108.503-8
§ for credit to the reserve account, see
be returned to the central fiscal agent
remaining undisbursed after
proceeds. Funds at a local institution
made payable jointly to the small
SBA, title insurance company or bank. After
fiscal agent (see
has been contracted for completion at a
(e.g. a parking lot) represent a relatively
rate of interest thereon.

(a) General. The maximum private
participation shall be required in each
project. Financing for at least
percent of the cost of each project, as
defined in § 108.503-5, shall be derived
from non-Federal sources, which are not
associates of the small concern, as
defined in § 120.2-2 of this chapter.

(b) Terms of private sector financing.
(1) The maturity of the non-Federal or
private sector financing shall be at least
seven years when the Debenture is for a
term of ten years and the project does
not include real estate. Otherwise, such
private sector financing shall be for the
greater of ten years or half the maturity of
the 503 debenture for all other
maturities. Balloon payments must be
justified in the loan report and clearly
identified in the loan authorization.
Under no circumstances may a balloon
payment be due in less than 10 years.
The SBA must determine in writing that
the balloon payment will not adversely
affect the small concern’s ability to
satisfy its financial obligation to SBA.

(2) Where private financing is
supplied by the seller of property, such
financing shall be subordinate to the 503
loan.

(3) Any private sector financing
subordinate to the 503 loan shall not be
prepaid without SBA’s prior written
approval which shall be based on a
finding that such prepayment will
substantially benefit the small concern.
See also §§ 108.9, 108.503-4(c)(3)(B), and
108.503-9(a)(5).

(4) SBA shall not participate in a
financing unless the interest rate on the
non-Federal and/or private sector
financing is legal and reasonable.

(5) The private sector portion of the
financing may include consolidation of
existing debt on the 503 project
property: Provided, That such pre-
existing debt is not considered part of
project cost, and collateral is adequate
to fully protect the Government.

(6) SBA shall not participate in a
financing unless the private lender has the
capacity of, or has arranged for,
servicing adequate to protect SBA’s
interests.

(7) The non-Federal or private lender
shall agree to notify SBA in writing
within 30 days after a default and 60
days prior to a foreclosure sale.

(8) Except as otherwise permitted in
this Part, SBA shall not participate in a
financing where the private sector
lender has a preference as described in
§ 120.301-1 of this chapter. (See
§§ 108.503-9(a)(5) and 108.503-13(c).)

Reporting and recordkeeping requirements
have been approved by the OMB under
control number 3245-0192)

§ 108.503-9 503 Debenture financing.
(a) Application. Upon application
(SBA Form 1244) to the field office
serving the area where the small
concern is located, SBA may guarantee
debentures (SBA Form 1242) of the 503
company. The proceeds of such
debenture shall be used to finance part of
a fixed asset project for a small
concern on either a loan or lease basis
subject to the following conditions:

(1) Purpose. Subject to § 108.503(b),
such debenture is issued for the purpose
of assisting an identifiable small
concern in accomplishing a sound
business purpose in compliance with the
regulations of this part.

(2) Amount. The aggregate amount of
such debenture, rounded up to the
nearest $1,000, shall not exceed the
amount of the loan or loans to be made
from the proceeds of the debenture other
than any excess attributable to
eligible administrative costs (as
specified in § 108.503-5) of such loan.
The minimum amount of a 503 debenture
that may be guaranteed by SBA shall be
$50,000, unless SBA determines that a
smaller debenture is reasonable and
necessary. In no case shall a debenture
be for less than $25,000.

(3) Interest rate. The interest rate on
503 debentures shall be a rate
determined by the purchaser, but not
less than a rate determined from time to
time by the Secretary of the Treasury
taking into consideration the current
average market yield on outstanding
marketable U.S. obligations with
comparable maturities. Such rate can be
obtained from the appropriate SBA field
offices.

(4) Maturity. The maturity of the 503
debenture shall be 10, 15, 20, or 25 years.
(For interrelation with private sector
financing, see § 108.503-8(b)(1).)

(5) Subordination. SBA may permit
the subordination of the 503
debenture(s) to any other debt or
obligation of the 503 company: Provided,
however, that any debt or obligation
incurred by such company to satisfy the
loan requirement (§ 108.503-10) shall be
subordinated to the 503
debenture. (See also §§ 108.9, 108.503-
4(c)(3), and 108.503-8(b)(2).)

(6) Multiple Loan Debenture. A 503
company that has demonstrated
management ability, adequate financial
capacity, and has shown an active use
of this program may, with the approval
of the Director, Office of Economic
Development, SBA, be allowed to issue
503 debentures to fund more than one
loan.

(7) Collateral. All loans to small
concerns provided from the proceeds of
a 503 debenture shall be so secured (as
determined by SBA) as to reasonably
assure repayment. SBA shall require
that the 503 company’s injection
pursuant to § 108.503-10 be
subordinated to the loan made from the
proceeds of the 503 debenture. In the
event of default on the debenture, the
liability of the 503 company shall be
limited to all payments made by the
small concern to the 503 company and the collateral securing the defaulted loan. All collateral shall be insured against such hazards and risks as SBA may require and the insurance policies shall provide for notice to the 503 company or to SBA in the event of their impending lapse.

[8] Proof of use of proceeds. At the time of closing of the debenture, the 503 company shall submit evidence satisfactory to SBA that the proceeds will be used in accordance with the statutory purpose. Such evidence shall include, but not be limited to a certification (SBA Form 1429) that proceeds will be used for eligible project costs and, if the plant is owned by the development company, proof that the small concern has the right to use the plant for at least as long as the term of the debenture.

(9) 503 Loan conditions. (i) A 503 loan may not exceed the lesser of forty percent of total project cost (as defined in § 108.503-5) plus administrative costs authorized under §§ 108.503-6(a)(1) and 108.503-11 (a) and (b)(2), or an amount which, together with the outstanding balance of all other SBA financings to any one small business concern and its affiliates (as defined in § 121.3(a) of this chapter) under section 7(a), 15 U.S.C. 638(a), does not exceed $500,000. Provided, however, That for good cause shown, SBA may authorize a 503 loan up to fifty percent. Such cause shall be deemed to exist if a project meets all three objectives of § 108.503-5(a) and it can be demonstrated to SBA’s satisfaction that without such authorization the project would be lost to the community.

(ii) Each loan to be made from the debenture proceeds shall be approved by SBA.

(iii) The terms and conditions shall be sufficient to assure timely payments by the 503 company on the debenture. Payments received after the 15th of each month shall be subject to a late payment fee equal to 5% of the late amount of $100, whichever is greater, payable to the Central Fiscal Agent for remittance at SBA’s direction. Late payments may be accepted without such late payment fee but such fee shall be received within 15 days thereafter to avoid a declaration of default.

(10) 503 lease conditions. All conditions applicable to 503 loans set forth in this part shall be equally applicable to the leasing of assets by the 503 company to a small concern. In addition, the lease agreement between the 503 company and the small concern shall be at least as long as the term of the 503 debenture; and the rent paid by the small concern during the term of the debenture shall be sufficient to retire principal and interest on all debts incurred by the 503 company in financing this project, and all related expenses, and may include a reasonable return on the 503 company’s investment. (See also § 108.503-6 of this part.)

(11) Loan/Debenture prepayment. If the small concern exercises its right voluntarily to prepay the 503 loan, the 503 company shall prepay the 503 debenture in an amount sufficient to repay the corresponding balance of the debenture with interest and adjusted for any premium or discount provided for in such debenture. Where SBA for any reason prepays (repurchases) a 503 debenture secured by the note evidencing the 503 loan, any premium resulting from such purchase shall be treated as a recoverable expense and shall be considered as part of the indebtedness defined in such note. Any discount resulting from such repurchase shall reduce the indebtedness defined in such note.

(b) Accounts maintained by the CFA.—(1) Escrow account. The monthly installments received from the small concern shall be placed in an interest bearing escrow account, until such amounts are subject to withdrawal to meet the required semi-annual payment on the 503 debenture.

(2) Reserve Account. Upon sale of the debenture, an amount equal to two percent (2%) of the net debenture proceeds shall be placed in an interest bearing reserve account. Neither the reserve account nor any interest earned/accrued thereon shall be available to the small concern until the loan and the debenture have been fully paid: Provided, however, That when the balance of the account exceeds the outstanding balance of the 503 loan, such excess funds may be released to the small concern. In addition, sufficient funds from the reserve account may be released at the small concern’s request to meet the small concern’s Federal income tax liability relating to earnings on the reserved account if there is no shortage in the Reserve Account, and all monthly installments are current. A small concern may make this request through its 503 company to the appropriate SBA field office at least 45 days prior to the filing of its Federal Income Tax Return. Such requests shall not be processed in amounts of less than $100.00.

(c) Reserve and escrow account balances. Any balance in either or both the reserve and escrow accounts shall be used to make debenture payments in the event the small concern is delinquent in meeting its monthly payments. Any remaining balance in these shall be remitted to the small concern within 30 days after the 503 loan is paid in full.
§ 108.503-12 Loan closing.

The closing of the loan between the small concern and the 503 company is the responsibility of the 503 company. The debenture closing is the responsibility of the 503 company and the SBA.

§ 108.503-13 Servicing loans and debentures.

(a) General. The 503 company shall service the 503 loan according to the related instruments and the loan authorization until paid in full, subject to the conditions specified herein.

(b) Specific servicing functions. The 503 company shall conform to servicing standards of prudent lending.

(1) The 503 company shall submit to SBA a quarterly written report on accounts in its portfolio which are sixty (60) days or more past due, explaining the reason(s) for non-payment, the steps that the 503 company is taking to bring the account(s) current, and advice regarding the payment status of all other financing involved in the project(s).

Special interim reports will be provided by the 503 company upon request by SBA.

(2) The 503 company shall review the financial statements, the small concern's payment of taxes and insurance, U.C.C. filings, and shall make field visits as necessary, or as requested by SBA.

(3) Any other adverse trend, condition or information shall be reported to SBA promptly.

(c) Prohibitions. Without the prior written consent of SBA, the 503 company shall not—

(1) Make or consent to any substantial alteration in the terms of any 503 loan instrument;

(2) Make or consent to release of collateral;

(3) Accelerate the maturity of any note;

(4) Sue upon any loan instrument;

(5) Waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument;

(6) Directly or indirectly charge or receive any bonus, fee, commission, or other payment or benefit in connection with the making and servicing of any loan, except as authorized under this part;

(7) Increase the amount of any prior lien on property securing the 503 loan;

(8) Require or obtain any funds, certificates of deposit, compensating balance not under the unrestricted control of the small concern, or any other agreement establishing any preference in favor of the 503 company.

“Preference” as used herein, shall include but shall not be limited to any arrangement whereby the 503 company obtains a position superior to the position of SBA in the repayment of its injection pursuant to § 108.503-10.

(d) Service fee. The 503 company's monthly service fees (§ 108.503-6) are paid only from loan payments received. Such fees may be accrued without interest and collected by the 503 company from the CFA when the payments are made. Failure by the 503 company to comply with the reporting and servicing requirements contained in this part is a basis for withholding service and late fees. Willful or negligent noncompliance with the reporting and servicing requirement for ninety days or longer after the respective due dates shall authorize SBA to receive the fees withheld as compensation for its effort to obtain compliance.

(e) Servicing deficiencies. SBA shall provide written notice to the 503 company of any servicing or collection deficiencies. Such notice shall state the deficiencies and action to be taken that will correct such deficiencies. Should the 503 company fail to take such actions, expenses and administrative costs incurred by SBA to correct such deficiencies may be assessed to and must be paid by the 503 company computed on a daily basis, not to exceed $250 per day: Provided, however, That this amount shall be reduced by the amounts withheld by SBA pursuant to paragraph (d) above.

(f) Termination of fees. If the 503 company persists in its failure to take corrective action pursuant to subsection (e) hereof, SBA shall have the right, pending suspension or revocation, pursuant to § 108.503-15, to take over servicing of all or part of the 503 company's portfolio or require the 503 company to assign all or part of its portfolio to another 503 company. In such event, the assignor 503 company shall have no rights to any further fees which shall be paid to the transferee. If SBA does the servicing it shall collect the fees. In addition, the 503 company's processing authority will be temporarily suspended.

(g) Assumption of a 503 loan. A 503 loan may be assumed by another small concern with SBA's prior written approval. Such approval shall not be unreasonably withheld.

(h) Deferments. At the request of the 503 company, SBA may agree to a deferment of monthly payment(s) by the small concern at its sole discretion if it finds that without such deferment the small concern will become or remain insolvent; with such deferment the small concern will become or remain viable and the small concern agrees to compensate SBA for its cost in making such deferment, and to offer such additional security as SBA may require. No such deferment shall be made for a period exceeding six months, and may be renewed if the preceding deferment period has produced beneficial results. In no event may such deferment period exceed five years, nor may the maturity of the Loan exceed twenty-five years in the aggregate.

§ 108.503-14 Liquidation of 503 loans and security.

When a 503 loan is transferred to liquidation status by SBA, the servicing functions of the 503 company and CFA may be terminated upon notice by SBA: Provided, however, That the 503 company and SBA may negotiate an agreement whereby the 503 company continues to service or to liquidate the loan on a fee basis.

§ 108.503-15 Oversight and evaluation; suspension and revocation.

(a) Operational review. Each 503 company shall be subject to operational review by SBA. Such review shall take place by appointment during the 503 company's regular business hours. The 503 company shall cooperate with SBA by making its staff, records, and facilities available.

(b) Periodic compliance audit. Each 503 company shall be subject to periodic compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General. The regulatory compliance part of the annual report prepared in accordance with § 108.503-3(f) shall be submitted to the SBA Office of Inspector General within ninety days after the end of the 503 company's fiscal year and shall satisfy this requirement. Otherwise, unless the requirement of a compliance report has been waived pursuant to § 108.503-3(f), SBA's Office of Inspector General may conduct such periodic compliance audit.

(c) Fees. Each 503 company shall bear the costs of the compliance part of the annual report prepared by its independent public accountant. The 503 company shall be assessed for each periodic compliance audit conducted by SBA, on an hourly basis not to exceed $35 per hour as prescribed by SBA's Inspector General.

(d) Special audits. A 503 company may be subject to special audit conducted by SBA's Office of Inspector General. Such audits shall be conducted at no cost to the 503 company. The 503 company shall make all books and records and related materials available for review and copying for purposes of periodic and special compliance audits.

(e) Revocation, suspension and other corrective actions.—(1) Corrective Action. SBA reserves the right to revoke the certification of any 503 company, to suspend temporarily the eligibility of any 503 company, or to
require any other corrective action for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operation requirements set forth in this Part; but such action shall not invalidate any guarantee previously issued by SBA.

(2) Suspension. SBA shall give written notice at least 10 business days prior to the effective date of a suspension action. Such notice shall inform the 503 company of the opportunity for a hearing pursuant to Part 134 of this chapter.

(3) Revocation and Appeal of Suspensions. Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for a hearing pursuant to Part 134 of this chapter.


SUPPLEMENTARY INFORMATION:

Highlights

Existing § 108.2 has been expanded to add definitions of the following terms: 504 Debenture, 504 Loan, Pool or Trust, 505 Certificate, Central Fiscal Agent, Fiscal Agent, Transfer Agent, Selling Group, and Reserve Deposit.

The new § 108.504 of these Regulations relates to the sale of debentures to investors other than the Federal Financing Bank (FFB). This regulation implements and amends § 108.2 of the SBI Act. Essentially, these debentures (504 debentures) must meet all credit and other requirements for section 503 debentures, unless specifically superseded by these Regulations. There are minor differences in the terms of the debenture and pricing mechanism of section 504 debentures.

Debentures (section 504) will have a standard prepayment clause which requires the borrower to pay a declining premium based on the number of years the debenture has been outstanding. The investor will receive a pro rata share of the prepaid principal amount plus a pro rata share of any prepayment premium assessed. However, SBA is permitted to purchase a 504 debenture at the outstanding balance plus interest to the date of repurchase and is not required to pay a premium. The term of 504 debentures will be limited to 10 or 20 years as opposed to 503 debentures which are for 15, 20, and 25 years. This should result in larger pools of homogeneous debentures. Section 504 also provides for a single Master Reserve Account in place of the separate Escrow and Reserve Accounts which are presently used for 503 debentures. Although the borrower will have the Reserve Deposit returned on payment in full of the debenture, the accrued interest will be used to make timely payment of principal and interest on 504 debentures and 505 certificates. Lastly, the new § 108.504 provides that the process of marketing and servicing 503 Certificates will also apply to 504 debentures that are sold to investors.

Section 505 of these Regulations implements section 505 of the SBI Act. This section authorizes SBA to issue certificates representing ownership of all or a fractional part of Pools of 504 debentures. The Administration is additionally authorized to guarantee the timely payment of principal and interest on these certificates under such terms and conditions as the Administration deems appropriate. The regulations explain the process by which Certificates, which may be guaranteed by SBA and which are backed by a Trust or Pool of debentures by 503 companies, are to be issued and sold. SBA has the right to cancel a certificate when all the underlying debentures are prepaid (or repurchased by SBA). This statute also requires SBA to engage an agent to provide transfer agent functions related to the certificate process. Such agents' fees are subject to SBA approval. getLastly, the statute requires the seller of any certificate to disclose to the purchaser certain information as required by statute. Should a broker or dealer fail to disclose this information to a purchaser, SBA has the right to exclude such broker or dealer from participating in the sale of certificates. These regulations implement the statutory requirements.

Executive Order 12291, Regulatory Flexibility and Paperwork Management

For purposes of compliance with E.O. 12291 of February 17, 1981, SBA hereby certifies that this proposal, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this final rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 610 et seq., this Interim Final Rule will not have a significant economic impact. The level of debenture funding available remains unchanged. The only differences from the existing 503 program are the identity of the purchasers and the existence of 504 Debentures and 505 Certificates. SBA certifies pursuant to section 602 of the Regulatory Flexibility Act, (5 U.S.C. 608) that this Interim Final Rule is being published pursuant to an emergency. The reason for the emergency is the statutory deadline of June 7, 1986, which was imposed on SBA for the promulgation of final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act. Therefore, a regulatory flexibility analysis has not been provided. In addition, SBA certifies pursuant to 5 U.S.C. 553(b)(8) that good
cause exists for not seeking public comment due to the statutory deadline for implementation of these regulations. Nevertheless comments are invited and will be considered for possible revision of this regulation.

There is no alternative to these regulations which would have less economic impact or be less costly to the government. These regulations do not duplicate, overlap, or conflict with any existing Federal Rules.

This regulation contains no reporting requirements which are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act, (44 U.S.C. Ch. 35).

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Part 108 is hereby amended as follows:

1. The authority citation for Part 108 continues to read as follows:


2. The table of contents appearing for Part 108 is amended by adding at the end, new center heading entitled “Assistance Under Sections 504 and 505” followed by new §§ 108.504 through 108.505.

Assistance Under Sections 504 and 505

108.504 Pilot program.

108.505 Debenture pool certificates (505 certificates).

3. Section 108.2 Definitions is amended by adding nine new paragraphs (n), (o), (p), (q), (r), (s), (t), (u), and (v) as follows:

§ 108.2 Definitions.

(n) “504 Debenture” means a debenture issued by a 503 company and guaranteed by SBA for sale to private investors (see § 108.504), either individually or as part of a pool or trust which backs 505 certificates.

(o) “504 Loan” means a loan made to a small business concern from the proceeds of 504 debenture.

(p) “Pool” or “trust” means an aggregation of 504 debentures approved by SBA.

(q) “505 certificate” means a certificate of interest issued by SBA or its agent representing ownership of all or a fractional part of a Pool or Trust.

(r) “Central fiscal agent” or “CFA” shall mean an agent of the 503 company appointed by SBA to receive and disburse funds related to 503 and 504 Loans. (See § 108.503–11(a) of this part.)

(s) “Fiscal agent” means an agent appointed by SBA to direct the planning, organization, control, integration and completion of sales of debentures pursuant to section 504 and/or 505 certificates pursuant to section 505.

(t) “Transfer agent” means an agent engaged by SBA to issue 505 certificates and perform the registration and transfer functions as well as collection and paying functions for either debentures sold pursuant to section 504 or 505 certificates sold pursuant to section 505, or both.

(u) “Selling group” means one or more parties who have been approved by SBA and/or its fiscal agent to market 504 debentures or 505 certificates.

(v) “Reserve deposit” shall be an amount equal to two percent (2%) of the net debenture proceeds.

4. Following § 108.503–15 add a new center heading, “Assistance under Section 504, and add §§ 108.504 through 108.506 to read as follows:

Assistance Under Sections 504 and 505

§ 108.504 Pilot program.


(b) Pilot program. SBA is required to conduct a pilot program involving the sale to investors of 504 debentures, as defined in § 108.2(n) or 505 certificates, as defined in § 108.2(q), either publicly or by private placement.

(c) Purpose. The terms and conditions upon which assistance may be rendered under the pilot program shall be for the same purposes and shall be the same as set forth in §§ 108.503 to 108.503–15 of this Part, except as superseded by paragraphs (d)–(i) of this section.

(d) Term. 504 debentures shall be issued only for maturities of ten (10) or twenty (20) years.

(e) Master reserve account. the CFA shall establish an interest bearing master reserve account in which it will place all reserve deposits and all payments on 504 loans. These funds, together with funds as necessary provided by SBA in honoring its guarantees, will be used to insure that timely payments are made to holders of 504 debentures and/or 505 certificates. In the event the borrower fails to make timely payment(s), the reserve deposit may be applied to reduce the outstanding indebtedness. The reserve deposit, without accrued interest, shall be returned to the borrower upon payment in full of the 504 debenture.

(f) Prepayment. If the small concern voluntarily exercises its right to prepay its loan or lease made with the proceeds of a 504 debenture, it shall pay a prepayment premium equal to that required of the 504 debenture. In the event of such voluntary prepayment, the 503 company shall prepay the 504 debenture with a like premium.

(g) Purchase by SBA. If SBA purchases a 504 debenture, in the event of default by the small concern or otherwise, the purchase price shall equal the unpaid debenture balance plus unpaid interest to the time of such purchase, without premium. SBA shall not be required to reimburse the investor for any premium paid for the 504 debenture or 505 certificate.

(h) Termination of interest. Interest on 504 debentures prepaid pursuant to paragraph (f) of this section, or purchased by SBA pursuant to paragraph (g) of this section, shall accrue only through the date of such prepayment or purchase.

(i) Marketing 504 debentures. Section 108.503(r) through (t) of this part shall also apply to individual 504 debentures sold to investors.

§ 108.505 Debenture pool certificates (505 certificates).


(b) Purpose. Section 505 of the Small Business Investment Act authorizes SBA or its agent to issue certificates representing ownership of all or a fractional part of a pool or trust composed of 504 debentures. Such certificates shall be sold to investors either publicly or by private placement.

(c) Guaranty. SBA is authorized to guarantee the timely payment of principal and interest on 505 certificates, not to exceed the outstanding principal and interest on the guaranteed debentures which comprise the pool. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such certificates. No State or local law, and no Federal law shall preclude or limit SBA’s exercise of its ownership rights in the pooled debentures and related collateral.

(d) Prepayment. In the event of prepayment or SBA purchase pursuant to § 108.504 (f) or (g), as the case may be, proceeds shall be passed through pro rata to the holder(s) of such certificates, and SBA’s guaranty shall be proportionately reduced. In the event all
504 debentures constituting the pool are so paid off, SBA may call all certificates backed by such Pool for cancellation.

(e) Such certificates shall be initially issued in amounts of at least one hundred thousand dollars ($100,000).

Such certificates shall be issued in registered form, and shall be transferable only by entry on the central registry maintained pursuant to paragraph (f)(2) of this section. No such transfer shall take place within 10 business days before any payment date. Payment on such certificates shall be made only to registered holders.

(f) Fiscal and transfer agent(s). SBA will appoint an agent or agents to perform functions necessary to market and service debentures sold pursuant to §108.504(b) of this part or 505 certificates sold pursuant to §108.505(b) of this part.

(1) Fiscal agent. SBA will appoint a fiscal agent to:

(i) Establish performance criteria for the selling group and select qualified candidates to comprise the selling group. Such action shall be subject to SBA prior written approval and paragraph (g) of this section.

(ii) Negotiate the terms and conditions of periodic offerings of 504 debentures and/or 505 certificates with the selling group.

(iii) Direct and coordinate periodic sale of 504 debentures and/or 505 certificates and monitor performance of transfer agent, and selling group members.

(iv) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding 504 debentures or 505 certificates.

(v) Perform other functions as SBA may from time to time prescribe.

(2) Transfer agent. SBA will appoint a transfer agent to:

(i) Issue 505 certificates in the form prescribed by SBA at the time of the primary sale of debentures.

(ii) Effect the transfer of 505 certificates upon resale in any secondary market transactions.

(iii) Maintain physical possession of the 504 debentures for SBA and the certificate holders.

(iv) Establish and maintain a system for central registration of:

(A) Debenture pools including identification of the debentures that are included in each pool, identification of the development companies which are obligors of such debentures, and the interest rate to be paid on each debenture;

(B) 505 certificates issued or transferred with respect to each sale including identification of the pool backing the certificate, name and address of such certificate purchaser, price paid by each purchaser, the interest rate on such certificates and fees or charges assessed by the transfer agent;

(C) Brokers and dealers in 505 certificates and commissions, fees or discounts granted to such brokers or dealers in such certificates; and

(D) Other information as SBA may from time to time prescribe.

(v) Receive semi-annual payments of amounts due on 504 debentures, or amounts paid under voluntary prepayments or prepayments by SBA pursuant to §§108.504(f) and (g) of this Part.

(vi) Make periodic payments to registered holders of 504 debentures or 505 certificates as scheduled or required by their terms and pay all amounts required to be paid upon prepayment of 504 debentures.

(vii) Before any resale of such debenture(s) or certificate(s) is recorded on the registry, assure that the seller has disclosed to each purchaser in writing information required to be disclosed by §108.505(i) of this part.

Such agent shall provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(g) Selling group requirements. Each member of the selling group shall:

(1) Be regulated by a federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD); and

(2) Have a net worth in accordance with the requirements of the appropriate regulatory authority and have the financial capability to market 504 Debentures and 505 Certificates;

(3) Maintain its books and records in accordance with generally accepted accounting principles and in accordance with the guidelines promulgated by the regulatory body governing its activities;

(4) Conduct its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations;

(5) Be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment (see paragraph (l) of this section) and with any Federal regulatory body governing the entity's activities or with NASD, if it is a member;

(h) Access to records. The fiscal agent, transfer agent and selling group shall make all books, records, and related materials associated with 504 Debentures or 505 Certificates available to SBA for review and copying purposes.

Such access shall be at the place of business during normal business hours.

(i) Fees and charges. In addition to those fees delineated in §108.503-6 of this part, federal or transfer Agent fees and other fees and charges necessary to market and service debentures sold pursuant to §108.504(b) of this Part or 505 Certificates pursuant to §108.505(b) of this Part may be assessed to the recipient of the 504 loan or charged to the purchaser of the debenture or certificate. Such fees shall be approved by SBA and shall be published from time to time in the Federal Register.

(j) Disclosure statement. Prior to any sale of a 505 Certificate, the seller, or the broker or dealer as agent for the seller, shall in the form prescribed or approved by SBA, disclose to the purchaser of such certificate information on the terms, conditions and yield of such certificate including information on any premium or other characteristics not guaranteed by SBA.

(k) Prohibition. In addition to §108.4(d) of this Part, a 504 loan recipient or any officer, director, partner, shareholder of such loan recipient or close relative of any of the foregoing (as defined in §120.2(d) of SBA Regulations) may not purchase the debenture which funded its 504 loan. In such cases, SBA shall have the option of canceling its guarantee of such 504 debenture. Also see §§108.7 and 108.503-15(e) of this part.

(l) Suspension or revocation of brokers and dealers. (1) SBA may exclude from the sale and all other dealings in, 504 debentures or 505 certificates, any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer may be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for 504 debentures or 505 certificates, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(iii) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for 504 debentures or 505 certificates may be terminated.
(iv) When such broker or dealer has failed to make full disclosure of the information required by §108.505(j) of this part, such broker's or dealer's participation in the market for 504 debentures or 505 certificates may be terminated.

(2) Proceedings to terminate such broker's or dealer's participation in the market for such certificates shall be conducted in accordance with Part 134 of this title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§134.32(b)(7) and 134.34.


Charles L. Heatherly,
Acting Administrator.

[FR Doc. 86-12853 Filed 6-5-86; 8:45 am] BILLING CODE 8025-01-M
Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 81 and 82
Color Additives; Final Rules
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[DOCKET NO. 76N-0366]

Provisional Listing of FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 for use as color additives in drugs and cosmetics and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be August 6, 1986. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used. Published elsewhere in this issue of the Federal Register is a document terminating the provisional listing of D&C Red No. 37.

EFFECTIVE DATE: Effective June 6, 1986, the new closing date for FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 will be August 6, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of June 6, 1986, for the provisional listing of FD&C Yellow No. 6, D&C Orange No. 17, D&C Red No. 8, D&C Red No. 9, and D&C Red No. 19 by regulation published in the Federal Register of September 4, 1985 (50 FR 35783). FDA extended the closing date for these color additives until June 6, 1986, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives and for publication of a regulation in the Federal Register regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the June 6, 1986, closing date for the provisional listing of these color additives until August 6, 1986.

FDAs has essentially completed its review and evaluation of available information relevant to the use of these color additives in food, drugs, and cosmetics. The agency has concluded that the external drug and cosmetic uses of D&C Red No. 8, D&C Red No. 9, D&C Orange No. 17, and D&C Red No. 19, and the food, drug, and cosmetic uses of FD&C Yellow No. 6 are safe. Thus, the agency has decided to permanently list these color additives for these uses. The agency has also decided, based on its evaluation of the ingested drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9 that they are safe and may be permanently listed for these uses at significantly reduced concentrations. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until August 6, 1986, to provide time for the preparation and publication of appropriate Federal Register documents. The agency intends to move expeditiously to publish these documents as soon as possible, but not later than August 6, 1986. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in McIlwain v. Hayes, 690 F.2d (D. C. Cir. 1982).

Elsewhere in this issue of the Federal Register, FDA is terminating the provisional listing of D&C Red No. 37 effective June 6, 1986. The agency's decision is based on the fact that the petitioner has withdrawn its petition for this color additive and, thus, a basis for its continued provisional listing no longer exists.

Because of the shortness of time until the June 6, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of June 6, 1986. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d)(1) and (3), this postponement is issued as a final regulation, effective on June 6, 1986.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 61 continues to read as follows:


§ 81.1 [Amended]

2. In § 81.1 Provisional lists of color additives by revising the closing dates for “FD&C Yellow No. 6” in paragraph (a) and for “D&C Orange No. 17,” “D&C Red No. 8,” “D&C Red No. 9,” and “D&C Red No. 19” in paragraph (b) to read “August 6, 1986.”

§ 81.27 [Amended]

3. In § 81.27 Conditions of Provisional listing by revising the closing dates for “FD&C Yellow No. 6,” “D&C Orange No. 17,” “D&C Red No. 8,” “D&C Red No. 9,” and “D&C Red No. 19” in paragraph (d) to read “August 6, 1986.”

Dated: June 3, 1986.

Frank E. Young
Commissioner of Food and Drugs.

[FR Doc. 86-12690 Filed 6–5–86; 10:44 am]

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21 CFR Parts 81 and 82

[DOCKET NO. 86C–0228]

Termination of Provisional Listing of D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is terminating the provisional listing of the color additive D&C Red No. 37 for use in coloring externally applied drugs and cosmetics. FDA is taking this action because the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., has withdrawn its petition for the use of D&C Red No. 37 in externally applied drugs and cosmetics. Therefore, D&C Red No. 37 may not be added to externally applied drugs and cosmetics after June 6, 1986.

EFFECTIVE DATE: June 6, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Center for Food

SUPPLEMENTARY INFORMATION: FDA established the current closing date of June 6, 1986, for the provisional listing of D&C Red No. 37 by a regulation published in the Federal Register of September 4, 1985 (50 FR 35783). FDA extended the closing date for D&C Red No. 37 until June 8, 1986, to provide time for completion of the agency’s review and evaluation of the data concerning the drug and cosmetic uses of D&C Red No. 37 and for publication of a regulation in the Federal Register regarding the agency’s final decision on the petition for the permanent listing of color additive.

As noted in the Federal Register of August 6, 1973 (38 FR 21199), D&C Red No. 37 is a subject of petition (CAP 9CO991) filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletery and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005) for use in coloring drugs and cosmetics. The petition was filed under section 708 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376). By letter dated April 29, 1986, CTFA withdrew its petition requesting permanent listing of D&C Red No. 37 for use in externally applied drugs and cosmetics without prejudice to a future refiling. (See letter of April 29, 1986, from Mr. E. Edward Kavanaugh, CTFA, to Gerald L. McCowin.) Because the petitioner has withdrawn that portion of the petition pertaining to use in externally applied drugs and cosmetics, there is no longer a basis for continued provisional listing of these uses (21 U.S.C. 376, note).

Accordingly, in the absence of a petition for such uses, FDA concludes that (1) the provisional listing of D&C Red No. 37 for use in externally applied drugs and cosmetics should be terminated under section 203 (a)(2) and (d)(1)(E) of the transitional provisions of the amendments; (2) all certificates heretofore issued for batches of D&C Red No. 37, its lakes, and all mixtures containing this color additive for externally applied drugs and cosmetics are cancelled as of June 6, 1986; and (3) after that date the addition of D&C Red No. 37 to externally applied drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the externally applied use of the straight color additive, its lakes, and mixtures of the color additive and its lakes. On February 4, 1983 (48 FR 5262), the agency terminated the provisional listing of D&C Red No. 37 for use in ingested drug and cosmetic products. FDA also concludes that the health concern regarding the use of this color additive is such that the current use of the color additive does not represent an acute imminent hazard. Therefore, the protection of the public health does not require (1) the recall from the market of drug and cosmetic products for externally applied use that contain the color additive, or (2) the destruction of such drug or cosmetic preparations to which the color additive has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that may be externally applied and that contain D&C Red No. 37 may either discontinue use of the color additive or substitute a different color additive in accordance with the provisions of 21 CFR 314.70(c)(1) or 21 CFR 514.8(d)(3) and (e), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate. The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing the subject color should promptly amend the IND or INAD to indicate that the color additive has been deleted or a different color additive substituted.

FDA is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 37 may continue to be used with the uncolored product or products containing alternative colors during the time necessary to obtain supplies of revised labeling or until June 6, 1987, whichever occurs first.

The agency has considered the environmental effects of this action. Because FDA’s action will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance in the environment, FDA concludes that this action will not have any impact on the quality of the human environment. This action is similar to actions involving human and animal drugs that are excluded from preparation of an environmental assessment under 21 CFR 25.24 (c)(3) and (d)(6) of FDA’s final rule implementing the National Environmental Policy Act (50 FR 16636; April 26, 1985).

Notice and public procedure are not necessary prerequisites to promulgating these regulations because section 203(d)(2) of the Pub. L. 86–618 so provides.

List of Subjects in 21 CFR Parts 81 and 82

Color additives, Cosmetics, Drugs.

Therefore, under the transitional provisions of the Color Additive Amendments of 1986 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 81 and 82 are amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:


§ 81.1 [Amended]

In § 81.1(a)(7), after the entry for "D&C Red No. 37", redesignate paragraphs (q) as paragraphs (q)(1) and add new paragraph (q)(2) to read as follows:

(q)(1) * * *

(q)(2) D&C Red No. 37. In the absence of a petition to list D&C Red No. 37 for external use, there no longer exists a
basis for provisional listing for such uses. Accordingly, the Commissioner of 
Food and Drugs hereby terminates the 
provisional listings of D&C Red No. 37 
for use in externally applied drugs and 
cosmetics, effective June 6, 1986:

§ 81.27 [Amended]
4. In § 81.27 Conditions of provisional 
listing in paragraph (d) by removing the 
entry for "D&C Red No. 37".

5. In § 81.30 by revising paragraph 
(r)(2) and adding new paragraph (r)(3) to 
read as follows:

§ 81.30 Cancellation of certificates.

(r) * * * *

(2) The agency finds, on the scientific 
evidence before it, that no action has to 
be taken to remove from the market 
ingested drugs and cosmetics to which 
D&C Red No. 19 and D&C Red No. 37 
were added on or before February 4, 
1983, or externally applied drugs and 
cosmetics to which D&C Red No. 37 was 
added on or before June 6, 1986.

(3) Certificates issued for D&C Red 
No. 37, its lakes, and all mixtures 
containing this color additive are 
cancelled and have no effect as pertains 
to its use in externally applied drugs and 
cosmetics after June 6, 1986, and use of 
this color additive in the manufacture of 
externally applied drugs or cosmetics 
after this date will result in adulteration.

PART 82—LISTING OF CERTIFIED 
PROVISIONALLY LISTED COLORS 
AND SPECIFICATIONS

6. The authority citation for 21 CFR 
Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 
as amended, 74 Stat. 399-407 as amended (21 
U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1337 [Removed]
7. By removing § 82.1337 D&C Red 
No. 37.

Dated: June 4, 1986.
Frank E. Young,
Commissioner of Food and Drugs.
[FR Doc. 86–12379 Filed 6–5–86; 10:44 am] 
BILLING CODE 4160–01–M
Part V

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147
General Conference Committee of the National Poultry Improvement Plan Meeting; Proposed Rule
DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 86-056]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Announcement of meeting.

SUMMARY: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held June 23, 1986 (9 a.m.–12 noon), June 24 and 25, 1986 (9 a.m.–5 p.m.), and June 26, 1986 (9 a.m.–2 p.m.).

ADDRESSES: The meeting will be held at the Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, California. Written comments may be mailed to Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, APHIS-VS, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-5140. Comments received may be inspected at this address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, (301) 436-5140.

SUPPLEMENTARY INFORMATION: This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan to be held June 23, 1986, through June 26, 1986. The sessions on June 24, 25, and 26, 1986, will include the delegates to the biennial National Plan Conference, who represent State officials and poultry industry personnel from the 47 cooperating States. The purpose of the Committee is to make recommendations to the Department concerning the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

At the meeting consideration will be given concerning whether to recommend to the Department that the following changes be made in the regulations in 9 CFR Parts 145 and 147:

1. Provide for a minimum number of birds to be tested from each house when blood testing commercial poultry flocks for salmonella and mycoplasma.

2. Provide for the enzyme-labeled immunosorbent assay test (ELISA) as one of the official tests for pullorum and fowl typhoid diseases.

3. Provide alternative procedures for examining certain types of birds that react to a blood test for pullorum-typhoid to determine if the birds are false reactors.

4. Amend the method Official State Agencies use to determine the number of birds to be tested in determining U.S. Pullorum-typhoid status of multiplier breeding flocks on poultry premises of unknown status.

5. Add a program to recognize a State when certain requirements for the control of Mycoplasma gallisepticum are met in poultry flocks.

6. Add a program for turkey breeding flocks meeting certain husbandry and sanitary requirements.

7. Provide egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean".

8. Add a program recognizing States which meet certain minimum standards for poultry disease prevention.

The meeting will be open to the public. Written statements concerning these and other matters may be filed with the Committee before or at the time of the meeting.

Dated: June 5, 1986.

D.F. Schwindaman,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-12972 Filed 6-5-86; 12:36 pm]

BILLING CODE 3410-34-M
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Friday, June 6, 1986

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