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Proclamation 5709 of September 29, 1987

The President

AIDS Awareness and Prevention Month, 1987

By the President of the United States of America

A Proclamation

The Human Immunodeficiency Virus (HIV) and the disease AIDS (Acquired Immune Deficiency Syndrome) into which it can develop are a severe public health problem in the United States and elsewhere. HIV destroys the immune system and attacks the central nervous system, leading to devastating physical consequences and then to death. Because the virus has a long incubation period and the progress of the disease varies sharply from individual to individual, people can unwittingly carry and spread it for years.

AIDS afflicts thousands of Americans, and an unknown number are infected with HIV without showing any symptoms. The deadly virus is most commonly spread through sexual contact with an infected person, especially through homosexual practices; through intravenous drug use with contaminated needles; and through other transmissions of infected blood. Our country's huge and vital public health task of AIDS prevention and treatment is underway. Massive public and private efforts have already led to definite advances in research and treatment. Our understanding of AIDS remains incomplete, however, and much remains to be done before any vaccine or cure is found.

A Presidential Commission is studying the public health dangers of the HIV epidemic, including the medical, legal, ethical, social, and economic impact, and will issue a report next year, focusing on Federal, State, and local measures to protect the public from contracting the virus, to help find a cure for AIDS, and to care for those already afflicted.

Both medicine and morality teach the same lesson about prevention of AIDS. The Surgeon General has told all Americans that the best way to prevent AIDS is to abstain from sexual activity until adulthood and then to restrict sex to a monogamous, faithful relationship. This advice and the advice to say no to drugs can, of course, prevent the spread of most AIDS cases. Millions already follow this wise and timeless counsel, and our Nation is the poorer for the lost contributions of those who, in rejecting it, have suffered great pain, sorrow, and even death.

Education is crucial for awareness and prevention of AIDS. Parents have the primary responsibility to help children see the beauty, goodness, and fulfillment of chastity before marriage and fidelity within it; know the blessings of stable family life; and say yes to life and no to drugs. Educational efforts should be locally determined and consistent with parental values. Educators can develop and relay accurate health information about AIDS without mandating a specific curriculum on this subject. Parents and educators should teach children not to engage in premarital sex or to use drugs, and should place sexuality in the context of marriage, fidelity, commitment, and maturity.

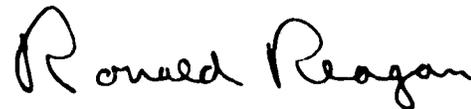
Prevention of AIDS also demands responsibility from those who persist in high-risk behavior that is spreading AIDS. While many of these individuals apparently have not been convinced by educational efforts, some have begun to modify their behavior. AIDS is a fatal communicable disease of wide proportions, and all people of goodwill must realize that it is a public health problem whose prevention requires, at minimum, measures of detection, testing, and treatment now routinely taken against less dangerous communica-

ble diseases. Our goal must be to protect the lives, the health, and the well-being of all our citizens. Public officials are entrusted with and sworn to the sacred duty of such protection. Our country needs wisdom and courage in this effort.

We also need to remember that the battle against AIDS calls for calmness, compassion, and conviction—calmness, to remember that fear is the enemy of just solutions; compassion, for all AIDS victims; and conviction, for the understanding and the willingness to combat this major public health threat effectively.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of October 1987 as AIDS Awareness and Prevention Month, and I call on Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of Sept., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

A handwritten signature in cursive script that reads "Ronald Reagan". The signature is written in dark ink and is positioned to the right of the main text of the document.

[FR Doc. 87-22911

Filed 9-30-87; 2:26 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 5710 of September 29, 1987

National Lupus Awareness Month, 1987

By the President of the United States of America

A Proclamation

Systemic lupus erythematosus or lupus is often called "the great impersonator" because it can mimic so many other diseases. A disorder of the body's immune system, lupus may affect the joints, the skin, and one or more internal organs (such as the kidneys, heart, and brain) in varying combinations. As many as 500,000 Americans—mostly women in their childbearing years—may suffer from this autoimmune disorder.

Normally, an individual's immune system protects him or her from infection by producing antibodies that react with and eliminate foreign substances. In autoimmune diseases such as lupus, however, the immune system can harm the individual by making antibodies that react against the person's own tissues.

Scientists are not yet sure why the body's antibody-producing system behaves this way, but they are conducting extensive research seeking the cause of the disease. Their research studies include: investigations on genes that underlie the development of the disease; research on a wide variety of immune system components and chemical messengers; research on initiation of abnormal immune reactivity; and hormonal studies. Such fundamental studies will lead to the design of improved treatments that alleviate the symptoms of lupus, or even better, attack the disease itself.

Thanks to recent research progress, lupus has become more a chronic disease than the acute and often fatal disorder it was decades ago. Nevertheless, deaths do occur, and new research findings and new approaches to diagnosis and treatment are needed to eliminate lupus. A concerted Federal-private research effort is working to ultimately uncover the cause and cure for this distressing disease.

The Congress, by Public Law 100-106, has designated the month of October 1987 as "Lupus Awareness Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1987 as Lupus Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.



Presidential Documents

Proclamation 5711 of September 29, 1987

Child Health Day, 1987

By the President of the United States of America

A Proclamation

For nearly 6 decades, Americans have observed Child Health Day in reaffirmation of our private and public national commitment to the good health of every child. During this year's observance, we should resolve to redouble our efforts to ensure that all aspects of health services needed by mothers, babies, and older children are properly identified, provided, and used, when and where needed. Appropriate perinatal, medical, nutritional, and educational services should be made available in accordance with family needs, including specialized services for those at risk for poor pregnancy outcomes such as low birth weight, delivery complications, or developmental problems.

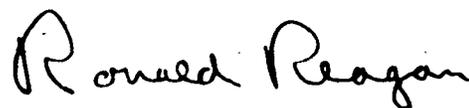
Babies and older children with special health needs such as severe chronic illnesses, birth impairments, and related conditions often require early intervention and highly specialized care. A family-centered, comprehensive program of medical, educational, and social services in the community and in the home may also be needed.

It is vital that approaches such as these be fostered throughout our country. Preventing low birth weights and infant mortality from other causes; reducing disability levels; and increasing the feasibility of home care in cases of severe chronic illness are objectives of high priority. Health professionals and staff members of State and local social service agencies can improve the effectiveness of health care delivery as they cooperate fully in these approaches.

Federal health services, research, and financing agencies continue to focus upon support of such endeavors. For instance, the recently created Bureau of Maternal and Child Health and Resource Development has as a central element of its mission the promotion of case-managed perinatal care as well as care for babies and older children who have special health care needs. Real progress can be made through the combination of State and local action and cooperation and Federal encouragement and support.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution approved on May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 5, 1987, as Child Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.



Presidential Documents

Proclamation 5712 of September 30, 1987

Implementation of Agreement Concerning Certain Pasta Articles From the European Community

By the President of the United States of America

A Proclamation

1. On September 15, 1987, the United States and the European Community (EC) entered into an agreement to resolve the long-standing dispute over EC exports of subsidized pasta products to the United States. I have now determined, pursuant to section 301 of the Trade Act of 1974, as amended (Act) (19 U.S.C. 2411), to take action necessary to implement the agreement. In accordance with the agreement, certain pasta articles the product of any member country of the EC, exported on or after October 1, 1987, will be denied entry into the customs territory of the United States unless accompanied by documentation establishing that such imports are receiving reduced refund payments from the EC or are benefitting solely from Inward Processing Relief from the EC.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action within his power to enforce the rights of the United States under any trade agreement, or to respond to any act, policy, or practice of a foreign country or instrumentality that is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce. Pursuant to section 301(a), such actions can be taken on a nondiscriminatory basis or solely against the foreign government or instrumentality involved. Section 301(d) of the Act (19 U.S.C. 2411(d)) authorizes the President to take action on his own motion and on an expedited basis if required.

3. I have decided, pursuant to section 301(a) and (d) of the Act, to direct the United States Trade Representative to take such actions as he deems necessary and appropriate to enforce the provisions of the agreement. The U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all shipments the product of any member country of the EC, exported on or after October 1, 1987, of macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36 part 15B, schedule 1 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), unless accompanied by such documentation as is determined by the USTR to be necessary to ensure compliance with the agreement. The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to section 301(a) and (d) of the Trade Act of 1974, do proclaim that:

1. The U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36, part 15B, schedule 1 of the Tariff Schedules of the United States, the product of any member country of the European Community unless accompanied by such documenta-

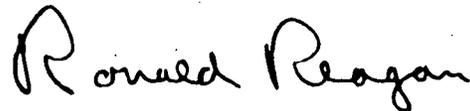
tion as the United States Trade Representative determines necessary and appropriate to enforce the agreement.

2. The United States Trade Representative shall determine what actions are necessary to enforce the agreement and shall notify the U.S. Customs Service of the documentary requirements necessary to permit entry, or withdrawal from warehouse for consumption, into the customs territory of the United States of such pasta articles.

3. The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement.

4. This Proclamation shall be effective with respect to such pasta articles exported from the EC on or after October 1, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

A handwritten signature in cursive script that reads "Ronald Reagan". The signature is written in dark ink and is positioned to the right of the main text of the document.

[FR Doc. 87-22974

Filed 10-1-87; 8:50 am]

Billing code 3195-01-M

Presidential Documents

Memorandum of September 30, 1987

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined to take actions necessary to implement an agreement signed on September 15, 1987, with the European Community (EC) with respect to exports of certain pasta products to the United States. In accordance with the agreement, the U.S. Customs Service shall exclude from entry, or withdrawal from warehouse for consumption, into the customs territory of the United States all shipments the product of any member country of the EC, exported on or after October 1, 1987, of macaroni, noodles, vermicelli, and similar alimentary pastes composed primarily of wheat, provided for in items 182.35 and 182.36 part 15B, schedule 1 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), unless such shipments are accompanied by appropriate documentation establishing that such imports are receiving reduced refund payments from the EC or are benefitting solely from Inward Processing Relief from the EC. The United States Trade Representative (USTR) shall determine what actions are necessary to enforce the agreement and shall notify the U.S. Customs Service of the documentary evidence necessary to permit entry of such pasta articles. The U.S. Customs Service will collect and assemble such data as are necessary to monitor the agreement. I have determined to take this action on my own motion on an expedited basis under the authority of section 301(d)(1) of the Trade Act of 1974 (19 U.S.C. 2411(d)(1)).

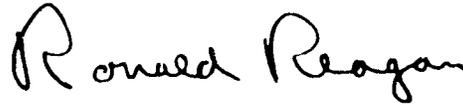
Statement of Reasons

The agreement implemented by this determination resolves a long-standing dispute over certain EC subsidy practices I previously determined to be unfair (47 FR 31841). On November 30, 1981, the USTR initiated an investigation of export subsidies on certain pasta products from the EC (46 FR 59675), on the basis of a petition filed by the National Pasta Association under section 301 of the Trade Act of 1974. The United States pursued this matter under the dispute resolution procedures of the Subsidies Code. In 1983, a Subsidies Code panel found, after lengthy and careful examination of the arguments of both sides, that EC export subsidies on pasta products are inconsistent with Article 9 of the Subsidies Code. The EC and certain other countries declined to permit adoption of the panel ruling. Subsequent efforts to achieve a settlement through bilateral negotiations were unsuccessful.

In the context of a separate dispute with the EC concerning tariff preferences granted by the EC on certain citrus products, I imposed increased duties on certain pasta products under Proclamation 5354 of June 21, 1985 (50 FR 26153), as modified by Proclamation 5363 of August 15, 1985 (50 FR 33711). These increased duties on pasta products were withdrawn, effective August 21, 1986, by action of the USTR under authority delegated by Proclamation 5363, as a result of the negotiation of a satisfactory settlement of the dispute concerning citrus preferences (51 FR 30146). One of the terms of that settlement with the EC was that the United States and the EC would negotiate a satisfactory settlement of the dispute over EC pasta subsidies.

The agreement implemented by this determination and accompanying Proclamation is the result of those negotiations. The agreement reasonably restricts the EC subsidies on pasta exported to the United States, and therefore is an appropriate and feasible response to enforce the rights of the United States under the trade agreements of the United States or to respond to EC acts, policies, and practices that are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce.

This determination shall be published in the **Federal Register**.



THE WHITE HOUSE,

Washington, September 30, 1987.

[FR Doc. 87-22975

Filed 10-1-87; 8:51 am]

Billing code 3195-01-M

Presidential Documents

Memorandum of September 30, 1987

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

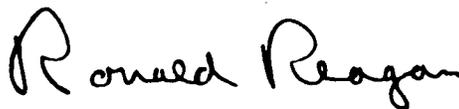
Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act*, and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize*, enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based upon this information, I hereby make an affirmative determination for the third annual period (October 1, 1986–September 30, 1987) that during such period:

- (A) The major companies of the steel industry, taken as a whole, have—
- (i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry; and
 - (ii) taken sufficient action to maintain their international competitiveness;
- (B) each of the major companies committed not less than 1 percent of net cash flow to the retraining of workers, except as waived below; and
- (C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

Moreover, I hereby waive the application of section 806(b)(1)(B) with respect to one major company (Wheeling-Pittsburgh Steel Corporation) now operating under Chapter 11 of the Federal bankruptcy laws; and another major company (Nucor Corporation) not having or reasonably anticipating significant unemployment in steel operations, in light of recent growth in employment.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 1987.

Presidential Documents

Executive Order 12610 of September 30, 1987

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C., App.), it is hereby ordered as follows:

Section 1. Each Advisory Committee listed below is continued until September 30, 1989:

- (a) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration).
- (b) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).
- (c) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor).
- (d) President's Committee on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).
- (e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor).
- (f) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services).
- (g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).
- (h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services).
- (i) President's Economic Policy Advisory Board; Executive Order No. 12296 (Office of Policy Development).
- (j) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce).
- (k) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in Section 1 of this Order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive Orders, which established committees that have terminated or whose work is completed, are revoked:

- (a) Executive Order No. 12490, establishing the National Commission on Space.
- (b) Executive Order No. 12427, establishing the President's Advisory Council on Private Sector Initiatives.
- (c) Executive Order No. 12526, establishing the President's Blue Ribbon Commission on Defense Management.

(d) Executive Order No. 12511, establishing the President's Child Safety Partnership.

(e) Executive Order No. 12503, as amended by Executive Order No. 12529, establishing the President's Commission on Americans Outdoors.

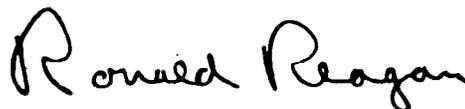
(f) Executive Order No. 12435, establishing the President's Commission on Organized Crime.

(g) Executive Order No. 12575, establishing the President's Special Review Board.

(h) Executive Order No. 12546, establishing the Presidential Commission on the Space Shuttle Challenger Accident.

Sec. 4. Executive Order No. 12534 is superseded.

Sec. 5. This Order shall be effective September 30, 1987.



THE WHITE HOUSE,
Washington, September 30, 1987.

Rules and Regulations

Federal Register

Vol. 52, No. 191

Friday, October 2, 1987

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

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: On May 22, 1987, the Department published a proposed rule to implement the automatic free meal eligibility and verification provisions mandated by the School Lunch and Child Nutrition Amendments of 1986 (Pub. L. 99-500 and Pub. L. 99-591) in the Child Care Food Program (CCFP). In addition, that rulemaking also proposed several discretionary changes to the procedures governing the application for free or reduced price benefits and the verification of eligibility in the CCFP. This interim rulemaking action: (1) Responds to commenters' views regarding the proposed rulemaking; (2) requires the implementation of automatic (or "categorical") eligibility and related verification provisions in the CCFP in Fiscal Year 1988; (3) makes optional for Fiscal Year 1988 and mandatory for Fiscal Year 1989 the implementation of the discretionary changes which were proposed in the May 22, 1987 rulemaking. The Department is publishing these regulations in interim form in order to allow interested parties an opportunity to submit additional comments based on their experience in implementing categorical eligibility and the related verification procedures mandated by Pub. L. 99-500 and Pub. L. 99-591. In addition, those States choosing to implement immediately the

discretionary changes to the application and verification procedures proposed in the May 22, 1987 rulemaking will also have operational experience on which to base additional comments. This rulemaking is intended to simplify eligibility and verification procedures and improve administrative consistency.

DATES: This interim rulemaking is effective October 1, 1987. The section entitled "Implementation", which appears at the end of this preamble, details those changes which must be implemented on October 1, 1987 and those for which implementation may be delayed at State discretion until October 1, 1988. To be assured of consideration, comments must be postmarked on or before December 31, 1987.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Ms. Anna Kondratas, the Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping

requirements that are included in §§ 226.9, 226.15, 226.17, 226.19 and 226.23 of this interim rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983). This interim regulation implements both nondiscretionary provisions of law and discretionary initiatives of the Department concerning the free and reduced price application and verification process in the Child Care Food Program. Since the large majority of free and reduced price applications are submitted at the beginning of the fiscal year, and since Congress clearly intended that categorical eligibility be available to program participants in a timely manner, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(d), that good cause exists to make this rule effective less than 30 days after publication. Furthermore, with respect to the nondiscretionary provisions of this rule which merely recite statutory requirements, this rule constitutes an interpretative rule for which a 30 day waiting period is not required.

Background

On May 22, 1987, the Department published a proposed rule in the *Federal Register* (52 FR 19354) to: (1) Provide automatic free meal eligibility and simplified verification procedures for children from households receiving food stamps or from "assistance units" receiving Aid to Families with Dependent Children (AFDC) benefits; (2) require additional income information from households applying on behalf of other children (i.e., children who are not part of food stamp households or AFDC assistance units); (3) require that CCFP applications include a signed certification that the information being provided by the household on the application is true and correct; and (4) eliminate "institution conferences" as a method of verification in the CCFP. A 60-day comment period was provided during which the Department received 18 comments on the proposed

regulation. Commenters represented State agencies responsible for administering the CCFP; public and private nonprofit sponsors of child care centers and family day care homes; and child care centers. Many of the comments received dealt with portions of the CCFP regulations which were not part of the proposed rulemaking, and only 8 of the 18 comments concerned the Department's proposal to make several discretionary changes to the CCFP application and verification procedures.

In order to implement the School Lunch and Child Nutrition Amendments of 1986 in a timely manner, this interim rulemaking mandates full implementation of the categorical eligibility and related verification procedures by October 1, 1987. However, implementation of the remaining changes proposed in the May 22, 1987 rulemaking is *optional* in Fiscal Year 1988 and *mandatory* in Fiscal Year 1989. The specific discretionary provisions involved in optional Fiscal Year 1988 implementation are discussed in the section entitled "Implementation" which appears at the end of this preamble.

By promulgating in interim form the nondiscretionary changes mandated in Pub. L. 99-500 and Pub. L. 99-591, the Department wishes to give State agencies and institutions the opportunity to submit additional comments based on their actual experience in implementing automatic free meal eligibility and related verification procedures for the Fiscal Year 1988 Program. In addition, those States choosing to implement immediately the discretionary changes proposed in the May 22, 1987 rulemaking are also encouraged to submit additional comments reflecting their experience with these provisions.

The remainder of this preamble will discuss the views expressed by commenters in relation to each of the provisions discussed in the May 22, 1987 rulemaking. Comments which addressed portions of the 7 CFR Part 226 regulations not substantively affected by the proposed rulemaking are not discussed herein.

General Comments

Of the 18 comments received, 7 expressed agreement with the changes proposed in the May 22, 1987 rulemaking. Most of these commenters, and many of those expressing concern regarding specific provisions of the proposed rulemaking, commended the effort to simplify eligibility and verification procedures and to bring about administrative consistency between the CCFP and the School

Programs. Five (5) commenters requested that the Department issue guidance on the revised application and verification procedures. These commenters felt that such guidance was imperative since categorical eligibility requires that eligibility be established for each child, rather than for entire households as in the past. The Department understands that there may be some confusion at the local level, especially in regard to determining eligibility in "mixed households" (i.e., households which include both categorically eligible children and other children who are not categorically eligible). The Department is revising the applicable guidance, but again reiterates the request made in the preamble to the proposed rulemaking that States and institutions submit specific comments and questions concerning the implementation of categorical eligibility. Comments on the interim rule should reflect administering agencies' practical experience in implementing these provisions, and will thus be helpful to the Department in its effort to provide clear and complete guidance materials.

1. Comments on Categorical Eligibility and Related Verification Provisions

In addition to the requests for guidance noted above, two State agencies provided comments on categorical eligibility's impact on the application process. One of these commenters requested that the definition of "household" be expanded to clarify the procedures for processing applications from mixed households and from households which include both a food stamp household and an AFDC assistance unit. Both commenters felt that the regulations should provide more specific language pertaining to processing mixed households. The Department agrees that this information is needed by administering agencies, but believes that it would be more appropriate to address such situations in guidance materials rather than attempting to deal with a large and complex variety of possible circumstances in the regulations themselves. The definition of "household" remains unchanged in § 226.2, as do the definitions of "food stamp household" and "AFDC assistance unit" added to Part 226 in the proposed rulemaking, in order to facilitate reference to requirements which apply to all households and those which apply to specific types or parts of households.

A third comment on the subject of "mixed households" misunderstood the Department's intent in the proposed rulemaking. The commenter believed

that since Congress intended to simplify the application process it would not require two different types of eligibility determinations to be made for the same household. Because the commenter believed that using two techniques to determine eligibility in mixed households would be cumbersome and too complicated, she concluded that eligibility for *all* children in a mixed household would have to be based on income and family size. The proposed rule provided that in a mixed household, two types of eligibility determinations are made—the first provides automatic eligibility for children from food stamp households or AFDC assistance units within the mixed household, while the second applies to all other children in the household and is based on total household size and income.

The Department does not believe that this treatment of mixed households adds significantly to the burden or complexity of the eligibility process. Prior to the passage of the School Lunch and Child Nutrition Amendments, the eligibility determination for children in a mixed household would have been based on income alone; now, the only additional step is to review a simple application containing the child's name, a food stamp or AFDC case number and a signature. In addition, a mixed household can always choose to submit income and family size information for all children in the household. Finally, the Department believes strongly that its implementation of categorical eligibility is consistent with section 323 of Pub. L. 99-591 and section 4203 of Pub. L. 99-500, both of which state that, "A *child* shall be considered automatically eligible . . . if the *child* is a member of" a food stamp household or an AFDC assistance unit (emphases added). This wording makes clear that congressional intent is to extend categorical eligibility to children receiving benefits under the Food Stamp or AFDC Programs, regardless of whether they reside in a household with other children who are not categorically eligible. Therefore, to require income and family size information for these children would be inconsistent with the statutory requirement concerning categorical eligibility.

The remainder of the comments concerning the nondiscretionary changes mandated by the School Lunch and Child Nutrition Amendments of 1986 involved the implementation of simplified verification procedures for categorically eligible children. With respect to the verification of food stamp or AFDC participation, one commenter noted that the "Notice of Eligibility"

provided to recipients by the food stamp or AFDC office will not necessarily list all the members of the food stamp household or AFDC assistance unit. The commenter suggested that in such cases it might be difficult for households to obtain the appropriate proof of current program certification from their food stamp or AFDC office. This commenter recommended that households be required to provide the case number only at the time of application and be penalized only if the information proved false. A second commenter believed that the Department should accept identification cards or issuance receipts as verification of certification in the Food Stamp or AFDC Programs.

The Department wishes to emphasize that these issues arise only at the time of verification. When making an application, the household need only provide the food stamp or AFDC case number. Only if a household's application is selected for verification will proof of food stamp or AFDC participation be required. In further response to the first commenter, the Department does not wish to place an unreasonable verification burden on those households selected for verification. Consistent with this concern, the definition of "verification" at § 226.23 and the verification procedures set forth at § 226.23 (h)(2)(iv) of the proposed rulemaking permit State agencies to use other sources of information for verification if the written evidence provided by the household is insufficient to establish food stamp or AFDC certification. Thus, if the written evidence submitted by the household is not adequate to verify the current food stamp or AFDC certification of the child(ren) for whom automatic eligibility was claimed, the State agency may then choose to contact the local food stamp or welfare agency to obtain this information. In response to the second commenter, the Department wishes to point out that, in accordance with § 226.23 (h)(2)(iii), the "Notice of Eligibility" is not the only document which households may use to establish their food stamp or AFDC certification. For example, an identification card is acceptable proof of certification provided that it contains an expiration date; in fact, § 226.23 (h)(2)(iii) provides that "equivalent official documentation issued by a food stamp or welfare office", will suffice as long as it establishes the current certification of the children for whom benefits were claimed.

With regard to the proposed change to the definition of "verification", the Department has noticed a point of

possible confusion. In this interim rule, the definition is revised to make clear that the only verification which can be required for a child whose eligibility is based on food stamp or AFDC participation is verification that the child is part of a currently certified food stamp household or AFDC assistance unit. In addition, the phrase permitting verification of other application information for children who are not categorically eligible for the program has been moved to emphasize this State agency option. Section 226.23(h)(2)(i) has also been revised to make this clarification.

11. Comments on Discretionary Changes to Application and Verification Requirements

Eight (8) commenters specifically addressed the discretionary changes proposed in the May 22, 1987 rulemaking. Of these, one (1) commenter expressed agreement with all of the proposed changes; three (3) commenters opposed the requirement to obtain additional income information from households applying for free or reduced price benefits; two (2) commenters made observations relating to the collection of additional income information; and two (2) commenters expressed the opinion that the Department's proposed changes did not establish full consistency between the methods of verification employed in the school programs and the CCFP.

Of the three commenters which disagreed with the proposal to collect information on the source(s) of income for each household member, two were from child care centers. One center operator believed that the collection of additional information would create an added burden for centers and households. The other center operator believed that the added burden on households would discourage households from applying for benefits and would result in lower reimbursement for centers.

The Department does not, of course, wish to impose unnecessary burdens on either local entities or households. Rather, based on its experience in administering the National School Lunch Program, the Department believes that the collection of additional information will lead to the submission of more complete and accurate income statements by households, and will therefore improve program accountability. Similar information is collected in relation to the receipt of means-tested benefits in other Child Nutrition Programs, and that process has not been demonstrated to be excessively burdensome. Finally, it should be

reiterated that this change in application requirements will provide greater consistency in the administration of the school programs and the CCFP. Since the same agency often administers all of these programs, the States' burden will be *decreased* by implementing uniform application requirements.

The third commenter objecting to the collection of additional income information stated that such information would only be useful to State agencies which chose to conduct verification in non-pricing programs (verification of income is not required for non-pricing programs, but States may choose to verify this information if they wish). The commenter therefore suggested that collection of income by source be left to State discretion. However, in addition to its usefulness for verification purposes, the Department reiterates that the collection of additional income data is likely to improve the accuracy and completeness of the information submitted by the household. Thus, program accountability should be improved regardless of whether the household participates in a pricing or non-pricing program and regardless of whether the State chooses to verify the income information on the application in a non-pricing program.

Without objecting to the collection of income by source, two commenters provided observations regarding potential problems in implementing this change to the application requirements. One commenter expressed support for greater consistency in application requirements in the school programs and CCFP, but feared that collection of income by source could *increase* the potential for erroneous eligibility determinations. The Department believes that there might be a *very slight* possibility of an increase in errors by centers and day care home sponsors because more numbers would have to be added together to determine overall household income. However, the greater accuracy which results from reminding applicants that wages are not the only type of countable income will far outweigh the small potential for error by administering agencies.

The second commenter requested that the definition of "documentation" be revised to clarify that the income received by a household member should appear next to the member's name on the application. The Department believes that this information should more properly be included in the guidance material being developed on CCFP application and verification procedures.

Finally, in regard to the Department's desire to improve administrative consistency between the school programs and the CCFP, two State agencies suggested that the Department propose additional changes to make verification more uniform across these programs. Specifically, these commenters believed that verification in CCFP pricing programs should be conducted by institutions rather than by State agencies, just as school food authorities conduct income verification in the National School Lunch and School Breakfast Programs.

However, because of the differences between the school programs and the CCFP, it is neither possible nor desirable to perform verification identically in these programs. For example, in the case of non-pricing programs in the CCFP, it would clearly be inappropriate for institutions to perform verification, since the institution will receive greater reimbursement from the Department if it serves more free and reduced price meals. With respect to verification in pricing programs, it must be noted that participating CCFP institutions are, in most cases, small, private entities, with limited access to verification information. In addition, given the small number of pricing programs and the regulatory flexibility to schedule and perform verification on a limited number of applications, this requirement does not impose a significant burden on State agencies. Given these factors, the Department believes that this inconsistency between the school programs and the CCFP is necessary and appropriate and does not conflict with the overall goal of consistency between the programs.

Implementation

This interim rulemaking is effective October 1, 1987. Implementation of the regulation on October 1, 1987 is *mandatory* except for the following requirements for which implementation may be delayed until October 1, 1988: (1) collection of income information from each household member, identified by source of income (see clause (c) under the definition of "Documentation" in § 226.2, and § 226.23(e)(1)(ii)(D)); (2) certification that the information on the application is true and correct (see § 226.23(e)(1)(ii)(G)); and (3) elimination of "institution conferences" (see the introductory sentence to § 226.23(h)(2)(iv) and § 226.23(h)(2)(iv)(D)). In lieu of the above requirements, during fiscal year 1988: a complete application can provide total household income without identifying income by household member and source; applications need not include

the perjury certification; and institution conferences may continue to be used as a source of verification.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and Children, Surplus agricultural commodities.

Accordingly, for the reasons set forth in the preamble, the Department is amending 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows:

Authority: Secs. 323, 326, and 361, Pub. L. 99-500 (42 U.S.C. 1758, 1760, and 1766); secs. 323, 326, and 361 of Pub. L. 99-591 (42 U.S.C. 1758, 1760, and 1766); secs. 803, 810, and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.2:

a. New definitions of "AFDC Assistance Unit" and "Food Stamp Household" are added in alphabetical order.

b. The definitions of "Documentation", "Free Meal", and "Verification" are revised.

The revisions and additions specified above read as follows:

§ 226.2 Definitions.

"AFDC assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals under this part.

"Documentation" means the completion of the following information on a free and reduced price application: (a) Names of all household members; (b) social security number of each adult household member or an indication that an adult household member does not possess one; (c) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (d) the signature of an adult member of the household. However, prior to October 1, 1988, collection of the information specified in clause (c) of this definition may, at the State agency's option, be limited to total household income.

Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and the signature of an adult member of the household.

"Food Stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

"Free meal" means a meal served under the Program to (a) a child from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC reciprocity. Regardless of whether the child qualified for free meals by virtue of (a) or (b), neither the child nor any member of his family shall be required to pay or to work in the food service program in order to receive a free meal.

"Verification" means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

§ 226.4 [Amended]

3. In § 226.4, paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(9) are amended by removing the word "income" and adding in its place the word "eligibility".

§ 226.6 [Amended]

4. In § 226.6:

a. Paragraph (b)(2) is amended by removing the words "family size and income" and adding in their place the word "eligibility".

b. Paragraph (e)(7) is amended by removing the words "Secretary's income".

§ 226.9 [Amended]

5. In § 226.9, paragraph (b)(1) is amended by removing the phrase "family-size and income" and adding in its place the word "eligibility" both times the phrase appears.

§ 226.11 [Amended]

6. In § 226.11, paragraph (c)(1) is amended by removing the words "from families meeting the family-size and income standards for" and adding in their place the words "eligible to receive".

7. In § 226.15:

a. Paragraph (e)(2) is amended by adding a third sentence.

b. Paragraph (e)(3) is amended by adding a third sentence.

The additions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(2) * * * However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(iii), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom free meal benefits are being claimed.

(3) * * * However, when a provider's own child is a member of a food stamp household or an AFDC assistance unit and free meal benefits have been applied for in accordance with § 226.23(e)(1)(iii), such information shall consist of the child(ren)'s food stamp or AFDC case number.

* * * * *

7. In § 226.17, paragraph (b)(7) is amended by adding a second sentence to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * However, for households applying for free meal eligibility on behalf of children from food stamp households or AFDC assistance units in accordance with § 226.23(e)(1)(iii), child care centers shall collect and maintain food stamp or AFDC case numbers in lieu of family-size and income information and social security numbers.

* * * * *

§ 226.18 [Amended]

8. In § 226.18, paragraph (e)(3) is amended by removing the words "meet

the family-size income standards for" and adding in their place the words "are eligible to receive".

9. In § 226.19, paragraph (b)(9)(i) is revised to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(9) * * *

(i) Documentation of enrollment for all children, including information sufficient to establish the eligibility of children classified as free or reduced price meal recipients;

* * * * *

10. In § 226.23:

a. Paragraph (c)(2) is amended by changing the semi-colon to a period and adding a second sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

c. Paragraph (e)(1)(i) is amended by adding a fifth sentence.

d. Paragraph (e)(1)(ii) is amended by adding the words, "Except as provided in paragraph (e)(1)(iii) of this section," at the beginning of the first sentence.

e. Paragraphs (e)(1)(ii)(D) and (e)(1)(ii)(G) are revised.

f. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

g. Paragraph (e)(1)(iii) is revised.

h. Paragraphs (e)(2)(iii) and (e)(2)(vii) are revised.

i. Paragraph (h)(2) is revised.

j. Paragraph (h)(5) is amended by changing the words "paragraph (h)(2)(i)" to read "paragraph (h)(2)(vii)", and by changing the words "paragraph (h)(2)(ii)" to read "paragraph (h)(2)(viii)".

The revisions and additions specified above read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(c) * * *

(2) * * * Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households;

* * * * *

(d) * * * The release issued by institutions which charge separately for meals shall announce the availability of free and reduced price meals to children meeting the approved eligibility criteria, and shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits.* * *

(e)(1) * * *

(i) * * * However, such forms and materials shall state that, if a child is a

member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) * * * (D) the total current household income, and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources.) However, prior to October 1, 1988, collection of income information may, at the State agency's option, be limited to total household income. * * * (F) a statement which includes substantially the following information: "Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * * (G) the signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes. However, prior to October 1, 1988, the requirement in paragraph (e)(1)(ii)(D) of this section may, at the State agency's option, be limited to the signature of an adult member of the household.

(iii) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for

free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide: (A) The names and food stamp or AFDC case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and (B) the signature of an adult member of the household as provided for in § 226.23(e)(1)(ii)(G). In accordance with § 226.23(e)(1)(ii)(F), if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(ii).

(2) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 226.2.

* * * * *

(vii) An explanation that households receiving free and reduced price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over \$50 per month or \$600 per year or, in the case of households that provided a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs.

* * * * *

(h) * * *

(2) *Verification procedures for pricing programs.* (i) For pricing programs, in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income information provided on the approved application for free and reduced price meals and, at State agency discretion, verification may also include confirmation of other information required on the application. However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

(ii) State agencies shall perform verification on a random sample of no less than 3 percent of the approved free

and reduced price applications in an institution which is a pricing program.

(iii) Households shall be informed in writing that they have been selected for verification and that they are required to submit the requested verification information to confirm their eligibility for free or reduced price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In these cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of information for verification may include written evidence, collateral contacts, systems of records. In addition, prior to October 1, 1988, institution conferences may, at the State agency's option, be used as a source of information for verification.

(A) *Written evidence* shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and current certification to participate in the Food Stamp or AFDC Program. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(B) *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not

be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced price meals shall be terminated if it refuses to choose one of these options.

Termination shall be made in accordance with paragraph (h)(2)(vii) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification which is maintained by other government agencies and to which the State agency can legally gain access may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(D) *Institution conferences.* Prior to October 1, 1988, the adult member(s) of the household may be asked to visit the institution for a discussion of the information on the application. Households shall be provided sufficient opportunity to schedule the conference.

(v) Verification by State agencies of receipt of food stamps or AFDC benefits shall be limited to a review to determine that the period of Food Stamp or AFDC Program eligibility is current. If the food stamp or AFDC certification period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

(vi) The State agency may work with the institution to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(vii) If a household refuses to cooperate with efforts to verify, or the verification of income indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial

of benefits in accordance with paragraphs (e)(4) and (e)(5) of this section. Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of: (A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal; and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(viii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing:

(A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10-day advance notice period; and

(B) Households which are denied benefits upon application shall not receive benefits.

* * * * *

Anna Kondratas,
Administrator.

Date: September 29, 1987.
[FR Doc. 87-22825 Filed 9-30-87; 9:23 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This order amends the Upper Midwest milk order to allow the operator of one or more distributing plants and one or more soft-products plants (processing cream items, cottage cheese and yogurt, but excluding ice cream) located within the marketing area to treat such plants as one plant, or unit, for pooling purposes.

The amendment, which is based on an industry proposal considered at a public hearing held in Minneapolis, Minnesota on July 7-8, 1987, is necessary to reflect

current marketing conditions and to assure orderly marketing in the Upper Midwest marketing area. Cooperative associations representing more than the required two-thirds of the producers supplying milk for the market during the representative period of June 1987 have approved issuance of the amended order.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Emergency Partial Final Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area.

Upon the basis of the evidence introduced as such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of

pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make this order amending the order effective not later than October 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued September 2, 1987 (52 FR 33943). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective October 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551 through 559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) or more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and

conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for CFR Part 1068 continues to read as follows:

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

2. In § 1068.7, Pool plant, add a new paragraph (a)(3) as follows:

§ 1068.7 Pool plant.

* * * * *

(a) * * *

(3) A unit consisting of at least one pool distributing plant and one or more additional plants of a handler shall be considered as one plant for the purpose of meeting the requirements of this paragraph, subject to the following conditions:

(i) For each plant within the unit which does not qualify as a pool distributing plant pursuant to paragraphs (a) (1) and (2) of this section, the combined disposition of skim milk and butterfat in products specified in § 1068.40(a), § 1068.40(b)(1) in packaged form, and § 1068.40(b)(4)(i) is 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator;

(ii) All plants within the unit are located within the marketing area; and

(iii) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

* * * * *

Signed at Washington, DC, on: September 28, 1987.

Kenneth A. Gilles,
Assistant Secretary for Marketing and
Inspection Services.

[FR Doc. 87-22771 Filed 10-1-87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations to provide relief to rural rental housing projects that are experiencing high vacancy rates due to local rental market conditions. Currently, some existing and prospective tenants are not willing to pay 30 percent of adjusted income or market rent because the rental rates would exceed those of other rental properties in the community. The intended effect of this action is to allow borrowers to reduce their "market" or maximum rents, to be comparable with those in the local market, so as to avoid the failure of rural rental housing projects because of extreme unforeseen changes in a local economy.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Laurence R. Anderson or Arlene Halfon, Senior Loan Officers, Multiple Family Housing Servicing and Property Management Division, Room 5321-S Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382-1599.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." This action will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

General Information

Background and Statutory Authority

The regulation, 7 CFR Part 1930 Subpart C, interprets the authority of The Housing Act of 1949 to establish ranges of rental rates to be paid by eligible tenants in rural rental housing projects. The revision will reduce the maximum rate in those projects experiencing distress from high vacancy due to the local market conditions.

Tenants whose incomes require that they pay more than basic rent would not have to pay higher rents in FmHA projects than they would for comparable housing elsewhere in the community. This should ultimately increase occupancy of FmHA projects and so help to make the project fiscally sound.

The proposed rule published January 5, 1987 (52 FR 296) referred to a Special Servicing Market Rent. This is being changed to read Special Servicing Market Rate Rent (SMR) to make it clear that the interest rate used to compute the market rent is being adjusted to make rent compatible with those in the community. Minor modifications had to be made throughout the proposed procedure to adjust for this change. For the sake of simplicity, the acronym has been changed to SMR.

Another minor change has been made to clarify that in order to qualify for an SMR, a borrower must have obtained approval from FmHA to rent to ineligibles at least 3 months earlier.

A total of 44 comments were received from the public. Thirteen of these were identical sets of comments from local organizations which are members of a national organization. One of these organizations also submitted an additional set of comments. No tenant groups were represented and only one

comment may have been from a tenant. Thirty-eight responses came from project owners, managers, national, and local industry organizations and attorneys representing the housing industry. Five comments were received from FmHA employees. Twenty-four comments expressed favorable opinions of the proposed regulations either as the sole comment or in conjunction with some suggestions. Only two commenters were opposed to the regulations or raised serious concerns. These concerns involved public relations with the community, competition with the private housing industry, encouraging vacancies, and encouraging rentals to ineligible tenants. The Agency feels there are sufficient constraints on the granting of SMR's that these will not be major issues. The Agency feels that large numbers of ineligible tenants would not wish the occupy the project since FmHA regulations do not allow them long term occupancy.

The issue addressed most dealt with the length of time projects had to be in operation in order to receive an SMR without National Office approval. Many felt that the recent change in regulations requiring tenants to pay 30 percent of their adjusted incomes for rent, made projects which would have been feasible under the 25 percent rent formula in effect when the application was made, to not be feasible by the time the project was completed. Suggestions ranged from making SMR's available immediately to making them available after 12 months of operation. It was felt that this argument was valid at this time but would not be valid for projects being developed in the future. In addition, most projects currently eligible for an SMR would have already been in operation more than 24 months. We, therefore, decided to allow projects in operation for over 6 months to receive an SMR during a transition period but to retain the 24-month period for SMR's after the transition. It is incumbent on applicants to be certain that market surveys justifying the projects are accurate. In the event that market conditions do change significantly between application and rentup, a National Office exception can be granted.

Comments suggested that a State Office exception should be allowed. It was determined that the National Office should maintain this control in order to monitor the extent to which these waivers are necessary and to be certain that market surveys are being adequately performed.

The next most commonly addressed issue was that dealing with the vacancy

rate and period for which the vacancy rate was maintained in order to qualify for an SMR. The proposed rule stated that the vacancy rate must have been at least 25 percent for the most recent 6-month period. It was felt by all who commented on this issue that the required vacancy rate was too high; at the point at which a project has had a 25 percent vacancy rate for 6 months, it would no longer be salvageable. Several commenters also felt that the length of time for the vacancy rate was too long. Comments ranged from the suggestion that vacancies required should be reduced to "5-10 percent" to "15 percent" and the time period from as low as 2 months to the suggestion of a graduated rate and period of 25 percent for 3 months or 15 percent for 6 months.

The Agency decided to reduce the vacancy rate necessary to qualify for an SMR to 15 percent for each month of the preceding 6-month period. A 10 percent vacancy is normal in many functional projects for the first year and for occasional periods thereafter; in fact, most operating budgets assume a 5 to 10 percent vacancy rate. Setting the vacancy rate for eligibility that low would provide little incentive to borrowers to try to restore the project without these emergency measures. The 15 percent figure was recommended as sufficient in virtually all the independently written comments. This figure would allow the entire vacancy allowance and the owner's return to be exhausted prior to the emergency measure being granted.

The Agency is not changing the length of time for the vacancy rate to be at the set level. We want to be certain that vacancies have not just increased due to temporary market conditions and it would take at least the 6-month period for borrowers to exhaust all efforts to alleviate vacancy problems without this solution.

A number of commenters noted that the plan to cancel an SMR when the vacancy rate dropped below 10 percent did not specify the length of time this condition must exist. Suggestions for this time period ranged from 6 months to 2 years. The duplicated comments also suggested that the SMR remain in place until a 5 percent vacancy is reached and that it not be cancelled if more than 10 percent of the tenants are on SMR's. We also discovered from these comments that the regulation did not provide adequate direction for transitioning out of an SMR.

The Agency decided to have the transition begin when the vacancy rate drops and is sustained at the below-10 percent level for a 6-month period. For

simplicity's sake and to keep the rents for new tenants consistent with those of existing tenants, the rent itself and not the individual tenant contribution will be the basis for the increase. It is also made clear that the SMR is not completely terminated until the market rent is again set at the note rate. This is important to know because return to owner is not available to the owner until the SMR is completely terminated. It was felt that following the other suggestions could keep an SMR in place indefinitely even when no longer needed.

A substantial number of commenters suggested that FmHA rents may be inflated. Several commenters sent lists of comparisons showing that FmHA basic rents, in many cases, approached market rents in their communities. Since the major variable in costs between FmHA and non-FmHA projects should be interest rates, the costs for some FmHA projects are apparently inflated. If conventional owners cut costs, forego profit, and/or invest additional funds to keep their units marketable, FmHA borrowers should be willing to do so with FmHA units.

The Agency felt that many commenters thought the maximum rents were set arbitrarily, losing sight of the fact that it was set at the note rate of interest at which loans were made. Proposals included establishing no minimum rent, a minimum rent set at 1 percent interest rate, and charging no overage for any tenant at any FmHA project. Commenters are reminded that the market rent is based on the note rate of interest for the loan that funded the project. This interest rate, although subsidized for needy tenants, should allow for a realistic market rental rate at which projects can operate and the FmHA loan can be repaid, for all but the most distressed projects.

The Agency, therefore, adds the provision that budgeted O&M be set at a minimum before a project qualifies for an SMR. However, the reserve account and FmHA payments, as reduced by the interest credit agreement, should be maintained in accordance with the loan agreement/resolution.

Several of the comments indicated that a brief explanation of how an SMR is established would be helpful. To begin, projects eligible for an SMR have two rents, the minimum, or "basic rent" which pays for project expenses and repays the FmHA loan at a 1 percent subsidized rate; and the maximum or "market rent" which pays project expenses and repays the FmHA loan at its full note or unsubsidized rate. When an SMR is established, the maximum or

market rent is lowered to be comparable to rents in the local community. The basic rent for the project will be calculated in the same manner as when an SMR is not in effect except that operations and maintenance costs will be held to an absolute minimum and no return to owner will be budgeted. Budgeted vacancy rates are to remain unchanged. In accordance, to FmHA policy, the vacancy and contingency allowance on the project budget should generally not exceed 10 percent under any circumstances. In other words, the SMR should anticipate that occupancy rates will be increased to at least 90 percent.

To establish an SMR, three key changes to the budget are required: (a) Market rents are set at the SMR level as determined by comparable rents in the community; (b) the maximum amount of the FmHA payment to be collected at the SMR level is determined as described in item 3 of the example below, and (c) the interest rate that corresponds to the funds available to make the FmHA payment is calculated.

For example:

1. Project with 48 units before an SMR:

Rents	FmHA Payment
Basic (at 1% subsidized rate) \$225.....	\$33,840
Market (at 11.875% note rate) \$441.....	\$157,772

2. The market rent is set at an SMR level by review and analysis of rents in the community, the SMR in this case is \$325.

3. The FmHA payment to be entered on the project budget is determined as follows:

a. Find the difference between SMR and Basic Rent—\$100

b. Multiply the difference by the number of units—\$4,800

c. Multiply the amount for twelve months—\$57,600

d. Add the amount to the FmHA payment at Basic rent—\$91,440

4. Using a business calculator, determine the interest rate that supports the SMR rent.

5. Project with an SMR:

Rents	FmHA Payment
Basic (at 1% subsidized rate) \$225.....	\$33,840
SMR (at 6.65% SMR rate) \$325.....	\$91,440

There were comments that new projects designed for a different market (e.g. elderly vs. family) should continue to be funded in communities in which SMR's are granted. However, attempting to rent to all potential tenants is an

avenue that should have been explored in any project with substantial vacancies. One commenter suggested a comment period during which applicants for other housing in the area could comment on a proposed SMR. The Agency does not believe this is necessary since a good market study should reveal these problems. An SMR should only be approved when there is clearly no market for the units at the current rents. The regulation is revised to include a provision that the District Director review any current market studies on file to determine if conflicting evidence is available. Conflicts will lead to close scrutiny of both requests.

Several commenters felt we should state more clearly that tenants already living in the project would receive the benefits of the SMR. The regulations now state that the new rate will be for the entire project.

Several commenters felt that use of the entire 2 percent contribution prior to implementation of the SMR would leave the project in a financially precarious position. In recognition of this comment, we revised this provision, to now allow a balance in the general operating account (which includes any remaining 2 percent initial operating capital) to an amount sufficient to provide for 3 months (25 percent) budgeted O&M expenses; or 1.2 months (10 percent) if no initial operating capital remains. It is important to note that any 2 percent money does not have to be separately identified and is to be included in unrestricted cash on a borrower's annual budget report to FmHA.

There were comments that borrowers should not have to forego their return to owner during an SMR and that they should not be asked to contribute any of their own funds to the project. These are actions that any owner of a distressed conventional project would take. The Agency expects borrowers to take responsibility for financial management of their projects. Incentives such as these are needed to induce borrowers to use innovative approaches other than SMR to increase occupancy. Borrowers agreed in their loan agreement/regulations to forego their return to owner if the project was not providing sufficient funds to pay it. One commenter stated that the SMR costs the Government nothing. This is not true since with an SMR the Government is paying additional subsidy through the interest credit program.

Two commenters, on the other hand, felt that foregone interest should be recaptured at sale of the project. The Agency decided not to require this because the requirements for obtaining SMR's are so restrictive that there

would be no alternative left to the borrower. While it's true that an SMR is a potential expense to the Government, an SMR is less expensive than leaving the units vacant. The SMR will bring tenants into otherwise vacant units, who will be paying some overage.

One comment suggested that tenants should be allowed to pay less than 30 percent of income if 30 percent would set the rent too high to qualify for tax credit. The Agency cannot establish regulations to meet the financial needs of borrowers, other than within the program parameters. The SMR is intended to address vacancy problems of troubled projects, not resolve questions of eligibility for tax credits as provided by sec. 42 of the Internal Revenue Code.

We were asked to define "community" and "comparable" as they are not clearly understood. Definitions of "community" and "market area" are referenced to paragraph 2 of Exhibit A-6 of Subpart E of Part 1944. Agency employees would be aware, by virtue of having been trained to make appraisals, that "comparable" means essentially similar or financially adjusted for dissimilarities. Exhibit A-2 of Subpart E of Part 1944 of this chapter may be used to organize comparables for obtaining an SMR. If original judgments based on inappropriate comparables do not provide an SMR that correctly reflects the market situation, adjustments can be made to the SMR.

There were other suggestions which we believe did not fall within the scope of this regulation. This included issues dealing with recent tax legislation, providing additional rental assistance, better servicing of projects and changing the 30 percent rule for rent calculations.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing—rental, Reporting and recordkeeping requirements.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

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

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Section 1930.138 is added to read as follows:

§ 1930.138 Supervisory actions for distressed projects.

Multiple Family Housing projects experiencing high vacancy rates which could lead to project failure can apply for a special servicing market rate rent (SMR) change in accordance with paragraph X of Exhibit C of this subpart.

3. Exhibit C is amended by redesignating current paragraph X as paragraph XI and adding a new paragraph X to read as follows:

Exhibit C of Subpart C—Rent Changes

* * * * *

X. Special Servicing Market Rate Rent (SMR) Change

When a Plan II or Plan II RA RRH project is experiencing severe vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent. An SMR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or market rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph 2 of Exhibit A-6 of Subpart E of Part 1944.

A. Eligibility for SMR. Based on borrower documentation and FmHA servicing records, the District Director will prepare a written recommendation for borrower eligibility for an SMR.

1. Based on borrower documentation and District Office verification:

a. The vacancy rate was at least 15 percent for each month for the most recent 6 month period.

b. Comparable market rents in the community are lower than the previously approved FmHA market rents. Exhibit A-2 to Subpart E of Part 1944 can be used to document comparable market rents.

c. The borrower has aggressively marketed the project including the following actions:

(i) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Marketing Plan (AFHMP).

(ii) The borrower had obtained approval from FmHA at least 3 months earlier to rent to ineligible tenants in accordance with paragraph VI B 6 of Exhibit B of this subpart.

d. The borrower complies with FmHA regulations and encourages occupancy through good maintenance and positive relations with tenants.

e. The borrower has provided a signed statement agreeing to forego, without

provision to recoup, the return on initial investment while operating with an SMR.

f. The borrower has submitted a project budget on Form FmHA 1930-7, "Statement of Budget and Cash Flow," with only minimally sufficient operation and maintenance expenses. The project budget should continue to fund other cash expenditures such as FmHA payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph X A 1 e of this exhibit.

2. Based on District Office servicing actions and documentation:

a. The project has been operational for at least 24 months, except that projects obligated prior to October 1, 1986, must have been operational for at least 6 months. The National Office may make exceptions to these requirements on a case-by-case basis for extreme hardship.

b. No more than 10 percent of budgeted operation and maintenance expenses are reflected in unrestricted cash, or 25 percent if any funds remain from the 2 percent initial operating capital, and reserve account balances do not exceed required levels minus authorized withdrawals.

c. The District Director has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII C of Exhibit B of this subpart.

d. The District Director has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph X A 1 f of this exhibit.

e. The District Director has reviewed any market studies or surveys received from MFH loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B. Approval of SMR. 1. The State Director may approve the use of an SMR when the conditions listed above in paragraph X A of this exhibit are met.

2. While an SMR is in effect, no initial RRH loan may be obligated for the same market area if existing units can be used to serve the unmet need.

C. Implementing an SMR. 1. After the use of an SMR has been approved by the State Director, the District Director will establish an SMR for the project with the borrower.

a. The SMR will be obtained by adjusting Item 3, "FmHA Payment (Principal and Interest) Including Overage," on column 4 of Form FmHA 1930-7, to reflect a payment to FmHA amortized at an interest rate which is less than the full note rate on the borrower's promissory note. The interest rate chosen may never be less than 2 percent.

b. The interest rate of the SMR budget will be set at a level that will make project market rents comparable with community rental rates. This rate will remain constant except as provided in paragraph D of this exhibit.

2. The initial change to SMR rents or a decrease in SMR rents will be accomplished in accordance with paragraph VI B of this exhibit.

D. Changing an SMR. 1. An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually.

2. An SMR must be increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA) when the:

a. Vacancy rate drops to 10 percent or below for 6 consecutive months, or

b. The borrower does not continue to satisfy the conditions of paragraphs X A 1 c (i) and (ii), d, e, or f of this exhibit.

3. An SMR is completely terminated when the market rent is again based on the note interest rate.

4. An increase in an SMR will be accomplished in accordance with paragraph IV of this exhibit.

* * * * *

Dated: August 10, 1987.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 87-22841 Filed 10-1-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-17-AD; Amdt. 39-5740]

Airworthiness Directives; Cessna Models T303, 310, 320, 335, 340, 401, 402, 404, 411, 414 and 421 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Aircraft Company Models T303, 310, 320, 335, 340, 401, 402, 404, 411, 414 and 421 Series airplanes, equipped with reciprocating engines, herein referred to as 300 and 400 Series airplanes, which requires the modification of the fuel filler ports to prevent inadvertent filling of the fuel tanks with jet fuel. The NTSB has reported six accidents or incidents where airplane misfueling was found to have contributed to these occurrences. The modification is necessary to prevent further misfueling and thereby preclude inflight engine failure.

DATES: Effective Date: November 2, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Aircraft Company Service Information Letter ME84-31 dated July 20, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201. This information may be examined in the Rules Docket, Federal

Aviation Administration, Central Region, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Riddle, ACE-140W, Aerospace Engineer, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the fuel filler port to prevent inadvertent filling of the fuel tanks with jet fuel on certain Cessna 300 and 400 Series airplanes equipped with reciprocating engines was published in the *Federal Register* on June 8, 1987, (52 FR 21572).

This proposal resulted from a recommendation by the NTSB reporting that there have been six accidents or incidents on Cessna 300 and 400 Series airplanes equipped with reciprocating engines in which misfueling with jet fuel was the cause. Further the board indicated that most cases of misfueling occur with light, twin-engine, piston-powered airplanes which are similar in appearance to turbine engine-powered airplanes.

In recent years, the frequency of accidents involving misfueling with jet fuel has increased significantly despite efforts of the FAA and other interested parties. On September 17, 1982, and October 5, 1984, the FAA issued two Advisory Circulars (ACs) Nos. 20-116 and 20-122, "Marking Aircraft Fuel Filler Openings with Color Decals," and "Anti-Misfueling devices: Their Availability and Uses." Both recommend methods to prevent airplane misfueling. However, the level of response to these AC's has been low considering the nature of the problem and the number of airplanes involved. Therefore, in the interest of aviation safety, the modification of the fuel filler port, recommended by the NTSB, was proposed.

Interested persons have been afforded an opportunity to comment on the proposal. Nine commenters responded. Three of these concurred with the proposal. However, one of these commenters stated that the AD should apply to all turbocharged, single engine piston powered airplanes. The FAA does not agree. Including other manufacturer's airplanes is beyond the scope of this rulemaking action. However, the FAA will consider the commenters suggestion and initiate separate rulemaking actions if appropriate.

The remaining six commenters disagreed with the proposed rule. Three of these commenters felt that the Cessna 336, 337 and P337 Models should not be included in the proposed rule since these airplanes do not resemble any other turbine powered airplanes. In addition, one commenter also objected to the inclusion of the Cessna T303, 310 and 320 Models since these models have had no misfueling accidents. The FAA agrees with the comments on the Cessna 336, 337 and P337 airplanes. Therefore, the proposed rule has been changed by removing these airplanes from the list of those affected. The FAA does not agree with the commenter regarding the T303, 310 and 320 airplanes. There has been one instance of a T310Q airplane being misfueled with Jet-A fuel. The FAA has determined that these models could be mistaken for a turbine powered airplane and therefore, the proposed rule has not been changed in this regard.

Another commenter felt that his 310 did not look like a turbo-prop and should not be affected. He also suggested that the filler ports of turbine powered airplanes be changed to unique configuration that only a matching nozzle would fit.

As stated above the Model 310 can be mistaken for a turbine powered airplane and be misfueled. Further, changing the filler ports on turbine powered airplanes and changing the turbine fuel nozzles would still require a change to the fuel filler ports of piston powered airplanes to prevent the redesigned turbine fuel nozzle from fitting into the fuel port of a piston powered airplane. The FAA has determined that proposed rule is the most economical way to prevent airplane misfueling. Two commenters felt that training of the line personnel doing the refueling is the only acceptable method to prevent misfueling. The FAA agrees that education and training would certainly help in preventing misfueling. However, promulgating requirements with respect to those areas is beyond the scope of this rulemaking. The FAA, has determined that the proposed rule is the best means for preventing misfueling at this time.

One commenter questioned the estimated cost to modify the affected airplanes as compared to the benefit obtained from that modification. The estimated cost was based upon the information currently available in the manufacturers service bulletin. The benefits obtained from this modification is a reduction in the number of accidents involving misfueling with jet fuel. The frequency of this type of accident has increased significantly in recent years. Therefore, in the interest of aviation

safety the FAA proposed modification of the fuel filler ports.

Accordingly, the proposal is adopted with the changes noted above. The FAA has determined there are approximately 12,112 airplanes affected by the AD. The estimated cost of modifying these airplanes would depend on the number of fuel filler caps on the airplane. Many of the above airplanes have optional wing or wing locker tanks. The estimated cost to modify the Cessna fleet is \$4,933,286. This cost assumes that the optional fuel tanks are installed on those airplanes on which they were offered. The average cost per airplane is \$350.

The cost of complying with AD therefore will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following airplanes equipped with reciprocating engines certificated in any category:

Model and Serial Number

T303

T30300001 thru T30300301
310 thru 310R

310-39032 thru 310R2140
 320 thru 320F
 320-0001 thru 320F0045
 335
 335-0001 thru 335-0065
 340 thru 340A
 340-0001 thru 340A1543
 401 thru 401B
 401-0001 thru 401B0221
 402 thru 402C
 402-0001 thru 402C0653
 404
 404-0001 thru 404-0859
 411 thru 411A
 411-0001 thru 411A0300
 414 thru 414A
 414-0001 thru 414A0858
 421 thru 421C
 421-0001 thru 421C1257

Compliance: Required as indicated in the body of the AD, unless already accomplished. To preclude misfueling of the airplane resulting in engine failure, accomplish the following:

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, modify all fuel-filler opening(s) in accordance with the instructions contained in Cessna Service Information Letter ME84-31 dated July 20, 1984.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) In accordance with FAR Part 43, Appendix A, Item (c) 29, the modifications required by this AD (except installation of the SK303-29 kit) are preventative maintenance and may be performed by the holder of a pilot certificate issued under FAR Part 61 on airplanes owned or operated by him subject to the limitations of FAR 43.3(g). The maintenance record entries required by FAR 43.9 and FAR 91.173 must be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 801 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 2, 1987.

Issued in Kansas City, Missouri, on September 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-22719 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Rel. No. IA-1083; File No. S7-24-86]

Financial and Disciplinary Information That Investment Advisers Must Disclose to Clients

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule.

SUMMARY: The Commission is adopting a rule under the Investment Advisers Act of 1940 to codify an investment adviser's fiduciary obligation to disclose material financial and disciplinary information to clients. The rule sets forth the general disclosure obligation and provides guidance on disciplinary information required to be disclosed. The rule is intended to help ensure that clients receive information material to their decision whether to hire or continue to engage an adviser.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Debra Kertzman, Attorney, or Robert E. Plaze, Special Counsel, Office of Disclosure and Adviser Regulation, (202) 272-2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting Rule 206(4)-4 under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Advisers Act"). The rule, which was proposed for public comment on September 19, 1986,¹ codifies the Commission's interpretation that section 206 of the Advisers Act [15 U.S.C. 80b-6] requires (1) advisers with custody or discretionary authority over client funds or securities or who require substantial prepayment of advisory fees to disclose precarious financial conditions to clients, and (2) all advisers to disclose material disciplinary events to clients. In addition, the rule specifies certain legal or disciplinary events (referred to hereafter as "disciplinary events") involving the adviser or key advisory personnel as presumptively material. While providing guidance on the types of material disciplinary information required to be disclosed, the rule makes clear that additional disclosure may be required under the Advisers Act.

¹ Investment Advisers Act Rel. No. 1035 (September 19, 1986) [51 FR 34229 (September 26, 1986)].

Discussion

Section 206 of the Advisers Act prohibits investment advisers from engaging in fraudulent and deceptive acts and practices and provides the Commission with rulemaking authority to define and prescribe means reasonably designed to prevent such acts and practices.² Fraudulent and deceptive acts and practices under section 206 include the failure to disclose certain facts.³ The Commission proposed Rule 206(4)-4 to remind advisers of their obligation to disclose to clients material facts about precarious financial conditions and certain disciplinary events, and to provide guidance on some of the disciplinary events required to be disclosed.

Thirty-one comments were received on the proposed rule.⁴ Most commenters supported the general purpose of the rule. Many, however, suggested modifications to either clarify the disclosure obligation under the rule or narrow its scope. After reviewing the comments, the Commission has decided to adopt the rule with several modifications. Rule 206(4)-4, as adopted: (1) Limits the requirement to disclose precarious financial conditions to advisers with custody or discretionary authority over client funds or securities, or that require substantial prepayment of advisory fees, (2) requires all advisers to disclose material disciplinary events to clients, and (3) sets forth those disciplinary events that are presumptively material.

1. Financial Information

As proposed, paragraph (a)(1) of the rule would require all advisers to disclose to clients material facts with respect to a financial condition of the adviser that is reasonably likely to impair the adviser's ability to meet contractual commitments to clients ("precarious financial conditions").

² Section 206 of the Advisers Act, in relevant part, states that: It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; * * * (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

³ *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 198 (1963).

⁴ File No. S7-24-86 contains these public comment letters as well as a summary of comments prepared by the Commission staff.

Fourteen commenters recommended limiting financial disclosures under the rule to advisers that either have custody of client assets or require substantial prepayment of advisory fees.⁵ These commenters stated that an adviser's financial condition is material to a client or prospective client only when client assets or prepaid services may be jeopardized.⁶

The Commission agrees that the financial condition of all advisers may not be material to their clients and has modified the rule accordingly. As adopted, the rule requires only those advisers with custody or discretionary authority⁷ over client funds or securities, or that require prepayment of advisory fees of more than \$500 per client and six months or more in advance, to disclose a precarious financial condition to clients.⁸ Several commenters urged the Commission not to impose this financial disclosure obligation on advisers solely because they have discretionary authority over client assets. They asserted that a client's decision whether to hire an adviser and give it discretionary authority is due primarily to the services the adviser is able to provide, rather than the adviser's financial background. The Commission believes, however, that this information is material to these clients and should be disclosed because of the risk of investment loss resulting from the disruption or discontinuance of active investment management.⁹

⁵ These are the circumstances under which an adviser must include a balance sheet in Part II of its Form ADV [17 CFR 279.1]. Form ADV is the registration form for investment advisers. Part II of which specifies disclosures to clients and prospective clients required by Rule 204-3 under the Advisers Act [17 CFR 275.204-3] ("brochure rule").

⁶ In addition, several of these commenters requested the Commission to clarify what constitutes a "financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients" under the rule. Such a determination is inherently factual in nature but, as noted by two commenters, would generally include insolvency or bankruptcy.

⁷ "Discretionary authority" under the rule includes both express and implied discretionary authority. See *Follansbee v. Davis, Skaggs & Co., Inc.*, 681 F.2d 673 (9th Cir. 1982); *Carras v. Burns*, 516 F.2d 215 (4th Cir. 1975).

⁸ Under the rule, advisers required to disclose a precarious financial condition need only make such disclosures to those clients over whose securities they have custody or discretionary authority, or from whom they accept substantial prepayment of advisory fees, and not to other clients.

⁹ The risk of investment loss is especially acute where the client's portfolio requires constant supervision because it contains volatile, high risk investments, or where clients, such as an investment company or a pension plan, must overcome legal hurdles (shareholder votes, etc.) to replace the adviser.

2. Material Disciplinary Information

Paragraph (a)(2) of the proposed rule would require an adviser to disclose material facts about any disciplinary event material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. Paragraph (b) of the proposed rule defined certain disciplinary events involving the adviser or its management persons and occurring within the past ten years as material.

A number of commenters urged the Commission to revise this paragraph to narrow the definition of material disciplinary events. They stated that this provision of the rule would require advisers to disclose information that they believed to be immaterial. For example, several commenters argued that the rule would require disclosure of a violation of a technical state insurance regulation by an insurance holding company parent of an adviser, although such a violation might not be material to a client's evaluation of the advisory subsidiary's integrity or ability to meet contractual commitments to clients.

Because of these commenters' concerns, the Commission has decided to substantially modify paragraph (b). As adopted, paragraph (b) creates a rebuttable presumption of materiality rather than a determination of materiality. The Commission acknowledges that there are circumstances where some of the disciplinary events set forth in paragraph (b) may not be material to clients. This may be due to differences in the size and organizational structure of an adviser, the broad range of investment-related laws, and/or the length of time which has passed since the disciplinary event occurred.

One option some commenters suggested, and the Commission considered, would be to simply codify the general duty to disclose material disciplinary events and allow case law to determine which events are material and thus required to be disclosed. However, the Commission believes that it is desirable to provide advisers with guidance in complying with their disciplinary disclosure obligation under Section 206. By creating a presumption of materiality, Rule 206(4)-4 will provide this guidance while preserving flexibility for advisers able to rebut the presumption based upon a particular fact situation. To determine whether a disciplinary event falling within the terms of paragraph (b) overcomes the presumption of materiality, an adviser should carefully weigh each of the following four factors: the distance of the entity or individual involved in the

disciplinary event from the advisory function, the nature of the infraction that led to the disciplinary event, the severity of the disciplinary sanction, and the time elapsed since the date of the disciplinary event. While there may be particular instances where a single factor is dispositive, all four factors should be considered because in most instances no single factor will be controlling.

a. Pending Criminal Proceedings

Paragraph (b), as proposed, would define certain civil and criminal court actions, agency proceedings, and self-regulatory organization ("SRO") proceedings as material disciplinary events.¹⁰ Included within the definition of material court actions were pending criminal proceedings relating generally to fraud or theft. Several commenters urged the Commission not to define pending criminal proceedings as material disciplinary events under the rule because this would, in their opinion, have the effect of imposing a penalty on the adviser before a finding of guilt is made or, if the case is ultimately dismissed or a finding of innocence is made, unfairly penalize the adviser. The rule has not been modified in this respect. The Commission believes that a pending criminal proceeding against an adviser or its management person is material and should be disclosed because it reflects upon the degree of trust and confidence clients would place in their adviser. Moreover, the requirement to disclose pending criminal proceedings is no different than the disclosure required of directors and executive officers of companies issuing securities,¹¹ registrants in their annual

¹⁰ The Commission has modified the definition of "investment-related" in paragraph (d)(3) of the rule to conform to the 1986 amendments to section 203(e)(2)(B) of the Advisers Act [15 U.S.C. 80b-3(e)(2)]. Pub. L. 99-571, section 101, 100 Stat. 3208, 3220 (1986). The amendments expanded the circumstances under which an adviser could be disqualified from registration to include felony or misdemeanor convictions involving government securities brokers or dealers or entities or persons required to register under the Commodity Exchange Act [17 U.S.C. 1 *et seq.*].

¹¹ See Item 11 of Form S-1 [17 CFR 239.11]; Item 18 of Form S-4 [17 CFR 239.25]; Item 21 of Form S-11 [17 CFR 259.18]; Item 10 of Form S-18 [17 CFR 239.28]; Item 9 of Form N-1A [17 CFR 274.11A]; Item 10 of Form N-2 [17 CFR 274.11a-1]; Item 13 of Form N-3 [17 CFR 274.11b]; Item 13 of Form N-4 [17 CFR 274.11c]; Item 6 of Form N-5 [17 CFR 274.5]; and Item 17 of Form N-8B-4 [17 CFR 274.14].

or semi-annual reports,¹² persons soliciting proxies,¹³ or persons making a tender offer.¹⁴

b. Management Persons

Paragraph (b), as adopted, requires disclosure of disciplinary events involving the adviser or its management persons. As defined in paragraph (d), management persons include any person with the power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser or to determine the general investment advice given to clients. Seven commenters urged the Commission to narrow this definition, asserting it would include too many persons or entities not directly involved in giving investment advice, particularly in the context of a large diversified financial firm. The adoption of the presumptive materiality standard in paragraph (b) effectively limits the breadth of the definition of management person. As discussed above, the distance of the entity or person involved in the disciplinary event from the advisory function is one factor in determining whether the presumption of materiality of a disciplinary event listed under paragraph (b) may be overcome.

One commenter asked the Commission to clarify whether an adviser would have to disclose the disciplinary history of a person no longer employed or affiliated with the investment advisory firm. Under the definition of "management person," an adviser is only required to disclose the disciplinary history of persons currently employed or affiliated with it, regardless of whether the disciplinary event occurred prior to the person's employment or affiliation with the adviser.

c. Time Period

Paragraph (b) of the proposed rule would define certain disciplinary events as material unless more than ten years had elapsed from the time of the event. This ten-year period is based upon the time period specified in section 203(e)(2) of the Advisers Act [15 U.S.C. 80b-

3(e)(2)]¹⁵ and Item 11 of Form ADV.¹⁶ In the proposing release, the Commission requested comment on whether a different time period should be used, such as the five-year period specified in Item 401(f) of Regulation S-K [17 CFR 229.401(f)].¹⁷

Several commenters urged the Commission to reduce the time period from ten to five years. According to these commenters, reducing the time period would not eliminate the adviser's obligation to disclose disciplinary events occurring before a five-year period, because paragraph (e) of the rule states that the period specified in paragraph (b) is only a minimum disclosure requirement.

The Commission has decided to adopt the rule with a ten-year period to measure the presumptive materiality of disciplinary events. Because section 203(e)(2) of the Advisers Act reflects a congressional determination that the materiality of disciplinary events involving investment advisers extends back, at a minimum, to events occurring within a ten-year period, a ten-year period is appropriate. The length of this period is mitigated somewhat by the presumptive materiality standard in paragraph (b). As previously discussed, the amount of time that has elapsed is one factor in determining whether the presumption of materiality of a disciplinary event listed under paragraph (b) may be overcome.

Thus, under the rule, disciplinary events involving the adviser or its management person occurring within the ten-year period may, under certain circumstances, not be material to clients and would not have to be disclosed.

3. Integration with Form ADV

Finally, eight commenters recommended that the Commission integrate the disclosure required under Rule 206(4)-4 into Part II of Form ADV (the "brochure"). Use of the brochure to comply with Rule 206(4)-4 would, in their view, make compliance for registered advisers easier and less expensive than a separate disclosure document. The Commission agrees with

¹⁵ Section 203(e)(2) sets forth a list of disciplinary events involving an adviser which can be used to deny, suspend, or revoke an adviser's registration. See also Rule 206(4)-3(a)(1) [17 CFR 275.206(4)-3(a)(1)] which prohibits registered investment advisers from using solicitors that have been convicted during the previous ten years of any felony or misdemeanor involving conduct described in section 203(e) of the Advisers Act.

¹⁶ The ten-year period is the minimum disclosure period for disciplinary events in Item 11 of Part I of Form ADV.

¹⁷ Item 401(f) requires issuers to disclose material legal proceedings involving management of the issuer.

these commenters and has added a note to Rule 206(4)-4 and an instruction to Form ADV stating that advisers may use their brochure to make the required disclosures,¹⁸ provided that the timing of disclosure provision in paragraph (c) of Rule 206(4)-4 is satisfied.¹⁹

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, which the Commission prepared in accordance with 15 U.S.C. 603, regarding proposed Rule 206(4)-4 was published in Investment Advisers Act Release No. 1035. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Debra J. Kertzman, Esq., Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272-2107.

Statutory Authority

The Commission is adopting Rule 206(4)-4 and the instruction of Form ADV under the authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act [15 U.S.C. 80b-4, 80b-6(4) and 80b-11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Investment adviser, Fraud, Securities.

Text of Rule

Parts 275 and 279 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read as follows:

Authority: Sec. 203, 54 Stat. 850, as amended, 15 U.S.C. 80b-3; sec. 204, 54 Stat. 852, as amended, 15 U.S.C. 80b-4; Sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b-6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b-11.

2. By adding § 275.206(4)-4 as follows:

¹⁸ One commenter suggested that the Commission allow "insolvent" advisers to give clients a balance sheet to comply with the financial disclosure requirements of Rule 206(4)-4. Under the rule, inclusion of an audited balance sheet in the brochure would not be sufficient to disclose a precarious financial condition: an affirmative statement disclosing such a condition is required.

¹⁹ Under Rule 204-3, registered advisers are required only to offer to deliver a brochure to existing clients. In contrast, under Rule 206(4)-4 disclosure of precarious financial conditions and material disciplinary events must be made promptly to clients.

¹² See 10 of Form 10-K [17 CFR 249.310]; and sub-item 77e of Form N-SAR [17 CFR 274.101]. Cf. Item 11 of Form ADV [17 CFR 279.1].

¹³ See Item 7 of Schedule 14A [17 CFR 240.14a-10]. See also Item 1 of Schedule 14C [17 CFR 240.14C-101] with respect to issuers transmitting information statements.

¹⁴ See Item 2 of Schedule 14D-1 [17 CFR 240.14d-100].

§ 275.206(4)-4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance; or

(2) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of paragraph (a)(2) of the rule for a period of 10 years from the time of the event:

(1) A criminal or civil action in a court of competent jurisdiction in which the person—

(i) Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(2) Administrative proceedings before the Securities and Exchange Commission, and other federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

(3) Self-Regulatory Organization (SRO) proceedings in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.

(c) The information required to be disclosed by paragraph (a) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(d) For purposes of this rule:

(1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(3) "Investment-related" means pertaining to securities commodities, banking, insurance, or real estate (including, but not limited to, action as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 *et seq.*], or fiduciary).

(4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the 10-year period during which events are presumed to be material under paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with paragraph (b) of this rule shall not relieve any investment adviser from the disclosure obligations of paragraph (a) of the rule; compliance with paragraph (a) of the rule shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

Note: Registered investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under Rule 204-3 [17 CFR 275.204-3]; *provided*, that the delivery of the brochure satisfies the timing of disclosure requirements described in paragraph (c) of this rule.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

2. By amending instruction 1 to Form ADV, which is described in § 279.1, by adding a new sub-paragraph.

§ 279.1 Form ADV, for Application for Registration of Investment Adviser and for Amendment to Such Registration Statement.

Instruction to Form ADV

1. This is a Uniform Form for use by investment advisers to:

* * * * *

• Comply with their obligation under SEC Rule 206(4)-4 to disclose material financial and disciplinary information to clients. When using Part II of this form to disclose this information to clients, advisers must satisfy the timing of disclosure requirements described in paragraph (c) of SEC Rule 206(4)-4. Note that SEC Rule 206(4)-4(c) requires an adviser to disclose this information promptly to clients, while SEC Rule 204-3(b) only requires an adviser to annually offer to deliver its brochure to existing clients.

* * * * *

By the Commission.
September 25, 1987.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 87-22702 Filed 10-1-87; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87-34-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: September 28, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; order granting rehearing solely for purposes of further consideration.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing of Order No. 500 solely for the purpose of affording sufficient time to consider the numerous issues raised in the forty-four requests for rehearing which have been filed. This action does not constitute a grant or denial of rehearing, either in whole or in part.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (202) 357-8274.

SUPPLEMENTARY INFORMATION:

[Docket Nos. RM87-34-001 through RM87-34-045]

Order Granting Rehearing Solely for Purposes of Further Consideration

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

On August 7, 1987, the Federal Energy Regulatory Commission issued Order No. 500¹ responding on an interim basis to the decision of the United States Court of Appeals for the District of Columbia Circuit concerning Order No. 436 in *Associated Gas Distributors v. FERC*.² On August 28 and September 3, 4, and 8, 1987, the Commission received forty-four timely requests for rehearing of Order No. 500.

In order to afford sufficient time to consider the numerous issues raised in

the rehearing requests, it is necessary to grant rehearing of Order No. 500 for the limited purpose of further consideration.

The Commission orders:

Rehearing of Order No. 500 is hereby granted for the limited purpose of further consideration. This action does not constitute a grant or denial of rehearing, either in whole or in part. As provided in § 385.713(d) of the Commission's Rules of Practice and Procedure, no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-22819 Filed 10-1-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 230, 633, and 635

Required Contract Provisions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending regulations pertaining to required contract provisions for Federal-aid construction contracts. The purpose of this final rule is to eliminate duplicative provisions of 23 CFR Part 633 that merely restate requirements contained in other existing regulations. This consists of removing the text of Form PR-1273, Required Contract Provisions, from the Appendix to Part 633 and amending Part 635 to include several requirements which were previously addressed only in the Appendix to Part 633. Form PR-1273 is essentially a convenient collection of contract provisions already required by regulations promulgated by the Federal Highway Administration (FHWA) and other Federal agencies. This action is intended to eliminate the need to amend the regulation through repetitive rulemaking procedures each time the form is revised to incorporate a new or amended requirement duly promulgated by the responsible agency.

EFFECTIVE DATE: This final rule is effective October 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392, or Mr. Paul Brennan, Office of Chief Counsel, (202) 366-1394, Federal Highway Administration, 400 Seventh Street SW., Washington, DC

20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday.

SUPPLEMENTARY INFORMATION: The regulations currently contained in 23 CFR Part 633, Subpart A require certain contract provisions to be incorporated in each highway construction contract that involves the expenditure of Federal funds (other than direct Federal and Appalachian construction contracts). These provisions which are set forth in Appendix A of the regulation, contain the conditions attached to participation of Federal funds and are imposed under authority administered by the FHWA and several other Federal agencies.

Since Appendix A primarily restates requirements contained in regulations promulgated by the Environmental Protection Agency, Department of Labor, Department of Transportation (DOT), or Office of Management and Budget (OMB), the FHWA has determined that it is an unnecessary procedural burden to revise 23 CFR Part 633 by rulemaking whenever the substantive regulations are revised or amended by the responsible agencies. In order to reduce this paperwork burden and to eliminate the redundancy of regulations, Appendix A, Required Contract Provisions, is being removed from Title 23 of the CFR.

To ensure that all conditions of Federal-aid contracts continue to be authorized pursuant to regulation, it is necessary to amend 23 CFR Part 635 to include the following existing requirements which were previously addressed only in 23 CFR Part 633 and Appendix A: provisions for termination of contract, provisions for subcontracting, provisions for final certification of a project concerning wages and labor classifications, and provisions for record of materials, supplies, and labor. Relative to the record of material, supplies, and labor, the FHWA is also increasing the reporting threshold for the submission of Form PR-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds" from \$500,000 to \$1,000,000 for final construction cost for roadway and bridge projects. This change to the reporting threshold will reduce the burden of data collection on contractors and result in only minor changes in the reported construction usage factors.

In the future, the Required Contract Provisions, presently designated as Form PR-1273, will be redesignated as Form FHWA-1273 and distributed periodically through FHWA's division offices located in each State. This process will keep the contract

¹ 52 FR 30334 (August 14, 1987).

² No. 85-1811 (D.C. Cir. June 24, 1987).

provisions current with the underlying regulatory requirements.

The following table sets forth the source regulation for each provision contained within redesignated Form FHWA-1273.

Provision table	Regulation reference
1. Nondiscrimination.....	41 CFR Part 60 49 CFR Part 21
2. Nonsegregated Facilities.....	41 CFR Part 41
3. Payment of Predetermined Minimum Wage.	29 CFR Parts 1, 3, and 5
4. Statement and Payrolls.....	29 CFR Parts 3 and 5
5. Record of Materials, Supplies, and Labor.	23 CFR Part 635
6. Subletting or Assigning the Contract.	23 CFR Part 635
7. Safety: Accident Prevention.	23 CFR Part 635
8. False Statements Concerning Highway Projects.	23 CFR Part 635
9. Implementation of Clean Air Act and Federal Water Pollution Control Act.	40 CFR Part 15

The FHWA has determined that this action does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal, since the FHWA is merely eliminating duplicative procedures and is making no substantive changes. The procedural and editorial revisions in this document will eliminate repetitive efforts and simplify the contract solicitation and award process. Accordingly, a separate regulatory evaluation is not required.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

With regard to the information collection requirements contained in this regulation, the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq., Pub. L. 96-511) has assigned the control numbers of 1215-0140 and 2125-0033. These recordkeeping requirements are mainly attributable to requirements imposed by regulations issued by the Department of Labor and the Department of Transportation (Office of the Secretary).

The procedural elimination and editorial revisions impose no additional burdens on the States or the construction industry. For these reasons, the FHWA finds good cause to make this regulation effective without prior notice and opportunity for comment and without a 30-day delay in effective date. Furthermore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under the

Administrative Procedure Act because the matters affected relate to grants, benefits, or contracts pursuant to 5 U.S.C. 553(a)(2). Accordingly, this regulation is effective upon publication.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Parts 230, 633, and 635

Grant programs—transportation, Government contracts, Highways and roads, Reporting requirements.

Issued on: September 18, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA is amending 23 CFR Parts 230, 633, and 635 as follows:

1. In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, Part 633, by revising Subpart A, consisting of §§ 633.101-633.104, as set forth below.

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.	
633.101	Purpose.
633.102	Applicability.
633.103	Regulatory authority.
633.104	Availability.

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contract)

§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

(a) The required contract provisions and the required proposal notices apply

to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).

(c) For contracts authorized under certification acceptance procedures, an alternate format for inclusion of required contract provisions may be used pursuant to 23 CFR Part 640.

(d) The required contract provisions contained in Form FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA-1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR Part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA-1273, the SHA may include Form FHWA-1273 in its entirety to meet this requirement.

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA-1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA-1273.

§ 633.104 Availability.

(a) Form FHWA-1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA-1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

PART 635—CONSTRUCTION AND MAINTENANCE**Subpart A—Contract Procedures**

2. The authority citation for Part 635 is revised to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 135; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

3. Part 635 is amended by revising §§ 635.113 and 635.126 and by adding §§ 635.129 and 635.130 to read as follows:

§ 635.113 Subcontracting.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(1) "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

(2) "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

(b) Upon the request of an SHA, the requirements of paragraph (a) of this section may be modified in whole or in part by the FHWA to such extent as the

FHWA determines to be in the public interest.

(c) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

(d) To assure that all work is performed in accordance with the contract requirements, the contractor shall be required to furnish (1) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (2) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

§ 635.126 Termination and default of contract.

(a) All contracts exceeding \$10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) When a Federal-aid contract is terminated by the SHA, the extent of Federal-aid participation in the contract costs, including final settlement, will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.

(c) Normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when an SHA awards the contract for completion of a defaulted or previously terminated Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by

the plans and specifications under the original contract, whichever amount is the lesser.

(d) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.129 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid primary, urban, and Interstate System contracts, except those which provide solely for the installation of protective devices at railroad crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 the SHA's shall require the contractor:

(1) To become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractors of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To maintain a record of the total cost of all materials and supplies purchased for and incorporate in the work, and also the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown;

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA-47 together with the data required in paragraph (b)(2) of this section relative to materials and supplies a final labor summary for all contract work indicating the total hours worked and the total amount earned.

(c) Upon receipt from the contractor, the SHA shall promptly transmit the Form FHWA-47 to the Division

Administrator in accordance with the instructions printed in the form.

(Approved by the Office of Management and Budget under control number 2125-0033)

§ 635.130 Payroll, weekly statement, and final labor certificate.

(a) For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the period set forth in 23 CFR Part 17 for review as needed by the FHWA, the Department of Labor, the General Accounting Office, or other agencies.

(b) Upon completion of the contract, the contractor shall submit to the SHA contracting officer, for transmission to the FHWA with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen, and guards employed on the project, in the following form:

The undersigned contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen, and guards directly employed or employed by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice, trainee, watchmen, or guard conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title: _____

(Approved by the Office of Management and Budget under control number 1215-0140)

Technical Amendment

Due to the removal of Form PR-1273 from 23 CFR Part 633, Subpart A, Appendix A, and redesignation of the form as Form FHWA-1273, it is necessary to make a minor technical correction to the footnote in another part of Title 23, CFR, as follows:

PART 230—[AMENDED]

4. The authority citation for 23 CFR Part 230 continues to read as follows:

Authority: 23 U.S.C. 140 and 315; E.O. 11246; 49 CFR 1.48(b)(24), unless otherwise noted.

§ 230.204 [Amended]

5. Part 230, Subpart B is amended by revising footnote number one in § 230.204 to read as follows:

¹Form FHWA-1273 is available for inspection and copying at the locations given in 49 CFR Part 7, Appendix D, under

Document Inspection Facilities and at all State highway agencies.

[FR Doc. 87-22527 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Surface Mining Control and Reclamation Act; Return of Full Regulatory Authority to the State of Oklahoma

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

ACTION: Final rule.

SUMMARY: In accordance with the provisions of 30 CFR 936.19, OSMRE is announcing the Director's decision to terminate direct Federal enforcement of the Oklahoma permanent regulatory program, hereinafter referred to as the Oklahoma program, and to return full authority to the State of Oklahoma. Since Oklahoma has met the requirements for restoration of full authority, this notice also amends 30 CFR Part 936 to delete those portions which address direct Federal enforcement of parts of the State program, the remedial actions required of the State to regain full authority and the requirements and procedures for terminating direct Federal enforcement.

EFFECTIVE DATE: October 2, 1987.

ADDRESSES: Copies of the Director's decision and the administrative record documents referred to in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, OK 73105, Telephone: (405) 521-3659.

FOR FURTHER INFORMATION CONTACT: Jack Carson, (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 1981, the State of

Oklahoma received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On March 10, 1983, the Director of OSMRE notified the Governor of Oklahoma that OSMRE had reason to believe that serious problems existed in the implementation of Oklahoma's approved regulatory program. After a public hearing and opportunity for public comment, the Director found that the Oklahoma Department of Mines (ODM) was not adequately implementing certain aspects of its approved program. On April 12, 1984, the Director of OSMRE, in accordance with the provisions of 30 CFR 733.12(f), announced his decision, effective April 30, 1984, to institute direct Federal enforcement of those parts of Oklahoma's program that the State had not adequately enforced and to restrict funding of the State's abandoned mine lands reclamation (AMLR) program until regulatory program improvements were made (49 FR 14674). The Director also outlined the process by which the State could regain full authority for its inspection and enforcement program.

On May 15, 1985, Oklahoma submitted a permitting plan and inspection and enforcement plan in partial satisfaction of these requirements (Administrative Record No. OK-666). After considering these documents, the progress made by the State in resolving other deficiencies, and accomplishing the remedial measures required in 30 CFR 936.18, and comments received from the public, the Director decided to initiate a phased return of inspection and enforcement authority to the State.

In the December 2, 1985, **Federal Register** announcing this decision, as codified in 30 CFR 936.17, 936.18, and 936.19, the Director established requirements and a schedule for full resumption of program authority by the State of Oklahoma and withdrew restrictions on the AMLR program (50 FR 49376). The Director based his decision, in part, on the agreement of ODM to officially submit detailed information on its policies, procedures, guidelines and forms, and on its plans and commitments to address the backlog of bond forfeiture actions and injunctive relief proceedings. As specified in 30 CFR 936.17(b), upon satisfactory submission of the above items, OSMRE agreed to return inspection and enforcement authority to ODM, for all mines where mining had

been completed or the sites had been abandoned and no further mining was intended.

ODM also agreed to reevaluate and revise permits for active and temporarily closed operations with emphasis on relevant permitting deficiencies identified in the OSMRE 1985 Oklahoma State Program Annual Evaluation Report and on adequacy of bond amounts. OSMRE required ODM to submit quarterly reports updating the State's progress in these and other areas.

As set forth in 30 CFR 936.17(c), OSMRE agreed to return inspection and enforcement authority for active and temporarily inactive operations on an individual permit basis upon ODM's affirmative demonstration that the reevaluated permit, including the reclamation bond, was in compliance with the approved program.

OSMRE continued to be responsible for outstanding Federal enforcement actions, including necessary follow-up inspections on those operations for which inspection and enforcement authority had been returned to ODM.

II. Director's Findings on Current Status of Required Remedial Actions

The regulation at 30 CFR 936.19 requires the Director to return full program authority to Oklahoma and to terminate procedures initiated under 30 CFR 733.12 when he determines that the state has satisfied the remedial action requirements of 30 CFR 936.18(a-f). The Director has reviewed the current status of Oklahoma's remedial actions and makes the following findings.

1. Remedial Action No. 1 (30 CFR 936.18(a))

To minimize the potential for confusion and misunderstanding about ODM's Permitting and Inspection and Enforcement Plans during the resumption of authority, ODM was required to identify or provide to OSMRE, by December 16, 1985, copies of policy statements, guidelines, procedures, and forms that were then in use; policy statements, guidelines, procedures, and forms that were changed since submission of the plans; and policy statements, guidelines, procedures, and forms that were being proposed, including time frames for projected implementation.

On May 15, 1985, ODM submitted a detailed Permitting Plan consisting of permitting processes, procedural changes relating to permitting and bonding, staff changes, and training procedures (Administrative Record No. OK-666), which it subsequently updated on June 24, 1985 (Administrative Record

No. OK-670). ODM simultaneously submitted an Inspection and Enforcement Plan (Administrative Record No. OK-671) with the detailed policy statements, guidelines, procedures, and forms required to implement Oklahoma's program. On December 24, 1985, ODM submitted further information pertaining to plans, policy statements, guidelines, procedures, and forms for permitting, bond forfeiture, and inspection and enforcement activities (Administrative Record No. OK-723).

Following a detailed review, the Director finds the documents submitted to OSMRE on May 15, 1985, June 24, 1985, and December 24, 1985, are sufficiently comprehensive to enable ODM personnel to implement the inspection and enforcement requirements of the approved program, review permit applications in accordance with all approved program procedures, and make calculations of bond amounts and bond release determinations in accordance with approved program procedures.

2. Remedial Action No. 2 (30 CFR 936.18(b))

ODM was required to prepare and provide to OSMRE, by December 16, 1985, lists identifying the current backlog of bond forfeiture actions and of injunctive relief proceedings regarding State-issued violations and a plan including necessary commitments from the Attorney General's office as to how Oklahoma intended to address this backlog.

On December 24, 1985, ODM submitted lists identifying the backlog of bond forfeiture actions and injunctive relief proceedings regarding State-issued violations and plans for reducing the backlog of bond forfeiture and injunctive relief cases (Administrative Record No. OK-723). A revised plan specifying the procedures for ODM and the Attorney General's office to address the backlog of bond forfeiture actions and injunctive relief proceedings was submitted to OSMRE on August 13, 1987 (Administrative Record No. OK-817).

OSMRE's most recent review of State bond forfeiture efforts, as conducted for the 1987 Oklahoma State Program Annual Evaluation Report, found that, although there are forfeited bonds from previous years awaiting collection, the number of bonds collected and forfeiture actions initiated during 1986 and 1987 represents a significant improvement by ODM (Administrative Record No. OK-822).

Therefore, based on the documents provided to OSMRE, the progress made in collection of forfeited bonds and the

results of the annual program evaluation, the Director finds that ODM has adequate capability to effectively pursue collection of forfeited bonds and to seek and pursue relief.

3. Remedial Action No. 3 (30 CFR 936.18(c))

ODM was required to carry out permitting and bonding processes in accordance with the Permitting Plan and the approved Oklahoma program. Specifically ODM was required to implement procedures to calculate and set bonds sufficient to cover the cost of third-party reclamation; process bond forfeiture actions in a timely manner; assure against after-the-fact revisions to permits; prevent issuance of permits to operators with outstanding enforcement actions or unpaid Federal reclamation fees; and assure against inappropriate incidental boundary changes.

On December 24, 1985, ODM submitting plans (Administrative Record No. OK-723) that outlined procedures to correct the problems listed above. OSMRE has monitored implementation of the bond calculation procedures and the 1987 data indicate that bond amounts and procedures are adequate. ODM has submitted reports every 90 days outlining the progress in bond forfeitures, which is discussed under Finding No. 2 above. OSMRE reviews conducted for the 1987 Annual Evaluation Report indicate that after-the-fact revisions have been approved by Oklahoma only in cases where the revision was a more appropriate action than on-the-ground correction (Administrative Record No. OK-822). OSMRE has monitored the State's progress in screening applicants for outstanding violations and unpaid Federal reclamation fees, and no permits have been issued to such applicants. ODM has revised its policy and procedures governing incidental boundary revisions to set appropriate limits on incidental boundary changes.

Therefore, the Director finds that the Permitting Plan and the approved State program are being followed, that the specific permitting and bonding problems listed above have been corrected, and that ODM has met the requirements of Remedial Action No. 3.

4. Remedial Action No. 4 (30 CFR 936.18(d))

ODM was required to reevaluate and revise permits for active and temporarily closed operations with emphasis being placed on those relevant permitting deficiencies identified in the 1985 Annual Evaluation Report and those operations that had not received a

permanent program permit. After reevaluation, ODM was to require additional reclamation bond for those active and temporarily closed operations that were found to be underbonded.

ODM has reevaluated the 40 permitted operations, which OSMRE and ODM agreed were in need of review. ODM required permittees to update the permits and correct the deficiencies identified in the reevaluation. ODM then prepared new written findings for each of the 40 permits. Upon review and acceptance of each reevaluated permit, OSMRE returned inspection and enforcement authority for that particular permit to ODM, as provided in 30 CFR 936.17(c).

Two of the 40 permits were found to have residual reclamation issues sufficiently serious to justify continued OSMRE involvement. However, because mining has been completed on both of these operations, on August 25, 1987, OSMRE and ODM executed a written agreement to return inspection and enforcement authority to ODM and work cooperatively to achieve adequate reclamation (Administrative Record OK-820).

Therefore, the Director finds that the State has corrected or is in the process of correcting the permitting deficiencies on the existing active and temporarily closed operations and that this action satisfies the requirements of Remedial Action No. 4. The State now has resumed inspection and enforcement authority for all individual permits as described in 30 CFR 936.18(c).

5. Remedial Action No. 5 (30 CFR 936.18(e))

ODM was required to conduct joint inspections with OSMRE inspectors on a monthly basis for the first 3 months (one complete inspection and two partial inspections) on those permits described in 30 CFR 936.17(c) for which inspection and enforcement authority had been returned. Beginning August 1, 1986, with the return of authority of the first permits and continuing as permits were returned, ODM has conducted joint inspections with OSMRE inspectors on a monthly basis for the first 3 months.

Therefore, the Director finds that ODM has met the requirements of Remedial Action No. 5.

6. Remedial Action No. 6 (30 CFR 936.18(f))

ODM was required to submit quarterly reports to OSMRE showing State activities in permitting, setting bond amounts, bond releases and processing of petitions to designate lands unsuitable for surface coal mining.

ODM began submitting quarterly reports to OSMRE in November 1984, and has continued to provide an updated report every three months. The reports document the State's progress in (1) reevaluating existing permits, including bond adequacy, (2) reevaluating bond release actions since August 10, 1982, (3) notifying operators of additional permit application and/or bond information requirements, (4) processing applications for new permits or permit revisions, and (5) processing petitions to designate lands as unsuitable for surface coal mining.

Therefore, the Director finds that ODM has satisfied the reporting requirements of Remedial Action No. 6.

III. Director's Decision

After a review of all available information on ODM's implementation of the Oklahoma program, including policies, procedures, guidelines, forms and plans; the results of OSMRE's oversight activities; and ODM's periodic progress reports, the Director has determined that Oklahoma has sufficiently addressed and corrected the problems identified in the State's implementation of its program and has demonstrated that it has resources, capability, policy, procedures and commitment necessary to assure proper implementation of the program. As discussed in the section of this notice entitled "Director's Findings on Current Status of Required Remedial Actions", the State of Oklahoma has met the requirements specified in 30 CFR 936.18. Therefore, in accordance with 30 CFR 936.19, the Director hereby returns full program authority to Oklahoma and terminates the procedures initiated under 30 CFR 733.12 (49 FR 14674). However, as specified by 30 CFR 843.1, OSMRE will continue to be responsible for any outstanding Federal enforcement actions, including any necessary followup inspections.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory

programs. Therefore, this action is exempt from preparation of a regulatory impact analysis statement and regulatory review by OMB.

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 936

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

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

Date: September 28, 1987.

PART 936—OKLAHOMA

30 CFR Part 936 is amended as follows:

1. The authority citation for Part 936 continues to read as follows:

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

§§ 936.17, 936.18 and 936.19 [Removed]

2. In Part 936, §§ 936.17, 936.18, and 936.19 are removed in their entirety.

[FR Doc. 87-22658 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Wind-Down of Revenue Sharing Program

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: In view of the repeal of the Revenue Sharing Act and the expiration of the one year authorization of funds for the wind-down of the Office of Revenue Sharing, the regulations need amendment to reflect the disestablishment of the Office of Revenue Sharing and the termination of the Revenue Sharing Program.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT:
Thomas P. O'Malley, Director, Office of Procurement, Room 1458, 1500 Pennsylvania Ave., NW., U.S. Treasury, Washington, DC 20220 Tel.: (202) 566-2586.

SUPPLEMENTARY INFORMATION:

Background

Title XIV of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (COBRA), provides for the repeal of the Revenue Sharing Act (31 U.S.C. 6701-6724) effective October 18, 1986. An authorization for appropriations to carry out the provisions of COBRA was provided for the fiscal year beginning October 1, 1986 and ending September 30, 1987. Accordingly, the operations of the Office of Revenue Sharing will cease on the last day of that fiscal year. Any remaining activities that need to be taken by the Department of the Treasury will be accomplished under the supervision of the Assistant Secretary of the Treasury (Management) pursuant to Treasury Order No. 101-17 (March 24, 1987).

Special Analysis

No notice of proposed rulemaking is required for interim regulations. Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply to this regulation. Because the regulation concerns agency organization and management, the provisions of Executive Order 12291 and the notice and delayed effective date provision of the Administrative Procedure Act (5 U.S.C. 553) do not apply.

List of Subjects in 31 CFR Part 51

Accounting, Administrative Practice and Procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing.

Kent A. Peterson,

Acting Director, Office of Revenue Sharing.

Dated: September 17, 1987.

For the reasons set forth in the preamble, 31 CFR Part 51 is amended as follows:

PART 51-FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 14001, Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272); Treasury Department Order No. 224, dated January 26, 1973, as amended, and Treasury Department Order No. 101-17, dated March 24, 1987.

2. Section 51.0 is hereby revised to read as follows:

§ 51.0 Scope and application of regulations.

The rules and regulations in this subpart are prescribed for carrying into effect the termination of the Revenue Sharing Program as required by Title XIV of Pub. L. 99-272. The provisions of this part are intended to be implemented by the Assistant Secretary of the Treasury (Management) in a manner that most efficiently resolves any remaining issues pertaining to the Revenue Sharing Program. Any obligations under this part of the Department of the Treasury shall be operative after September 30, 1987 only to the extent that the Assistant Secretary deems necessary to carry out the requirements of Title XIV of Pub. L. 99-272.

3. Section 51.1 is hereby revised to read as follows:

§ 51.1 Wind-down authority for revenue sharing.

The Assistant Secretary of the Treasury (Management) shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by Title XIV of Pub. L. 99-272 with regard to the activities necessary for the termination of the Revenue Sharing Program. The authority and duties under this part of the Director of the Office of Revenue Sharing shall cease at the discretion of the Assistant Secretary pursuant to the authority provided by the Secretary of the Treasury for that purpose.

[FR Doc. 87-22823 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) is amending its National Service Life Insurance (NSLI) policy loan regulation to provide that the rate of interest on all loans applied for on and after the effective date of this regulation may be periodically adjusted. This is a change from the VA's prior policy of issuing loans with interest rates which are fixed for the term of the loan. The variable loan rate will be based on the level of an economic indicator, and after October 1, 1988, may not be adjusted more frequently than once a year.

Notice of the prevailing variable loan rate will be provided at the time a policyholder applies for a loan. Notice of changes to the loan rate will be published in the **Federal Register**, and notice of increases will be provided directly to existing variable loan borrowers. The variable loan rate established as of the effective date of this regulation is 8 percent. The interest rates on United States Government Life Insurance (USGLI) policy loans and existing fixed rate NSLI policy loans will not be changed by this amendment. Policyholders with existing 11 percent fixed rate loans will be offered the opportunity to exchange their 11 percent loans for variable rate loans.

EFFECTIVE DATE: November 2, 1987.

FOR FURTHER INFORMATION CONTACT:
Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 22350 and 22351 of the **Federal Register** of June 11, 1987, a proposed regulatory amendment was published providing that the interest rate on NSLI policy loans applied for on and after the effective date of the regulation may be periodically adjusted. Interested parties were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulatory amendment.

Two comments to the proposed regulations were filed. The first comment was dated June 26, 1987. The commentator recommended that the ceiling to the variable loan rate be fixed at 11 percent, rather than 12 percent as provided in the regulation. The commentator stated that "this would follow past practice by effectively 'grandfathering' over 81,000 veterans who have National Service Life Insurance policy loans at the 11 percent rate."

The 12 percent variable rate ceiling, which is based on recent interest rate trends in the Federal securities market, will effectively protect borrowers from excessive interest rates during periods of high inflation. Under this proposal, 11 percent borrowers have the option of switching to the variable rate, which is initially set at 8 percent, or retaining the 11 percent fixed rate. We believe that most borrowers will recognize the advantages of the variable rate and will elect this option. Nonetheless, borrowers with 11 percent loans are provided the option of retaining those loans and thus assuring that their loan interest rate will never be increased. In

this way, the interests of existing loan holders are protected under the amended regulation and no modification of the 12 percent interest rate cap is required.

The second comment was dated July 7, 1987, and supports the proposed regulation.

A rate change will be triggered by movement of the economic indicator to a level which is higher or lower than the existing rate. If a rate change is necessary, it will be made effective on the first of October following a determination that a rate change is required. The new rate will be set at the level of the economic indicator rounded down to the next whole number, unless this would result in a rate which is above 12 percent or below 5 percent. In that event, the rate would be set at the closest whole percentage within the permitted range—either 12 or 5 percent—depending on the level of the indicator. The upper and lower level rate limits are provided to protect borrowers from potentially high interest rates, while at the same time ensuring the financial integrity of the NSLI program. By tracking an economic indicator which reflects current economic conditions, the loan rate will remain consistent with other new NSLI trust fund interest earnings, thereby avoiding any significant impact on dividends to policyholders. After October 1, 1988, rate changes may not be made more frequently than once a year.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this final regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will affect only certain NSLI policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this final regulatory amendment is nonmajor in accordance with Executive Order 12291, Federal Regulation. This regulation will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program Number is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: September 15, 1987.

Thomas K. Turnage,
Administrator.

PART 8—[AMENDED]

In 38 CFR Part 8, National Service Life Insurance, § 8.28 is revised to read as follows:

§ 8.28 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of \$5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness shall equal or exceed the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (November 2, 1987) and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (November 2, 1987) shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time the loan is made. Policyholders with existing variable rate loans will be forwarded reasonable advance notice of any increase in the rate. Reasonable advance notice of any change in the variable loan rate will be published in the *Federal Register*. A notice pertaining to variable loans which is sent to the policyholder's last address of record will constitute sufficient evidence of notice.

(c) Subject to the provisions of paragraph (d) of this section, loan rates

established pursuant to paragraph (b) of this section shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage. Such loan rate shall be effective on the first day of October following a determination that a rate change is required, and after October 1, 1988, shall remain in effect for not less than one year after the date of establishment. The prevailing variable loan rate shall apply to all loans granted under paragraph (b) of this section.

(d) The variable loan rate is established at the rate of 8 percent per annum as of November 2, 1987. This rate is subject to adjustments on and after October 1, 1988, under the provisions of paragraph (b) of this section. Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(Authority: 38 U.S.C. 706)

[FR Doc. 87-22653 Filed 10-1-87; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-434-F]

Medicare Program; Standards for the Reuse of Hemodialyzer Filters and Other Dialysis Supplies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule contains standards and conditions for safe and effective hemodialyzer reuse and reprocessing, enforceable as Medicare conditions for coverage. It incorporates by reference voluntary guidelines and standards adopted by the Association for the Advancement of Medical Instrumentation in July 1986 (i.e., "Recommended Practice for Reuse of Hemodialyzers"). In addition, the rule provides standards for reuse of dialyzer caps and prohibits reuse of transducer filters in ESRD facilities. As provided in section 9335(k) of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986, failure of facilities to comply with these conditions could result in suspension of payment or removal of the facility from coverage under the Medicare program.

EFFECTIVE DATES: With the exception of recordkeeping and reporting requirements listed in §§ 405.2136(b), 405.2138(a), 405.2139(a), and 405.2140 (b) and (c), these regulations are effective October 1, 1987. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 594-6719.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

Section 1881 of the Social Security Act (the Act) authorizes Medicare coverage for the treatment of end-stage renal disease (ESRD) in approved facilities that provide dialysis and transplantation services to ESRD patients. Approval is granted by HCFA after a State survey agency determines that the facility is in compliance with conditions for coverage of suppliers of end-stage renal disease services.

Rules relating to certification of suppliers are found in 42 CFR Part 405, Subpart S. The decision as to whether a facility complies with a particular condition for coverage depends on the manner and degree to which the supplier satisfies the various standards within each condition. A supplier is not in compliance, if, after completion of a survey, a State survey agency determines that the supplier fails to comply with one or more of the standards within the conditions for coverage, and the deficiencies are of such character as to limit substantially the supplier's capacity to furnish adequate care or to affect adversely the health and safety of patients.

Section 1881(b) of the Act authorizes the Secretary to limit Medicare reimbursement for kidney transplantation and dialysis services to facilities meeting such requirements as may be prescribed in regulations. The requirements are set forth at 42 CFR Part 405, Subpart U-Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services. Facility compliance is determined by an on-site facility survey.

The conditions and standards prescribe the services which must be provided and the qualifications of staff who provide those services. The conditions do not specify performance standards for equipment used in dialysis, other than to require its good repair, disinfection, and use in accordance with acceptable medical standards of practice.

In the process of hemodialysis, the patient's blood is cleansed of impurities

by passing the blood through the filter (hemodialyzer) of a hemodialysis machine. Although the filter is labeled by manufacturers for single use, techniques exist that allow these devices to be reused. We understand that some manufacturers are modifying their labeling practices to indicate that reuse is permissible if proper procedures are used.

The multiple use of hemodialyzers has had its proponents and practitioners in this country and most parts of Europe for over 20 years. Reuse involves the cleaning, disinfecting and preparation of disposable hemodialysis devices for subsequent use for the same patient. The practice of reuse is estimated to be occurring in about 60 percent of dialysis facilities eligible under Medicare. Studies by the Public Health Service (PHS) and others in the clinical community indicate that, although the potential exists for adverse patient outcomes from reuse, when done properly reprocessing and reuse of dialyzers is safe. The new regulations are intended to provide dialysis personnel with information necessary to perform reuse adequately and to require conformance with these procedures in order to minimize patient risks.

Current regulations at 42 CFR 405.2100 through 405.2171 provide the health and safety requirements that facilities furnishing ESRD services to beneficiaries are required to meet. They do not specifically address the issue of hemodialyzer reuse, nor do they provide criteria relating to the reuse process, namely the cleaning, disinfection and preparation of disposable hemodialysis devices for subsequent use. Under our present requirements, the ESRD facility and the physician determine if devices will be reprocessed and reused by particular patients. Currently, surveyors only verify that facilities that reuse devices have a reprocessing procedure that does not jeopardize the health and safety of patients and staff.

B. New Legislation on Reuse of Dialysis Filters and Other Dialysis Supplies

Section 9335(k) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99-509, amended section 1881(f)(7) of the Act by requiring the Secretary to establish protocols on standards and conditions for reuse of hemodialyzer filters for those facilities that voluntarily elect to reuse such filters. The protocols must be incorporated into the conditions for coverage no later than October 1, 1987. Thereafter, failure of a facility to follow such protocols may result in a finding of noncompliance as described in 42 CFR 405.1905. Consequences of

noncompliance are termination of coverage under the Medicare and Medicaid programs or denial of payment for services. Section 9335(k) of OBRA '86 further requires, on or after January 1, 1988, that no dialysis facility may reuse blood lines, transducer filters, caps and other dialysis supplies unless the Secretary has established protocols for their reuse.

C. Proposed Regulations

On June 17, 1987, we published in the **Federal Register**, at 52 FR 23055, a Notice of Proposed Rulemaking to solicit comments on proposed changes to the regulations. We proposed to incorporate the OBRA '86 provisions into several existing conditions and standards in our regulations (requirements for governing body of an ESRD facility, patients' rights and responsibilities, and physical environment) and to add a new condition on requirements for reuse of dialyzers and other dialysis supplies. The new condition incorporates by reference the guidelines on reuse of hemodialyzers adopted by the Association for the Advancement of Medical Instrumentation (AAMI), dated July 1986.

II. Response to Public Comments

In response to our request for public comments in the **Federal Register** on June 17, 1987, we received 204 letters, of which 18 were from organizations representing patients. The remaining comments were from professional organizations, many of which represent dialysis facilities, and from health care providers and patients. The comments ranged from full support for the proposal to strong opposition. Following are a summary of comments received and our responses.

Patient Information Requirements

Comment: Numerous commenters believed that patients should not only be informed that a dialysis facility reuses hemodialyzers and other supplies, but that patients should also have the right to refuse reused supplies.

Response: These comments appear to be based on a lack of confidence in the performance of reused hemodialyzers and established procedures for cleaning and disinfecting them and other supplies for subsequent use by the same patient. As noted in the proposed rule, studies by PHS and others in the clinical community indicate that reprocessing and reuse of hemodialyzers are safe procedures when properly performed by trained staff. We believe that the regulations provide dialysis personnel with the information they need to safely

reprocess hemodialyzers for reuse. Further, the attending physician and the medical director of the dialysis facility determine whether a reused hemodialyzer may not be in the best interest of an individual patient and take appropriate action. Patients who disagree with that determination, as patients who disagree with other aspects of their treatment, are free to seek services from another provider. Since reuse is a widely chosen option for facilities, we suggest that dialysis facilities assist patients by identifying whether there are nearby facilities that do not practice reuse of dialyzers, if the patient seeks a transfer to avoid reuse of items.

Comment: One commenter suggested that, because the attending physician may not be familiar with dialyzer reprocessing, the interdisciplinary patient care team should advise and discuss with the patient the facility's practice of reusing dialyzers.

Response: Section 405.2138(a)(4) of the proposed regulations requires that the facility fully inform the patient regarding the facility's reuse of dialysis supplies, including hemodialyzers. We do not believe it appropriate to prescribe who in the facility must advise the patient. The informing may be oral or through printed material and should identify components routinely reused. We are not requiring that patient information encompass technical aspects of dialyzer reprocessing or the reuse procedure.

Comment: One commenter objected to what the commenter perceived as regulating the contents of all printed materials issued by a dialysis facility.

Response: As explained above, it is not the intent of these regulations to control the content of printed materials, such as brochures that explain a facility's dialysis program. Facilities have considerable latitude over actual content as long as the patients are informed of reuse practices.

Comment: Commenters suggested that medical records specify whether a patient received treatment with reused dialyzers.

Response: We agree. We do not believe that it would be an additional burden on the facility to make such an entry into each record for all patients, since facilities routinely either reuse all dialyzers or use only new ones. Further, it is our understanding that it has been accepted general practice to make such entries in the patient's medical record. We have, therefore, revised § 405.2139 to require this documentation.

Comment: Some commenters argued that each patient should receive a copy of, or have an opportunity to review in detail, a facility's hemodialyzer reuse

policy and procedures manuals or a summary of policy and procedures.

Response: These regulations require that the patient be fully informed, through brochures or discussions with the physician, about the risks as well as the benefits associated with reuse of hemodialyzers and other dialysis devices. However, we believe that it would be burdensome for facilities to give each patient a copy of its policy and procedure manuals, but manuals should be available for review upon request. For a patient who wants detailed information about his or her specific treatment, including the facility's reuse procedures, we suggest that the patient request this information from his or her physician.

Inspection and Monitoring

Comment: Fifteen commenters recommended that we inspect and monitor all facilities that reuse hemodialyzers to verify that the standards on reuse are followed by the facilities.

Response: State survey agencies perform onsite inspections of dialysis facilities and monitor their compliance with the conditions of participation specified in 42 CFR Part 405 Subpart U. The requirements in these regulations are included in Part 405 Subpart U and will be added to surveys performed beginning on the effective date of these regulations.

Comment: Several commenters suggested alternatives to the requirement in AAMI standard 3.2.1, concerning dialyzer reprocessing training, that the facility's physician director establish a training course. Alternatives suggested include requiring the training be established by a physician, by an interdisciplinary group or by specially trained technical personnel.

Response: We interpret this standard to mean that the facility's physician director must assure that persons performing hemodialyzer reprocessing are adequately trained, not that he or she personally establish the program. The information to be included in the curriculum is set forth in AAMI standard 3.2 and was not questioned by the commenters. Consequently, a facility may establish its own training course or use any other mechanism, such as a cooperative arrangement among facilities or a uniformly developed training course, provided it includes the information required by the AAMI standard.

Comment: Some commenters suggested that we specifically train personnel to survey facilities and enforce the standards.

Response: We believe it is unnecessary to provide extensive training to State surveyors on these guidelines because the AAMI held extensive training sessions after the publication of the guidelines in July 1986. Further, some States have already incorporated the guidelines in their surveys of dialysis facilities. However, arrangements have been made with the U.S. Food and Drug Administration (FDA) to provide technical assistance and training sessions when necessary with respect to the AAMI guidelines and the additional standards specified in these regulations.

Comment: Commenters inquired what violations of the numerous AAMI standards of dialyzer reuse would result in noncompliance with the conditions of participation and result in termination of the facility's option to reuse dialyzers.

Response: If, in the judgment of the State survey agency, a facility violates any aspects of the standard on dialyzer reuse in § 405.2150 which adversely affect the health and safety of patients, the survey agency will find that the standard is not met. The facility must then submit a corrective action plan to either correct the deficiencies, or discontinue reuse of dialyzers.

Reuse Procedures

Comment: Several commenters opposed the use of reprocessed dialyzers under any circumstances because they were concerned that the products used to reprocess dialyzers may be hazardous to the health of patients.

Response: As we noted in an earlier response, we are convinced that use of reprocessed hemodialyzers is safe and effective when properly performed. Comprehensive reviews of the available data have been conducted by the AAMI and components of the PHS including the FDA, the National Institutes of Health, the National Center for Health Sciences Research. Congress, after intensive review, chose to require regulation of hemodialyzer reuse, rather than to eliminate the practice.

We believe that these regulations promote the safety of dialyzer reuse procedures by clearly defining the standards of good reuse practice by trained personnel and providing a mechanism for enforcement of those standards through regular facility surveys.

Comment: Several commenters contend that AAMI guidelines have no basis in scientific practice, are inadequate, lack sufficient detail and have not been tested or validated.

Response: The AAMI guidelines were developed through a lengthy process of consultation between all elements of the hemodialysis community including physicians, providers, manufacturers of dialyzers and reprocessing equipment, researchers, patients and government agencies. The final AAMI standards contain only those elements upon which the participants reached consensus and which were believed to have the highest scientific merit. Furthermore, it was not the intent of the AAMI nor the Department's Task Force on Dialyzer Reuse to create uniform universal protocols, but rather a set of procedures that will ensure safe dialyzer reprocessing for patients and a set of procedures that will provide a framework for documentation and validation of the procedures. The AAMI standards contain sufficient detail to ensure safe and effective procedures when properly conducted.

Comment: Some commenters recommended that we strengthen the AAMI guidelines by incorporating in them regulations on good manufacturing practice in 21 CFR Part 820. These regulations apply to the manufacture of medical devices.

Response: Under Medicare, payment is not made for any medical device that is subject to approval. The FDA has concluded that non-commercial reuse by dialysis facilities is separate and distinct from the manufacture of finished medical devices and is thus outside FDA's legal jurisdiction. Since dialysis facilities are not considered to be manufacturers, they should not be subjected to provisions regarding good manufacturing practices or be responsible for the type of documentation and validation that a manufacturer is responsible for in the production of large lots of sterile items. The FDA has determined that labeling a health care facility, such as a dialysis center, as a manufacturer simply because it cleans and disinfects a medical device that may be labeled "for one-time use" is not valid. We believe that the AAMI guidelines, together with effective review of facilities by the State survey agencies to determine that the facilities are in compliance with conditions for coverage, will provide sufficient guidance to enable a facility to process a device for reuse in a safe and effective manner.

Comment: Commenters noted that AAMI guidelines do not address the issue of how many times a dialyzer can be reused.

Response: The commenters are correct. There are no data upon which a maximum number of reuses can be based. The consensus of the AAMI

experts was that the performance testing criteria used to judge properly functioning dialyzers may be applied to both new and reused dialyzers. A dialyzer that does not perform adequately should be discarded, whether it is used once or for multiple dialyses.

Comment: One commenter was concerned that the AAMI guidelines do not specify when reprocessing must begin after a dialyzer is used.

Response: We are not aware of any problems that have arisen due to delays in reprocessing dialyzers. The consensus of the AAMI group was that timing of the procedure is not important; hence, there is no particular reason to make a specific recommendation governing the amount of time between the end of dialyzer use on a patient and the initiation of the reprocessing procedure.

Comment: One commenter recommended that in addition to the AAMI guidelines, we include in the regulations modifications recommended by the National Kidney Foundation Report on Dialyzer Reuse of July 11, 1987. (Copies may be obtained from the National Kidney Foundation, Inc., 2 Park Avenue, New York, N.Y., 10016.)

Response: Many of the National Kidney Foundation experts that developed the report were part of the expert group that developed the AAMI guidelines. While we realize that there are some differences in approach, especially with regard to criteria for determining whether a dialyzer is functioning properly, we do not believe that these differences are great and we consider both guidelines to be compatible.

Comment: Commenters stated that the AAMI guidelines were overly specific with regard to staff surveillance of patient reactions to reused dialyzers, and argued that physicians should perform this function.

Response: We do not agree. The AAMI recognizes, and we agree, that the reuse of medical devices is the sole responsibility of the patient's physician and has therefore directed the "Recommended Practice for the Reuse of Hemodialyzers" to the physician responsible for the hemodialyzer reprocessing program. In addition, the AAMI document has suggested that training programs for persons performing hemodialyzer reprocessing be established under the direction of the facility's physician/director and that each person performing procedures for the multiple use of dialyzers satisfactorily complete the appropriate training program. We believe that the physician's delegation of authority to

persons adequately trained is consistent with current practice and proper.

Comment: Commenters noted that the AAMI guidelines failed to specify the chemical quality of water.

Response: The chemical quality of water used in reprocessing systems does not appear to play a role in any adverse effects associated with the process. The lack of consensus on this issue, expressed in the AAMI guidelines related more to a practical issue. Some individuals believed that water for reprocessing dialyzers should be the same water that is used to prepare dialysis fluid (see § 405.2140(a)(5)). There are both microbiologic and chemical specifications for water used in dialysis fluid. The majority of the AAMI group, however, believed that, although many facilities do use the same water for dialysis and for reprocessing, some facilities may wish to use only water that is of good microbiologic and endotoxin quality for reprocessing. This type of water is less expensive to produce. We have no basis for differing from this point of view. There is no evidence that the chemical quality of water plays any role in adverse effects on patients who are dialyzed with reprocessed dialyzers.

Comment: Commenters questioned the AAMI recommendation that water used to rinse dialyzers or to prepare dilutions of the chemical germicide (used to disinfect dialyzers) have less than one nanogram per milliliter of endotoxin or less than 200 bacteria per milliliter.

Response: The primary reason for this recommendation is to prevent water with a relatively high level of bacterial endotoxin from reaching membranes of the hemodialyzer during the rinsing period or disinfection period. The PHS advises us that the bacterial endotoxin can attach to the membranes and remain there during the reprocessing cycle and subsequently be released during dialysis. The PHS also advises us that techniques used to measure bacterial endotoxin in water by means of the Limulus lysate (LAL) test have been shown to be specific and sensitive with very few instances of false positive results. Similarly, techniques for the enumeration of bacteria in water are straightforward, precise and accurate.

Comment: Commenters noted that the AAMI guidelines do not contain standards for automated hemodialyzer reprocessing machines, which are used by 40% of dialysis facilities.

Response: We agree that the AAMI guidelines do not contain specific "standards" for automated reprocessing machines, but point out that automated reprocessing machines are clearly

included in the scope of the document. Specific reference to automated reprocessing machines is made throughout the document (see sections 1.1, 5, 5.2, 5.2.2, 5.2.3, etc.). We believe that facilities that use automated reprocessing machines operate them according to the manufacturer's instructions. When automatic reprocessing machines are used, a copy of the manufacturer's instructions should be included in the master file. As specified in standard 5.2 and 5.2.3 of the AAMI guidelines, if the facility chooses to deviate from those instructions, the reason for that deviation should be supported by expert opinion, documented, and new instructions placed in the master file of the facility. In addition, the new instructions should be attached to, or located near the equipment.

Comment: Commenters observed that the AAMI guidelines contain no requirement that facilities report morbidity and mortality rates associated with reused dialysis filters.

Response: The AAMI guidelines do not contain a specific requirement that facilities report morbidity and mortality rates associated with reused dialyzers. However, they do require a complaint investigation file containing information about failures of reprocessed dialyzers or adverse reactions to reprocessed dialyzers, the results of the investigation, and corrective action taken, if appropriate. It is reviewed periodically for trends that may contribute to patient morbidity and mortality. Further, information relative to reuse morbidity and mortality is obtained by the Department through the HCFA survey process and by the FDA through the medical device reporting system.

Comment: Commenters recommended that State law prevail when there is a conflict between the AAMI guidelines and State law.

Response: The Medicare conditions are merely minimum standards. States may impose more stringent or extensive standards, and, in accordance with 42 CFR 405.2135(c), facilities would be required to meet those standards as well.

Comment: Commenters noted that the AAMI guidelines fail to distinguish between single-use versus multiple-use products.

Response: We agree that the AAMI guidelines do not distinguish between single-use versus multiple-use products. Nevertheless, the document does describe the essential elements of good practices for reprocessing hemodialyzers (regardless of the labeling) that facilities can use in order

to help assure that the device processed for reuse is safe and effective. Extensive dialyzer reuse today indicates that those who process medical devices for reuse are influenced little, if at all, by a "single use only" label placed on the device. We understand that two manufacturers are modifying their labeling practice to indicate that reuse is permissible, if proper procedures are used. We therefore believe the AAMI guidelines are adequate for the purposes intended and do not need to be modified.

Comment: One commenter stated that it is not necessary that dialyzer (blood port) caps be disinfected with the same disinfectant used for the hemodialyzer.

Response: The intent of the provision is that dialyzer caps that are exposed to blood (i.e., blood port caps) be disinfected so that they do not contaminate the blood input and output side of the reprocessed dialyzers. Our requirement that the same germicide that is used for dialyzer disinfection also be used for caps was based on the assumption that this coincides with the practice of most dialysis centers. As the commenter points out, this assumption may not be correct.

Because the PHS informs us that there is no known risk to the integrity of the blood port caps by using a different germicide from that used for disinfecting the dialyzer, an alternative disinfecting protocol may be used. We believe that an equally acceptable technique would be to disinfect the dialyzer cap with a chemical germicide that has a high level of activity. In practice, this would include all of the currently available commercial chemical germicides that have been approved by FDA for dialyzer disinfection or chemical germicides approved by the EPA as a sterilant/sporicide. These latter chemical germicides can be used for purposes of high level disinfection specified by the manufacturer of the chemical germicide.

Caps that are used on the dialysate input and output ports can be simply cleaned with soap and water or sanitized and dried. Further, blood port caps that are supplied from the manufacturer can also be used.

Accordingly, we are revising § 405.2150(b) of the regulations to specify, as noted in the AAMI's guidelines, that the ports of hemodialyzers can be capped with new or disinfected caps. If dialyzer blood port caps are reused, they will be disinfected with the chemical germicide that is used for disinfecting the hemodialyzer or any other chemical germicide approved by EPA as a sterilant/sporicide.

Comment: One commenter objected to the recommendation in the AAMI

guidelines that the staff note the cosmetic appearance of the dialyzer. The commenter pointed out that cosmetic appearance is a visual reference point and is unimportant in terms of safety and effectiveness of the dialyzer. In addition, the commenter stated that the recommendation is vague and unenforceable.

Response: We agree. We point out, however, that the guidelines recommend a visual inspection be a part of a quick check. Such an inspection should not be considered the definitive measurement of dialyzer performance. The performance measurements listed in section 9.3 of the AAMI document include specific guidelines for additional performance tests.

Comment: One commenter noted that there is not a consensus on what performance tests should be used to determine if a dialyzer is functioning. Some scientists believe that ultrafiltration rate, as well as fiber bundle volume and air pressure leak tests should be performed.

Response: We realize that there is not unanimous agreement on this subject. However, it was the consensus of the experts convened by AAMI that, at a minimum, fiber bundle volume and leak tests of each dialyzer are important criteria to assure function. On advice of the PHS, ultrafiltration rate is not included as a test that needs to be performed after each reprocessing procedure on each dialyzer, although the facility may choose to do so if it wishes.

Comment: Commenters objected to the requirement that transducer filters not be reused because they may be a health hazard.

Response: We are aware that these devices are not actually reused in the sense that they are reprocessed between patient use, but rather are left in place and used from one patient to the next. We also realize that these types of filters function primarily to prevent patients' blood from contaminating the dialysis machine. However, it is the consensus of infection control experts at CDC as well as the American Nephrology Nurses Association that these devices can represent a potential vehicle for cross-contamination for the hepatitis B virus (HBV). Individuals who have hepatitis B infection contain extraordinarily high amounts of the virus, i.e., 10^8 - 10^9 infectious virus particles per milliliter, in the blood. It is the consensus of these groups that casual visual inspection of these filters is not sufficient to ensure that serum or blood have not contaminated the devices, which in turn, could transmit HBV from one patient to the next.

Therefore, we have provided that transducer filters should be changed between patients:

Chemical Germicides

Comment: Commenters suggested that the AAMI guidelines be revised to include the strength of germicides.

Response: The concentrations of commercially available chemical germicides are not listed in the guidelines because we believe that the user should refer to the manufacturer's recommendations on the use of the chemical germicide. These recommendations and procedures may change periodically.

Comment: One commenter objected to the AAMI guideline concerning formaldehyde concentrations and contact time on the basis that the AAMI guideline lacks specificity and allows the facility to use any kind of germicide it might choose without regard to effectiveness or safety, as long as the facility follows the manufacturer's instructions.

Response: Specific concentrations of formaldehyde are recommended (4 percent), but we recognize that facilities also may achieve an equivalent effect by using lower germicide concentrations at a higher temperature. The PHS informs us that there are valid scientific studies that clearly document the effectiveness of lower concentrations of formaldehyde at higher temperatures during storage. Concentrations of commercially available chemical germicides are specified by the manufacturer.

Comment: One commenter suggested that there is no scientific rationale for the provision in proposed § 405.2150(a)(1) that would prohibit dialyzers disinfected with one generic type of chemical germicide from being reused if a different germicide is introduced as part of the dialysis facility's reprocessing system.

Response: We disagree with the commenter. In 1986, the CDC investigated an outbreak of pyrogenic reactions and found strong epidemiologic evidence that a major factor in the outbreak was the reprocessing of the dialyzers with different types of chemical germicides.

We agree that there are no published reports on this phenomenon, but on the other hand, there are also no evaluations of the combined effect of chemical germicides on certain types of dialyzer membranes. The PHS has clearly demonstrated that minute breaks in dialyzer membranes can be associated with bacteremia in patients and that leaks are not always detected by an air pressure leak test.

Comment: Commenters were concerned that the language of § 405.2150(a)(1), requiring the use of only one chemical germicide in dialyzer reprocessing, is imprecise, confusing, and subject to misinterpretation.

Response: We agree that the language could be misconstrued and should be changed. The requirement that only one type of chemical germicide be used on a hemodialyzer as it is reprocessed multiple times was based on concern that two germicides may have a combined adverse effect on the membranes of the dialyzers. For example, if a dialyzer were reused four times with formaldehyde and then the facility changed its procedure and used glutaraldehyde, the combination may produce an effect on the membrane. This situation does not occur often at a dialysis center. Usually protocols for this type of operation are stable and change very infrequently.

Furthermore, the requirement is intended to focus on those specific chemical germicides that are used by a facility to disinfect the dialyzer and which remain in the dialyzer for relatively long periods of time (1 to 3 days). It was not intended to refer to any chemical germicide that was used by the manufacturer to sterilize the dialyzer originally; thus, the regulation would not require that, if originally ethylene oxide were used to sterilize the dialyzer, that formaldehyde or other chemical germicides cannot be used in a facility's reprocessing program.

In addition, some chemical reagents such as sodium hypochlorite and hydrogen peroxide, which in other settings can be used for the purposes of disinfection, are used as part of a cleaning protocol for the hemodialyzers. For example, if the dialyzer were cleaned with sodium hypochlorite or hydrogen peroxide, disinfection could be accomplished using 4 percent formaldehyde or a glutaraldehyde or peracetic acid-based chemical germicide.

To clarify the regulations, we are revising § 405.2150(a)(1) to specify that dialyzers should be exposed to only one chemical germicide during the reprocessing procedure. If a facility decides to use a different chemical germicide, the reprocessed dialyzer should be discarded rather than be exposed to a second germicide to prevent a hypothetical risk of dialyzer membrane leaks due to the combined action of different chemical germicides. If sodium hypochlorite or hydrogen peroxide are used in the cleaning step of a reprocessing procedure and used for short exposures as cleaners and not chemical germicides, then a chemical

germicide of a different generic type could be used for dialyzer disinfection.

Potential Patient Reactions to the Reprocessing Procedure

Comment: A commenter objected to the requirement that blood cultures be taken during a suspected pyrogenic reaction on the basis that a culture does not prove conclusively that patient reactions were a result of facility reprocessing techniques.

Response: Taking blood cultures during a suspected pyrogenic reaction is part of a series of tests meant to differentiate between a pyrogenic reaction and a bacterial infection. We agree that there are a number of factors that may either mimic a pyrogenic reaction or cause occasional pyrogenic reaction or pyrogenic-like reactions to occur in patients. Our intent is that the physician director of the dialysis facility or chief nurse have the responsibility for determining whether pyrogenic reactions are occurring, if they are occurring in clusters and if they are associated with the reprocessing procedures. These are decisions and determinations that are based on the broad medical and clinical experience of the health care professionals, and ones that cannot be listed specifically in any regulation.

In this same context, if the director of a dialysis facility, or that person's designate reaches the conclusion that either a chemical germicide used in reprocessing or a commercially available reprocessing system in any way is associated with pyrogenic reactions, it is the responsibility of that individual to contact the manufacturer of the germicide regarding this problem. It is the responsibility of the manufacturer under FDA regulations to notify the FDA. In addition, reuse of hemodialyzers should be terminated until the problems associated with pyrogenic reactions are solved.

Comment: Commenters questioned the need to terminate dialyzer reuse in the facility when only one individual experiences a pyrogenic reaction, bacteremia, or an unexplained reaction.

Response: We believe that this requirement safeguards all patients by preventing the spread of organisms that could contaminate all dialyzers. Our intent is explained in the previous comment. We would expect that the physician, after analyzing all the evidence associated with untoward reactions in a single patient or in several patients in the facility, would take whatever action is needed, including the termination of reuse, not only to protect the individual patient, but all patients if

it were determined that these reactions resulted from improper processing.

Comment: One group commented that requiring surveillance for bacteremia and unexplained reactions is inadequate because it implies that pyrogenic and bacteremic reactions are the only major complications of exposure to reprocessed hemodialyzers.

Response: We disagree that these regulations imply that pyrogenic reactions and bacteremia as major complications are only associated with hemodialyzer reuse. However, there have been documented instances of pyrogenic reactions and bacteremia due to inadequate dialyzer reuse procedures, and surveillance for them is part of a proper protocol. We have discussed the actions to be taken as a result of surveillance as a response to a previous comment.

Comment: One commenter noted that AIDS and hepatitis are associated with the reuse of hemodialyzers.

Response: The PHS advises us that since 1976 there is no excess risk of hepatitis B infection among patients or staff members in facilities that do and those that do not reuse hemodialyzers. We believe that the same precautions used to prevent the spread of hepatitis B will be effective in reducing the spread of the AIDS virus.

Comment: Commenters suggested that the AAMI guidelines be more specific with regard to the quality of water to prevent pyrogenic reactions in patients.

Response: The AAMI does have standards for water used to prepare dialysis fluid, but we do not believe that the entire set of AAMI standards are necessary for water that is used as part of a reprocessing procedure. The PHS advises us that the endotoxin level in reprocessing water should not exceed one nanogram per milliliter. To accomplish this, the AAMI guidelines include either an endotoxin test or microbiologic assay. We believe that these procedures are sufficient to prevent pyrogenic reactions associated with water used in the reprocessing procedure.

General Comments

Comment: One provider association objected to the AAMI guidelines being incorporated by reference in the regulations. Among the problems they cite are that the guidelines do not mandate specific tasks and, thus, make interpretation and compliance difficult, and that the guidelines provide too much flexibility and an absence of requirements in some areas and too much specificity in other areas in which technological advances may quickly outdate the instructions.

Response: We think that these guidelines constitute a framework for documentation, validation, and surveillance of reprocessing procedures. We believe that if the guidelines are followed and adherence to the guidelines is evaluated by State agency surveyors, they will enhance the quality of practice of dialyzer reuse.

Comment: Commenters noted that AAMI guidelines are not scheduled for revision until 1991 and asked what we would do if revisions are necessary before 1991. One commenter noted that improvements to, or development of new dialysis techniques occur continuously and recommended that we perform an ongoing reevaluation of the guidelines.

Response: The commenters are correct that the AAMI intends to update the voluntary standards every 5 years. If we find that revisions need to be made to the standards regarding dialyzer reuse procedures at that time or at any time, we will propose revisions through the Department's usual rulemaking procedures. With regard to technical modifications and improvements that occur, we believe that State survey agencies are unlikely to find that standards are not met if the equipment, materials and processes used provide health and safety protection that is the same as, or greater than the AAMI recommended practice. For example, if techniques are developed that are more specific or more sensitive than the Limulus amoebocyte lysate assay, with as few instances of false positives, we expect use of such techniques to be interpreted by the State survey agency as meeting or exceeding the standard regarding bacterial lipopolysaccharide concentration in dialyzer rinsing fluid.

Comment: A number of commenters were concerned that the proposed requirement in § 405.2138(a)(5) that patients be fully informed regarding their suitability for transplantation and home dialysis will be burdensome to facilities if we impose rigid implementation and unnecessary and duplicative recordkeeping to establish that information was actually imparted. One commenter, on the other hand, recommended that we specify that the assessment concerning whether a patient is suitable for a transplant be made only by a transplant surgeon.

Response: The requirement that patients be fully informed about their suitability for transplantation and home dialysis does not require a new evaluation by the facility. This requirement already exists as part of the long term care plan specified in § 405.2137(a). We are merely requiring that facilities document in the medical

record the fact that they have informed patients about the selection of treatment modality specified in the long term care plan. This requirement does not duplicate any other requirements, and we do not believe that the recordkeeping requirement is unnecessarily burdensome or onerous for facilities.

Regarding the recommendation that only a transplant surgeon conduct the assessment of whether a patient is suitable for a transplant, existing regulations specify that this determination is to be made by a professional team. Section 405.2137(a) specifies that the long term care program representing the selection of dialysis or transplantation is developed by a professional team that includes, but is not limited to the physician director of the facility, a transplant surgeon, a qualified nurse, a qualified dietitian and a qualified social worker.

Comment: Several commenters suggested revisions to the physical environment condition, § 405.2140. Commenters suggested adding provisions to ensure safe reuse of hemodialyzers, sufficient space and storage capacity for processing of hemodialyzers, a definition of "sanitary, comfortable and well-lighted area," and quality assurance with respect to contamination and infection control.

Response: Paragraphs (b)(1) and (c) of proposed § 405.2140 contain cross references to § 405.2150, which is the standard for reuse of hemodialyzers. We believe that the AAMI guidelines referenced in § 405.2150 will ensure safe reuse of dialyzers including contamination and infection control and that no revision to the physical environment condition is necessary.

We have not accepted the suggestion that we define "sanitary, comfortable and well-lighted area" in the regulations. Any clarification or detailed explanation of the term would, instead, be included in survey guidelines.

With regard to space and storage capacity for reprocessing hemodialyzers, we believe existing requirements in § 405.2140(b)(2) with respect to sufficient space for treatment, storage and maintenance of equipment are adequate.

III. Final Rule

After consideration of the public comments, and for the reasons stated in our responses to those comments, we have decided to finalize the regulations as proposed, except for revisions to § 405.2139(a) on documentation of medical records, § 405.2150(a)(1) on

chemical germicides, and § 405.2150(b) on dialyzer caps.

IV. Waiver of 30-Day Delay in Effective Date

Section 9335(k) of OBRA '86 requires that we establish standards for reuse of hemodialyzer filters. Those standards must be incorporated into the conditions for coverage of suppliers of end stage renal disease services no later than October 1, 1987. If regulations containing the standards are not effective by October 1, 1987, we can no longer pay for reused hemodialyzers, a practice that has been an option for facilities for many years. We ordinarily provide a 30-day delay in effective date following publication of a regulation to allow time for affected entities to comply with the new requirements. However, in this case, the usual 30-day delay in effective date would effectively require facilities to temporarily stop reusing hemodialyzers and use only new ones. To suddenly terminate payment for reused dialyzers to allow for a 30-day delay in effective date would be disruptive and administratively burdensome to dialysis facilities, and disruptive to the continuity of patient care. We therefore, find good cause for waiving the 30-day delay in effective date and find that such waiver is in the public interest.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all ESRD facilities as small entities.

B. Comments and Responses

In the proposed rule we gave an extended discussion of our reasons for not providing an impact analysis or regulatory flexibility analysis. Various commenters addressed that decision and the issues touched upon in our discussion.

Provider Impact

Comment: One commenter stated that the impact statement failed to analyze the true economic impact of reuse and the implications for dialysis facilities of meeting "an adequate single standard" [sic]. Further, the commenter stated that HCFA's conclusion that there would be a negligible effect was an erroneous conclusion based on inadequate data and improper assumptions and that there should have been a full-fledged analysis.

Response: Even though we had little data, we did provide an estimate of the prevalence of reuse and gave our reasons for believing that the economic impact would be small and that the effects on beneficiaries would be beneficial.

We are uncertain what the commenters meant to imply by referring to "an adequate single standard." The commenter, in referring to the proposed standard as adequate, seems to presume that many facilities now observe only lesser, inadequate, reuse standards. The main point we made is that most facilities have been following reasonable standards for reuse already. If standards were inadequate in a facility, then costs would be incurred to bring the facility into compliance and assure the quality of services to the beneficiary. With regard to the request that we fully analyze the economic impact before adopting a standard, we do not have data or a model to isolate just those reuse-associated costs that may differ from facility to facility, nor to relate costs to facility-specific reuse practices. The commenter did not offer any more data than the data presented in the preamble, nor did anyone contest our estimates of the prevalence of reuse.

Comment: One commenter stated that with the adoption of AAMI standards concerning patient surveillance and reporting to the manufacturer, reuse costs could be affected.

Response: It is likely that some standards and reporting requirements could increase costs for those facilities with reuse practices significantly different from those required by this rule, but aggregate costs for all facilities are not expected to rise. We expect that any rise in cost in a specific facility would be more than offset by the value

of establishing additional safeguards to insure the health and safety of the patients.

An increase in dialysis costs, whether for one or many facilities, would not result in increased payments to affected facilities unless those costs increased the average cost per dialysis session in a way that was later reflected in the level at which composite rate payments were set. Because it appears that many facilities are currently following reasonable standards in reuse of dialyzers, similar to the requirements in this regulation, this rule is not expected to result directly in any increases or reductions in Medicare program expenditures in the aggregate.

Comment: One commenter, quoting the regulatory impact statement in the proposed rule, concluded that there are financial incentives for dialysis facilities to practice reuse and a disincentive for a pure medical judgment on the issue of reuse. The commenter further stated that it was not clear whether in promoting reuse the Department was concerned primarily with the financial advantage to the government or savings to dialysis facilities.

Response: First, we wish to state clearly that it is not our policy or intent to promote reuse. The section of the initial regulatory impact statement quoted by the commenter was intended merely to explain the interaction between the proposed standards, facility costs, and Medicare payments. It was not a statement of objectives, but an attempt to help reviewers of the proposed rule assess its consequences. We grant that one major reason facilities elect to encourage reuse is to save money. Our position is not to encourage or discourage reuse, but rather to ensure that patient health and safety are protected when it is practiced.

Beneficiary Impact

Comment: One commenter, expressing concern about the impact on beneficiaries, believed that the rule, if adopted without provisions for informed consent and the right of refusal, will leave the patient unprotected and at unnecessary risk.

Response: We believe that this is a misinterpretation of the regulation. This regulation requires that the patient be fully informed about reuse. In addition, the regulation would require that each patient be fully informed regarding his or her suitability for kidney transplantation and home dialysis. Furthermore, the medical record must contain evidence that each patient was informed regarding his or her suitability for transplantation and home dialysis.

These facts, in combination with the expected benefit to patients of establishing standards for reuse, make it clear that the intended and expected results of this rule are to increase patient protections.

C. Conclusion

Because we are unable to predict the decisions that facilities will make in response to this regulation, we are unable to quantify the potential effect it will have. We continue to believe adoption of these standards for reuse of dialysis supplies will help ensure beneficiary health and safety. In response, we expect some beneficiaries will be reassured that their rights have been safeguarded. However, we expect that there will be a negligible effect on most beneficiaries and facilities, due to the fact that it appears that many facilities are currently following standards for reuse of dialyzers that are similar to those in this final regulation. This final rule is not expected to result directly in any increases or reductions in Medicare program expenditures, nor will it result in a decline nor a deterioration of patient rights or protections.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

Paperwork Reduction Act of 1980

Sections 405.2136(b), 405.2138(a), 405.2139(a), and 405.2140(b) and (c) of this rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. The recordkeeping and reporting requirements are not effective until they have been approved by OMB under the Paperwork Reduction Act of 1980. The requirements have been submitted to OMB for review. Comments on the requirements should be sent to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron

When clearance is obtained, we will publish a notice in the Federal Register announcing that clearance.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO),

Health professions, Incorporation by reference, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405 Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U continues to read as follows:

Authority: Secs. 1102, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. The table of contents for Subpart U is amended by adding a new § 405.2150 to read as follows:

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

* * * * *

Sec. 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies

* * * * *

3. Section 405.2136(b) introductory text is revised to read as follows:

§ 405.2136 Condition: Governing body and management.

* * * * *

(b) Standard: operational objectives. The operational objectives of the ESRD facility, including the services that it provides, are established by the governing body and delineated in writing. The governing body adopts effective administrative rules and regulations that are designed to safeguard the health and safety of patients and to govern the general operations of the facility, in accordance with legal requirements. Such rules and regulations are in writing and dated. The governing body ensures that they are operational, and that they are reviewed at least annually and revised as necessary. If the ESRD facility is engaged in the practice of hemodialyzer reuse, the governing body ensures that there are written policies and procedures with respect to reuse, to assure that recommended standards and conditions are being followed, and requires that patients be informed of the policies and procedures.

* * * * *

4. In § 405.2138, paragraph (a) introductory text is republished, paragraph (a)(3) is revised, and new

paragraphs (a)(4) and (a)(5) are added, to read as follows:

§ 405.2138 Condition: Patients rights and responsibilities.

* * * * *

(a) Standard: informed patients. All patients in the facility:

* * * * *

(3) Are fully informed by a physician of their medical condition unless medically contraindicated (as documented in their medical records);

(4) Are fully informed regarding the facility's reuse of dialysis supplies, including hemodialyzers. If printed materials such as brochures are utilized to describe a facility and its services, they must contain a statement with respect to reuse; and

(5) Are fully informed regarding their suitability for transplantation and home dialysis.

5. Section 405.2139(a) is revised to read as follows:

§ 405.2139 Condition: Medical records.

* * * * *

(a) Standard: medical record. Each patient's medical record contains sufficient information to identify the patient clearly, to justify the diagnosis and treatment, and to document the results accurately. All medical records contain the following general categories of information: Documented evidence of assessment of the needs of the patient, whether the patient is treated with a reprocessed hemodialyzer, of establishment of an appropriate plan of treatment, and of the care and services provided (see § 405.2137(a) and (b)); evidence that the patient was informed of the results of the assessment described in § 405.2138(a)(5); identification and social data; signed consent forms referral information with authentication of diagnosis; medical and nursing history of patient; report(s) of physician examination(s); diagnostic and therapeutic orders; observations, and progress notes; reports of treatments and clinical findings; reports of laboratory and other diagnostic tests and procedures; and discharge summary including final diagnosis and prognosis.

* * * * *

6. Section 405.2140(b) introductory text, (b)(1) and (c) are revised to read as follows:

§ 405.2140 Condition: Physical environment.

* * * * *

(b) Standard: favorable environment for patients. The facility is maintained and equipped to provide a functional sanitary, and comfortable environment

with an adequate amount of well-lighted space for the service provided.

(1) There are written policies and procedures in effect for preventing and controlling hepatitis and other infections. These policies include, but are not limited to, appropriate procedures for surveillance and reporting of infections, housekeeping, handling and disposal of waste and contaminants, and sterilization and disinfection, including the sterilization and maintenance of equipment where dialysis supplies are reused, there are written policies and procedures covering the rinsing, cleaning, disinfection, preparation and storage of reused items which conform to requirements for reuse in § 405.2150.

(c) *Standard contamination prevention.* The facility employs appropriate techniques to prevent cross-contamination between the unit and adjacent hospital or public areas including, but not limited to, food service areas, laundry, disposal of solid waste and blood-contaminated equipment, and disposal of contaminants into sewage systems. Waste storage and disposal are carried out in accordance with applicable local laws and accepted public health procedures. The written patient care policies (see § 405.2136(f)(1)) specify the functions that are carried out by facility personnel and by the self-dialysis patients with respect to contamination prevention. Where dialysis supplies are reused, records are maintained that can be used to determine whether established procedures covering the rinsing, cleaning, disinfection, preparation and storage of reused items, conform to requirements for reuse in § 405.2150.

7. A new § 405.2150 is added to Subpart V to read as follows:

§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section.

(a) *Standard: Hemodialyzers.* If the ESRD facility reuses hemodialyzers, it meets the voluntary guidelines adopted by the Association for the Advancement of Medical Instrumentation (A.A.M.I.) July 1986 (i.e., "Recommended Practice for Reuse of Hemodialyzers") which is incorporated by reference. Incorporation of the Association for the Advancement of Medical Instrumentation 1986 edition of the "Recommended Practice for Reuse of Hemodialyzers" was approved by the

Director of the Federal Register in accordance with 5 U.S.C. 562(a) and 1 CFR Part 51 which governs the use of incorporations by reference.¹

In addition to the A.A.M.I. 1986 edition criteria on hemodialyzer reuse, the ESRD facility conforms to the following procedures:

(1) *Chemical germicides.* To prevent any risk of dialyzer membrane leaks due to the combined action of different chemical germicides, dialyzers are exposed to only one chemical germicide during the reprocessing procedure. If a dialyzer is exposed to a second germicide, the dialyzer must be discarded.

(2) *Staff exposure to chemical germicides.* Chemical germicides are handled in a manner to minimize exposure to staff members who are involved in the reprocessing. The following exposure limits for a number of active ingredients contained in formulations of chemical germicides utilized in dialysis facilities have been set by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) (see 29 CFR 1910.1000). Staff exposure to any material in the table is consistent with these limits.

TABLE

Substance/material	Limits
Formaldehyde.....	3 ppm TWA. 5 ppm Ceiling. (1 ppm TWA proposed by OSHA).
Glutaraldehyde.....	None developed.
Phenol.....	5 ppm TWA.
Glutaraldehyde-Phenol..	Individual standards of recommendations should apply.
Peracetic Acid.....	None developed.
Chlorine Dioxide Syn: Chlorine Oxide.	100 ppb TWA.
Hydrogen Peroxide.....	1 ppm TWA.
Chlorine.....	1 ppm Ceiling.

TWA=Time weighted average.
Ceiling=Maximum exposure ceiling.
ppm=Parts per million.
ppb=Parts per billion.

¹ The "Recommended Practice for Reuse of Hemodialyzers" is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC. Copies may be obtained from the Association for the Advancement of Medical Instrumentation, 1901 North Fort Myers Drive, Suite 602, Arlington, Va. 22209-1699.

If any changes in the "Recommended Practice for Reuse of Hemodialyzers" are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

(3) *Surveillance of patient reactions.*

In order to detect bacteremia, to maintain patient safety when unexplained events occur, and to provide the manufacturer with information so that prompt remedial action can be taken, the facility—

(i) Takes appropriate blood cultures at the time of a febrile response in a patient;

(ii) If pyrogenic reactions, bacteremia, or unexplained reactions associated with ineffective reprocessing are identified, terminates reuse of hemodialyzers in that setting and does not continue reuse until the entire reprocessing system has been evaluated; and

(iii) Notifies the manufacturer, if these reactions appear to be associated with any commercially available germicide or a reprocessing device.

(b) *Standard: Dialyzer caps.* The ports of hemodialyzers may be capped with new or disinfected caps. If dialyzer blood port caps are reused, they are disinfected with the chemical germicide that is used for disinfecting the hemodialyzer or any other chemical germicide approved by the Environmental Protection Agency as a sterilant/sporicide.

(c) *Standard: Transducer filters.* To control the spread of hepatitis, transducer filters are changed after each dialysis treatment and are not reused.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance.)

Dated: September 21, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: September 23, 1987.

Otis R. Bowen,
Secretary.

[FR Doc. 87-22938 Filed 9-30-87; 4:32 pm]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6764]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the

program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain

management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64
Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Texas: Burleson County, unincorporated areas	481169	July 6, 1987, Emerg.	June 17, 1977.
California: San Benito County, unincorporated areas	060267	July 7, 1987, Emerg.	Aug. 2, 1977.
Pennsylvania: *Limestone, township of, Warren County	422547	Feb. 28, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 7, 1987, Rein.	June 1, 1987.
Iowa: *Eldora, city of, Hardin County	190139	Apr. 14, 1975, Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; July 8, 1987, Rein.	Do.
Ohio: Enon, village of, Clark County	390795	Sept. 12, 1975, Emerg.; Apr. 17, 1987, Reg.; Apr. 17, 1987, Susp.; July 8, 1987, Rein.	Apr. 17, 1987.
North Carolina: Pineville, town of, Mecklenburg County	370160	May 6, 1975, Emerg.; May 18, 1987, Reg.; May 18, 1987, Susp.; July 8, 1987, Rein.	Mar. 18, 1987.
Iowa: *Kellogg, city of, Jasper County	190164	June 3, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 9, 1987, Rein.	June 1, 1987.
New York: Webster, town of, Monroe County	360436	Mar. 8, 1973, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp.; July 9, 1987, Rein.	June 4, 1987.
Arkansas: Franklin County, unincorporated areas	050432	July 15, 1987, Emerg.	Do.
Michigan: Huron, township of, Huron County	260415	.do.	Do.
Oklahoma: Kay County, unincorporated areas	400477	.do.	Do.
Texas: Nolan County, unincorporated areas	481240	.do.	Do.
Tennessee: Gates, town of, Lauderdale County	470258	Sept. 16, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 10, 1987, Rein.	July 2, 1987.
Kentucky: *Manchester, city of, Clay County	210058	Sept. 2, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 8, 1987, Rein.	Do.
Ohio: Morrow County, unincorporated areas	390868	July 23, 1987, Emerg.	Aug 4, 1978.
Georgia: Monroe County, unincorporated areas	130138	July 29, 1987, Emerg.	Apr. 1, 1977.
Florida: Calhoun County, unincorporated areas	120403	May 14, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.; July 29, 1987, Rein.	June 18, 1987.
Kentucky:			
*Edmonton, city of, Metcalfe County	210173	Oct. 24, 1974, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	July 1, 1987.
*Hindman, city of, Knott County	210130	July 9, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	Do.
*Jackson County, unincorporated areas	210118	Nov. 25, 1985, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 29, 1987, Rein.	Do.
Missouri: Byrnes Mill, city of, Jefferson County	280891	July 21, 1987, Emerg.	Do.
Alabama: Blount County, unincorporated areas	010230	July 22, 1987, Emerg.	Feb. 24, 1978.
Kansas:			
Elk City, city of, Montgomery County	200408	July 23, 1987, Emerg.	Oct. 29, 1975.
Neosho Falls, city of, Woodson County	200360	July 23, 1987, Emerg.	Jan. 31, 1975.
Minnesota:			
*Red Lake County, unincorporated areas	270387	Apr. 5, 1974, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 10, 1987, Rein.	July 2, 1987.
*Willow River, city of, Pine County	270353	Apr. 26, 1974, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 15, 1987, Rein.	July 1, 1987.
Maine: *Woodstock, town of, Oxford County	230344	Aug. 5, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp.; July 17, 1987, Rein.	Apr. 1, 1987.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Maine: *Upton, town of, Oxford County.....	230342	Aug. 6, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp.; July 17, 1987, Rein.	Do.
Florida: *Webster, city of, Sumter County.....	120298	July 10, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; July 10, 1987, Rein.	July 1, 1987.
Iowa: *Colfax, city of, Jasper County.....	190163	July 11, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; July 20, 1987, Rein.	June 1, 1987.
Tennessee: Somerville, town of, Fayette County.....	470051	Aug. 27, 1975, Emerg.; July 5, 1982, Reg.; July 5, 1982, Susp.; July 20, 1987, Rein.	July 5, 1982.
Iowa:			
Bonaparte, city of, Van Buren County.....	190266	Jan. 14, 1976, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; July 23, 1987, Rein.	July 2, 1987.
Zearing, city of, Story County.....	190260	Sept. 28, 1976, Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; July 23, 1987, Rein.	May 1, 1987.
New York:			
Thurman, town of, Warren County.....	360881	May 24, 1979, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; July 6, 1987, Rein.	Aug. 19, 1986.
Fremont, town of, Sullivan County.....	360821	Apr. 11, 1975, Emerg.; May 25, 1984, Reg.; Apr. 3, 1987, Susp.; July 6, 1987, Rein.	Apr. 3, 1987.
Region I—Regular Conversions			
Connecticut: Milford, city of, New Haven County.....	090082	July 2, 1987, suspension withdrawn.....	July 2, 1987.
Massachusetts: Mattapoisett, town of, Plymouth County.....	255214	.....do.....	Do.
Vermont:			
Morrisville, village of, Laddille County.....	500065	.....do.....	Do.
Morrisville, town of, Landille County.....	500064	.....do.....	Do.
Region III			
West Virginia: Fairmont, city of, Marion County.....	540099	.....do.....	Do.
Region V			
Ohio:			
Clark County, unincorporated areas.....	390732	.....do.....	Do.
London, city of, Madison County.....	390366	.....do.....	Do.
Region IX			
California:			
Isleton, city of, Sacramento County.....	060265	.....do.....	Do.
Pittsburg, city of, Contra Costa County.....	060033	.....do.....	Do.
Region II			
New York:			
Amityville, village of Suffolk County.....	360788	July 16, 1987, suspension withdrawn.....	July 16, 1987.
Babylon, village of Suffolk County.....	360791	.....do.....	Do.
Crown Point, town of Essex County.....	361148	.....do.....	Do.
Lindenhurst, village of Suffolk County.....	360798	.....do.....	Do.
Port Henry, village of Essex County.....	361493	.....do.....	Do.
Region III			
Virginia: Alleghany county, unincorporated areas.....	510009	.....do.....	Do.
Region V			
Michigan: Niles, city of Cass and Berrien Counties.....	260040	.....do.....	Do.
Ohio: Dover, city of Tuscarawas County.....	390543	.....do.....	Do.
Region VI			
Arkansas:			
Montgomery County, unincorporated areas.....	050453	.....do.....	Do.
Stone County, unincorporated area.....	050465	.....do.....	Do.
Oklahoma:			
Inola, town of Rogers County.....	400456	.....do.....	Do.
Pryor Creek, city of Mayes County.....	400117	.....do.....	Do.
Texas:			
Highland Village, city of Denton County.....	481105	.....do.....	Do.
Plum Grove, city of Liberty County.....	481269	.....do.....	Do.
Region IX			
California:			
Contra Costa County, unincorporated area.....	060025	.....do.....	Do.
Loma Linda, city of San Bernardino County.....	065042	.....do.....	Do.
Region IV: Minimal Conversions			
Kentucky: Hickman, city of Fulton County.....	210077	.....do.....	Do.
Region V			
Illinois: Kirkwood, village of Warren County.....	170675	.....do.....	Do.
Michigan: Elsie, village of Clinton County.....	260725	.....do.....	Do.
Wisconsin: Nekoosa, city of Wood County.....	550516	.....do.....	Do.
Region VII			
Kansas: Norton, city of Norton County.....	200248	.....do.....	Do.
Region I			
Massachusetts: Wareham, town of Plymouth County.....	255223	August 4, 1987, suspension withdrawn.....	Aug. 4, 1987.
Vermont: Grafton, town of Windham County.....	500129	.....do.....	Do.
Region II			
New York: Watertown, city of Jefferson County.....	360354	.....do.....	Do.
Region III			
Virginia:			
Gloucester County, unincorporated areas.....	510071	.....do.....	Do.
Irvington, town of Lancaster County.....	510221	.....do.....	Do.
Tappahannock, town of Essex County.....	510049	.....do.....	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region V			
Illinois: Kirkland, village of DeKalb County	170186	.....do.....	Do.
Ohio: Strasburg, village of Tuscarawas County	390631	.....do.....	Do.
Sugarcreek, village of Tuscarawas County	390546	.....do.....	Do.
Region VI			
Arkansas: Piggott, city of Clay County	050035	.....do.....	Do.
Texas: Denton, city of Denton County	480194	.....do.....	Do.
Region IX			
California:			
Rio Vista, city of Solano County	060371	.....do.....	Do.
Madera County, unincorporated areas	060170	.....do.....	Do.
Region X			
Oregon: Lake Oswego, city of Clackamas County	410018	.....do.....	Do.
Region II			
New Jersey: Bridgewater, township of Somerset County	340432	August 19, 1987, suspension withdrawn	Aug. 19, 1987.
Region III			
Pennsylvania:			
Conewango, township of Warren County	422117	.....do.....	Do.
Muncy, township of Lycoming County	421847	.....do.....	Do.
North Beaver, township of Lawrence County	421795	.....do.....	Do.
Pine Grove, township of Warren County	422124	.....do.....	Do.
Warren, borough of Warren County	420843	.....do.....	Do.
Region VI			
Arkansas: Gould, city of Lincoln County	050127	.....do.....	Do.
Oklahoma: Rogers County unincorporated areas	405379	.....do.....	Do.
Region VIII			
Utah: St. George, city of Washington County	490177	.....do.....	Do.
Region X			
Washington: Pierce County unincorporated areas	530138	.....do.....	Do.
Minimal Conversions			
Region III			
Pennsylvania:			
Franklin, township of Lycoming County	420973	.....do.....	June 1, 1987.
Howe, township of Forest County	421647	July 1, 1987, suspension withdrawn	Do.
Fox, township of Sullivan County	422063	.....do.....	July 1, 1987.
Laporte, township of Sullivan County	422065	.....do.....	Do.
Lemon, township of Wyoming County	422200	.....do.....	Do.
Nicholson, township of Wyoming County	422202	.....do.....	Do.
Northmoreland, township of Wyoming County	422204	.....do.....	Do.
Nowich, township of McKean County	421859	.....do.....	Do.
Ward, township of Tioga County	422101	.....do.....	Do.
West Virginia:			
Barbour County unincorporated areas	540001	.....do.....	Do.
Lewis County unincorporated areas	540085	.....do.....	Do.
Moorefield, town of Hardy County	540052	.....do.....	Do.
Morgan County unincorporated areas	540144	.....do.....	Do.
Pendleton County unincorporated areas	540153	.....do.....	Do.
Taylor County unincorporated areas	540188	.....do.....	Do.
Upshur County unincorporated areas	540198	.....do.....	Do.
Region IV			
Florida: Live Oak, city of Suwannee County	120334	.....do.....	Do.
North Carolina:			
Jonesville, town of Yadkin County	370260	July 1, 1987, suspension withdrawn	Do.
Randleman, city of Randolph County	370199	.....do.....	Do.
Region V			
Indiana:			
Clinton, city of Vermillion County	180259	.....do.....	Do.
New Harmony, town of Posey County	180210	.....do.....	Do.
Michigan: Carp Lake, township of Ontonagon County	260548	.....do.....	Do.
Ohio:			
Ansonia, village of Darke County	390138	.....do.....	Do.
Fostoria, city of Hancock County	390245	.....do.....	Do.
McConnelsville, town of Morgan County	390422	.....do.....	Do.
Wisconsin:			
St. Cloud, village of Fond Du Lac County	550142	.....do.....	Do.
Wausaukee, village of Marinette County	550264	.....do.....	Do.
Weyauwega, city of Waupaca County	550503	.....do.....	Do.
Yuba, village of Richland County	550362	.....do.....	Do.
Region VI			
Arkansas: Dewitt, city of Arkansas County	050001	.....do.....	Do.
New Mexico: Red River, town of Taos County	350079	.....do.....	Do.
Region VII			
Kansas: Concordia, city of Cloud County	200060	.....do.....	Do.
Missouri:			
Barton County, unincorporated areas	290785	.....do.....	Do.
Marines County, unincorporated areas	290816	.....do.....	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Senath, city of Dunklin County	290131	.....do.....	Do.
Nebraska: Leigh, village of Colfax County.....	310386	.....do.....	Do.
Region VIII			
Utah: Washington, city of unincorporate areas.....	490182	.....do.....	Do.
Minimal Conversions			
Region IV			
North Carolina:			
Hamlet, city of Richmond County.....	370200	July 16, 1987, suspension withdrawn.....	July 2, 1987.
Jackson, town of Northampton County.....	370175	.....do.....	Do.
Siler City, town of Chatham County.....	370058	.....do.....	Do.
Region V			
Illinois:			
Carthage, city of Hancock County.....	170269	.....do.....	Do.
Valier, village of Franklin County.....	170870	.....do.....	Do.
Washburn, village of Woodford County.....	170728	.....do.....	Do.
Michigan:			
Burlington, township of Calhoun County.....	260651	.....do.....	Do.
Vicksburg, village of Kalamazoo County.....	260578	.....do.....	Do.
Minnesota:			
Crosslake, city of Crow Wing County.....	270095	.....do.....	Do.
Wisconsin:			
Dodgeville, city of Iowa County.....	550177	.....do.....	Do.
Lake Mills, city of Jefferson County.....	550195	.....do.....	Do.
Luck, village of Polk County.....	550335	.....do.....	Do.
Region VII			
Iowa:			
Centerville, city of Appanoose County.....	190009	.....do.....	Do.
Region II: Minimal Conversions			
New York:			
Schenevus, village of Otsego County.....	361359	Aug. 1, 1987, suspension withdrawn.....	Aug. 1, 1987.
Schoharie, village of Schoharie County.....	361061	.....do.....	Do.
Stamford, village of Delaware County.....	360213	.....do.....	Do.
Region III			
Pennsylvania:			
Annin, township of, McKean County.....	421850	.....do.....	Do.
Cherry, township of, Sullivan County.....	422058	.....do.....	Do.
Forkston, township of, Wyoming County.....	422199	.....do.....	Do.
North Branch, township of, Wyoming County.....	422203	.....do.....	Do.
Roseville, borough of Tioga County.....	420826	.....do.....	Do.
Shrewsbury, township of Sullivan County.....	422066	.....do.....	Do.
West Hemlock, township of Montour County.....	421925	.....do.....	Do.
West Virginia:			
Albright, town of Preston County.....	540161	.....do.....	Do.
Hendricks, town of Tucker County.....	540193	.....do.....	Do.
Region IV			
Alabama:			
Pike County, unincorporated areas.....	010286	.....do.....	Do.
Sumter County, unincorporated areas.....	010194	.....do.....	Do.
Washington County, unincorporated areas.....	010302	.....do.....	Do.
Florida: Bonifay, city of Holmes County.....	120116	.....do.....	Do.
Kentucky: Bath County, unincorporated areas.....	210008	.....do.....	Do.
North Carolina: Conway, town of Northampton County.....	370174	.....do.....	Do.
Region V			
Indiana: Petersburg, city of Pike County.....	180199	.....do.....	Do.
Ohio:			
Hicksville, village of Defiance County.....	390145	.....do.....	Do.
Huron County, unincorporated areas.....	390770	.....do.....	Do.
Loudonville, village of Ashland and Holmes Counties.....	390009	.....do.....	Do.
Monroeville, village of Huron County.....	390283	.....do.....	Do.
Ottoville, village of Putnam County.....	390473	.....do.....	Do.
Roswell, village of Tuscarawas County.....	390813	.....do.....	Do.
Smithville, village of Wayne County.....	390629	.....do.....	Do.
Region VI			
Louisiana: Richland Parish, unincorporated areas.....	220154	.....do.....	Do.
New Mexico: Otero County, unincorporated areas.....	350044	.....do.....	Do.
Texas:			
Anthony, town of El Paso County.....	480804	.....do.....	Do.
Blum, city of Hill County.....	480350	.....do.....	Do.
Bosque County, unincorporated areas.....	480051	.....do.....	Do.
Childress, city of Childress County.....	480125	.....do.....	Do.
Eastland, city of Eastland County.....	480204	.....do.....	Do.
Le Flors, city of Gray County.....	480256	.....do.....	Do.
Meridian, city of Bosque County.....	480053	.....do.....	Do.
Seminole, city of Gaines County.....	480240	.....do.....	Do.
Toyah, city of Reeves County.....	480539	.....do.....	Do.
Region VII			
Kansas: Garnett, city of Anderson County.....	200005	.....do.....	Do.
Missouri: Elvins, city of St. Francois County.....	290322	.....do.....	Do.
Region IV: Minimal Conversions			
Florida: Century, city of Escambia County.....	120084	August 4, 1987; suspension withdrawn.....	Aug. 4, 1987.
North Carolina: Henderson, city of Vance County.....	370367	.....do.....	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Tennessee: Portland, city of Sumner County.....	470187	.....do.....	Do.
Region V			
Illinois: South Jacksonville, village of Morgan County.....	170519	.....do.....	Do.
Ohio: Russells Point, village of Logan County.....	390342	.....do.....	Do.
Region VII			
Iowa: Carlisle, city of Warren and Polk Counties.....	190103	.....do.....	Do.
Missouri: Warsaw, city of Benton County.....	290030	.....do.....	Do.
Region IV—Minimal Conversions			
Kentucky: Fleming-Neon, city of, Letcher County.....	210139	August 19, 1987, suspension withdrawn.....	Aug. 19, 1987.
North Carolina: Williamston, town of, Martin County.....	370157	.....do.....	Do.
Region V			
Illinois:			
Carterville, city of, Williamson County.....	170716	.....do.....	Do.
Christopher, city of, Franklin County.....	170238	.....do.....	Do.
Forreston, village of, Ogle County.....	170527	.....do.....	Do.
Michigan: Fredonia, township of, Calhoun County.....	260562	.....do.....	Do.
Minnesota:			
Pope County unincorporated areas.....	270368	.....do.....	Do.
Traverse County unincorporated areas.....	270621	.....do.....	Do.
Ohio:			
Dellroy, village of, Carroll County.....	390049	.....do.....	Do.
Dexter City, village of, Noble County.....	390431	.....do.....	Do.
Hemlock, village of Perry County.....	390708	.....do.....	Do.
Leontonia, village of, Columbiana County.....	390084	.....do.....	Do.
Mount Gilead, village of, Morrow County.....	390424	.....do.....	Do.
Region VII			
Iowa: Anamosa, city of, Jones County.....	190174	.....do.....	Do.
Nebraska: Brock, village of, Nemaha County.....	310155	.....do.....	Do.

* Minimal conversions.

Note.—The City of South Flomaton, Florida (No. 120084) has recently changed their name to the City of Century, Florida. The City of South Flomaton should be deleted from the Eligibility Status Book as a separate entry. The City of Century should be listed with the footnote "formerly the City of South Flomaton". Note that the City of Century is in the conversion process and is scheduled to convert to the Regular Program on August 4, 1987 provided appropriate ordinances are adopted by then.

The City of Ward Ridge (Gulf County), Florida has merged into the City of Port St. Joe. Therefore, the City of Ward Ridge should be deleted from all records as a separate entity. The community number for Ward Ridge is 120622. The City of Port St. Joe has been participating in the Regular Program since June 15, 1983. The City of Port St. Joe's Community number is 120099. The Regular Program conversion scheduled for Ward Ridge on August 4, 1987, should be suspended.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
 Administrator, Federal Insurance
 Administration.
 [FR Doc. 87-2275 Filed 10-1-87; 8:45 am]
 BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 70885-7202]

Pacific Halibut Fisheries

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

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to allow full harvest, within conservation constraints, of available Pacific halibut stocks in the northern Pacific Ocean.

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in

Charge, Law Enforcement, Alaska Region, NMFS, P.O. Box 02-1668, Juneau, AK 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206-624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (signed at Ottawa Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. These regulations have been approved by the Secretary of State of the United States. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of their restrictions and requirements.

The current IPHC regulations (52 FR 16268, May 4, 1987), are amended by establishing a catch limit of 20,000 pounds per vessel for the 24-hour fishing period commencing noon ADT

September 30, 1987, in Regulatory Area 3A and Regulatory Area 3B.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: September 28, 1987.

Bill Powell,
 Executive Director, National Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

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

Authority: 5 U.S.T. 5; T.I.A.S. 2900, 16 U.S.C. 773-773k.

2. Section 301.9 is amended by adding paragraph (c) to read as follows:

§ 301.9 Trip limits.

* * * * *

(c) Vessels fishing in Regulatory Area 3A of Regulatory Area 3B during the fishing period commencing September 30, 1987 shall be limited to a maximum catch of 20,000 pounds (9.07 mt) of halibut.

[FR Doc. 87-22766 Filed 9-29-87; 1:04 pm]
BILLING CODE 3510-22-M

50 CFR Part 654

[Docket No. 70995-7195]

Stone Crab Fishery of the Gulf of Mexico

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment revising the definition of stone crab to conform to the recent taxonomic description of a previously unrecognized species and a hybrid. The recognition of this new species and hybrid does not alter any other aspects of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). The intent of this rule is to broaden the definition of stone crab to recognize that two species and their congeneric hybrid now occupy the management area instead of one species as originally believed, thereby closing a potential avenue for evasion of the regulations.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The stone crab fishery is managed under the FMP its implementing regulations at 50 CFR Part 654. At the time the FMP was prepared, fishery scientists recognized a

single species of stone crab, *Menippe mercenaria*, occurring in the Gulf of Mexico and in the area managed under the FMP, i.e., the exclusive economic zone seaward of the west coast of Florida and the Florida Keys. It is the intent of the FMP to manage all stone crabs taken in that management area. Recently, taxonomists described a second species of stone crab, *M. adina*, from the northern and western Gulf and ranging into northwest Florida (Williams, A. B., and D. L. Felder, 1986. Analysis of stone crabs: *Menippe mercenaria* (Say), restricted, and a previously unrecognized species described (Decapoda: Xanthidae). Proc. Biol. Soc. Wash. 99: 517-543). The two species overlap in the Apalachee Bay region of Florida and hybridize. Consequently, the Gulf stone crab population that is managed under the FMP and described there as a single species is now identified as comprising two species and a hybrid: *Menippe mercenaria*; *M. adina*; and *M. adina X M. mercenaria*. Distinguishing characteristics are coloration, carapace morphometry, and differences in striation patterns and teeth on the claws. The differences are subtle and superficial; therefore, the recognition of this additional species and hybrid does not alter the intent of the FMP to manage all stone crabs found in the management area, the definition of optimum yield, or any of the management measures designed to achieve optimum yield from the fishery.

Accordingly, in order to maintain technical consistency between the intent of the FMP and the text of its implementing regulations, § 654.2 is revised to expand the definition of stone crab to include *Menippe adina* and the hybrid *M. adina X M. mercenaria*. This will ensure continued enforcement of all management measures with respect to

all stone crabs in the management area, as the FMP intends.

Other Matters

This action is taken under the authority of the FMP and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, has determined that it is unnecessary to provide for prior public comment on this rule or to delay for 30 days its effective date. Prior public comment and delay of the effective date are unnecessary because this final rule merely corrects the definition section's scientific description of the population managed under the FMP to incorporate the latest scientific understanding of the composition of that population; it does not increase the population under management, nor have any effect on any fishing practice.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: September 28, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 654 is amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 654 continues to read as follows:

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

2. In § 654.2, the definition for *Stone Crabs* is revised to read as follows:

§ 654.2 Definitions.

* * * * *

Stone crab means *Menippe mercenaria*, *M. adina*, or the hybrid, *M. adina X M. mercenaria*.

* * * * *

[FR Doc. 87-22765 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 52, No. 191

Friday, October 2, 1987

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Basic Quality Assurance in Radiation Therapy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the medical use of byproduct material to require its medical licensees to implement certain quality assurance steps that will reduce the chance of therapy misadministrations. This proposed action is necessary to provide better patient safety and a basis for enforcement action in cases of therapy misadministration. The amendment is intended to reduce the chance and severity of therapy misadministrations. The proposed regulations would primarily affect hospitals, clinics, and individual physicians. In an advance notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*, the NRC is also requesting comments on the need for a comprehensive quality assurance program requirement.

Comments: Comments must be received by December 1, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of the regulatory analysis and the comments received on this rule may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of the regulatory analysis are available from

Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4108.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4108.

SUPPLEMENTARY INFORMATION:

I. Byproduct Material in Medicine

Use for Patient Care

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. An estimated 10 million diagnostic nuclear medicine procedures are performed in this country annually. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat hyperactive thyroid conditions and certain forms of cancer. An estimated 30,000 procedures are performed each year.

Sealed radioactive sources that produce high radiation fields are used in radiation therapy primarily to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body to be treated. An estimated 100,000 patients receive cobalt-60 teletherapy treatments from NRC and Agreement State licensees each year. Smaller sealed sources with less radioactivity are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. Licensees perform approximately 50,000 brachytherapy treatments annually.

Sealed radioactive sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects

the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

State and Federal Regulation

Many states, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the medical use of byproduct material, and currently regulate about 5,000 licensees. In non-Agreement States, the NRC has licensed 2,200 medical institutions (mostly hospitals and clinics) and 300 physicians in private practice. These licenses authorize certain diagnostic and therapeutic uses of radioactive materials.

II. NRC's Regulatory Program

NRC's Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.
2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.
3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

NRC's Responsibilities in the Medical Use of Byproduct Material

The NRC draws a line between the unavoidable risks attendant to purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless use of byproduct material in medicine. The NRC is obliged, as part of its public health and safety charge, to establish and enforce regulations that protect the public from the latter.

Reports of Misadministrations in Radiation Therapy

The NRC has published a study of the twenty-seven therapy misadministrations that were reported over the period November 1980 through July 1984.¹ The following NRC analysis of these events provides the basis for determining that a need exists for this rulemaking.

The specific causes of the misadministrations, detailed in Table 1, are, of course, related to the treatment modality. Nonetheless, three basic themes run through the reports: inadequate training, inattention to detail, and lack of redundancy.

Table 1.—Therapy misadministrations reported to NRC from November 1980 to July 1984

Teletherapy

Prescription

Total daily dose was delivered from each port (2) *

Oral and written prescriptions were different (1)

Boost dose of 500 rad/3 da was interpreted as 500 rad x 3 da (1)

Proper body side was not clear (1)

Treatment planning

Tumor depth was incorrectly measured (1)

Tumor depth was incorrectly recorded (1)

Dosimetrist used wrong computer program (1)

Dosimetry tables for wrong unit were used (1)

Arithmetic mistakes were made (3)

Records

Arithmetic mistakes were made (1)

Poor handwriting of numerals caused misunderstanding (1)

Physical measurements

Wedge factors were measured incorrectly (1-53 patients affected)

Application

Field blocks were not used (1)

Brachytherapy

Treatment planning

Dose rate was much higher than first estimated (1)

Application

Wrong sources were loaded in applicator (2)

Source fell out of applicator (1)

Source was improperly seated in applicator (1)

Radiopharmaceutical Therapy

Wrong Radiopharmaceutical was administered (2)

Assay date on unit dosage was not read (3)

Patient was improperly identified (1)

Improved training of medical personnel who handle and administer byproduct material can reduce the potential for error. Thorough training should also clearly impress on each individual involved in the medical use of byproduct material that a clear communication of concepts and quantities as well as systematic checks for revealing mistakes early in the process are both essential for the delivery of quality care. All information integral to the process, whether specific to the patient or to the clinic, should be carefully examined for clarity, applicability, and correctness. Each individual involved in the process should be strongly encouraged to ask for clarification if there is any unclear or unexpected step or if an expected step is missing.

Inattention to detail is often the medium in which a misadministration event germinates. NRC recognizes that this problem is not specific to the medical use of byproduct material. Computerized radiation therapy treatment planning may reduce the chance of mistakes in sealed source treatment planning, and "record and verify" systems that check teletherapy unit orientations and settings may reduce the chance of mistakes in teletherapy administration. But even these systems must ultimately rely on quantities that are initially measured, recorded, and entered into memory by individuals.

Lack of redundancy means that there exist no independent mechanism for detecting errors. An independent verification requires examination by a second individual of each data entry, whether a physical measurement or a number copied from a table of values, as well as a check of arithmetic operations for correctness. Redundancy requires that two separate systems produce the same result. For purposes of planning radiation therapy, the best method of early detection of mistakes may be a

simple independent check. Independent verification may also need to be incorporated into procedures for measuring radiation parameters, using those measurements for treatment planning, and applying radiation to patients. In radiation therapy or any other endeavor, an independent outside auditor can detect mistakes in both process design and process application as well as cite where a change in the process might reduce the chance for future error.

These observations have led the NRC to some general conclusions regarding quality assurance.

The radiation therapy process should be planned with the realization that individuals are likely to make mistakes. Some simple aids may include using tables and graphs that are clearly titled and easy to read, and use of a uniform written prescription format. NRC inspections have revealed that about ten percent of teletherapy unit calibrations and spot-checks are incomplete. Checklists could be used to assure completeness.

Independent verification must be made integral to the design of the radiation therapy process. All entries and calculations in a treatment plan should be checked by an individual who did not construct the treatment plan. Each patient's chart should be reviewed weekly to check for accumulated dose and implementation of prescription changes. A quality assurance program for the teletherapy unit should include a periodic check of the teletherapy unit output and an occasional detailed examination of the complete teletherapy process, including physical measurements, by an outside expert with an eye towards systematic errors and system improvements.

A program that requires a physical measurement of the dose or amount of radioactivity actually administered to the individual patient would provide assurance that the given dose is the same as the prescribed dose. Such measurements are now done for radiopharmaceutical therapy and occasionally for some teletherapy cases, but because of expense or unavailability of equipment are not commonplace in sealed source therapy.

Reports of Diagnostic Misadministrations That Result in Doses in the Therapy Range

The NRC has also published a report on misadministrations of diagnostic dosages of iodine-131 that lead to doses in the therapy range.² The report was a

¹ For a copy of this report, write to Kathleen M. Black, Office for Analysis and Evaluation of Operational Data, Nuclear Regulatory Commission, Washington, DC 20555. Ask for report AEOD/C505.

* Numbers in parentheses indicate number of events of the type described.

² For a single copy, submit a request for report number AEOD/N701 to the address in footnote 1.

review of fourteen recent misadministration events in which patients were administered one to ten millicuries of iodine-131 with a resulting thyroid dose of several thousand rads. Many of the events demonstrated that the physician authorized user failed to review the medical history of the referred patient to determine the suitability of a particular clinical procedure. In many cases the referring physician, who is not a nuclear medicine expert, and the nuclear medicine technologist, who is not a medical expert, determine which radiopharmaceutical should be administered. Furthermore, in some events technologists unfamiliar with the clinical procedure prescribed by the authorized user mistakenly administered a dosage that was not requested. It is apparent, therefore, that whenever radiopharmaceuticals capable of producing therapy doses are used, clear nomenclature, independent verification, and adequate training are essential.

Earlier NRC Efforts

This is not the first time the NRC has examined the matter of quality assurance in the medical use of byproduct material. In 1979 the NRC issued some basic quality assurance requirements for teletherapy (see 44 FR 1722, published January 8, 1979). This rulemaking was precipitated by the inaction of a single licensee. The output of a teletherapy unit was incorrectly calculated and the licensee made no physical measurements to determine whether the calculation was correct. This inaction resulted in cobalt-60 teletherapy being misadministered to 400 patients. The 1979 rule addressed the circumstances surrounding that event but did not critically examine the entire radiation therapy process.

Voluntary Initiatives

The Commission is aware of voluntary initiatives to improve quality assurance. A notable example is the Patterns of Care study managed by the American College of Radiology. In addition to comparing prescriptions, methods of applying radiation, and survival rates for certain diseases at various therapy facilities across the nation, methods of calculating and measuring applied dose rates are examined for accuracy. Such an examination can detect whatever procedural flaws may be present as well as determine the precision and accuracy of day-to-day service.

It is NRC's position that voluntary programs alone may not provide adequate assurance of public health and

safety. Serious misadministrations continue to occur. The NRC would be remiss in its responsibilities were it to fail to examine thoroughly all avenues available to reduce unnecessary exposure from licensed material.

Summary

The NRC believes many misadministrations could reasonably be avoided if certain basic quality assurance steps were included in the radiation therapy process.

Other Actions

The NRC recognizes that the medical use of byproduct material is a complex field, and that preparing regulations to reduce the likelihood of misadministrations must be done carefully. However, the NRC cannot allow the complexity of medical use to prevent it from taking regulatory action when patients are harmed by the incorrect application of byproduct material. The NRC has balanced these competing desiderata by preparing two rulemaking actions for contemporary publication.

This Notice of Proposed Rulemaking (NRC) will provide the foundation for a basic quality assurance program that addresses some simple sources of error that have come to light under NRC's misadministration reporting program. Elsewhere in this issue of the *Federal Register*, the NRC has published an Advance Notice of Proposed Rulemaking (ANPR) that provides the foundation for a comprehensive quality assurance program requirement that addresses broad areas where error can lead to a misadministration.

The NRC believes this two-pronged approach to the problem of misadministrations provides the best balance between the need to assure public health and safety without inadvertently interfering in the delivery of quality medical care.

III. Discussion of Proposed Regulatory Text

The NRC staff has examined literature on the radiation therapy process and consulted with experts practicing in the field of radiation therapy to discuss these quality assurance steps. The NRC believes that the following steps are basic to the radiation therapy process. The regulations that would require implementation of these steps will provide guidance for improved patient safety and will also provide a basis for NRC enforcement action should these steps not be followed.

Section 35.2 Definitions.

The NRC has added several definitions to the regulations to ensure that the regulatory requirements are clear. The definitions are intended to be similar to those already in use in radiation therapy.

Section 35.39 Ordering, prescribing, and administering certain radiopharmaceuticals.

There have been a number of misadministrations in which an unclear oral prescription by the authorized user resulted in the licensee ordering the wrong radiopharmaceutical. Confusing colloidal and soluble phosphorus-32 is a common mistake. The NRC is particularly concerned with the medical use of iodine-131 because of the high thyroid dose that results when a patient with a normal thyroid is misadministered an iodine-131 dosage intended for a patient whose thyroid has been removed.

These misadministrations appear to be precipitated by unclear instructions. This section would require close participation of the nuclear medicine physician in those cases involving the use of radio-pharmaceuticals that are clearly hazardous to the patient if misadministered.

In drafting this section the Commission considered applying these requirements to all licensees when using any diagnostic radiopharmaceutical. For the following reasons the scope of the section was limited to therapy radiopharmaceuticals and radiopharmaceuticals of iodine.

There is a clear history of misadministration of these two groups of radiopharmaceuticals, and medical experts generally agree that there is clear potential for harm to patients that receive these misadministrations. For the other radiopharmaceuticals identified in 35.100 and 35.200, the record shows that most misadministrations involve either the conventional administration of a radiopharmaceutical to the wrong patient, or the conventional administration of the wrong radiopharmaceutical to the patient (see "NCR Reports on Misadministrations and Unannounced Safety Inspections," *Journal of Nuclear Medicine*, v27, n7, p1102, July 1986). Neither of these types of misadministration pose a clear hazard to the patient. To misadminister a diagnostic radiopharmaceutical other than iodine in a manner that would pose a hazard to the patient would, in the most likely circumstance, require administration of at least a full day's

inventory of the radiopharmaceutical to the patient.

However, the absence of additional quality assurance requirements for diagnostic radiopharmaceuticals other than iodine should not be interpreted as Commission lack of interest in this matter. The Commission would appreciate public comment on how it might address future diagnostic applications of radioisotopes which, if misadministered, could produce doses in the therapy range.

Section 35.43 Prescriptions and records of medical use for therapy.

The NRC has received one therapy misadministration report in which radiation was administered to a patient who had not been referred for medical use of byproduct material. The NRC believes that a physician with special training and experience is needed to consult with the primary care physician in cases of referral, and make a determination that a clinical procedure that requires radiation dose to the patient is indicated.

When a decision has been made to treat a patient for any malady, whether with radiation, surgery, or drugs, a physician makes a patient chart that includes information about the care provided for the patient. The chart is made for medical and legal reasons. All charts contain the patient's name, the results of laboratory tests and physical examinations, a statement of diagnosis, and a prescription. Charts for teletherapy patients usually include: (1) Photographs of the patient's face and the treatment area; (2) the treatment plan (which is comprised of: (a) Diagrams of physical measurements of the patient, portal arrangements used to administer the radiation dose, and devices used to modify the radiation beam, (b) calculations made to determine how long the beam must be applied each day to deliver the prescribed dose, and (c) the number of days radiation is to be administered); (3) a record of each daily application of radiation made at the time of application; and (4) records of any physical measurements of radiation or portal verification films made specifically for the patient. Charts for brachytherapy patients include the same type of information, but the diagrams and calculations refer to implanted radiation sources rather than externally applied radiation beams. Each entry in a chart is dated and signed or initialed.

The NRC considered preparing prescriptive recordkeeping requirements for the application of therapeutic amounts of radiation, but believes that the patient charts and calibration records that licensees make and retain

usually contain the information needed to demonstrate that the licensee has implemented a quality assurance program. However, the NRC would appreciate public comment on this matter.

Several therapy misadministrations have been precipitated by unclear prescriptions. In radiation therapy, a different dose is prescribed for each patient, depending on the type and extent of the malady. Therefore, requiring a legible handwritten or typed prescription on the patient's chart appears to be the most efficient way of ensuring clear communication between the prescribing physician and the dosimetrist who makes the calculations to determine how long radiation must be applied to deliver the prescribed dose.

The NRC believes that it is possible that some dosimetrists or technologists may be disinclined to request clarification of instructions and this may lead to misadministrations. Therefore, the NRC would require licensees to specifically instruct workers to request clarification in cases where there may be ambiguity or error.

The NRC is considering prescribing what documentation is needed to demonstrate that an independent check of data transfers and calculations had been made. The NRC has not included such a requirement in the proposed rule, but would appreciate comment on this matter.

Section 35.65 Discrepancies in records and observations.

On occasion licensees have complied with required safety measures, such as performing surveys, yet not taken mitigating or corrective actions that the NRC believes were obviously necessary to assure public health and safety. The purpose of this section is to clearly require licensees to resolve discrepancies in records and observations.

The NRC foresees the possibility of many kinds of discrepancies. The licensee's measurement of the source strength of a brachytherapy source may differ from the manufacturer's reported source strength. A thin patient may present a surface lesion, yet the patient's record may refer to a deep-seated lesion with extensive overlying tissue. A post-mastectomy patient may be referred for a prophylactic treatment with no clear statement prescribing whether the tissue surrounding the site of surgery or the remaining breast tissue is to be treated. The prescription in the chart may not be in accord with the prescription agreed to by the physician, physicist, technologist, and dosimetrist during a treatment planning meeting.

Daily tallies of administered dose may not agree with projections made by multiplying the daily dose by the number of treatment days.

If, when faced with an obvious discrepancy, a licensee, physician, physicist, technologist, dosimetrist or other individual fails to take reasonable clarifying, mitigating, or corrective action and the discrepancy results in a misadministration, then a citation will issue under this section.

Section 35.432 Source strength measurements.

The radiation dose rate from a sealed source, which is known as source strength, depends on the amount of radioactivity in the source and the material used to encapsulate it. (See National Council on Radiation Protection and Measurements Report Number 41, "Specification of Gamma-Ray Brachytherapy Sources," Chapter 4.)³ Manufacturers usually provide source strength information with sources, but the NRC believes that an independent measurement is needed to ensure that the information relates specifically to the source under consideration.

However, the NRC would not require licensees to use these measurements in dose calculations. In some cases, manufacturers are able to provide more accurate measurements of source strength than licensees; the licensee must be free to use the source strength that it believes is the most accurate.

Sections 35.452 and 35.652 Physical measurements of patients.

The NRC knows that dose rates depend to some extent on the tissue volume to be treated and its depth within the patient. These parameters may be determined by physical examination or examination of images such as radiographs, or images from computerized tomography, ultrasound, nuclear medicine, or nuclear magnetic resonance. The NRC considered requiring that two individuals independently make the physical measurements of the patient that are needed for dosimetry purposes, and believes that such a requirement may reduce the chance of misadministrations. The NRC would like comment on this matter.

³ Copies of this report may be purchased by contacting NCRP Publications, P.O. Box 30175, Washington, DC 20014.

Section 35.454 Check of dose calculations, and § 35.654 Checks and measurements of dose.

Dose calculations are made for each teletherapy and brachytherapy patient before radiation is administered to determine how long the source must be used to deliver the prescribed radiation dose to the treatment volume. Several therapy misadministrations have been precipitated by arithmetic mistakes or incorrect assumptions in dose calculations. An independent check will likely uncover many of these mistakes.

Ideally, teletherapy dose calculations should be checked before radiation is administered, and the NRC expects that most licensees already do this. However, a second person may not always be available to check the dose calculations before therapy begins. The NRC believes that requiring the check to be made before 20 percent of the dose has been administered provides a proper balance between patient safety and administrative flexibility for the licensee.

For most brachytherapy cases, final dose calculations cannot be performed until the sources are implanted in the patient because the exact location of the sources with respect to certain tissues cannot be predetermined. Brachytherapy sources are typically left in place for two to three days. Thus, a 20 percent criterion may be difficult to meet in many cases, because the check would have to be made within hours after the sources are implanted. Thus, the NRC has selected a dose calculation check criterion of 50 percent.

Public comments are invited on the workability of these 20 percent and 50 percent criteria.

There are two usual methods for performing checks of manual dose calculation. Two individuals may independently calculate treatment times and compare results. Alternatively, one individual may make the calculation and then a second individual can examine each entry and arithmetic operation to verify its accuracy.

The NRC considered requiring that licensees perform a manual check of the dose to a single point in the treatment volume predicted by computer-generated dose calculations. However, checks of computer-generated dose calculations pose difficult problems. It is not clear whether nomograms or manual algorithms are available that can be used to check the accuracy of computer-generated dose calculations. Many computer programs that are used contain steps for calculating the effect on the dose caused by tissue density differences, organ and tissue contours,

and radiation field contours. The NRC believes that a manual check of a computer calculation with that many physical correction factors may be beyond the reasonably expected means of many licensees, and may adversely affect the delivery of medical care. Therefore, the NRC has only drafted a requirement that a second individual assure that the correct parameters, such as radionuclide, dose, and physical measurements of patients, were used in the computer-generated dose calculation printout to information in the patient's chart, and examining each relevant piece of information on the calculation printout.

The NRC would appreciate comments on the best method for documenting that these checks have been made.

Regarding the concept of "independent check," the NRC would particularly appreciate comments on whether a second individual should begin with only the prescription, independently calculate the dosimetry and treatment plan, and then compare those results with those of the first individual.

In teletherapy, the arithmetic that sums the daily administration of radiation must also be checked. Radiation is usually administered in daily doses over several days or weeks and each dose is recorded in the patient's chart. A weekly check will assure the daily doses have been summed correctly. In contrast, brachytherapy is administered continuously until the prescribed dose has been given; thus, there is no need for a comparable requirement.

One recent teletherapy misadministration occurred in a case in which an unusual treatment configuration of the teletherapy unit, the beam collimators, and the patient was required. Whereas an arithmetic mistake would likely be obvious in a commonly used configuration because certain calculated values for patients usually fall within small ranges, an unexpected treatment time in an uncommon configuration would likely be attributed to the uncommonness of the configuration rather than triggering an examination of calculations for a dosimetry mistake. Therefore, the NRC believes that a physical measurement of the dose rate should be made if the teletherapy unit settings or beam modifying devices used for a patient fall outside the ranges examined during the last set of full calibration measurements.

The NRC considered requiring physical measurements for brachytherapy but believes the methodology (comprised of a comparison of calculated and measured dose rates)

that is needed to make such measurements has not been fully developed. The NRC also considered requiring that two individuals verify that the correct sources were being implanted. This would clearly add to workers' radiation dose, but it is not clear that this would reduce the number of brachytherapy misadministrations.

The NRC knows that some treatments must be administered within hours after a decision has been made to administer radiation therapy. These cases usually involve compression of the spinal cord or superior vena cava, respiratory distress, brain metastases, or severe vaginal bleeding. In such cases, it may not be possible for the licensee to perform an independent check of calculations.

The NRC believes the prescribing physician is best situated to determine whether the time needed to make normal quality assurance checks might jeopardize the patient's health. This provision is not intended to give licensees a basis for not providing the required quality assurance steps in a timely fashion.

Section 35.632 Full calibration measurements.

In one misadministration event, 53 patients received doses of radiation different from the doses that were prescribed because to mistake was made when measuring the effect of certain beam modifying devices on the teletherapy unit output. The NRC believes the revalidation of the effect of these devices on the output is just as important as the annual full calibration itself.

Section 35.633 Independent check of full calibration measurements.

All teletherapy dose calculations are based on the output of the teletherapy unit, which is measured each year as part of the full calibration. If a mistake were made in that measurement, all dose calculations would be incorrect. Therefore, the NRC believes there should be an independent check of the output that we determined during the full calibration. The check should be made by a teletherapy physicist because that individual has special training and experience in the measurement of therapeutic radiation.

The check should be made using a measuring system other than the system used in the full calibration. This will better assure that any mistake made in the methodology or the calibration of dosimetry equipment will not go unnoticed. (The term "measuring system" is used in a broad sense here to

mean not just the dosimetry equipment, but the personnel, records, site-specific methodology, and even origin of dosimetry equipment calibration when possible. However, the NRC is not certain that this would be available to all licensees and requests comment on this matter.) The device used to make the output measurement could be one described in § 35.630 "Dosimetry equipment." Alternatively, it could be made using a specialized dosimetry service available by mail. Some organizations supply licensees with precisely calibrated thermoluminescent dosimeters within a device made of "tissue-equivalent" material. The licensee irradiates the device, calculates the given dose, and returns the dosimeters to the organization by mail. By processing the thermoluminescent dosimeters, the organization can measure the given dose and compare that measure to the calculated given dose. This provides assurance that the output has been correctly measured.

IV. Administrative Statements

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) and (c)(14). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150-0010.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies may be obtained from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT" heading).

Regulatory Flexibility Certification

Based on the information available to date, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial

number of small entities. The NRC has issued approximately 2,500 medical licenses under 10 CFR Part 35. Of these, approximately 2,200 are held by institutions, and approximately 300 physicians in private practice. Most of the institutional licensees are community hospitals. The size standards adopted by the NRC (50 FR 50241, December 9, 1985) classify a hospital as a small entity if its average gross annual receipts do not exceed \$3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts do not exceed \$1 million. Under these size standards, some NRC medical licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act.

The number of medical licensees that would fall into the small entity category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The primary objective of the rule is to require licensees that provide radiation therapy service to implement certain quality assurance steps that will reduce the chance of therapy misadministrations. The NRC believes that most licensees already perform these steps in order to assure the provision of quality medical care. Therefore, there should not be a significant economic impact on these small entities.

The Commission has prepared a preliminary regulatory analysis for this regulation which contains information concerning the anticipated economic effect of this regulation on licensees and presents the basis for the Commission's belief that the regulation will not result in significant additional costs to any licensees. It is available for public inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies are available from Mr. McElroy.

Because of the widely differing conditions under which licensees covered by this proposed regulation operate, the Commission specifically seeks public comment from small entities. Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates: (1) The licensee's size in terms of annual income or revenue, number of employees and, if the licensee is a treatment center, the number of beds and patients treated annually; (2) how the regulation would result in a significant economic burden on the licensee as compared to that on a large licensee; (3) how the regulations could be modified to take into account

the licensee's differing needs or capabilities; (4) the benefits that would be gained or the detriments that would be avoided to the licensee, if the regulations were modified as suggested by the Commenter; and (5) how the regulation, as modified, would still adequately protect public health and safety. The Commission is particularly interested in comments on whether individuals with special training and experience (such as treatment technologists, dosimetrists, and radiation therapy physicists) are readily available in the marketplace, either as full-time employees or as a contract service.

Backfit Analysis

The staff has determined that a backfit analysis is not required for this rule because these amendments do not apply to 10 CFR Part 50 licensees.

V. List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

VI. Text of Proposed Regulations

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1954, as amended, and 5 U.S.C. 553 the NRC is proposing to adopt the following amendments to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.39, 35.43, 35.49, 35.50(a)-(d), 35.51(a)-(c), 35.53 (a) and (b), 35.59 (a)-(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70(a)-(f), 35.75, 35.80(a)-(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204 (a) and (b), 35.205, 35.220, 35.302, 35.310(a), 35.315, 35.320, 35.400, 35.404(a) 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.432, 35.454, 35.500, 35.520, 35.605, 35.608, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632(a)-(f), 35.633, 35.634(a)-(i), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.654, 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b., 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.33(a)-(d), 35.36(b),

35.39, 35.43 (b) and (d), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(j), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In Subpart A—General Information, § 35.2, the following terms are added in alphabetical order:

§ 35.2 Definitions.

* * * * *

"Beam modifying devices" means items such as trays, wedges, compensators, boluses, and blocks that are used to change the radiation dose profile within the patient.

* * * * *

"Computer-generated dose calculation" means a dose calculation that has been made by a computer program with no human action necessary other than the input of patient data, selection of a certain computer program, and the instruction to the computer to begin calculation.

* * * * *

"Manual dose calculation" means a calculation made by an individual using patient data, tabulated data or graphs, nomograms, and a calculator that was not specifically designed or programmed for radiation therapy calculations.

* * * * *

"Patient chart" means a record of the diagnosis and radiation treatment applied to a patient. It may be part of the hospital admission chart prepared for each patient and kept with the patient, or a chart prepared primarily as a result of radiation treatment and kept in the clinic.

* * * * *

"Prescription" means the written instruction to make medical use of byproduct material for the benefit of a specific patient.

* * * * *

"Source strength" means the exposure rate at a specified distance from a source (usually expressed as roentgens per hour at one meter), the amount of radioactivity in source (usually expressed as millicuries), or the amount of a different radionuclide that produces the same dose rate (usually expressed as milligrams of radium equivalent).

* * * * *

3. In Subpart B—General Administrative Requirements, § 35.39 is added to read as follows:

§ 35.39 Ordering, prescribing, and administering certain radiopharmaceuticals.

(a) A license may not order any radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without the approval of the authorized user.

(b) A physician may not prescribe administration of a radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without personally examining the patient and the patient's chart, and consulting with the referring physician if reasonably available. Prescriptions for these byproduct materials must be in writing, and must include the patient's name, the radiopharmaceutical, dosage, and route of administration.

(c) A licensee may not administer a radiopharmaceutical of iodine for diagnosis or therapy or any radiopharmaceutical for therapy without comparing the radiopharmaceutical label and dosage on hand with the physician's prescription.

4. In Subpart B—General Administrative Requirements, § 35.43 is added to read as follows:

§ 35.43 Prescriptions, records, and checks of medical use for therapy.

(a) The authorized user or a physician under supervision of the authorized user shall ensure that, if there is a primary care physician, the patient has been referred for a therapeutic clinical procedure that requires the medical use of byproduct material.

(b) Before beginning a patient's treatment, the licensee shall verify that the authorized user or a physician working under supervision of the authorized user has personally made, dated, and signed a written prescription in the patient's chart that identifies the body part to be treated. Any change in the prescription must also be made in writing in the patient's chart, and must be dated and signed.

(1) For radiopharmaceutical therapy, the prescription must also identify the radiopharmaceutical, the amount of activity to be administered, and the route of administration.

(2) For brachytherapy, the prescription must also identify the sources of radiation and the total tumor dose.

(3) For teletherapy, the prescription must also identify the teletherapy unit to be used, the prescribed dose, and the treatment plan.

(c) Prescriptions and other records made regarding the medical use of byproduct material must be legible and unambiguous.

(d) The licensee shall instruct all workers involved in the radiation

therapy process orally and in writing to request clarification from the prescribing physician if any element of a prescription or other record is unclear, ambiguous, or apparently erroneous.

5. In Subpart C—General Technical Requirements, § 35.65 is added to read as follows:

§ 35.65 Discrepancies in records and observations.

A licensee may not use byproduct material for medical use on a patient if there is a discrepancy in records, observations, or physical measurements that may result in a misadministration. A licensee may resume use after resolving the discrepancy.

6. In Subpart F—Radiopharmaceuticals for Therapy, § 35.302 is added to read as follows:

§ 35.302 Administration of radiopharmaceutical dosages.

A licensee shall verify that the prescribed radiopharmaceutical is being administered by comparing the written prescription and the container label.

7. In Subpart G—Sources for Brachytherapy, § 35.432 is added to read as follows:

§ 35.432 Source strength measurements.

(a) A licensee shall measure the source strength of sources before first use and annually thereafter. Sources that are in storage and not being used do not have to be measured; they must be measured before they are placed in service again. For sources manufactured and supplied in lots of nominally identical sources, a sample from each lot may be selected rather than measuring each source.

(b) When performing dose calculations, a licensee may use the source strength reported by the manufacturer rather than using the source strength measured by the licensee.

8. In Subpart G—Sources for Brachytherapy, § 35.452 is added to read as follows:

§ 35.452 Physical measurements of patient. [Reserved]

9. In Subpart G—Sources for Brachytherapy, § 35.454 is added to read as follows:

§ 35.454 Check of dose calculations.

A licensee shall check dose calculations for accuracy before 50 percent of the prescribed dose has been administered. The check must provide assurance that the final treatment plan will provide the dose prescribed in the patient's chart.

(a) Manual dose calculations must be checked for accuracy by an individual who did not make the calculations.

(b) Computer-generated dose calculations must be checked by examining the calculation printout to assure that the correct parameters and parameter values were used in the calculation. The check must be made by an individual who did not enter the patient data or prescription into the computer.

(c) If the prescribing physician makes a determination to delay treatment in order to perform the checks of dose calculations required by this section would jeopardize the patient's health because of the emergent nature of the patient's condition, the licensee may provide the prescribed treatment without performing the checks; the prescribing physician shall make a notation of this determination on the patient's chart, and the licensee shall perform the checks as soon as practicable.

10. In Subpart I—Teletherapy, § 35.632, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 35.632 Full calibration measurements.

(b) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

(1) The output within ± 3 percent for the range of field sizes, range of distances, and selection of beam modifying devices (for example: trays, wedges, and the stock material that is used for making compensators and boluses) used for medical use;

11. In Subpart I—Teletherapy, § 35.633 is added to read as follows:

§ 35.633 Independent check of full calibration measurements.

(a) A licensee shall have an independent check of the output determined within one month after completion of the full calibration required by § 35.632.

(b) The independent check must be performed by a teletherapy physicist who did not perform the full calibration and made using a dosimetry system other than the one used to measure the output during the full calibration. The teletherapy physicist does not have to be listed as a teletherapy physicist on an NRC or Agreement State license. The dosimetry system may be one described in § 35.360, or it may be another system that provides a similar level of accuracy and precision.

12. In Subpart I—Teletherapy, § 35.652 is added to read as follows:

§ 35.652 Physical measurements of patient. [Reserved]

13. In Subpart I—Teletherapy, § 35.654 is added to read as follows:

35.354 Checks of dose calculations and measurements of dose.

A licensee shall check dose calculations for accuracy every 20 percent of the prescribed dose has been administered. The check must provide assurance that the final treatment plan will provide the dose prescribed in the patient's chart.

(a) Manual dose calculations must be checked for accuracy by an individual who did not make the calculations.

(b) Computer-generated dose calculations must be checked by examining the calculation printout to assure that the correct parameters and parameter values were used in the calculation. The check must be made by an individual who did not enter the patient data or prescription into the computer.

(c) A licensee shall make a weekly accuracy check of daily arithmetic calculations that have been made in patient's charts.

(d) If the patient's dose calculations include parameters or parameter values that fall outside the range of those measured in calibrating the teletherapy unit, the licensee shall make a physical measurement of the dose rate to be administered to the patient. This measurement must be made before 20 percent of the prescribed dose has been administered.

(e) If the prescribing physician makes a determination that to delay treatment in order to perform the checks of dose calculations or physical measurements required by this section would jeopardize the patient's health because of the emergent nature of the patient's condition, the licensee may provide the prescribed treatment without performing the checks of dose calculations or physical measurement; the prescribing physician shall make a notation of this determination on the patient's chart, and the licensee shall perform the checks of calculations or physical measurements as soon as practicable.

Dated at Washington, DC, this 29th day of September, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-22826 Filed 10-1-87; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 35

Comprehensive Quality Assurance in Medical Use and a Standard of Care

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amendment to its regulations that apply to the use of byproduct material for radiation therapy and diagnostic uses involving large radiation dosages. In addition to the current requirements for quality assurance, the contemplated amendments would require licensees that offer teletherapy or brachytherapy services to implement a comprehensive quality assurance program to reduce the chance of misadministrations. The NRC requests public comment on the extent to which additional radiopharmaceutical quality assurance requirements are needed, and invites advice and recommendations on several questions that will have to be addressed in the rulemaking process. The NRC is also requesting comments on some basic quality assurance program requirements set out in a proposed rule published elsewhere in this issue.

DATE: Submit comments by 12/31/87. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 7:30 am and 4:15 pm on Federal workdays.

Examine copies of comments received at: The NRC Public Document Room 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4108.

SUPPLEMENTARY INFORMATION:

Therapy Use of Byproduct Material

Teletherapy is the application of a beam of radiation emanating from a cobalt-60 source to a patient for a therapeutic purpose, usually curative, prophylactic, or palliative cancer therapy. (High energy x-ray machines

are also used for the same purposes.) As an example, a treatment might be comprised of daily treatments of 200 rads to the tumor volume for five weeks, yielding a total tumor dose of 5000 rads.

Brachytherapy is the insertion of small sealed sources such as cesium-137, iridium-192, gold-198, or iodine-125 into the tumor volume for curative or prophylactic cancer therapy. As an example, a treatment might require insertion of 50 millicuries for 48 to 72 hours, resulting in a tumor dose of 5000 rads.

Radiopharmaceutical therapy is the administration of a radioactive drug for therapeutic purposes. The most common clinical procedure involves the oral administration of liquid or gelatin-capsuled iodine-131 as sodium iodide. For hyperthyroidism, 5 to 30 millicuries might be administered; for thyroid cancer, 70 to 200 millicuries might be administered.

Most diagnostic uses result in whole body doses of about 0.1 rem and target organ doses of about 2.0 rem. Occasionally, however, as much as 5 millicuries of iodine-131 is administered as a diagnostic dosage for patients who have been treated for thyroid cancer. If this dosage were mistakenly administered to a patient who has no thyroid disease, the thyroid dose would be several thousand rads.

NRC's Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.
2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.
3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and

adequately informed physicians will make decisions in the best interest of their patients.

NRC's Responsibilities in the Medical Use of Byproduct Material

The NRC draws a lien between the unavoidable risks attendant to purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless use of byproduct material in medicine. The NRC is obliged, as part of its public health and safety charge, to establish and enforce regulations that protect the public from the latter.

Reports of Misadministrations in Radiation Therapy

The NRC has published a study of the twenty-seven therapy misadministrations that were reported over the period November 1980 through July 1984.¹ The following NRC analysis for these events provides the basis for determining that a need exists for this rulemaking.

The specific causes of the misadministrations, detailed in Table 1, are, of course, related to the treatment modality. Nonetheless, three basic themes run through the reports: inadequate training, inattention to detail, and lack of redundancy.

Table 1.—Therapy Misadministrations Reported to NRC From November 1980 to July 1984

Teletherapy

Prescription

Total daily dose was delivered from each port (2)¹

Oral and written prescriptions were different (1)

Boost dose of 500 rad/3 da was interpreted as 500 rad X 3 da (1)

Proper body side was not clear (1)

Treatment planning

Tumor depth was incorrectly measured (1)

Tumor depth was incorrectly recorded (1)

Dosimetrist used wrong computer program (1)

Dosimetry tables for wrong unit were used (1)

Arithmetic mistakes were made (3)

Records

Arithmetic mistakes were made (1)

¹ For a copy of this report, write to Kathleen M. Black, Office for Analysis and Evaluation of Operational Data, Nuclear Regulatory Commission, Washington, DC 20555. Ask for report AEOD/C505.

Poor handwriting of numerals caused misunderstanding (1)

Physical measurements

Wedge factors were measured incorrectly (1-53 patients affected)

Application

Field blocks were not used (1)

Brachytherapy

Treatment planning

Dose rate was much higher than first estimated (1)

Application

Wrong sources were loaded in applicator (2)

Source fell out of applicator (1)

Source was improperly seated in applicator (1)

Radiopharmaceutical Therapy

Wrong radiopharmaceutical was administered (2)

Assay date on unit dosage was not read (3)

Patient was improperly identified (1)

¹ Numbers in parentheses indicate number of events of the type described.

Improved training of medical personnel who handled and administer byproduct material can reduce the potential for error. Thorough training should also clearly impress on each individual involved in the medical use of byproduct material that a clear communication of concepts and quantities as well as systematic checks for revealing mistakes early in the process are both essential for the delivery of quality care. All information integral to the process, whether specific to the patient or to the clinic, should be carefully examined for clarity, applicability, and correctness. Each individual involved in the process should be strongly encouraged to ask for clarification if there is any unclear or unexpected step or if an expected step is missing.

Inattention to detail is often the medium in which a misadministration event germinates. NRC recognizes that this problem is not specific to the medical use of byproduct material. Computerized radiation therapy treatment planning may reduce the chance of mistakes in sealed source treatment planning, and "record and verify" systems that check teletherapy unit orientations and settings may reduce the chance of mistakes in teletherapy administration. But even these systems must ultimately rely on quantities that are initially measured, recorded, and entered into memory by individuals.

Lack of redundancy means that there exists no independent mechanism for detecting errors. An independent verification requires examination by a second individual of each data entry, whether a physical measurement or a number copied from a table of values, as well as a check of arithmetic operations for correctness. Redundancy requires that two separate systems produce the same result. For purposes of planning radiation therapy, the best method of early detection of mistakes may be a simple independent check. Independent verification may also need to be incorporated into procedures for measuring radiation parameters, using those measurements for treatment planning, and applying radiation to patients. In radiation therapy or any other endeavor, an independent outside auditor can detect mistakes in both process design and process application as well as cite areas where a change in the process might reduce the chance for future error.

These observations have led the NRC to some general conclusions regarding quality assurance.

The radiation therapy process should be planned with the realization that individuals are likely to make mistakes. Some simple aids may include using tables and graphs that are clearly titled and easy to read, and use of a uniform written prescription format. NRC inspections have revealed that about ten percent of teletherapy unit calibrations and spot-checks are incomplete. Checklists could be used to assure completeness.

Independent verification must be made integral to the design of the radiation therapy process. All entries and calculations in a treatment plan should be checked by an individual who did not construct the treatment plan. Each patient's chart should be reviewed weekly to check for accumulated dose and implementation of prescription changes. A quality assurance program for the teletherapy unit should include a periodic check of the teletherapy unit output and an occasional detailed examination of the complete teletherapy process, including physical measurements, by an outside expert with an eye towards systematic errors and system improvements.

A program that requires a physical measurement of the dose or amount of radioactivity actually administered to the individual patient would provide assurance that the given dose is the same as the prescribed dose. Such measurements are now done for radiopharmaceutical therapy and occasionally for some teletherapy cases, but because of expense or unavailability

of equipment are not commonplace in sealed source therapy.

Reports of Diagnostic Misadministrations That Result in Doses in the Therapy Range

The NRC has also published a report on misadministrations of diagnostic dosages of iodine-131 that lead to doses in the therapy range.² The report was a review of fourteen recent misadministration events in which patients were administered one to ten millicuries of iodine-131 with a resulting thyroid dose of several thousand rads. Many of the events demonstrated that the physician authorized user failed to review the medical history of the referred patient to determine the suitability of a particular clinical procedure. In many cases the referring physician, who is not a nuclear medicine expert, and the nuclear medicine technologist, who is not a medical expert, determine which radiopharmaceutical should be administered. Furthermore, in some events technologists unfamiliar with the clinical procedure prescribed by the authorized user mistakenly administered a dosage that was not requested. It is apparent, therefore, that whenever radiopharmaceuticals capable of producing therapy doses are used, clear nomenclature, independent verification, and adequate training are essential.

Earlier NRC Efforts

This is not the first time the NRC has examined the matter of quality assurance in the medical use of byproduct material. In 1979 the NRC issued some basic quality assurance requirements for teletherapy (see 10 CFR 35.632 and 10 CFR 35.634). This rulemaking was precipitated by the inaction of a single licensee. The output of a teletherapy unit was incorrectly calculated and the licensee made no physical measurements to determine whether the calculation was correct. This inaction resulted in cobalt-60 teletherapy being misadministered to 400 patients. The 1979 rule addressed the circumstances surrounding that event but did not critically examine the entire radiation therapy process.

Voluntary initiatives

The Commission is aware of voluntary initiatives to improve quality assurance. A notable example is the Patterns of Care study managed by the American College of Radiology. In addition to comparing prescriptions,

methods of applying radiation, and survival rates for certain diseases at various therapy facilities across the nation, methods of calculating and measuring applied dose rates are examined for accuracy. Such an examination can detect whatever procedural flaws may be present as well as determine the precision and accuracy of day-to-day service.

It is NRC's position that voluntary programs alone may not provide adequate assurance of public health and safety. Serious misadministrations continue to occur. The NRC would be remiss in its responsibilities were it to fail to thoroughly examine all avenues available to reduce unnecessary exposure from licensed material.

Summary

The NRC believes many misadministrations could reasonably be avoided if certain quality assurance steps were included in the radiation therapy process.

Other Actions

The NRC recognizes that the medical use of byproduct material is a complex field, and that preparing regulations to reduce the likelihood of misadministrations must be done carefully. However, the NRC cannot allow the complexity of medical use to prevent it from taking regulatory action when patients are harmed by the incorrect application of byproduct material. The NRC has balanced these competing desiderata by preparing two rulemaking actions for contemporary publication.

This Advance Notice of Proposed Rulemaking (ANPR) will provide the foundation for a comprehensive quality assurance program requirement that will address each source of error that can lead to a misadministration. The NRC elected to prepare the ANPR because of the complexity of medical use. Elsewhere in this issue of the **Federal Register**, the NRC has published a Notice of Proposed Rulemaking (NPR) that provides the foundation for a basic quality assurance program that addresses some simple sources of error that have come to light under NRC's misadministration reporting program.

The NRC believes this two-pronged approach to the problem of misadministrations provides the best balance between the need to assure public health and safety without inadvertently interfering in the delivery of quality medical care.

² For a single copy, submit a request for report number AEOD/N701 to the address in footnote 1.

Effect on the Agreement States Program

Many States, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the use of byproduct material, and currently regulate about 5,000 medical licensees. Because the NRC will request the Agreement States, as a matter of compatibility, to implement regulations equivalent to those that it implements on this matter, state regulatory agencies are asked to comment.

Request for Comments

The NRC has prepared the following questions to elicit comments on methods of preventing misadministrations. Comments need not be confined to these questions alone, discussion of other related topics or alternatives is welcome if the commenter believes this will help to resolve issues related to this rulemaking.

Quality Assurance

General

The following questions apply to the provision of all types of medical use:

1. How can the Commission most effectively implement requirements for comprehensive quality assurance? The Commission has the authority to adopt existing national standards. The Commission, in concert with medical experts, could identify and adopt by rulemaking the key elements in a quality assurance program. The Commission could impose a performance requirement under which licensees would be required to implement a quality assurance program that would provide absolute assurance that there would be no misadministrations. What other mechanisms should be considered?

2. Should the definition of misadministration in 10 CFR 35.2 be changed? Is it clear and complete? Is the definition sufficiently broad to include all appropriate activities? Is it so broad as to include inappropriate activities? Is the term "misadministration" appropriately descriptive of the activities? Should some more descriptive term be used?

3. The NRC knows of one instance in which radiation was administered to a patient without a request from the primary care physician. Should the NRC require that the authorized user actively consult with the primary care physician before prescribing radiation or deciding that radiation is not needed? How can the chance of miscommunication be

reduced? What improvements can be made in terminology, prescription format, and orders?

4. What methods should be considered to provide assurance that the patient to whom radiation is administered is the patient for whom radiation was intended?

5. What current standards exist to ensure the adequacy and uniformity of training of all individuals who participate in the administration of radiation to patients? Should NRC require certification or prescribe specific training criteria for technologists, dosimetrists, and others who participate in the application of radiation to patients, or should NRC have a performance requirement that requires licensees to provide each individual whatever training is necessary? In either case, how can NRC ensure the adequacy and consistency of this training throughout the radiation therapy community? Should the NRC require licensees to administer written examinations to workers and evaluate them before allowing the workers to participate in radiation therapy? Should periodic retraining and re-examination be required?

6. What other regulatory, certifying, accrediting, or inspecting organizations examine medical quality assurance programs? Describe the purpose, objectives, and rigor of these examinations.

7. Should the NRC require physicians to provide patients, upon request, a record of the radiation dose prescribed and/or given? What information should or should not be provided?

8. Apart from increased NRC oversight, what changes in industry practice or standards could improve the quality of performance and minimize human error?

Teletherapy and Brachytherapy

The following questions apply to the provision of teletherapy and brachytherapy services.

1. What performance criteria could be adopted to assure appropriate care, minimize the chance of human error, and mitigate the consequences of potential error?

2. To assure adequacy of continued experience, some organizations recommend that certain surgical or test-tube procedures only be performed if the practitioner has a sufficient case-load to assure that dexterity and familiarity with the procedure are retained. Should NRC require that licensees have a certain minimum case-load to assure that their employees retain their expertise in performing radiation

therapy clinical and quality assurance procedures?

3. What fraction of licensees already have a quality assurance program? What are its key elements?

4. The Regulatory Flexibility Act requires that regulatory agencies examine the cost of compliance with regulations. How much does a quality assurance program cost per patient or per year? What fraction of staff time, including physicians, physicists, dosimetrists, technologists, and nurses, is currently budgeted for quality assurance work?

5. Are there complete model quality assurance programs already available that address every step of the radiation therapy process, or will model programs have to be developed? Should physical measurements, redundant calculations, or both be required to assure that the dose given is the same as the dose prescribed? What other areas are, or should be, covered in a complete quality assurance program?

6. Are the staff and equipment that are needed to implement a complete quality assurance program available in the marketplace, or would new training programs and equipment development be needed?

7. Computers are used in radiation therapy to calculate dose distributions and to control the operation of equipment. How could quality assurance of software accuracy and validity be improved? Should licensees be required to verify them? How can user skill and knowledge of the inherent assumptions and limitations of a computer program be assured? Should additional quality assurance requirements be developed to ensure that users understand the algorithms on which the programs are based?

8. What additional methods are available for reducing the frequency or impact of human error?

Radiopharmaceutical Therapy

The NRC requires that licensees use only certain radiopharmaceuticals for specified therapy clinical procedures, measure the radioactivity in radiopharmaceutical dosages before administration, and have a measurement quality assurance program for the dose calibrator used to make that measurement. These requirements appear to encompass the steps in a radiopharmaceutical therapy physical quality assurance program. However, the NRC invites public comment on this position.

There have been cases in which, due to procedural failure, a radiopharmaceutical other than that

intended has been ordered and administered. Many of these cases began with miscommunication between the referring physician and the licensee. Some began with miscommunication between the physician's authorized user and the nuclear medicine technologist. The NRC expects that all licensees have procedural requirements for clear statements of prescription and verification before administration of any pharmaceutical. The NRC would appreciate suggestions on methods to assure that the clinical procedure (including radiopharmaceutical, dosage, and route of administration) intended by the authorized user is prescribed, and that the prescribed clinical procedure is the clinical procedure that is performed. The NRC has observed several cases of miscommunication of the referring physician's request. What improvements can be made to minimize such errors? Are there special needs regarding patient identification in radiopharmaceutical therapy that go beyond the information regarding patient identification that was requested in question 4 of the *General* subsection?

Standards of Care

The following questions apply to the medical use of byproduct material.

1. Is there a clear, generally accepted standard of care that the NRC can adopt? If yes, please describe it. If not, please describe a standard that NRC could adopt. Is a standard needed if NRC has comprehensive prescriptive requirements?
2. What effect would such a standard or comprehensive, prescriptive requirements have on provisions of radiation therapy care?
3. What kinds of penalties should be imposed on licensees, their employees, or both, if the standard or the comprehensive, prescriptive requirements are not met? Should penalties be imposed on employees? Should NRC's Enforcement Policy (see 10 CFR Part 2, Appendix C) be changed, and if so, how?

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

The authority citation for this document is:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Washington, DC, this 29th day of September, 1987.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 87-22827 Filed 10-1-87; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 29, 30, and 34

[Docket No. 87-10]

Adjustable-Rate Mortgages, Real Estate Lending, Due-on-Sale Clauses

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is publishing for comment amendments to its real estate lending regulations that would consolidate and simplify the Office's rules governing real estate lending by national banks. In particular, important revisions are being proposed for the OCC's adjustable-rate mortgage (ARM) regulation (12 CFR Part 29). This proposed rule would implement recommendations of the Federal Financial Institutions Examination Council to achieve greater uniformity among the regulations of the several depository institution regulatory agencies. The current disclosure provision (12 CFR 29.7) would be rescinded. However, national banks will continue to be subject to the disclosure requirements contained in the Federal Reserve Board's Truth in Lending regulation. In addition, the authority of national banks to deal in ARMs would be broadened to ease the regulatory burden of lenders and eliminate regulatory impediments to the secondary market for ARMs. Certain revisions would be made for greater clarity, and obsolete or unnecessary provisions would be eliminated. Finally, obsolete portions of 12 CFR Part 30, dealing with due-on-sale clauses, would be rescinded and the remaining sections of Part 30 as well as the revised ARM regulation would be transferred to Part 34. This would bring all of the Office's substantive real estate regulations together in one place.

DATE: Comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be sent to Docket No. 87-10, Communications Division, Office of the Comptroller of the Currency, 5th Floor, 490 L'Enfant Plaza

East SW., Washington, DC 20219. Attention: Lynnette Carter. Comments will be available for inspection and photocopying at the same location.

Pursuant to the Paperwork Reduction Act of 1980, the collection of information requirements in the proposed rule have been submitted to the Office of Management and Budget (OMB). Comments specifically addressing those requirements should be directed to the Comptroller's Office at the above address and should also be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Roland G. Ullrich, Deputy Director, Consumer Activities Division, (202) 287-4265, or Ellen Starr, Attorney, Legal Advisory Services Division, (202) 447-1880.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal drafter of this document was Christopher Manthey, Attorney, Legal Advisory Services Division.

Background and Analysis

An adjustable-rate mortgage is a mortgage loan in which the interest rate is subject to change at agreed intervals according to changes in a designated independent index of market interest rates. Changes in the interest rate on ARM loans may result in changes in monthly payment amounts or changes in the rate of amortization of principal (changes in the maturity of the loan or the amount of the final payment).

Designed in response to the inflation and high interest rates which prevailed in the late 1970s and early 1980s, ARMs came into widespread use after the various federal depository institution regulatory agencies promulgated regulations governing them. This Office's ARM rules, contained in 12 CFR Part 29, were adopted on March 27, 1981, 46 FR 18932. The Federal Home Loan Bank Board and National Credit Union Administration followed suit in April and July 1981, respectively. Because of the disclosure requirements contained in 12 CFR 29.7, national banks have been exempted from compliance with certain disclosure provisions of the Federal Reserve Board's Truth-in-Lending regulation (Regulation Z) dealing with variable-rate, closed-end credit. 12 CFR 226.18(f) n.43.

Some concerns regarding ARMs have developed in recent years. For instance, there has been considerable congressional and industry interest in

developing uniform disclosures for ARM consumers. In particular, members of Congress have urged that such disclosures contain a "worst case" payment scenario, *i.e.*, a provision that spells out the maximum payment for which the borrower may become liable under the adjustable-rate loan to which he or she is agreeing. This is to prevent "payment shock," which can occur when the consumer finds that, following a payment adjustment, the payments are much larger than anticipated.

Another concern has been the secondary market, in which lenders buy and sell ARM contracts. Such a market has arisen, but its development has been hampered in part by the fact that the different agencies' regulations have dissimilar requirements, especially in the content and timing of disclosures that must be made to consumers. National banks that desire to purchase ARMs in the secondary market have been limited to buying loans that conform to the OCC's rules. This is undesirable since limiting the marketability of ARMs limits the incentive to provide residential mortgage loans in the first instance, causing a needless restriction in the availability of consumer credit. ARM originators who wish to have full access to the secondary market must make multiple disclosures to their borrowers to comply with all of the agencies' requirements. However, providing multiple disclosures is both burdensome for lenders and potentially confusing for consumers.

To address these problems, the Federal Financial Institutions Examination Council (FFIEC), composed of representatives of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration, has recommended uniform initial disclosure requirements for ARMs.

In a statement issued August 12, 1986, the FFIEC recommended to the Federal Reserve Board, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency that they require the following initial disclosures be given to prospective ARM borrowers: (1) "The Consumer Handbook on Adjustable-Rate Mortgages" (published jointly by the Federal Reserve Board and the Federal Home Loan Bank Board), or a suitable substitute; and (2) disclosures which demonstrate how any particular ARM loan program offered by a creditor may affect borrowers when interest rates change. The later includes

up to 14 specific elements, depending upon applicability to the specific loan program involved. The FFIEC's recommendations are similar to the initial disclosures required by the OCC's current ARM regulation.

The Federal Reserve Board has already moved to implement the FFIEC's recommendations. In a Notice of Proposed Rulemaking published November 24, 1986 at 51 FR 42241, the Board is proposing to amend 12 CFR Part 226 (Regulations Z) to incorporate the FFIEC proposals. At the same time, the Board will add to Regulation Z most of the subsequent disclosure requirements presently contained in the OCC's ARM regulation at 12 CFR 29.7. Since no benefit will be derived from duplicating the rules that the Federal Reserve Board will have in place, the Office believes that it would be more efficient simply to rescind the present disclosure requirements in 12 CFR 29.7. However, to the extent they become incorporated into Regulation Z, the Office will continue to enforce these requirements with respect to national banks.

Beyond the FFIEC recommendations, the Office has concluded that portions of its ARM regulation are no longer necessary and should be rescinded. The regulation has two purposes when originally proposed in 1980. First, it sought to increase the availability of mortgage credit to the public by clarifying that national banks were authorized to make adjustable-rate mortgage loans. In the inflationary environment of the time, it was believed that this would encourage national banks to make and hold residential mortgage loans and promote competition among residential mortgage lenders. Second, it provided protection for consumers by placing restrictions on permissible ARM products and by requiring substantial disclosure. *See generally*, preamble to proposed 12 CFR Part 29, 45 FR 64196, 64198-99, September 29, 1980.

Based on the early experience with ARMs, the regulation was revised substantially in 1983. 48 FR 9506. Implicitly recognizing that market forces were developing products that were prudent for both the lender and the consumer, this revision removed most, but not all, of the original regulation's restrictions on design of the product. It continued to prohibit national banks from purchasing nonconforming loans and retained the disclosure requirements.

The amendments now being proposed would change the types of loans covered, change the disclosure

requirements for national banks, and eliminate certain provisions that are believed to be redundant or unnecessary. The revised regulations, together with certain portions of 12 CFR Part 30, would be added to Part 34 so that all of the Office's substantive real estate regulations would be found in one place under the general heading of "Real Estate Lending."

Revisions to 12 CFR Part 30

Another area of concern in the early 1980s was "due-on-sale" clauses in real estate loans. These are clauses that give a lender the right to declare the entire debt payable at once if the property securing the loan is transferred. Many states had restricted or prohibited due-on-sale clauses either by statute or judicial decision. These states reasoned that such provisions discouraged homeowners from selling their property and, therefore, constituted an unreasonable restraint on the sale of housing. The Office, on the other hand, believed that in the volatile interest rate climate of the time, a rule ensuring the enforceability of due-on-sale clauses could encourage banks to offer fixed-rate, long-term mortgage loans with relatively lower interest rates, because of the reduced market risk. *See generally*, 46 FR 46964-65, September 23, 1981.

The debate was resolved with the passage of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469 ("the Garn-St Germain Act" or "the Act"). Section 341 of the Act, codified at 12 U.S.C. 1701j-3, provided generally that, notwithstanding state law, due-on-sale clauses in real estate loans, regardless of when originated, would be enforceable as to transfers occurring after the date the Act became effective (October 15, 1982). However, this general rule was not applicable during the "window period," *i.e.*, the period beginning with the date of a state rule of law restricting the enforceability of due-on-sale clauses and ending with the effective date of the Act. Due-on-sale clauses in window-period loans were to be enforceable only after the passage of three years from the effective date of the Act, unless a different rule was established by the appropriate regulatory authority. (The OCC did, in fact, establish an earlier cutoff date of April 15, 1984. 12 CFR 30.1(b)(1).) In addition, due-on-sale clauses in certain types of transactions were prohibited.

The Office implemented the Garn-St Germain Act by publishing its due-on-sale regulation, 12 CFR Part 30, on November 8, 1983. 48 FR 51283. Major

portions of the regulation are concerned with the so-called window period which, as noted above, ended on April 15, 1984. Since that time, national banks have been free to enforce due-on-sale provisions without restriction, except in the transactions exempted by the Garn-St Germain Act.

Accordingly, the Office believes that it would be beneficial to simplify this regulation by rescinding the obsolete portions dealing with the window period. These are paragraphs (b) and (d) of § 30.1. Since this constitutes the bulk of the regulation, it is proposed to transfer the remaining valid portions, paragraphs (a) and (c) of § 30.1, to Part 34, "Real Estate Lending," where they would become new § 34.4. The present text would remain unchanged except for minor, nonsubstantive revisions.

Effective Date

National banks will have a six-month transition period, beginning with the effective date of the final rules, in which they may choose to follow either the current regulations in Part 29 or the new regulations in Part 34. At the end of the six-month period Part 29 will be rescinded and compliance with the new Part 34 will be mandatory.

Section-by-Section Analysis

Section 34.4 Due-on-sale clauses.

This section would be drawn from the present paragraphs (a) and (c) of § 30.1, which would remain unchanged except for minor, technical revisions. In the proposed paragraph (a), the cross reference would be changed to conform to the new arrangement of this section; the phrase "the effective date of this part" would be changed to "December 8, 1983" (the effective date of the present Part 30) to avoid confusion; and the reference to the Trust Territory of the Pacific Islands would be eliminated as obsolete. See Compact of Free Association Act of 1985, section 201, 48 U.S.C. 1681 note. In paragraph (b), citations to the United States Code would be added for ease of reference.

Section 34.5 Definition.

This proposal would revise the definition of an adjustable-rate mortgage loan. An ARM is now defined as any loan to finance or refinance the purchase of, and secured by a lien on, a one- to four-family dwelling where the loan agreement permits the lender to adjust the interest rate after consummation. The definition also includes certain fixed-rate mortgage loan agreements that implicitly permit interest rate adjustments by having the note mature on demand or at the end of

an interval shorter than the term of the amortization schedule.

This proposal would amend the present definition of "adjustable-rate mortgage" to cover only extensions of consumer credit to natural persons. The phrase "consumer credit" is drawn from Regulation Z (12 CFR Part 226), and is intended to have the same meaning that it has there. Similarly, the exclusions contained in paragraph (b) of the proposed definition are drawn from the exemptions in Regulation Z, 12 CFR 226.3. The Office expects that, to the extent the terms and concepts in this definition are drawn from Regulation Z, relevant portions of the Official Staff Commentary on that regulation would become persuasive authority in its interpretation. See, e.g., paragraph 3(a) of the Commentary concerning loan purposes.

The purpose of this revision is to clarify that the Office's ARM regulation is not intended to apply to purchase-money mortgage loans for investment, commercial, business or agriculture purposes. Although the purpose of the original regulation was, in part, to promote the availability of mortgage funds for residential purposes, the language used was broad enough to cover those other types of loans. This has caused confusion in the past, and the Office therefore wishes to take this opportunity to sharpen the focus of the definition. The exclusions contained in proposed paragraph (b)(1) of the definition section are intended as further reinforcement of this position.

The Office is also proposing to eliminate the requirement for a disclosure notice for short-term and demand loans, which would, therefore, be excluded from the proposed definition. Henceforth, these loans would be governed by the disclosure requirements of Regulation Z. Regulation Z requires disclosure of the fact that the loan contains a demand feature and a payment schedule that shows a balloon payment when the loan matures prior to the end of the amortization schedule. In most cases, national banks that offer such loans must give both the Part 29 notice and the Regulation Z disclosure. The Office is not aware of any reported dissatisfaction with Regulation Z's simpler disclosure requirement for these loans and believes it should be guided by the Federal Reserve Board's extensive experience with disclosure in this area.

The Office believes that both borrowers and lenders would benefit from making our regulations more consistent with Regulation Z. However, we are especially interested in receiving

comments concerning these proposed changes in the scope of the regulation.

One further adjustment to the definition is being proposed, which would substitute the term "residential manufactured home" for "mobile home" in the types of housing units covered. This term includes both mobile homes and prefabricated homes and better describes today's technology.

Section 34.6 General rule.

The general rule would be changed to eliminate the restriction that national banks can make, sell, purchase, participate, or deal in ARM loans "only if they conform to the conditions and limitations in this part." This change is intended to enhance the ability of national banks to participate in the nationwide secondary market in ARM loans by permitting them to purchase or participate in loans that were made in accordance with another regulatory agency's requirements. Since the various financial regulatory agencies have had dissimilar ARM regulations in the past, especially in the area of disclosure requirements, the effect of the present regulation has been that national banks have been prohibited from purchasing ARM loans simply because they were originated by lenders who were governed by less comprehensive regulations. Typically, other lenders who wish to sell their loans to national banks may be forced to make disclosures required by both OCC and another regulatory agency. This is both burdensome to the lender and potentially confusing to the borrower. Either way, these difficulties have impaired the marketability of ARM loans between different types of financial institutions. Ultimately, it is the consumer who has suffered from reduced availability of mortgage credit. Accordingly, the Office believes it desirable to eliminate this restriction.

It should be noted that this change would not mean that national banks would be free to ignore the remaining substantive requirements of this part or the proposed revisions to Regulation Z when they make ARM loans. New §§ 34.7, 34.8, 34.9 and the disclosure requirements in Regulation Z incorporated in new § 34.10, are applicable by their own terms to ARM loans originated by national banks, without the necessity of so stating in this section. However, to prevent evasion through the use of affiliates, the Office is proposed to add that ARM loans or participations purchased from affiliates must comply with this regulation. Also, a reference to the Northern Mariana Islands would be

added to paragraph (a), to make this section consistent with proposed § 34.4.

Section 34.7 Index.

The index section would be reworded in an effort to achieve greater clarity, but no substantive change from the present regulation is intended.

Section 34.8 Rate changes.

The present section on rate changes would be deleted. In its place would be a provision requiring ARM loans originated on or after December 8, 1987 to include a limitation on the maximum interest rate that may apply during the term of the loan. Such an interest rate cap is required by section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 100 Stat. 552. The present section requires that loan documents contain various rules concerning the implementation of the rate changes. However, this requirement would be superfluous since loan documents would need to contain such provisions if the lender wants to make such changes. Moreover, the FFIEC guidelines, proposed to be incorporated into Regulation Z, will include disclosures for the subjects presently covered in § 29.4. See paragraphs 2 e-g of the FFIEC proposals, above.

The present section also contains a requirement that any interest rate changes must be based on the most recent index value as of the date of the change or the date of notification of the change, whichever is earlier. The purpose of this requirement was to ensure that lenders could not arbitrarily choose an advantageous index value. However, it is the Office's view that if a lender followed such a practice, the interest rate would not truly be tied to the index and the loan would not comply with the requirements of the proposed regulation. Accordingly, it is our view that the loss of index provision, through rescission of § 29.4, will not harm consumers. However, the Office desires public comments on this point.

Section 34.9 Prepayment fees.

The present § 29.6 on prepayment fees would be renumbered § 34.8.

Section 34.10 Disclosure.

Under this proposal, the Office's present disclosure section would be deleted. The Federal Reserve Board's proposed amendments to Regulation Z, would implement the FFIEC recommendations. The net result is that the OCC would rescind its present disclosure requirements and adopt the FFIEC recommendations by deferring to Regulation Z.

In its August 1986 proposal, the FFIEC recommended to the regulatory agencies that their regulations be amended to require the following initial disclosures, when applicable:

1. "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute.

2. A "loan program" disclosure (prepared for each adjustable-rate loan program) containing the following information, if applicable:

a. The fact that the interest rate, payment, or term can change.

b. The index or formula to be used and a source of information about the index.

c. How the interest rate and payment will be determined.

d. A statement that the interest rate will be discounted.

e. How the index is adjusted to determine the interest rate, *i.e.*, the margin—and a statement that the consumer should ask about the current margin value and current interest rate.

f. The frequency of interest rate and payment changes.

g. Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance (for example, interest rate or payment limitations, negative amortization, and interest carryover).

h. A statement of the maximum interest rate and payment amount under the program if a \$10,000 loan had originated at the most recent interest rate shown in the hypothetical example in "j". The example should assume that the interest rate increases as rapidly as possible under the program.

i. If there are no limitations on payment or interest rate increases, a statement to that effect.

j. An example, based on a \$10,000 loan amount, of how payments and the loan balance would be affected by changes implemented according to the terms of the loan program. The example should be based on index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example should reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as caps, a discounted interest rate, and negative amortization, that are triggered by index movements during the years shown.

k. An explanation of how to calculate the consumer's payment amounts for loans based on multiples of \$10,000, with an example using the recent monthly payment shown in the hypothetical example in "j".

l. The fact that a loan program contains a demand feature.

m. What information will be contained in the required notice of an adjustment and how far in advance such notice will be provided.

n. A notice that disclosure forms are available on other ARM loan programs.

In general, the initial disclosure requirements recommended by the FFIEC (and proposed to be adopted by the OCC through reference to the proposed revisions to Regulation Z) are patterned after the OCC's present requirements. The principal differences between the FFIEC proposal and OCC's present requirements include:

- OCC's present disclosure requirements apply to any open-end or closed-end loan to finance or refinance the purchase of a one- to four-family dwelling, including business and agricultural credit. The narrower definition proposed herein would mean that business, investment, and agricultural loans would no longer be subject to comprehensive consumer protection disclosures. Loans to other than a natural person would not be covered.

- The FFIEC proposal would require that a potential borrower be given "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute. OCC presently requires a brief description of the general nature of ARM loans.

- The FFIEC proposal covers only loans secured by the borrower's principal dwelling. The OCC currently covers any loan to finance or refinance the purchase of a one- to four-family dwelling. (All consumer loans not covered by the FFIEC proposal would continue to be covered by the general requirements of Regulation Z.)

- The FFIEC proposal covers non-purchase-money closed-end credit secured by the borrower's principal dwelling. OCC presently does not unless it is a refinancing of an ARM.

- The FFIEC proposal would require disclosure of the maximum interest rate and payment amount for a \$10,000 loan under the bank's program assuming a given interest rate or, if applicable, a statement that there is no limit. OCC presently requires disclosure of the maximum payment assuming a 10 percentage point increase in the index value. If there is no cap, no disclosure of this fact is required.

- The FFIEC proposal would require disclosure of the effect of historic changes in the interest rate index on a hypothetical \$10,000 loan over a 15-year

period. The OCC presently requires disclosure of the effect of increases in the interest rate index on a hypothetical \$10,000 loan over a five-year period, with a separate disclosure of a 10-year history of the index.

- The FFIEC proposal would require disclosure of a demand feature, if applicable, but no specific language is mandated. The OCC currently requires a specific bold-face demand/balloon payment notice in addition to the payment schedule presently required by Regulation Z.

- FFIEC items k, m, and n, above, are not currently required by the OCC.

The Office solicits comments as to whether or not the FFIEC proposals place an increased disclosure burden on national banks compared to the OCC's present regulation.

The FFIEC recommendations have been incorporated in the proposed revisions to Regulation Z at 12 CFR 226.19(b) (51 FR 42246). Although the Office could amend Part 29 so that it contained the full text of the FFIEC proposals, it believes that it would serve no useful purpose to have duplicate rules and that it would be more convenient for lenders to look only to Regulation Z for disclosure requirements.

The present Regulation Z, unlike the present Part 29, does not contain any subsequent disclosure requirements. The Federal Reserve Board, however, is further proposing to revise Regulation Z to require subsequent ARM disclosures, even though this was not part of the FFIEC proposal. The new subsequent disclosure provisions will be found at 12 CFR 226.20(e) (51 FR 42246). The new provisions resemble this Office's present subsequent disclosure requirements (51 FR 42245). There are some differences between the Federal Reserve's proposals and OCC's present requirements.

Unlike present § 29.7(c), the revised Regulation Z would not require a prompt subsequent disclosure of interest rate changes unless they are coupled with payment changes. Under the amended Regulation Z, notice of interest rate changes that do not result in payment changes would need to be given only once a year instead of at the time of each change. Any negative amortization accruing over a maximum of one year would not be material in relation to the amount of the loan. Notice to the consumer of interest rate changes, accompanied by payment changes, would be increased from 25 days before a payment at the new level is due 30 days before the effective date of the interest rate adjustment. The balance of the proposed subsequent disclosures in

Regulation Z are identical to the OCC's present requirements in § 29.7(b). Therefore, the Office believes that it can promote regulatory simplification by rescinding present § 29.7(b) and (c) without compromising consumer protection.

Short-term and demand loans, which are defined respectively as mortgage loans that are not fully amortized by the end of the loan term and mortgage loans that are payable on demand, are presently regulated by § 29.7(d). This section requires a standard, boldfaced notice warning of the possibility that such loans may be called or not renewed at maturity of the note. This requirement is in addition to the existing requirements applicable to these loans contained in Regulation Z. See 12 CFR 226.18(g) and (i). The Office is not aware of any significant dissatisfaction with Regulation Z's present requirements and believes, particularly in the interests of uniformity, that it should be guided by the Federal Reserve Board's experience in this area. It therefore proposes to eliminate the notice now required for these types of loans. This does not mean that consumers will no longer be placed on notice when they take out such loans. For adjustable-rate short-term and demand loans, a notice requirement is contained in the FFIEC recommendations which are to be incorporated in Regulation Z (see paragraph 1, above). Accordingly, the Office proposes to eliminate present § 29.7(d).

Section 29.7(e) currently requires lenders to inform borrowers of the initial index value upon which the initial interest rate is based, and to include this index value on the loan note. This requirement is superfluous since this information can be derived from the initial disclosure of the margin or other adjustment mechanism mandated by the proposed revisions to Regulation Z and the initial interest rate. The Office, therefore, proposes to eliminate this requirement. Comment on the desirability of this proposal is requested.

Section 34.11 Nonfederally chartered commercial banks.

Although this section merely repeats authority conferred by statute upon state commercial banks to make ARM loans in accordance with these regulations in lieu of state law, it will be retained for the convenient reference of banks in locating that authority. A citation to the United States Code would be added, and cross references would be changed to conform to the proposed new arrangement.

Section 34.12 Transition rule.

The present transition rule is obsolete and would be replaced with another. As discussed earlier under "Effective Date," national banks will have a 6-month transition period after these proposed rules become final in which they may choose to follow either the current regulations in Part 29 or the new ones in Part 34. At the end of that period, compliance with the new Part 34 will be required. This would mean that for existing adjustable-rate, purchase-money mortgage loans, the subsequent disclosure requirements of revised Regulation Z would apply following the transition period.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed regulation will not have a significant economic impact on a substantial number of small banks. All banks should benefit from regulatory simplification and the greater secondary market opportunities that will result from the proposal.

Executive Order 12291

The Office has determined that this proposed rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this revision: (1) Would not have an annual effect on the economy of \$100 million or more, (2) would not result in a major increase in the cost of bank operations or government supervision, nor would it be likely to generate substantially higher payments for borrowers, and (3) would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1557-0183.)

List of Subjects

12 CFR Part 29

Mortgages, National banks.

12 CFR Part 30

Due-on-sale clauses, National banks, Real estate loans.

12 CFR Part 34

Credit, Due-on-sale clauses, Mortgages, National banks, Real estate loans.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; and 12 U.S.C. 371.

2. Part 29 is amended by adding the following "Effective Date Note:" "Subpart B of Part 34 of this chapter became effective on [insert 45 days after publication of this notice], but national banks have the option of continuing to comply with this Part 29 (in lieu of Part 34) until [insert six months after effective date]."

3. Part 29 is removed effective [insert six months after effective date, above].

For the reasons set forth in the preamble, Title 12, Chapter I, Part 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—[REMOVED]

1. Part 30 is removed.

For the reasons set forth in the preamble, Title 12, Chapter I, Part 34 of the Code of Federal Regulations is proposed to be amended as follows:

PART 34—[AMENDED]

1. The authority citation for Part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3.

2. Part 34 is amended by adding the following "Effective Date Note:" "Subpart B effective [insert 45 days after publication of this notice], but national banks have the option of continuing to comply with Part 29 of this chapter until [insert 6 months after effective date]."

3. Part 34 is amended by adding the heading "Subpart A—General" immediately before § 34.1.

4. Part 34 is amended by adding § 34.4

§ 34.4 Due-on-sale clauses.

(a) *General rule.* A national bank may make or acquire through purchase, assignment, pledge or otherwise, a loan, secured by a lien on real property, that includes a clause, known as a due-on-sale clause, giving the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in

the property securing the loan is transferred to another person, whether by deed, contract, or otherwise. Except as set forth in paragraph (b) of this section, such clauses in loans, whenever originated, shall be valid and enforceable as to transfers of the secured property occurring after December 8, 1983, notwithstanding any contrary law or judicial decision of any state, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Guam, which laws and judicial decisions are hereby expressly preempted. For the purposes of this part, (1) real property shall also include such residential dwellings as condominium units, cooperative housing units, and residential manufactured homes and (2) the term "lender" means a government agency or person, including corporations, partnerships, trusts or associations making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency.

(b) *Exceptions.* Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 U.S.C. 1701j-3(d), as interpreted by the Federal Home Loan Bank Board pursuant to the powers granted to it in paragraph (e) of that section, 12 U.S.C. 1701j-3(e).

5. Part 34 is amended by adding Subpart B consisting of §§ 34.5 through 34.12.

Subpart B—Adjustable-Rate Mortgages

Sec.

34.5 Definition.

34.6 General rule.

34.7 Index.

34.8 Rate changes.

34.9 Prepayment fees.

34.10 Disclosure.

34.11 Nonfederally chartered commercial banks.

34.12 Transition rule.

Subpart B—Adjustable-Rate Mortgages**§ 34.5 Definition.**

(a)(1) Except as provided in paragraph (b), an adjustable-rate mortgage loan is any extension of consumer credit to a natural person made primarily to finance or refinance the purchase of and secured by a lien on a one-to-four-family dwelling, including a condominium unit, cooperative housing unit or residential manufactured home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time. (2)

The phrase "consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(b) Adjustable-rate mortgage loans do not include:

(1) Extensions of credit primarily for business, commercial, or agricultural purposes;

(2) Fixed-rate extensions of credit that are payable on demand; or

(3) Fixed-rate extensions of credit that are payable either without any interim amortization of the loan, or at the end of a term that, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule.

§ 34.6 General rule.

(a) National banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in adjustable-rate mortgage loans without regard to any limitations imposed on adjustable-rate mortgage lending by the laws of any state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam, which limitations are hereby expressly preempted.

(b) National banks are not prohibited from purchasing or participating in adjustable-rate mortgage loans which were not made in accordance with the regulations in this part, except that any such loans originated by and purchased, in whole or in part, from another national bank or an affiliate of a national bank shall comply with the regulations in this part. For purposes of this paragraph, the term "affiliate" shall have the same meaning that it has in 12 U.S.C. 371c.

§ 34.7 Index.

Loan documents shall specify an index to which changes in the interest rate charged on an adjustable-rate mortgage loan shall be linked. The index shall be readily available to and verifiable by the borrower, and beyond the control of the bank. A bank may use as an interest rate index any measure of market rates of interest which meets these requirements. The index for an adjustable-rate mortgage loan shall be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period.

§ 34.8 Rate changes.

All adjustable-rate mortgage loans originated on or after December 8, 1987

shall include a limitation on the maximum interest rate that may apply during the term of the loan.

§ 34.9 Prepayment fees.

Banks offering or purchasing adjustable-rate mortgage loans may impose fees for prepayments regardless of any state law prohibitions of, or limitations on, such fees, which prohibitions or limitations are hereby expressly preempted. For the purpose of this part, prepayments shall not include: (a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or (b) principal payments in excess of those necessary to retire the outstanding debt over the remaining loan term at the then current interest rate that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.10 Disclosure.

A national bank offering adjustable-rate mortgage loans shall make the disclosures required by regulations implementing the Truth in Lending Act as amended, Pub. L. 90-321, 82 Stat. 146 (1968), prescribed by the Board of Governors of the Federal Reserve System and commonly known as "Regulation Z."

§ 34.11 Nonfederally chartered commercial banks.

Under authority granted by section 804(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, codified at 12 U.S.C. 3803(a), nonfederally chartered commercial banks may make adjustable-rate mortgage loans in accordance with the following provisions of this part: §§ 34.5, 34.7, 34.8, and 34.9.

§ 34.12 Transition rule.

If on the effective date of this rule a national bank has already made a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which would violate any of the provisions of this subpart, the national bank may continue until [insert six months from effective date] to make loans or binding commitments to lend under the program before the program must be brought into conformity with all the provisions of this subpart.

Dated: September 29, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[I R Doc. 87-22134 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments are intended to address seven conditions placed upon Virginia's program by the Secretary at 30 CFR 946.16 (a) through (g). These conditions were placed upon Virginia's program at the time of conditional approval of Virginia's regulatory reform effort in the November 25, 1986, *Federal Register* (51 FR 42548-42555).

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 2, 1987, if requested, a public hearing on the proposed amendments will be held on October 27, 1987, and requests to present testimony at the hearing must be received on or before 4:00 p.m. October 19, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523-4303. If a hearing is requested, it will be held at the same address.

Copies of the proposed amendments, the Virginia program, the Administrative Record on the Virginia program, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requester may receive, free of

charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street NW., Washington, DC 20240; Telephone (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Building 10, Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937-2907.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Box Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219; Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 *Federal Register* (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendments

By letter dated September 1, 1987, (Administrative Record No. VA646), Virginia submitted proposed amendments to its permanent regulatory program. These amendments are intended to address seven conditions placed upon the Virginia program in the November 25, 1986, *Federal Register* (51 FR 42548-42555) when the Secretary conditionally approved a program amendment submitted by Virginia in response to OSMRE's regulatory reform efforts. The proposed amendments are briefly summarized below:

Condition 946.16(a) required that Virginia amend its coal surface mining reclamation regulations at section 480-

03-19.789.1(e) to provide for the award of appropriate costs and expenses (including attorney's fees) from the Commonwealth to any person who makes a substantial contribution to a full and fair determination of the issue in any administrative proceeding and who at least partially prevails on the merits of the issues. Virginia proposes to add section 480-03-19.789.1(e)(3) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(b) required Virginia to revise its ground cover measurement techniques for small areas (as contained in Attachment number 2 of the portion of its August 14, 1986, submission concerning revegetation issues) to specify how many transects must be taken, how this number will be determined, and how the transects will be determined. Virginia proposes to withdraw its proposal for techniques for measuring ground cover on small areas.

Condition 946.16(c) required Virginia to submit materials detailing the sampling techniques to be used to measure the productivity of grazing land, pasture land and crop land. Virginia proposes to adopt those standards contained in OSMRE's "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II".

Condition 946.16(d) required Virginia to amend its coal surface mining reclamation regulations at 480-03-19.842.15 or otherwise amend its program to provide that the Director's decision on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen is formally appealable in accordance with section 9-6.14:12 of the Virginia Administrative Process Act. Virginia proposes to add section 480-03-19.842.15(d) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(e) required Virginia to amend its coal surface mining reclamation regulations at section 480-03-19.843.12 or otherwise amend its program to specify that the Director's decision on whether to allow an extension of the abatement period for a violation beyond 90 days is formally appealable in accordance with the Virginia Administrative Process Act. Virginia proposes to add section 480-03-19.843.12(j) to its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(f) required Virginia to amend its coal surface mining reclamation regulations at section 480-03-19.843.15 or otherwise amend its

program to provide that a notice or order ceasing mining shall not expire after 30 days if the permittee or operator waives his or her right to an informal hearing or consents to holding the hearing more than 30 days after the issuance of the notice or order. Virginia proposes to amend section 480-03-19.843.15 of its coal surface mining reclamation regulations to satisfy this condition.

Condition 946.16(g) required Virginia to amend its coal surface mining reclamation regulations at sections 480-03-19.845.17(b) and 480-03-19.845.15(b)(1) or otherwise amend its program to specify that the failure of the Division to serve any proposed assessment or to hold any requested assessment conference within the time limits prescribed by the Virginia program shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay and unless that person makes a timely objection to the delay. Virginia proposes to amend sections 480-03-19.845.17(b) and 480-03-19.845.15(b)(1) of its coal surface mining reclamation regulations to satisfy this condition.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written Comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on October 19, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in

advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet this OSMRE representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance with Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance with the Regulatory Flexibility Act

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

4. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 914

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

Carl C. Close,

Assistant Director, Eastern Field Operations.
[FR Doc. 87-22824 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD7-87-44]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Martin County, the Coast Guard is considering a change to the regulations governing the Jensen Beach and Ernest Lyons drawbridges at Stuart, Florida by limiting the number of times the bridges are opened during certain periods. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

Both bridges presently open on signal. Martin County has asked that the bridges open only on the hour and half hour from 6 a.m. to 6 p.m. weekdays from December 1 through May 1. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety, and drawbridge openings for these bridges. Although regulation changes may be needed to help reduce highway traffic delays, the data do not appear to justify a need for regulations before 7 a.m.

Both bridges have high traffic volumes, substandard lane widths, and inadequate lateral clearances all of which contribute to the relatively poor levels of service on both roadways. On the average, neither bridge opens twice an hour during the daytime, but openings sometimes do occur "back to back" within 15 minutes causing traffic delays. The proposed rule would separate openings by thirty minutes giving auto traffic ample time to clear before the next opening. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261 is amended by adding paragraphs (o) and (p) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(o) *Jensen Beach (SR 707a) bridge, mile 981.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour.

(p) *Ernest Lyons (SR A1A) bridge, mile 984.9 Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour.

* * * * *

Dated: September 22, 1987.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 87-22730 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-87-37]

Drawbridge Operation Regulations; Okeechobee Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Martin County, the Coast Guard is considering a change to the regulations governing the Evans Crary and Roosevelt drawbridges at Stuart, Florida, by limiting the number of times the bridges are opened during certain periods. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 16, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposal regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Evans Crary bridge presently opens on signal except that from November 1 through May 1 weekdays from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. the bridge opens on the quarter and three quarter hour. On weekends from November 1 through May 1 from 8 a.m. to 6 p.m. the bridge opens on the hour, 20 minutes after the hour, and 40 minutes after the hour. Martin County has asked that the bridge be opened only on the hour and half hour from 6 a.m. to 6 p.m. weekdays from December 1 through May 1. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety and drawbridge openings for this bridge. The data appear to justify restrictions which vary slightly from those requested by Martin County. The Roosevelt bridge presently opens on signal except weekdays from 7 a.m. to 9 a.m., 11 a.m. to 1 p.m., and 4 p.m. to 7 p.m. when it

opens only on the hour and half hour. On weekends and holidays from 8 a.m. to 6 p.m. it opens on the hour, 20 minutes after the hour and 40 minutes after the hour. Martin County has asked that the Roosevelt bridge open only on the hour and half hour from 6 a.m. to 6 p.m. weekdays year round with no openings at 8 a.m., 8:30 a.m., 5 p.m. and 5:30 p.m. The Coast Guard has carefully evaluated information about highway traffic volume, vessel safety and drawbridge openings for this bridge. In this case, also, the data appear to justify additional restrictions which vary slightly from those requested by Martin County. Both bridges have high traffic volumes, substandard lane widths, and inadequate lateral clearances all of which contribute to the relatively poor levels of service on both roadways. On the average, neither bridge opens twice an hour during the daytime, but openings sometimes do occur "back to back" within 15 minutes causing major traffic delays. We are proposing that the bridges open at thirty minute intervals from 7 a.m. to 6 p.m. This would separate the openings to reduce the impact to vehicular traffic, while imposing only a slightly greater delay to boat traffic at the Roosevelt bridge than presently exists when the adjacent Florida East Coast Railroad bridge is down. That delay is now about 20 minutes. In addition, we are proposing to allow the Roosevelt bridge to remain in the closed position on weekdays from 7:30 to 9 a.m. and 4 to 5:30 p.m. to allow for uninterrupted flow of commuter traffic. The seasonal weekend regulations for the Evans Crary bridge would not start until December 1 to coincide with the seasonal start of the proposed weekday rules. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.317 is amended by revising paragraphs (b) and (d) to read as follows:

§ 117.317 Okeechobee Waterway.

(b) *Evans Crary (SR A1 A) bridge, mile 3.4 at Stuart.* The draw shall open on signal; except that, from December 1 through May 1 from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half hour. On Saturdays, Sundays, and federal holidays, December 1 through May 1, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(d) *Roosevelt (US 1) bridge, mile 7.4 at Stuart.* The draw shall open on signal; except that, Monday through Friday, except federal holidays, from 7 a.m. to 6 p.m. the draw need open only on the hour and half hour. However, the draw need not open at 8 a.m., 8:30 a.m., 4:30 p.m., and 5 p.m. On Saturdays, Sundays, and federal holidays, from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent Florida East Coast Railways bridge is in the closed position at the time of a scheduled opening, the draw need not open, but it must then open immediately upon the opening of the railroad bridge to pass all accumulated vessels. Exempt vessels shall be passed at any time.

Dated: September 23, 1987.

M. J. O'Brien,
*Captain, U.S. Coast Guard, Acting
 Commander, Seventh Coast Guard District.*
 [FR Doc. 87-22731 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 52**

[FRL-3271-7]

**Approval and Promulgation of
Implementation Plans; State of Kansas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rulemaking.

SUMMARY: In this document, EPA proposes to approve a revision to the Kansas state air pollution control regulations as part of the State Implementation Plan (SIP). The purpose of this revision is to require reasonably available control measures by sources which emit ozone precursors in the Kansas City ozone nonattainment area. These state regulations are required by the Clean Air Act. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received on or before November 2, 1987. Public comments on this document are requested and will be considered before taking final action of these SIP revisions.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submission is available at the above address and at the Kansas Department of Health and Environment, Bureau of Air Pollution and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires that all states have plans to implement the National Ambient Air Quality Standards in all areas of their states. These plans must contain control measures adequate to attain and maintain the standards in all areas of the state. In areas where the standards have not yet been attained, Part D of the Act requires states to submit new plan revisions with additional controls that will reduce air pollution to the levels of the air quality standards. These plans are to be evaluated by EPA and approved if they meet the requirements of the Act. Plans, or portions of plans, that are federally approved become enforceable by the federal government as well as by the state.

Background

On September 17, 1979, the state of Kansas submitted a Part D plan describing how the Kansas City ozone nonattainment area would attain the ozone air quality standard by December 31, 1982. This plan was conditionally approved on April 3, 1981 (46 FR 20170), with the last condition removed and full approval given on January 12, 1984 (49 FR 1492).

In spite of the reductions in emissions of the volatile organic compounds (VOC) that react in the atmosphere to form ozone, which were required and obtained by the 1979 plan, air quality monitoring in the Kansas City area continues to record violations of the ozone air quality standard. Therefore, on February 20, 1985, EPA formally notified the Governor of Kansas that the SIP was substantially inadequate to attain the ozone standard in the Kansas City area, and called for revisions to the SIP that would obtain additional emission reductions and demonstrate that the ozone standard would be attained.

On July 2, 1986, the Governor of Kansas officially submitted the revised plan demonstrating that the ozone standard will be attained in the Kansas City area by December 31, 1987, or shortly thereafter. EPA's review of this plan found that it meets all requirements of the Act except that it did not contain regulations requiring all reasonably available control measures as required by section 172(b)(2) of the Act. For a further discussion of the overall plan, the reader is referred to EPA's proposed approval of the remaining elements of the plan published elsewhere in today's Federal Register.

Current Submission

On April 22, 1987, the Kansas Department of Health and Environment submitted drafts of regulations that will require reasonably available control technology (RACT) on all VOC sources for which EPA has published a control techniques guideline (CTG) and all major VOC sources for which EPA has not yet published a CTG. (This submission was supplemented with additional revisions received on May 26, 27, and August 21, 1987.) If it is determined that these rules satisfy the requirement of section 172(b)(2) for the Kansas City area, the overall plan can be fully approved as meeting all the requirements of the Act.

The regulations proposed today are in draft form and have yet to be adopted by the state. The state has requested that EPA use parallel processing rulemaking procedures to act on these

regulations on the federal level at the same time that action on the rules is taken on the state level. Under the parallel processing procedure, EPA works closely with the state as it develops major regulations and proceeds through the state rulemaking process. Both the state and EPA will provide for public participation by providing public comment periods. EPA will publish a final rulemaking on the rules as drafted if they are finally adopted by the state and submitted to EPA.

The state has evaluated 16 regulations to determine the problems which need to be corrected. There are several categories of potential problems including deviating from recommended applicability limits, deviating from the CTG provisions, or having vague and unenforceable language.

When the Kansas City ozone plan was first developed and approved, EPA policy required RACT only on major (100 tons of VOC emissions per year) CTG sources in areas where the 1979 plan demonstrated attainment of the ozone standard by 1982, as the Kansas City plan did at that time. Because Kansas City did not attain the standard by 1982, additional control measures are needed. In order to be approvable at this time, a state plan must require RACT on all sources for which there is a CTG and for all major non-CTG sources. This provision requires that existing rules be revised to remove 100 ton per year (TPY) applicability cutoffs for CTG sources and that new rules be developed to address major non-CTG sources.

Recently EPA has issued new guidance defining very specifically the kinds of provisions that may or may not be included in state plans. The state has evaluated its proposed rules against the new guidance and developed corrections where needed. The revised rules generally use the RACT cutoffs from the CTGs, correctly define how equivalent controls will be evaluated, have all the correct definitions, specify appropriate compliance averaging times, require source recordkeeping, update the state compliance testing methods, and generally close any previous loopholes and make the rules fully enforceable in ozone nonattainment areas. In the event that such areas were redesignated to attainment, the rules would remain in effect. Each of the state rules is discussed briefly below. For a more detailed evaluation of each rule against the applicable requirements, the reader is referred to the technical support document.

State Rule 28-19-8, Reporting Required, has been revised so that smaller VOC sources will be required to submit information. This is needed because these smaller sources will be subject to the revised control regulations and must be evaluated for compliance with their new limits.

Rule 28-19-61, Definitions, has had a number of definitions added, removed, or revised to ensure that all of the critical terms used in the regulations have the necessary explanations and requirements.

Rule 28-19-62, Testing Procedures, has been totally rewritten to require the most current compliance evaluation methods.

Rule 28-19-63, Automobile and Light-Duty Truck Surface Coating, has been revised to specify testing methods, provide for the consideration of transfer efficiency in coating operations, and require adequate recordkeeping and reporting.

Rule 28-19-64, Bulk Gasoline Terminals; Rule 28-19-70, Leaks from Gasoline Delivery Vessels and Vapor Collection Systems; and Rule 28-19-72, Gasoline Dispensing Facilities; have had extensive revisions in compliance testing and recordkeeping provisions. In Rule 28-19-64 the exemption level of 100 TPY has been removed, but no additional sources are expected to be regulated and no emission reductions are expected to result. However, the emission reductions due to the Stage I vapor recovery requirement of 28-19-72 are a major part of the July 2, 1986, control strategy for the Kansas City area. Unlike the other rules, it has not been approved by EPA previously. EPA's evaluation of the state proposal finds that it meets the criteria for controls on gasoline dispensing facilities.

Rule 28-19-65, Volatile Organic Liquid Storage in Permanent Fixed Roof Type Tanks, and Rule 28-19-66, Volatile Organic Liquid Storage in External Floating Roof Tanks, have been revised to clarify what levels of control are required when storing which liquids and to add current testing and recordkeeping requirements.

Rule 28-19-69, Cutback Asphalt, has been revised to make previously automatic exemptions now subject to state approval.

Rule 28-19-71, Printing Operations, has been extensively revised to address a number of enforcement issues relating to the testing of inks and the keeping of records of ink and solvent use and of control device performance. This rule was originally part of the July 2, 1986, SIP submission. However, this revised

version would replace it in the approved SIP upon federal approval.

Rule 28-19-73, Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture, has been expanded to include furniture, which is a similar process but which was originally written as a separate rule. The rule has been rewritten in terms of solids applied rather than total amount of paint used to aid in calculating compliance when using methods other than compliance coatings. Transfer efficiency (TE) is also addressed and recordkeeping requirements are strengthened. This rule was originally adopted in 1986 with an effective date of May 1, 1987. The original version was not submitted for EPA approval. Today's proposed approval relates to the revised rule, not to the original version. EPA's evaluation of this revised version indicates that it meets all EPA requirements for approval as representing RACT.

Rule 28-19-75, Solvent Metal Cleaning, is another 1986 adoption with an effective date of May 1, 1987. This rule has had a 10 TPY exemption cutoff removed and more complete recordkeeping required. As with the above rule, EPA has evaluated the revised version and found it to meet all requirements. Therefore, the revised draft version of this rule is proposed for approval. The original version has not been submitted for EPA approval.

Also, the state had adopted Rule 28-19-74, Surface Coating of Metal Furniture, with an effective date of May 1, 1987. The state has now included the limits for this category with those for Miscellaneous Metal Coating. Rule 28-19-74 had not been submitted for federal approval and is not part of the SIP. This rule is being redesignated Wool Fiberglass Insulation Manufacturing, and totally rewritten to apply to the fiberglass manufacturing category. Kansas City has two manufacturers of wool fiberglass batt insulation which emit in excess of 100 TPY of VOC. There is no CTG for this industry. The resin used to form the hot glass fibers into the batting is a volatile compound that is driven into the air during the forming operation. The draft state regulation is based on the federal new source performance standard (NSPS) for this category which condenses VOC from the exhaust stream in the sampling equipment and calculates the result as particulate matter. (See 40 CFR 60.680 to 60.685 and Method 5E in Appendix A of Part 40.) This condensable catch has been used in the EPA Emission Factor book (AP-42) as representing VOC emissions, and those emission factors have been used to calculate that emissions from these two plants exceed

100 TPY. Source test results using this method show that, on average, about 47 percent of the total catch is condensed VOC. Thus, of the 11 pounds of particulate matter per ton of glass pulled allowed by the NSPS, approximately 5.15 is condensed VOC. Therefore, the level of control chosen by the state, 5 pounds of VOC per ton of glass pulled, represents very nearly the same level of control as the new source standard, when adjusted to consider only the condensed catch, rather than the total caught in the full particulate testing method. The draft rule also contains reporting and recordkeeping requirements. EPA's evaluation of this draft rule finds that it requires RACT for the two plants in Kansas City and is approvable.

In numerous instances, the rules allow the department to approve alternative compliance plans and test methods which are alternatives to the EPA-reference methods. EPA proposes approval of these rules with the understanding that all such alternative plans and test methods must be submitted and approved by EPA, as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the rules, and compliance would be determined by the methods stated in the rules. Also, the rules contain provisions whereby testing is required when the facility intends to demonstrate compliance by improved operations or new controls, yet there are no test procedures. Examples of such provisions are TE and vapor processing systems. Test methods which are developed by the state must be approved by EPA before sources may demonstrate compliance through alternative control and TE.

The SIP also contains two EPA approved regulations applying to petroleum refinery sources, 28-19-67, Petroleum Refineries, and 28-19-68, Leaks from Petroleum Refinery Equipment. The only source to which these rules applied has been closed. Therefore, the state has not updated these rules.

The state submitted statements on April 16, 1987, and August 18, 1987, which certify that there are no sources in the nonattainment area in the other categories for which EPA has issued CTGs. Other than the two wool fiberglass manufacturers discussed herein, there are no other major non-CTG VOC sources in the nonattainment area. Based on the negative declarations and the rules submitted as discussed herein, EPA believes that the Kansas

City ozone plan will, upon final adoption and submittal of the regulations described above, require all reasonably available control measures, as required by section 172(b)(2) of the Act.

Summary

The draft state submission includes revisions to previously approved regulations, new regulations, and declarations that certain source categories need not be regulated. EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Kansas and submitted to EPA for incorporation into the SIP.

Proposed Approval

This state submission constitutes a proposed revision to the Kansas SIP which EPA is proposing to approve. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of Section 110 and 172 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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, Particulate matter, Hydrocarbons, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: May 29, 1987.

William Rice,

Acting Regional Administrator.

[FR Doc. 87-22787 Filed 10-11-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3271-8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Clean Air Act (CAA), as amended, requires that a state revise its state implementation plan (SIP) for all areas for which the SIP has been found substantially inadequate to attain the National Ambient Air Quality Standards (NAAQS).

On February 20, 1985, EPA advised the Governor of Kansas that based upon air quality data, the ozone SIP for the Kansas City Metropolitan Area (KCMA) was substantially inadequate to attain the NAAQS. The call for a SIP revision was made under section 110(a)(2)(H) of the Act, but under section 110(c)(1)(C) of the Act, EPA allowed the state one year to submit the ozone plan revision.

On July 2, 1986, the Governor of Kansas officially submitted a revised ozone SIP for Johnson and Wyandotte Counties, Kansas. On April 22, 1987, Kansas submitted a supplement to the SIP consisting of revised emission control requirements in draft form. For a complete discussion of the April 22 submittal, the reader is referred to EPA's proposed approval published elsewhere in today's **Federal Register**. The July 2 submittal in conjunction with the April 22 submittal comprise the overall ozone SIP package, which EPA is proposing to approve in today's **Federal Register** actions.

DATE: Comments must be received no later than November 2, 1987.

ADDRESSES: Copies of the state submission are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

A. Background

Part D of the CAA, as amended in 1977, required that a state revise its SIP for all areas that had not attained NAAQS at that time. Part D includes sections 171 through 178 of the Act. The requirements for an approvable nonattainment plan are listed in section 172. On September 17, 1979, and September 22 and 25, 1980, the state of Kansas submitted to EPA proposed revisions to the SIP for the attainment of the ozone standard in both Johnson and Wyandotte Counties. On April 3, 1981 (46 FR 20170), EPA conditionally approved the ozone SIP revision for Johnson and Wyandotte Counties. The SIP demonstrated attainment of the ozone standard by the end of 1982. From time to time, the state submitted revisions to its ozone SIP to satisfy the conditions of approval. The approval conditions were satisfied by the state and these conditions were subsequently removed. However, the ozone standard was not attained in the Kansas City area by the 1982 attainment date.

In its SIP revision policy for areas which did not attain a standard by the end of 1982 (48 FR 50697), EPA announced that where a fully approved Part D plan failed to bring about attainment, EPA will treat the plan as substantially inadequate to assure attainment under section 110(a)(2)(H) and call for a SIP revision. The November 2, 1983, policy announced that EPA will provide one year for submittal of the new revision under section 110(c)(1)(C). Revisions under this policy must provide for attainment as expeditiously as practicable. These requirements are contained in EPA's "Guidance Document for Correction of Part D SIPs for Nonattainment Areas" dated January 27, 1984.

On February 20, 1985, EPA advised the Governor of Kansas that based upon air quality data, the ozone SIP for the KCMA was substantially inadequate to attain the NAAQS. On July 2, 1986, the Governor of Kansas officially submitted the revised ozone SIP for Johnson and Wyandotte Counties.

B. Post 1982 Ozone SIP Revision Requirements

As explained in a General Preamble that EPA recently published (52 FR 26404), EPA believes that once an area has received full approval of its SIP as meeting the requirements of Part D, it has discharged its Part D planning obligations. This means that if the area's Part D plan subsequently is found substantially inadequate to attain the NAAQS, as in the case of the ozone SIP

for Johnson and Wyandotte Counties, any new plan revision developed to correct the nonattainment problem must meet the basic requirements of the Act contained in section 110. See section 110(a) (2) and (3).

Section 110(a)(2)(B) requires that the plan include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard. . ." Although technically the Part D requirements do not govern new planning efforts in an area that once received full approval of its Part D plan, some of those requirements call for provisions that are in turn necessary to meet the requirement that the revision "insure attainment and maintenance". For example, EPA believes that an area cannot truly assure attainment as expeditiously as practicable, as required by sections 110(a)(2) (A) and (B), unless its plan includes all reasonably available control measures (defined as measures available at reasonable cost, considering the extent to which they are necessary to produce timely attainment) and produces enough progress toward attainment in the interim years to assure that attainment will in fact occur by the attainment date. For that reason, EPA's 1984 guidance on what the plan revisions for areas like Johnson and Wyandotte Counties must contain, includes references to several Part D requirements that are relevant to determining compliance with section 110. These requirements, and the extent to which the Kansas plan revision meets them, are summarized below.

The revised SIP must demonstrate attainment as expeditiously as practicable, and provide for the implementation of reasonably available control measures (RACM) needed to attain the NAAQS as expeditiously as practicable and assure reasonable further progress (RFP) toward attainment. The SIP revision must demonstrate that RFP toward attainment will be maintained and reported throughout the period leading to attainment. The plan must identify and quantify the emissions, if any, which will be allowed to result from the construction and operation of new and modified stationary sources in the nonattainment area. States and local agencies must identify to the extent possible the direct and indirect emissions associated with major Federal actions that are anticipated to take place during the period covered by the SIP. The SIP revision must contain the

most recent three years of air quality monitoring data which have been reduced, validated, and summarized. The SIP must contain a baseline and projected emission inventories of sufficient accuracy and detail for a sufficient period to provide input to EPA-approved models and comply with EPA modeling guidelines. The SIP revision must contain a contingency plan to ensure continued progress toward attainment in situations where analyses of air quality and control measure effectiveness suggests RFP is not being maintained.

EPA's policy for ozone nonattainment areas having a significant ozone generating potential requires reasonably available control technology (RACT) for all sources of volatile organic compounds (VOC) covered by a control techniques guideline (CTG) document. Controls representing RACT are also required for all major non-CTG VOC sources. Generally, areas having a design value above 0.150 ppm must have a RACT inspection and maintenance (I/M) program. However, the policy states that if a state can demonstrate attainment before an I/M program can be implemented, the program then will not be required. The ozone SIP revisions must implement all reasonably available transportation control measures. The policy guidance requires use of the most recent modeling guidance for determining mobile source emissions and determining the amount of reductions of VOC needed to attain the ozone standard. Specifically, MOBILE3 is recommended for mobile source emissions calculations and level III modeling (city-specific empirical kinetic modeling approach (EKMA)) is the minimum requirement for ozone SIP attainment demonstrations.

C. State Submittal

Section 172 of the Act contains the statutory requirements for nonattainment plan provisions. The following is a listing of section 172 requirements as well as EPA policy requirements for post 1982 ozone plans, and a discussion of how the Kansas ozone SIP revision addresses each issue.

1. Demonstration of Attainment

Section 110(a)(2) requires a plan to provide for attainment of a NAAQS as expeditiously as practicable, but within three years of EPA's approval of the revision. As discussed in a General Preamble that EPA recently published (52 FR 2604, July 14, 1987), it is not clear whether this period applies to post-Part D plan revisions submitted in response to a notice of plan inadequacy under section 110(a)(2)(H). However, the

legislative history of the Act does make it clear that any such revision must show attainment by a fixed, near-term date.

The ozone SIP revision of July 2, 1986, contains a demonstration of attainment by December 31, 1987. The attainment demonstration includes a new inventory of VOC emissions for the year 1984, including mobile source emission estimates based on EPA's motor vehicle calculation program, MOBILE3. The inventory was used as input into EKMA, which estimated that a 16.8 percent reduction in VOC emissions was necessary to meet the ozone standard.

The control strategy contained in the SIP revision projects VOC reductions of 9,145 kg/summer day from mobile sources, 3,028 kg/summer day from area sources, and 4,450 kg/summer day from point sources. These reductions total 16,623 kg/summer day; this amounts to a 17.9 percent reduction as compared to the required 16.8 percent. Mobile source reductions arise from emission reductions expected because of the Federal Motor Vehicle Pollution Control Program. Area source reductions are expected to result from the state's Stage I control regulation for gasoline stations (K.A.R. 28-19-72). This regulation requires submerged filling of gasoline storage tanks and a vapor balance system to return vapors to the delivery truck during the filling operation. Point source emissions reduction credits are obtained by offsetting emissions for a new GM plant with closure of an existing GM plant in Kansas City, Kansas. The new plant is to be in operation and the old plant closed by December 31, 1987. The remainder of the point source credits are obtained by applying CTG controls to three previously uncontrolled graphic arts facilities.

Because some of the draft Kansas rules that will produce the projected VOC reductions have not yet been finally adopted by the state, EPA questions whether the Kansas plan will actually produce the reductions necessary to bring about attainment by December 31, 1987. The draft rules on printing operations, in particular, specify that affected sources must comply within a year after final adoption of the rules. That date appears to be well beyond the December 31, 1987, date chosen for attainment in the Kansas plan. Even if the attainment date slips somewhat beyond that date, however, the plan still appears to be capable of producing attainment within the short-term, fixed period described in EPA's General Preamble of July 14, 1987 (52 FR 26404). EPA will monitor the state's

rulemaking process to see whether the required rules are adopted in final form soon enough to produce the required reductions within that timeframe.

2. Public Participation

Section 172(b)(1) requires the plan to be adopted after reasonable notice and a public hearing.

The state submitted evidence that public notice was published in newspapers in the affected areas which provided at least 30 days' notice of the public hearing conducted on June 5, 1986, in Kansas City, Kansas.

3. Reasonably Available Control Measures

Section 172(b)(2) requires implementation of all RACM as expeditiously as practicable.

The July 2, 1986, state submittal did not adequately address these requirements; however, the April 22, 1987, supplement to the SIP contains revised emission control requirements in draft form. This material supercedes all regulatory provisions in the July 2, 1986, submittal; nevertheless, all previously adopted state VOC rules, on which the attainment demonstration is based, remain in effect until such time that these draft revisions are adopted. EPA believes that these requirements, when adopted in final form by the state, will satisfy the requirements of section 172(b)(2). For a complete discussion of the April 22 submittal, the reader is referred to EPA's proposed approval published elsewhere in today's *Federal Register*.

4. Reasonable Further Progress

Section 172(b)(3) requires, in part, that the state demonstrate that it will make reasonable further progress toward attaining the standard by specified dates, including emission reductions which can be achieved by application of RACT. Section 171(1) defines RFP in terms of annual incremental reductions between the period of plan approval and the attainment date. For Kansas, all reductions necessary to attain the standard will occur within the next year. Therefore, the plan substantially meets this requirement.

5. Emission Inventory

Section 172(b)(4) requires the plan to include a comprehensive, accurate, and current inventory of all sources of each pollutant for which an area is nonattainment. It also requires the inventory to be updated as frequently as necessary to assure that RFP is being made and to assure that the standard will be attained.

Included in the plan submittal is an updated mobile source emission inventory using EPA's MOBILE3 model, and current and projected vehicle miles traveled. Also included is a current area and point source inventory with emission projections through the year 2000. The emission inventory is acceptable and satisfies the requirement of section 172(b)(4) of the Act.

6. Emission Growth

Section 172(b)(5) requires the plan to expressly identify and quantify the emissions, if any, which will be allowed to result from the construction and operation of major new or modified stationary sources in a nonattainment area.

The SIP contains an inventory based on 1984 stationary source emission reports, a contractor report of area source emissions, and a mobile source inventory based on the most recent traffic counts, registration data, and other data needed to run the MOBILE3 calculations. Future emission inventory estimates are projected through the year 2000.

Regulations governing construction and operation of new or modified sources in nonattainment areas are contained in K.A.R. 28-19-16 *et seq.* These rules were approved by EPA as part of the Kansas Part D plan for the Kansas City area on April 3, 1981. The ozone SIP contains projected area source VOC emissions. However, the ozone SIP revision contains projected VOC emissions reduction of approximately 1,000 kg/day in addition to that needed to meet the ozone standard, and states that additional new source growth must be accompanied by offsetting emissions. This should assure continued VOC emission reductions beyond the attainment date. The state plan satisfies the requirements of section 172(b)(5) of the Act.

7. Permit Requirements

Section 172(b)(6) requires plans to have a permit program for the construction and operation of new or modified sources in accordance with the permit requirements of section 173. As stated above, EPA approved the Kansas permit regulations that are applicable in nonattainment areas on April 3, 1981. The requirements of section 172(b)(6) are satisfied.

8. Resources

Section 172(b)(7) requires the state to identify and commit to financial and manpower resources necessary to carry out the plan provisions.

The Kansas City ozone plan approved by EPA on April 3, 1981, was found to

satisfy the requirements of section 172(b)(7). The SIP revision does not clearly commit to financial and manpower resources, but the state agency has included such resource growth in its annual grant agreement. Thus, EPA believes that resources will be available to carry out the plan commitments.

9. Schedules

Section 172(b)(8) requires emission limitations, schedules of compliance, and other measures as may be necessary to meet the requirements of section 172.

The plan contains three new RACT rules, each of which contains a schedule for compliance.

10. Public, Local Government, and Legislative Involvement

Section 172(b)(9) requires evidence of involvement and consultation of the public, local government, and state legislature in the planning process. The section also requires an identification and analysis of various effects of the plan and a summary of public comments on the analysis.

The plan approved by EPA on April 3, 1981, was found to be consistent with the requirements of section 172(b)(9). Public involvement is documented for the ozone SIP revision by a submittal of the state's hearing officer's report. The hearing officer's report summarizes testimony at the June 5, 1986, hearing and identifies those attending the hearing.

11. Attainment Date Extension

Section 172(b)(11) is applicable to Part D plans which could not demonstrate attainment of ozone or carbon monoxide standards by December 31, 1982. This section establishes requirements for plans requiring an extension of the attainment date. Such extension plans were to include I/M of motor vehicle emission controls, alternate site analysis of new stationary sources, and other activities to insure attainment of the ozone or carbon monoxide standard. This section requires that extension areas attain the applicable standard by December 31, 1987.

The Kansas Ozone SIP for the KCMA as approved by EPA demonstrated attainment by December 31, 1982. Therefore, an extension was not requested. Thus, section 172(b)(11) is not applicable to the revised Kansas Ozone SIP.

12. Planning Procedures

In accordance with section 174 of the Act, the Mid America Regional Council

(MARC) is the designated lead planning agency for the Kansas City area. MARC is primarily responsible for transportation planning, but is active in other SIP elements. MARC developed the forecasts of population change used in the SIP revision to project growth.

13. Contingency Plan

Section 6 of the SIP revision contains the state's contingency plan. The contingency plan provides for consideration of Stage II vapor recovery, an anti-tampering program, an I/M program, and traffic control measures.

D. Conclusions

The Kansas submission of July 2, 1986, is based on a current emission inventory, has an emission reduction requirement developed using current guidance, will reduce actual emissions through implementation of new emission limits, and shows attainment of the ozone NAAQS by a near-term date. These basic requirements, along with the other elements described above, are necessary for a revision to be approved as part of the SIP. The July 2 submittal satisfies all applicable CAA requirements, except that it does not provide for all RACMs as required by section 172(b)(2). The April 22, 1987, submittal (discussed briefly herein and in detail elsewhere in today's **Federal Register**) explicitly addresses the section 172(b)(2) requirements. Thus, the overall SIP addresses all elements of a complete ozone plan.

PROPOSED ACTION: EPA proposes to approve the revised Kansas Ozone SIP for the Kansas metropolitan area as meeting the requirements of the CAA.

EPA intends to propose, in the near future, its policy on how areas that are not currently attaining the ozone and carbon monoxide standards should revise their SIPs after 1987. As a part of that policy, the Agency expects to issue notices under section 110(a)(2)(H) of the Act that the SIPs for various states are substantially inadequate to attain the standards in the near term. EPA will continue to monitor the air quality in Kansas City, as well as the state's progress in implementing the provisions of the Kansas City plan according to the schedule described above. Depending on the outcome of that review, EPA may or may not include Kansas City among the areas receiving section 110(a)(2)(H) notices under the post-1987 policy.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 172 of the CAA; of 40 CFR Part 51,

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; and of the 1982 SIP policy.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a substantial impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Date: December 18, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 87-22788 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87-24; and 87-25]

Program Exclusivity in the Cable and Broadcast Industries

AGENCY: Federal Communications Commission.

ACTION: Extensions of Time for Reply Comments.

SUMMARY: On August 21, 1987, in response to a request for extension of time and for good cause shown, the Chief of the Office of Plans and Policy granted extension of time for Reply Comments in GEN. Docket 87-24 (Amendment of Part 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries) and GEN. Docket 87-25 (Compulsory Copyright License for Cable Retransmission).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

DATES: Reply Comments in GEN. Docket 87-24 are extended to September 22, 1987 and in GEN. Docket 87-25 to October 5, 1987, respectively.

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: The Notice of Inquiry and Notice of Proposed Rule Making in GEN. Docket 87-24 was published in the **Federal Register** on April 30, 1987 (52 FR 15738) and the Notice of Inquiry in GEN. Docket 87-25 was published in the **Federal Register** on April 30, 1987 (52 FR

15765), with Comments in both proceedings originally due June 27, 1987 and Reply Comments due August 6, 1987. Extensions of time subsequently had been granted to July 22, 1987 and September 8, 1987, respectively, in GEN. Docket 87-24 and in GEN. Docket No. 87-25 to August 6, 1987 and September 21, 1987, respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-22757 Filed 10-1-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 45164, Notice No. 87-20]

49 CFR Part 31

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, DOT.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Transportation (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against certain persons making false claims or statements.

DATE: To assure consideration, comments must be received on or before November 2, 1987. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Docket Clerk, Docket 45164, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will date stamp and sign the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Deputy Assistant General Counsel, at (202) 366-9154 (FTS 366-9154).

SUPPLEMENTARY INFORMATION:

I. Background

These proposed regulations would implement the Program Fraud Civil

Remedies Act of 1986 (the Act), which was enacted on October 21, 1986 as sections 6101-6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, 100 Stat. 1874), and codified at 31 U.S.C. 3801-3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Transportation (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or having reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to \$5,000 per false claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantively uniform throughout the government, except as necessary to meet the specific needs of a particular agency or program." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services (HHS) to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. HHS was asked to lead the task force because it has been administering since 1983 a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a. The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected federal agencies adopt them.

The Department here proposes to adopt the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions specific to the Department's organization and making a small number of minor changes. The more substantive of these are described below in this preamble.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liability attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any

written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

The claim or statement is actionable under the Act if it is submitted to the Department with actual knowledge or deliberate ignorance of its falsity, or with reckless disregard for the truth or falsity of the claim or statement. Where the Act is found to have been violated, each person found to be liable is subject to a penalty of up to \$5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of Major Participants in Bringing Cases

The Act prescribes roles for four major participants within the Department in bringing cases under the Act: the investigating official, the reviewing official, the presiding officer, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act, including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone within the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the defendant. The defendant may request a hearing by filing an answer within 30 days of receiving the complaint. If the defendant does so, the reviewing official sends the complaint and answer to a presiding officer, who in the Department, as in most affected agencies, will be an administrative law judge (ALJ).

The *presiding officer* serves a notice of hearing upon the defendant, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties

and assessments imposed. Any defendant who is determined to be liable for a civil penalty or assessment in an initial decision and who has filed a timely answer may appeal that decision to the authority head.

When a defendant files a proper appeal, the *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the defendant is liable for a penalty or assessment, the defendant may obtain judicial review of such determination in an appropriate United States District Court.

These proposed regulations name as the investigation official the Inspector General of the Department. The Department's Deputy General Counsel will act as the reviewing official. Administrative Law Judges (ALJ) will be presiding officers, and the Department's Assistant Secretary or Deputy Assistant Secretary for Budget and Programs will function as the authority head.

III. Discussion of Major Issues

1. Definitions

Most of the proposed definitions set forth in section 31.2 of the proposed rule come directly from the Act. One exception is the proposed rule come directly from the Act. One exception is the proposed definition of "benefit," which is broad in scope for the purpose of describing "benefit" in the context of false statements. This definition stands in contrast to the "benefits" specifically listed in 31 U.S.C. 3803(c)(2) for the purpose of limiting liability under the Act with respect to recipients of certain Government benefits. (The Department administers none of the benefit programs named in 31 U.S.C. 3803(c)(2).) The proposed definition "person" follows the Act's definition.

2. Basis for Civil Penalties and Assessments

For the most part, proposed language contained in section 31.3 comes directly from the Act or the legislative history. However, the proposed regulation provides that liability for assessments is joint and several among all defendants, whereas each defendant may be held liable separately for a penalty of up to \$5,000 per claim or statement.

3. Investigation

Section 31.4 includes the provision that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also would prescribe basic procedures for the investigating official

to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section would make it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by Reviewing Official

Under 31 U.S.C. 3809, the reviewing official is required to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. Section 31.5 would not interpret this to require the reviewing official to determine that a defendant could pay the statutory maximum, but rather that the defendant could pay an "appropriate amount."

5. Prerequisites for Issuing a Complaint

Most of the proposed language contained in § 31.6 is derived directly from the Act. Under 31 U.S.C. 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds \$150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The proposed regulation also would make it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds \$150,000.

6. Issuance of Complaints

The proposed regulations would specify what must be included in a complaint (§ 31.7) and an answer by which a defendant requests a hearing (§ 31.9). Section 31.8 would specify the means by which service of the complaint is made.

7. Default upon Failure to Answer

Section 31.10 would require the ALJ (after another notice to the defendant) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the defendant fails to answer within the time prescribed. An initial decision of the ALJ would become the final decision of the Department unless the defendant would demonstrate to the ALJ or on appeal to the authority head that

extraordinary circumstances prevented a timely answer.

8. Hearing

Sections 31.14 and 31.15 are designed to ensure the fairness of a hearing by providing for the separation of functions among those within the agency handling these cases, and prohibiting ex parte contacts with the ALJ on any matters at issue. In a slight variation from the model regulation, § 31.16 of the proposed regulation deletes the provision that if a motion for disqualification is made, the ALJ shall proceed no further in the case until the disqualification issue is resolved. The Department believes that permitting a party to stop all proceeding, even on the eve or in the middle of a hearing, by filing a disqualification motion and affidavit is unwise. The purpose of the deletion is merely to afford the ALJ the discretion to handle the matter as he or she deems appropriate in light of all the circumstances present.

9. Rights of Parties; Authority of the ALJ

Sections 31.17 and 31.18 would list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulations. To provide a clearer statement of what the Department perceives as the intent of the model regulation, proposed § 31.18(c), in a slight variation from the language of the model regulation, would read as follows: "The ALJ does not have authority to find Federal statutes or regulations invalid." The purpose of this minor change is to express better the legal principle that an agency and its personnel must presume the validity of the statutes and regulations under which it operates. The Department does not intend by this provision to restrict an ALJ from construing the language of statutes or regulations, or from considering even the constitutional implications of alternate interpretations of statutes and regulations.

10. Prehearing Conferences

Section 31.19 provides that the ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion.

11. Disclosure of Documents

The Act requires the disclosure of certain types of materials to the defendant. 31 U.S.C. 3803(e)(1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint

and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, under § 31.20 the defendant may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint.

12. Discovery

Congress provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues * * *." 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

In the ordinary case, the Committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the Committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.

S. Rep. No. 99-212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the proposed regulation (§ 31.21) provides that all discovery must be approved by the ALJ unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request. Section 31.21(d)(1) includes some minor editorial changes from the model regulation to improve clarity.

13. Exchange of Witness Lists, Statements, and Exhibits

Section 31.22 would provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ would be able to exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpoenas

Section 31.23 would prescribe procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). In a minor addition to the model regulation, the Department's regulation would require requests for the issuance

of a subpoena to be accompanied by a proposed subpoena. Section 31.24 would permit parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Filing Papers

In a minor supplementation of the model regulation, § 31.26(a) would require parties to submit the original and two copies of documents to the Docket Clerk, and two copies simultaneously to the ALJ or, if on appeal, to the authority head.

16. Motions

The Department proposes, in § 31.21(e)(3), 31.23(f), and 31.28(d), to include provisions not in the model regulation on the effect of motions on deadlines and return dates.

17. Sanctions

Section 31.29 would expressly recognize an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43. Section 31.29(b) contains a minor wording change from the model regulation to state more clearly that the list of sanctions in the regulation is not exhaustive.

18. The Hearing and Burden of Proof

Section 31.30 would recognize that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the defendant has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

19. Determining the Amount of Penalties and Assessments

The Act authorizes the imposition of penalties ranging up to \$5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. Section 31.31 would provide guidance to the ALJ and the authority head in exercising this discretion. The proposed regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damage ordinarily should be

imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and the authority head remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

20. Location of Hearing

In a minor clarification of the model regulation, § 31.32(b) would permit each party to have the opportunity to present written and oral argument with respect to the location of the hearing. However, if a party desires to present oral argument on the location of the hearing, the Department anticipates that such argument will be presented at the prehearing conference, which may be held by telephone. No separate, in-person hearing is required.

21. Witnesses

Under § 31.33, the ALJ would allow testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered. Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in paragraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

22. Evidence

Paragraphs (a) through (d) of § 31.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendation 86-2, 1 CFR 305.86-2, 51 FR 25642 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence, for example, to exclude unreliable evidence.

23. Post-Hearing Briefs

Per § 31.36, it is within the ALJ's discretion to order post-hearing briefs, and any party may file one if so desired. The proposed regulation does not include the model regulation's 60-day maximum period for filing post-hearing briefs because the Department believes that the matter should remain subject to the ALJ's discretion and that parties might come to expect 60 days, which would often be too long a period.

24. Initial Decision

Section 31.37 would provide that the ALJ shall serve on the parties an initial decision based solely on the record, which shall contain specific findings of fact and conclusions of law on whether

the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final 30 days after issuance unless an appeal is filed or a motion for reconsideration is made.

25. Reconsideration of Initial Decision

Section 31.38 would permit any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decisionmaker an opportunity to correct any errors in the initial decision. Sections 31.38 (f) and (g) are phrased slightly differently from the model regulation in order to improve clarity.

26. Appeal to Authority Head

Section 31.39 would prescribe procedures for a defendant who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule would provide that there is no appeal of an ALJ's interlocutory orders.

27. Miscellaneous

Sections 31.40 through 31.46 would largely reiterate statutory provisions, except § 31.41, which would provide that there will be no administrative stay of the authority head's final decision.

28. Limitations

The Act provides that the ALJ must serve a notice of hearing within 6 years of the date the claim or statement is made. The proposed regulation (§ 31.47) would provide that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirement.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

B. Department of Transportation Regulatory Policies and Procedures

Because this NPRM proposes a rule that would affect all Departmental administrations and would provide important new tools for combating fraud in Departmental programs, it is a significant rule under the Department's regulatory policies and procedures. However, because the rule's economic impacts would be minimal, it has been determined that a regulatory evaluation is not needed.

C. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. The

Department has determined that this proposed rulemaking does not contain any information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

V. Other Information

List of Subjects in 49 CFR Part 31

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies) Penalties.

Issued in Washington, DC, on September 29, 1987.

Elizabeth Dole,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation proposes to add a new 49 CFR Part 31 to subtitle A to read as follows:

PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.

- 31.1 Basis and purpose.
- 31.2 Definitions.
- 31.3 Basis for civil penalties and assessments.
- 31.4 Investigation.
- 31.5 Review by the reviewing official.
- 31.6 Prerequisites for issuing a complaint.
- 31.7 Complaint.
- 31.8 Service of complaint.
- 31.9 Answer.
- 31.10 Default upon failure to answer.
- 31.11 Referral of complaint and answer to the ALJ.
- 31.12 Notice of hearing.
- 31.13 Parties to the hearing.
- 31.14 Separation of functions.
- 31.15 Ex parte contacts.
- 31.16 Disqualification of reviewing official or ALJ.
- 31.17 Rights of parties.
- 31.18 Authority of the ALJ.
- 31.19 Prehearing conferences.
- 31.20 Disclosure of documents.
- 31.21 Discovery.
- 31.22 Exchange of witness lists, statements, and exhibits.
- 31.23 Subpoenas for attendance at hearing.
- 31.24 Protective order.
- 31.25 Fees.
- 31.26 Filing, form, and service of papers.
- 31.27 Computation of time.
- 31.28 Motions.
- 31.29 Sanctions.
- 31.30 The hearing and burden of proof.
- 31.31 Determining the amount of penalties and assessments.
- 31.32 Location of hearing.
- 31.33 Witnesses.
- 31.34 Evidence.
- 31.35 The record.
- 31.36 Post-hearing briefs.
- 31.37 Initial decision.
- 31.38 Reconsideration of initial decision.
- 31.39 Appeal to authority head.
- 31.40 Stays ordered by the Department of Justice.

- 31.41 Stay pending appeal.
- 31.42 Judicial review.
- 31.43 Collection of civil penalties and assessments.
- 31.44 Right to administrative offset.
- 31.45 Deposit in Treasury of United States.
- 31.46 Compromise or settlement.
- 31.47 Limitations.

Authority: 31 U.S.C. 3801-3812.

§ 31.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, Sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* The part—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 31.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Transportation.

Authority head means the Assistant Secretary of Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 31.7.

Defendant means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Transportation or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or settlement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the Deputy General Counsel of the Department of

Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 31.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 31.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official or to report violations of criminal law to the Attorney General.

§ 31.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 31.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 31.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 31.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 31.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 31.6 Prerequisites for issuing a complaint.

(a) The revising official may issue a complaint under § 31.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 31.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims is submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 31.3(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 31.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 31.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 31.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his or her representative.

§ 31.9 Answer.

(a) The defendant may request a hearing by serving an answer on the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 31.10 Default upon failure to answer.

(a) If the defendant does not answer within the time prescribed in § 31.9(a), the reviewing official may refer the complaint to an ALJ filing the complaint and a statement that defendant has failed to answer on time.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on

defendant in the manner prescribed in § 31.8, a notice that an initial decision will be issued under this section.

(c) In addition, the ALJ shall assure the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to answer on time is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and

binding upon the parties 30 days after the authority head issues such decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government and to the Docket Clerk.

(b) Such notice shall include—

- (1) The tentative time and place, and the nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The matters of fact and law to be asserted;
- (4) A description of the procedures for the conduct of the hearing;
- (5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and
- (6) Such other matters as the ALJ deems appropriate.

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

- (1) Participate in the hearing as the ALJ;
 - (2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or
 - (3) Make the collection of penalties and assessments under 31 U.S.C. 3806.
- (b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 31.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 31.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official of ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 31.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

- (a) Be accompanied, represented, and advised by a representative;
- (b) Participate in any conference held by the ALJ;
- (c) Conduct discovery;
- (d) Agree to stipulations of fact or law, which shall be made part of the record;
- (e) Present evidence relevant to the issues at the hearing;
- (f) Present and cross-examine witnesses;
- (g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 31.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 31.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether the party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 31.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only the portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 31.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the filing of an answer pursuant to § 31.9.

§ 31.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant documents or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 31.22 and 31.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion shall be accompanied by a copy of the request for production of documents, request for admissions, or interrogatories, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 31.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 31.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 31.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 31.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 31.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 31.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall be accompanied by a proposed subpoena, which shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 31.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten

days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

§ 31.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 31.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 31.26 Filing, form, and service of papers.

(a) *Filing and form.* (1) A party filing a document under this part shall submit:

(i) The original and two copies to the Docket Clerk, Documentary Services Division (C-55), Room 4107, Department of Transportation, 400 7th St., SW., Washington, DC 20590; and

(ii) Two copies simultaneously to the ALJ or, if on appeal, to the authority head.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 31.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued, by mail, an additional five days will be added to the time permitted for any response.

§ 31.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion.

Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) Except as provided by §§ 31.21(e)(3) and 31.23(f), which concern subpoenas, the filing or pendency of a motion shall not automatically alter or extend a deadline or return date.

§ 31.29. Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraphs (c), (d), and (e) of this section. Any such sanction shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 31.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 31.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 31.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 31.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present written and oral argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 31.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 31.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government

engaged in assisting the representative for the Government.

§ 31.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected at the offices of the Docket Clerk (see § 31.26(a)(1) for address) and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for the filing such briefs. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 31.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record,

which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 31.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 31.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the

ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 31.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 31.39.

§ 31.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal in accordance with this section and § 31.26.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 31.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows a good cause.

(c) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that

additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 31.3 is final and is not subject to judicial review.

§ 31.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 31.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 31.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 31.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 31.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 31.42 or § 31.43, or any amount agreed upon in a compromise or settlement under § 31.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 31.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 31.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 31.42 or during the pendency of any action to collect penalties and assessments under § 31.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 31.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 31.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 31.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 31.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 87-22795 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-62-M

Notices

Federal Register

Vol. 52, No. 191

Friday, October 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1988 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1988 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be \$66.00 per license.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, U.S. Department of Agriculture, Washington, DC 20250 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION:

Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20-6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a

specified country. The use of licenses by the license holder to import dairy articles is monitored by the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total costs to the Department of Agriculture of administering the licensing during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

7 CFR 6.33(b) provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1988 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1987 has been determined to be \$230,559. Of this amount, \$168,559 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1987 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled \$141,810; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled \$26,749); \$38,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1987; and \$24,000 represents other miscellaneous costs, including travel, postage, and an in-house computer system. The average number of licenses issued per year for the three years immediately preceding 1988 has been determined to be 3,510.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1988 calendar year, in accordance with the regulations

codified at 7 CFR 6.20-6.34, will be \$66.00 per license.

Issued at Washington, DC, the 5th-day of August, 1987.

Phillip J. Christie,

Licensing Authority.

[FR Doc. 87-22842 Filed 10-1-87; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 364]

Resolution and Order Approving The Application of The Massachusetts Port Authority, For a Special-Purpose Subzone For The General Motors Plant in Framingham, MA, Within The Boston Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Massachusetts Port Authority, grantee of FTZ 27, filed with the Foreign-Trade Zones Board (the Board) on October 18, 1985, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation in Framingham, Massachusetts, within the Boston Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

GRANT To Establish a Foreign-Trade Subzone in Framingham, MA, Within The Boston Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation,

and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application (filed October 18, 1985, Docket No. 38-85, 50 FR 45446) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of General Motors Corporation in Framingham, Massachusetts, within the Boston Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed October 18, 1985, the Board hereby authorizes the establishment of a subzone at the General Motors plant in Framingham, Massachusetts, designated on the records of the Board as Foreign-Trade Subzone No. 27D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or

property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 25th day of September 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-22834 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, and interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than October 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended

investigations, with anniversary dates in October for the following periods:

ANTIDUMPING DUTY PROCEEDING AND PERIOD

Shop Towels of Cotton from the People's Republic of China

10/01/86—09/30/87

Steel Wire Rope from Japan

10/01/86—09/30/87

Barium Chloride from the People's Republic of China

10/01/86—09/30/87

Pressure Sensitive Plastic Tape from Italy

10/01/86—09/30/87

COUNTERVAILING DUTY PROCEEDING AND PERIOD

Agricultural Tillage Tools from Brazil

01/01/86—12/31/86

Certain Iron Metal Castings from India

01/01/86—12/31/86

Certain Carbon Steel Products from Sweden

01/01/86—12/31/86

Canned Tuna from the Philippines

01/01/86—12/31/86

Roasted Pistachios from Iran

08/21/86—12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by October 31, 1987.

If the Department does not receive by October 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: September 24, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-22831 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review; Correction

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation, correction.

In notice document 87-20058 beginning on page 32950 in the issue of Tuesday, September 1, 1987, some errors occurred in the table on page 32951. The table is corrected as follows:

1. Within the table under the title *Antidumping Duty Proceeding*, insert the period "09/01/86-08/31/87," opposite the entry for the Greige Polyester/Cotton Printcloth from the People's Republic of China;

2. Within the table under the title of *Countervailing Duty Proceeding*:

Portland Hydraulic Cement and Cement Clinker from Mexico, period "01/01/86-12/31/87," should read "01/01/86-12/31/86";

Fresh Cut Roses from Israel, period "01/01/86-09/30/86" should read "10/01/85-09/30/86."

3. At the bottom of the table add:

	Period
Suspended Investigations	
Steel Sheet Pilings from Canada	09/15/85-08/31/86

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration,
September 24, 1987.

[FR Doc. 87-22830 Filed 10-1-87; 8:45 am]
BILLING CODE 3510-05-M

[A-588-606]

Antidumping; Final Determination of Sales at Not Less Than Fair Value; Certain Forged Steel Crankshafts From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain forged steel crankshafts (CFSC) from Japan are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Ellie Shea, or Gary

Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0187, 377-0184, or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of CFSC from Japan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We have found that the weighted-average margin for the company being investigated is *de minimis*.

Case History

Since the last **Federal Register** publication announcing the postponement of the final determination and the rescheduling of the public hearing (52 FR 23707, June 24, 1987), the following events have occurred. We conducted verification of the questionnaire responses of Sumitomo Metal Industries, Ltd. (SMI) from May 20 through 29, 1987. Petitioner and respondent filed pre-hearing briefs on July 16, 1987, and rebuttal briefs on July 29, 1987. Sumitomo Corporation (Sumitomo Corp.) and Sumitomo Corporation of America (SCOA), interested parties in this investigation, filed a pre-hearing brief on July 16, 1987. A public hearing was held on July 21, 1987.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Period of Investigation

CFSC are normally sold to the United States on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to the United States, we extended the period of investigation to encompass the 18 months from May 1, 1985 to October 31, 1985, as permitted by § 353.38(a) of our regulations.

Fair Value Comparisons

To determine whether sales of CFSC to the United States were made at less than fair value, we compared the United States price to the foreign market value for SMI, as specified below. We made comparisons on virtually all sales of CFSC during the period of investigation, May 1, 1985 through October 31, 1986. We divided the 18-month review period into three six-month periods for purposes of making our price to price comparisons.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by SMI, because the merchandise was sold to an unrelated purchaser prior to its importation into the United States. We calculated the purchase price based on the packed FOB (free on board), CFS (container freight station), CY (container yard), or FAS (free alongside ship) price to unrelated purchasers.

All U.S. sales, as well as all home market sales of such or similar merchandise, were made to Sumitomo Corp., a Japanese trading company. Because SMI knew the product was destined for the United States, and because SMI and Sumitomo Corp. are not related within the meaning of section 771(13) of the Act, we based the United States prices on the price SMI charged to Sumitomo Corp. We made deductions from these prices for inland freight and, where appropriate, other delivery charges. In the response, SMI deducted after-sale warehousing expenses from the gross price that it received from Sumitomo Corp. We consider this to be a circumstance of sale adjustment. Therefore, we have added this charge back into the gross price and made the appropriate adjustment to the foreign market value.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for CFSC on sales in the home market. We made deductions, where appropriate, from the home market price for inland freight. Since no packing costs were incurred on home market sales, we added only U.S. packing costs. We made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, after-sale warehousing, and sales commissions in the United States and home markets. Pursuant to § 353.16 of our regulations, we made adjustments, where appropriate, to

account for differences in physical characteristics of the merchandise.

Petitioner's Comments

Comment 1: Petitioner contends that Sumitomo Corp. and SCOA, a wholly-owned subsidiary of Sumitomo Corp., are reselling SMI's crankshafts in the United States at below their acquisition cost and selling expenses (*i.e.*, "middleman dumping"), and, therefore, the Department should use end-user prices in the U.S. market and, for comparability's sake, the corresponding end-user prices in the home market. Petitioner cites the *Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil* (51 FR 5572, Feb. 14, 1986) (*Fuel Ethanol*) which states that "[w]here there is a specific allegation that a trading company is failing to recover its costs in transactions concerning the subject merchandise, we will investigate that allegation to determine whether there is 'middleman dumping'." In support of its middleman dumping allegation, petitioner maintains that the commission paid to Sumitomo Corp. by SMI is not adequate to cover Sumitomo Corp.'s selling expenses. Petitioner maintains also that the low level of Sumitomo Corp.'s reported profits is further indication that Sumitomo Corp. makes a substantial portion of its sales at below its acquisition cost and selling expenses.

DOC Position: Since trading companies typically operate at small mark-ups, and presumably do not take losses, we require timely and convincing evidence that the trading company is in fact dumping before initiating an investigation with respect to the trading company. In *Fuel Ethanol*, the middleman dumping allegation was supported by evidence which warranted an investigation into the pricing practices of the trading company.

In the current case, petitioner made the middleman dumping allegation on May 26, 1987, three months after the response was submitted, approximately three weeks after the preliminary determination was issued, and at the end of the verification in Japan. We will not initiate an investigation of alleged middleman dumping unless the allegation can be supported by pricing or cost data [see, *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Cooking Ware from Korea* (51 FR 42873, Nov. 26, 1986)]. Petitioner provided no price information or other substantiating evidence that Sumitomo Corp. is selling below its cost of acquisition and related selling expenses. With regard to petitioner's comment concerning Sumitomo Corp.'s low profit levels, we do not consider low

profit levels to constitute adequate evidence to support an investigation of middleman dumping. Petitioner also did not provide any information to show that Sumitomo Corp. was not recovering all of its selling expenses.

Comment 2: Petitioner contends that the Department's decision to solicit Sumitomo Corp.'s end-user prices need not be contingent upon its agreement with petitioner's allegation that Sumitomo Corp. is engaging in middleman dumping. Petitioner maintains that Sumitomo Corp. is the actual exporter to the United States and, because it makes sales to end-users in both the U.S. and Japanese markets, it can engage in price discrimination at the end-user level, either in combination with or in lieu of SMI. Petitioner further contends that in *Roller Chain, Other Than Bicycle, from Japan; Final Results of Administrative Review of Antidumping Finding* (48 FR 51801, Nov. 14, 1983) (*Roller Chain*), the Department used the middleman's prices when the middleman determined the sales price in both the United States and the home market, regardless of whether the manufacturer knew the destination of the exported merchandise.

DOC Position: We determined that it is appropriate to use the prices at which SMI sells crankshafts to Sumitomo Corp. as the U.S. price because, at the time of such sale, SMI knows that the merchandise is destined for the United States. This is in accordance with the legislative history of the 1979 amendments to section 772 of the Act and the Department's long-standing practice. For example, in the *Roller Chain* case cited by petitioner, for one of the manufacturers, Kaga Kogyo, we used the manufacturer's price to an unrelated exporter since, as here, the manufacturer was aware at the time of the sale to the exporter that those sales were destined for the United States. See also, *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Cooking Ware from Korea* (51 FR 42873, Nov. 26, 1986).

While for two of the companies in *Roller Chain*, Honda and Toyota, we did use the prices charged by non-producers as the basis of our price comparisons, we did so because we determined that they, not the producers controlled the prices at which roller chain was sold in both the U.S. and Japanese markets. In this investigation, by contrast, our extensive review of the correspondence files during the verification showed that Sumitomo Corp.'s price to the end-user is based on the price Sumitomo Corp. pays SMI. We also saw no evidence that

would lead us to believe that Sumitomo Corp. is controlling prices.

Comment 3: Petitioner contends that SCOA should be deemed the agent of SMI within the meaning of section 771(13)(A) of the Act because SMI is extensively involved in SCOA's sales negotiations with U.S. customers and because SMI controls the prices charged by SCOA.

DOC Position: We disagree. We found no evidence during verification that would lead us to conclude that SCOA acts as the agent of SMI. SMI's participation in the actual sales negotiation between SCOA and the U.S. end-user is limited to consultation on technical matters. With regard to petitioner's argument that SMI controls the prices charged by SCOA, during verification we found that SCOA negotiates the end-user price.

Comment 4: Petitioner contends that the Department should consider SMI and Sumitomo Corp. to be "related parties" within the meaning of section 771(13)(C) of the Act because SMI has a substantial level of direct ownership in Sumitomo Corp.

DOC Position: The level of ownership between SMI and Sumitomo Corp. is less than five percent. Department policy has been not to consider parties to be related within the meaning of section 771(13)(C) of the Act if the ownership interest of one party in the other is less than five percent [see, *Final Determination of Sales at Less Than Fair Value: Portland Hydraulic Cement from Japan* (48 FR 41059, Sept. 13, 1983)]. Petitioner has not provided convincing evidence to cause us to change this policy for purposes of this investigation.

Comment 5: Petitioner contends that the Department should consider SMI and Sumitomo Corp. to be "related parties" within the meaning of section 771(13)(D) of the Act because well over 20 percent of SMI and Sumitomo Corp. are owned by the same group of corporate entities, the majority of which are members of the Sumitomo Group.

DOC Position: We disagree with petitioner's interpretation of section 771(13)(D). Petitioner contends that SMI and Sumitomo Corp. are related by virtue of the fact that a number of companies, in aggregate, own over 20 percent of the stock of both SMI and Sumitomo Corp. We do not believe this interpretation to be the intent of Congress. The underlying purpose of section 771(13)(D) was to avoid circumvention of the antidumping duty law by foreign manufacturers capable of shifting selling expenses to related parties in the United States, thereby influencing prices. Here there is no

ability for the common shareholders of SMI and Sumitomo Corp. to influence prices. Of the six companies that have common ownership in SMI and Sumitomo Corp. that in aggregate reach the level of 20 percent, three are banks and three are insurance companies. These six companies have stock holdings in a multitude of Japanese companies, including SMI and Sumitomo Corp., which touch almost every sector of the Japanese economy. The petitioner's interpretation of section 771(13)(D) would lead to absurd results in this instance where common shareholders are not capable of effecting what the provision intended to prevent—the shifting of selling expenses in order to influence prices. Under petitioner's interpretation, any two publicly traded companies would have to be considered related if any number of individuals or companies that owned shares in both, owned, in the aggregate, 20 percent of each company. Therefore, the Department does not agree that SMI and Sumitomo Corp. are related within the meaning of section 771(13)(D).

Comment 6: Petitioner contends that the Department should base foreign market value on the average home market price of all crankshafts within a 15 percent, plus or minus, weight range rather than comparing each U.S. sale to a single home market sale judged to be "most similar." Petitioner maintains that this "basket" approach to product comparisons offers the greatest potential for ensuring that the Department's final less than fair value calculations are based on comparable products, rather than on products similar only with respect to weight. Petitioner cites the following Department decisions in support of its position: *Preliminary Determination of Sales at Less Than Fair Value: Color Picture Tubes from Korea* (52 FR 24318, June 30, 1986) (CPTs); and the *Final Determination of Sales at Less Than Fair Value: Certain Iron Construction Castings from Canada* (51 FR 2412, Jan. 16, 1986) (*Iron Construction Castings*).

DOC Position: Pursuant to section 771(16), it is the Department's policy to use the most similar home market product for comparison purposes and not to average a number of similar home market products. Therefore, we selected the one crankshaft model sold in the home market which is most similar to the U.S. sale. We do not find that the number of adjustments to price resulting from our selection of comparable models in this case is so large as to require an averaging technique such as that proposed by petitioner, nor is there any evidence that petitioner's proposal

would lead to a more accurate comparison than the models we have chosen.

In *Iron Construction Castings*, our "similar" model selections were based on the primary product characteristics of weight, shape, overall dimension, and certain production inputs. This is consistent with our "similar" model selections in the current case which are based on the primary product characteristics of weight, number of throws, and steel type. For one company in the above-cited case, we did employ a weight averaging technique to determine the price of value boxes sold in the Canadian market. This was because sales of value boxes were recorded in component form since the company's Canadian customers were invoiced by reference to component parts and prices. Therefore, the Department employed a weight averaging technique to determine the average price per pound for a completed value box sold by its parts.

The facts in CPTs differ from those presented in this case. For the preliminary determination in CPTs, we compared U.S. sales to home market sales of identical merchandise when there was an adequate number of home market sales. Only when home market sales of identical merchandise were inadequate did we use a basket of similar products sold in the home market. Such a basket was used in order to reach an amount equalling five percent of sales to the United States.

In this investigation of CFSC, sales of the most similar merchandise in the home market chosen for comparison purposes exceeded five percent of sales to the United States.

Comment 7: Petitioner contends that the Department should not employ the standard six-month rule of contemporaneity in comparing U.S. and home market sales. Such a departure from the traditional rule is justified by the prevalence of long-term contracts. In agreeing in advance to set a dollar price for crankshaft shipments to be made over as much as a three-year period, SMI is willing to leave itself open to the risk of exchange rate shifts over the contract period. In order to reflect this aspect of the crankshaft market, petitioner submits that U.S. sales should be compared to the average home market prices of all "similar" crankshafts sold in the 18-month period of investigation.

DOC Position: We disagree. Since crankshafts exported to the United States are sold on the basis of long-term contracts, we extended our period of investigation, normally six months, to 18 months. Because this period is three

times longer than our usual period of investigation, we determined that it was not appropriate to follow our usual methodology of averaging home market sales prices over the entire period. Instead, in order to use home market sales prices which are roughly contemporaneous with the U.S. sales, as required by section 773(a)(1) of the Act, we divided the period of investigation into three six-month segments and used those home market sales that occurred during the six-month period of the U.S. sale.

Respondent's Comment

Comment 1: On sales to the United States, SMI receives a prepayment of a portion of the sales price from the trading company before shipment of the crankshaft. SMI pays interest on the prepayment which is based on the prevailing prime rate. SMI states that the interest rate paid to the trading company for the prepayment is less than the nominal interest rate it pays to commercial banks for short-term loans. Therefore, SMI requests that an additional credit adjustment be made to the foreign market value to reflect the benefit earned on the financing of U.S. sales due to the differences in interest paid to the trading company and the interest due to a commercial bank.

DOC Position: During verification, we found that SMI pays the same interest rate for the prepayment and for short-term loans from commercial banks. SMI contended that the effective interest rate on commercial borrowings was higher than the interest paid on the prepayment to the trading company because the banks require compensating balances. However, we could not verify the requirement of compensating balances, and SMI could not provide us with documentation to show that it placed compensating balances with commercial banks in order to secure short-term borrowings. Since we could not verify differences in the interest rate paid to the trading company on the prepayment and the interest SMI would have paid on commercial short-term lending, it is unnecessary to address this issue.

Currency Conversion

When calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in

accordance with section 776(a) of the Act and followed standard verification procedures, including examination of relevant sales and financial records of SMI.

Final Results

The final results of our investigation are as follows:

Manufacturer/Producer Exporter	Weighted-average margin percentage
Sumitomo Metal Industries, Ltd. ....	.05

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.
September 25, 1987.

[FR Doc. 87-22833 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-701]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 1.00 *ad valorem* for all manufacturers, producers or exporters in Thailand of certain steel wire nails.

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of certain steel wire nails from Thailand that are

entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Packing Credits
- Tax Certificates for Exports
- Assistance to Trading Companies Under the Investment Promotion Act (Double Deduction of Foreign Marketing Expenses and Foreign Taxes)

We determine the estimated net bounty or grant to be 1.00 percent *ad valorem* for all manufacturers, producers or exporters in Thailand or certain steel wire nails.

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Perliminary Affirmative Countervailing Duty Determination Certain Steel Wire Nails from Thailand* (52 FR 27444, July 21, 1987)], the following events have occurred. We conducted verification in Thailand from July 30 through August 7, 1987, of the questionnaire responses of the Government of Thailand, K.Y. Intertrade Co., Ltd. (KYI), Thai Nail Works Co., Ltd., and Asoke International Trading Co. Ltd. (Asoke), a trading company through which KYI exported steel wire nails to the United States. Respondents submitted a supplemental response to our deficiency questionnaire and an amended response correcting certain errors in the initial response on August 12, 1987.

Respondents filed a case brief on September 9, 1987. Petitioners did not file a case brief. Both petitioners and respondents waived their respective rights to a hearing in this case.

Scope of Investigation

The products covered by this investigation are certain steel wire nails from Thailand. These nails are: One-piece steel nails made of round wire, as currently provided for in *Tariff Schedules of the United States Annotated* item numbers 646.2500, 646.2610-90, and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under *Harmonized System* item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* 49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986, which corresponds to all three companies' most recently completed fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers and exporters in Thailand of steel wire nails under the following programs.

A. Export Packing Credits

Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. There have been several changes in this program since the Department's last investigation involving exports from Thailand [See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Rice from Thailand*, (50 FR 12356, April 10, 1986)]. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the Bank of Thailand will repurchase promissory notes issued by creditworthy exporters through commercial banks. The central

bank previously rediscounted promissory notes under this program.

Under the new regulations, exporters apply to commercial banks for export packing credits; the banks, in turn, must submit an application to the Bank of Thailand for approval. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for up to 180 days, and interest is paid on the due date of the loan rather than the date of receipt. If the loan is not repaid on time, the commercial bank will automatically charge the exporter a commercial rate of interest on the outstanding principal beginning on the day after the original due date.

From January 2, 1986 to March 26, 1986, commercial banks charged a maximum interest rate of eight percent per annum for export packing credits, and the Bank of Thailand repurchased these loans from commercial banks at five percent per annum. Effective March 27, 1986, the interest rates changed to seven percent and four percent per annum, respectively.

When a company receives an export packing credit, it must present the commercial banks with evidence that the product was exported by the due date of the loan. If such evidence is not presented, the company is charged an 11 percent interest penalty in addition to the interest rate, retroactive to the date of issuance of the loan. If the company can prove the export has been shipped within 60 days after the due date, then the 11 percent interest penalty is refunded. If the company exports a portion of the amount for which the financing was obtained, then the penalty refund will be made in an amount proportionate to the value of the actual export shipment. If the company does not export within the 60 day time period, no refund is given. The purpose of the penalty changes is to ensure that companies only take out packing credits to finance actual export sales.

We verified that only KYI received or paid interest on export packing credit loans for exports of steel wire nails to the United States during the review period. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this determination we are using the weighted-average interest rate charged

by commercial banks on domestic loans, bills and overdrafts during 1986, and, where loans are issued in 1985 but repaid in 1986, the weighted average interest rate of the same composition for 1985. The data used to calculate these weighted-average interest rates was verified at the Bank of Thailand. Comparing the weighted-average interest rates to the rate charged on export packing credits, we find that the rate on export packing credits is preferential and, therefore, these loans confer bounties or grants on the subject merchandise. Applying the weighted-average commercial bank interest rates as benchmarks, and adjusting the benefit for loans on which penalties were paid but not fully refunded, we calculate an estimated net bounty or grant of 0.43 percent *ad valorem*.

B. Tax Certificates for Exports

The Government of Thailand issues tax certificates to exporters to rebate indirect taxes and import duties on inputs into exported products. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of an input/output (I/O) study initially published in 1980, based on 1975 data, and updated in 1982 using 1980 data.

Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. It also calculates the import duties and indirect taxes on each input. The Ministry then calculates two rebate rates. The "A" rate includes both import duties and indirect domestic taxes. The "B" rate includes only indirect domestic taxes. The "B" rate is claimed when firms participate in Thailand's individual customs duty drawback program or duty exemption program on imported raw materials. The "A" or "B" rate, as appropriate, is then applied to the FOB value of the export to determine the amount of rebate that will be provided.

Under the Tax and Duty Act, the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities.

The rebate rates in effect from December 1, 1981 to February 4, 1986, were set forth in the Notification of the Ministry of Finance No. Or. 1/2524. These rates were based on the I/O study published in 1980. The "A" and "B" rates for nail exports based on the

I/O study published in 1980 were 3.71 percent and 1.96 percent, respectively. A new I/O study based on 1980 data was completed in 1982. Notification of the Committee on Tax Rebates, No. Or. 1/2529 announced new rates effective February 5, 1986, based on the updated study completed in 1982. Since February 1986, the "A" rate is 7.19 percent and the "B" rate is 0.59 percent for nail exports. We verified that Thai Nail Works received tax certificates at the "A" rate and KYI at the "B" rate. We also verified that all certificates earned on nail exports to the United States by Asoke, a trading company used by KYI, on exports on nails produced by KYI, were transferred back to KYI.

To determine whether an indirect tax rebate system, which incorporates rebates of import duties confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the I/O study upon which the indirect tax and import duty rebate system is based meets these conditions, the Department will consider that the system does not confer a bounty or grant if the amount rebated for duties and indirect taxes on physically incorporated inputs does not exceed the fixed amount set in the rebate schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs. Based on these tests, we determine the following.

The Tax and Duty Act provides that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other

energy used in the production of exports. Direct taxes such as income tax and taxes which are otherwise refundable or exempt are excluded from the rebate. Thus, the program operates to rebate indirect taxes and import duties.

The eligibility criteria for the rebate program, when considered in conjunction with the government's response and the information obtained during verification on the methodology and sampling used in calculating the rebate rates based on the revised I/O study, lead us to conclude that the government employed an adequate methodology for establishing the rebate levels. Furthermore, after a thorough examination of the methodologies employed in revising the 1975 I/O study and in calculating new rebate rates based on the revised study, we find that the government of Thailand has a system in place to periodically update the rebate schedules.

We have reviewed the documentation submitted by the government in their response and at verification showing their detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import duties and taxes, and domestic indirect taxes. The inputs itemized in the government's calculations include both physically incorporated items as well as non-physically incorporated items.

Since the indirect tax on non-physically incorporated items is also included in the government's rebate rate calculation, we must determine the extent to which the rebate rates confer an excessive remission of indirect taxes. First, we calculated the indirect tax incidence on physically incorporated inputs at FOB prices according to the most recent government rebate rate calculation. We then subtracted the percentage of indirect tax incidence attributable to physically incorporated inputs from the authorized rebate rate. Using this methodology, the overrebate on the "A" rate is 1.55 percent and the overrebate on the "B" rate is 0.20 percent.

To determine the country-wide estimated net bounty or grant, we weight-averaged the overrebates received by each producer under the current rebate rates by each company's proportion of the value of Thai exports of steel wire nails to the United States during the review period. On this basis, we calculate an estimated net bounty or grant of 0.26 percent *ad valorem*.

C. Assistance to Trading Companies Under the Investment Promotion Act: Double Deduction of Foreign Marketing Expenses and Foreign Taxes

Pursuant to section 16 of the Investment Promotion Act, the Board of Investment issued Announcement No. 40/2521. This announcement designated international trading companies as eligible for promotion through the receipt of an investment incentive license. Although this program was terminated for international trading companies not granted promotion prior to March 2, 1981, companies granted promotion before the termination continued to be eligible for benefits under the program. Asoke received its investment incentive license on February 20, 1980, prior to the termination date. Pursuant to this license, Asoke was eligible to receive each of the benefits listed in the announcement. These benefits include:

- Import duty exemptions for both raw and essential materials used in export production;
- Exemption of certain business taxes;
- Exemption of business taxes for suppliers;
- Exemption of business taxes for subcontractors;
- Permission to maintain foreign currency bank accounts;
- Entitlement to Export Packing Credits;
- A double deduction from taxable income of taxes paid by branch offices outside Thailand; and
- A double deduction from taxable income of foreign marketing expenses.

The first two benefits—import duty exemptions and exemption from certain business taxes—are discussed below under "Programs Determined Not To Confer Bounties or Grants." The next four benefits—exemption of business taxes for suppliers, exemption of business taxes for subcontractors, permission to maintain foreign currency accounts and entitlement to Export Packing Credits—are discussed below under "Programs Determined Not To Be Used."

We verified that Asoke used the two tax deduction sub-programs on its tax return filed during the review period. Because these programs provide a benefit contingent upon export performance, we determine that they both confer a bounty or grant. The benefit is the amount of tax savings realized as a result of the additional tax deductions allowed under the program.

We verified that the deduction for taxes paid by foreign branch offices may also be doubled and subtracted from

gross income. Therefore, we included both deductions in the same benefit calculation. To calculate the estimated net bounty or grant, we first determined Asoke's tax savings based on the tax return filed during the review period by multiplying the value of the extra deduction by the corporate tax rate of 40 percent. We then multiplied the tax savings by the proportion of Asoke's steel wire nail exports to the United States (excluding exchange gains) over the invoice value of its total export sales (excluding exchange gains and commission fees charged separately). We divided the resulting amount by total steel wire nail exports to the United States to derive the estimated net bounty or grant of 0.31 percent *ad valorem*.

II. Program Determined not to Confer Bounties or Grants

We determined that bounties or grants are not being provided to manufacturers, producers or exporters in Thailand of certain steel wire nails under the following program.

Assistance to Trading Companies Under the Investment Promotion Act: Import Duty Exemption and Exemption from Certain Business Taxes

Under the Board of Investment Announcement No. 40/2521 discussed above, eligible trading companies are entitled to import duty exemptions for both raw and essential materials used in export production.

We verified that the import duty exemption benefit functions in the same way as the duty drawback program in Thailand which we have determined does not confer a bounty or grant [See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Apparel from Thailand* (50 FR 9818, March 12, 1985)].

Announcement No. 40/2521 also provides business tax exemptions to producers who supply export commodities to promoted trading companies. Additionally, business tax exemptions are provided on the commission fees and export agency fees of promoted trading companies.

We verified that business taxes in Thailand are excise taxes paid on monthly gross receipts by the seller. As such, these taxes are indirect taxes. The taxes exempted under this program are also final stage taxes. Under the act, the non-excessive remission of, or exemption from, indirect taxes levied at the final stage is not considered a subsidy [See *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan*

(51 FR 19583, May 30, 1986)]. Therefore, we determine that the exemptions from the business taxes described above do not confer a bounty or grant.

III. Programs Determined not to be Used

We determine, based on verified information, that the manufacturers, producers and exporters in Thailand of certain steel wire nails did not apply for, claim or receive benefits during the review period for exports of steel wire nails to the United States under the following programs which were listed in the *Initiation of Countervailing Duty Investigation: Certain Steel Wire Nails from Thailand* (52 FR 18591, May 18, 1987).

- A. Repurchase of Industrial Bills
- B. Electricity Discounts for Exporters
- C. Investment Promotion Act (Sections 31, 33, 34 and 36)
- D. Export processing Zones
- E. International Trade Promotion Fund
- F. Assistance to Trading Companies Under the Investment Promotion Act: Exemption of Business Taxes for Suppliers, Exemption of Business Taxes for Subcontractors, Export Packing Credits and Foreign Currency Accounts

We verified that under this program, Assistance to Trading Companies Under the Investment Promotion Act, the first three benefits listed were not used by Asoke for exports of steel wire nails to the United States.

With respect to foreign currency accounts, at verification, the government reported that contrary to the initial company response, Asoke did maintain a foreign currency account denominated in U.S. dollars during the review period. However, we verified that the account was not used to conduct transactions involving steel wire nail exports to the United States, nor was it used to import inputs for the production of steel wire nails.

IV. Programs Determined not to Exist

We determined, based on verified information, that the following programs listed in the *Initiation of Countervailing Duty Investigation: Certain Steel Wire Nails from Thailand* (52 FR 18591, May 18, 1987) do not exist.

- A. Business Tax Exemption for Manufacturers of Construction Materials
- B. Sales Tax Exemption for Promoted Industries

We verified that a sales tax exemption program for promoted industries, other than that provided under the Investment Promotion Act, does not exist (see "Program Determined Not To confer Bounties or

Grants" and "Programs Determined Not To Be Used").

Comments

Comment 1: Respondents contend that the Department of Commerce (DOC) should not use a full-year weighted average commercial interest rate as a benchmark for calculating the benefit arising from the export packing credit program. Instead, they argue, six-month average interest rates should be used.

DOC Position: We disagree. We believe the use of a full-year benchmark neither overstates nor understates the benefit, but is the best measure of subsidization during the review period. Respondents have not provided sufficient rationale to convince us to depart from our standard short-term loan methodology. Using six-month benchmark rates, as respondents suggest, is not warranted in this instance, because no major fluctuation in the Thai economy occurred during the time the loans were obtained.

Comment 2: Respondents argue that, in calculating the benefit Asoke received from the double deduction of foreign marketing expenses and payment of foreign taxes, the DOC should not take into account for duty deposit purposes the tax loss carry-forward the company claimed on its 1986 tax return filed in 1987.

DOC Position: We agree. Asoke's tax loss carry-forward was created by the double deduction of foreign marketing expenses in previous tax years. Asoke was able to carry-forward this loss under a standard provision of Thai tax law. Therefore, we do not consider the use of that existing provision to constitute a program-wide change. Consequently, it is inappropriate to take into account the use of the provision for purposes of establishing a duty deposit rate. However, the tax loss carry-forward will be examined in a subsequent administrative review, if requested.

Comment 3: Respondents assert that permission to hold foreign currency accounts should not be considered a countervailable subsidy under U.S. law. Respondents further contend that Asoke's use of the foreign currency account did not confer a benefit on exports of steel wire nails to the United States.

DOC Position: While Asoke does maintain a dollar-denominated foreign currency account, we verified that the account was not used in conjunction with nail exports to the United States during the review period. Based on this information we determine that the program was not used; the question of countervailability is therefore moot.

Comment 4: Respondents argue that it is unnecessary to calculate the incidence of indirect taxes on non-physically incorporated inputs at stages of production prior to the final input stage to determine the benefit received under the tax certificate for export program. They contend that this program intends to rebate only those indirect taxes levied on inputs incorporated into the exported product at the final production stage, and that such a rebate is permissible under U.S. law.

DOC Position: We verified that the tax certificates for exports program only rebates the indirect taxes paid on the final stage inputs. The purpose of the program is not to rebate the amount of taxes paid on inputs at stages of production prior to the final input stage. Therefore, for purposes of our analysis, we have examined the indirect tax incidence only on inputs at the final stage of production.

Comment 5: Respondents point out that, for purposes of the final determination, the figure for total exports of steel wire nails to the United States should be adjusted. In the preliminary calculation, they contend, DOC erroneously used an export value for Asoke, a trading company, based on a cash receipt sales value reported by KYI, its supplier. Instead, Asoke's own records, which are kept on an accrual basis and include any mark-ups passed on to customers, should be used to calculate the export value. In calculating the proportion of KYI's shipments of nails to the United States, respondents suggest that KYI's shipments through Asoke be valued according to Asoke's accrual basis accounting records.

DOC Position: We agree. However, we further revised the figure for total export sales of nails to the United States by subtracting from it one very small export shipment of nails through Asoke produced by a non-responding company. We also subtracted exchange gains Asoke made on shipments of nails to the U.S. Likewise, we excluded these values when calculating the value of KYI's shipments through Asoke.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional

information that we deemed necessary for making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of certain steel wire nails from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit equal to 1.00 percent *ad valorem* for each entry of the subject merchandise. This suspension of liquidation will remain in effect until further notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

September 28, 1987.

[FR Doc. 87-22832 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 3642-05]

Actions Affecting Export Privileges; Joseph Lousky

Summary

In the matter of: Joseph Lousky, Respondent, Docket No. 3642-05.

Pursuant to the consent agreement reached by the Department of Commerce and Joseph Lousky in the above captioned proceeding, which agreement was approved by the Administrative Law Judge in his Recommended Decision and Order, Joseph Lousky, 63 Merton Road, Hampstead, Montreal, Quebec H3X 1M3, Canada is hereby denied all export privileges for three (3) years from the date of this Order and assessed a civil penalty in the amount of \$25,000. As authorized by § 388.16(c) of the Export Administration Regulations (15 CFR Parts 368 through 399 (1986)) (Regulations), the last two years of the three year denial period are hereby suspended. The two year suspension will commence one year after entry of this Order. The final two years of the denial period will be waived provided that during the period of suspension Lousky: (1) Complies with the terms set forth in the Consent Agreement and (2) commits no violations of the Act, regulations, order or license issued under the Act.

Order

On August 27, 1987, the Administrative Law Judge (ALJ) issued his Recommended Decision and Order approving the consent proposal dated August 10, 1987 and submitted by the parties in this matter. The Recommended Decision and Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act) and 15 CFR 388.17(a), for final action.

I hereby modify the third sentence in paragraph two of the ALJ's Decision by deleting that sentence and inserting in lieu thereof the following:

Lousky admits that certain of the facts stated in the charging letter are true. I find that those allegations, admitted by Lousky to be true, constitute violations of the Act and the Regulations. Lousky wishes to settle and dispose of all matters identified in the charging letter by entering into this consent agreement.

Paragraph V of the ALJ's Order is hereby modified by deleting that paragraph and inserting in lieu thereof the following:

V. All outstanding individual validated export licenses in which Lousky appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Lousky's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses are hereby revoked.

Paragraph VIII of the ALJ's Order is hereby modified by inserting after the words "specific authorization" the following:

* * * from the Office of Export Licensing * * *

Having examined the record and based on the facts adduced in this case, I affirm the Recommended Decision and Order of the ALJ as thus modified and incorporate herein by reference the terms of the settlement agreement referred to above.

This constitutes final agency action in this matter.

Dated: September 28, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision and Order Affirming Settlement Agreement

In the matter of: Joseph Lousky, Respondent, Docket Number 364-05.

Appearance for Respondent: Mr. Kenneth F. Salomon, Esq., 800 Quest Boulevard, Dorchester, Suite 2890, Montreal, Quebec Canada H 3b 1X9.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, U.S.

Department of Commerce, Room H3845, Washington, DC 20230.

An administrative proceeding was initiated against Joseph Lousky (Lousky),¹ pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401 through 2420), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368 through 399 (1986)), (the Regulations). The Office of Export Enforcement issued a charging letter on April 2, 1986, alleging that between April 1, 1981 through November 12, 1982, Lousky violated §§ 387.3, 387.4, 387.5 and 387.6 of the Regulations, in that:

(a) Between April 1, 1981 and November 12, 1982, Lousky conspired with Pierre A. Randin to bring about acts that constituted violations of the Act and the Regulations. The purpose of this conspiracy was to acquire U.S.-origin goods on the representation that Switzerland was the intended ultimate destination when, in fact, Lousky and Randin intended to, and did subsequently, divert the U.S.-origin goods to proscribed destinations without the required reexport authorization from the Department. In accomplishing this conspiracy, Lousky caused false and misleading statements of material fact to be submitted to the Department.

(b) Between April 1, 1981 and November 12, 1982, Lousky and others, in connection with these shipments indirectly caused false and misleading statements of material fact to be made to the Department on export control documents; and

(c) Lousky reexported U.S.-origin computers and computer components from Switzerland to proscribed destinations without obtaining reexport authorization from the Department which Lousky knew or had reason to know was required by § 374.1 of the Regulations.

Pursuant to 15 CFR 388.17, the Agency and Lousky have agreed to and submitted a consent proposal to this office whereby Agency counsel and Respondent have agreed that, although Lousky was charged individually and doing business as Eler Engineering S.A., that entity no longer exists. Therefore,

¹ The original proceeding was initiated by a Charging Letter addressed to Lousky, individually and doing business as Eler Engineering S.A., with addresses in both France and Switzerland. By letter dated May 26, 1988, the Agency was notified that Eler Engineering S.A. had, in fact, been liquidated. Accordingly, the Order is issued against Lousky only in his individual capacity.

the sanctions imposed shall apply only to Lousky, individually. Respondent Lousky admits that he violated the regulations as alleged in the charging letter and that this matter is being settled by: (1) Lousky's payment to the Agency of a civil penalty in the amount of \$25,000; (2) a denial to Lousky of all export privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad for a period of three years following the date of entry of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, It is ordered:

I. Respondent Joseph Lousky is assessed and shall pay to the Agency a civil penalty in the amount of \$25,000. Such civil penalty shall be payable to the Agency in three installments: The first installment of \$5,000 will be paid within 30 days from the service of the final Order of the Assistant Secretary; the second installment of \$5,000 will be paid to the Agency on or before September 30, 1988; the third and final installment of \$15,000 will be paid to the Agency on or before September 30, 1989. Each payment shall be made in accordance with the attached instructions.

II. For a period of 3 years from the date this Order becomes final, Respondent—

Joseph Lousky, 63 Merton Road,
Hampstead Montreal, Quebec H3X
IM3, Canada,

his successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

III. Commencing 1 year from the date on which this Order becomes final, in accordance with § 388.16(c) of the Regulations, the period of denial will be suspended for the balance of the remaining 2 year period and will be remitted without further action at the end of that period provided Respondent has committed no further violations of the Act, the regulations, or the final Order entered in this proceeding. During the 2-year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in

accordance with the requirements of the Act and the regulations. The provisions of Paragraph V of the Order are also suspended during the 2-year period.

IV. Respondent Lousky shall, during this suspension period, submit quarterly reports to the Director, Office of Export Enforcement, describing the reexport of U.S.-origin commodities, technical data, or equipment Lousky has made, as provided in the Consent Agreement. Each report shall cover successive quarters following the date of suspension. Lousky shall submit each of these reports after the close of each quarter.

V. All outstanding validated export licenses in which Lousky or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

VI. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to matters which are subject to the Act and the Regulations.

VII. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection, in the conduct of export trade of related services.

VIII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or

indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported, by, to, or for any Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

IX. By the Order of March 11, 1983 (48 FR 11479, March 18, 1983), Joseph Lousky and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the ten on-going investigation. Upon approval, this Order will constitute such final disposition of the administrative proceeding initiated by the Agency as a result of its investigation relating to the matters which gave rise to the temporary denial order. The Temporary Denial Order of March 11, 1983 (48 FR 11479-11480, March 11, 1983) will thereby be superceded and revoked. Review of the record relating to the 5 Respondents originally named in that Order reflect that all have now been addressed except Eler Engineering, S.A. and Suzanna Maas who was identified as a related party. As is stated in the footnote on page one, Eler Engineering has been liquidated and no longer exists. Since Suzanna Maas was named as a party related to Eler Engineering by virtue of her employment there, it appears that the basis for her being named no longer exists. The following entries will be deleted from the said Table:

Eler Engineering, S.A. a/k/a Eler, S.A.,
P.O. Box 209, CH-1401 Yverdon, and
CH-1040 Echallens, Switzerland
Eler, S.A.
Maas, Suzanna, Manager, Eler
Engineering, S.A., P.O. Box 209, CH-
1401 Yverdon, Switzerland.

From the effective date of this Order it alone will be the basis for any entry on the Table of Denial Orders until modified (15 CFR Part 388 (Supp. No. 1 1987)).

X. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to the Export Administration Amendments Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: August 27, 1987.

Hugh J. Dolan,
Administrative Law Judge.

Attachment To Administrative Law Judge Order

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to:

U.S. Department of Commerce, Office of Assistant General Counsel for Export Administration, Room H-3845, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attn: Pamela P. Breed, Esq.

[FR Doc. 87-22753 Filed 10-1-87; 8:45 am]

BILLIN CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 29, 1987.

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 October 5, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements

directs the Commissioner of Customs to increase the limit for cotton textile products in Category 347/348, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated November 28, 1986 was published in the **Federal Register** (51 FR 43960), as amended on April 7, 1987 (52 FR 12230), which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 347/348 and 647/648, produced or manufactured in Mexico and exported during the current agreement year which began on January 1, 1987 and extends through December 31, 1987. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and the United Mexican States, under the terms of which these limits were established, also includes provisions for special shift between the specific limits for Categories 347/348 and 647/648. Under the foregoing provisions of the bilateral agreement and at the request of the Government of the United Mexican States, the limit established for Category 347/348 is being increased by application of special shift for goods exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. The limit for Category 647/648 is being reduced to account for the special shift applied to Category 347/348.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709, as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27088) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

September 29, 1987.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

September 29, 1987.

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on November 28, 1986, as amended on April 7, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 5, 1987, the directive of November 28, 1986, as amended, is hereby further amended to adjust the previously established limits for cotton and man-made fiber textile products in Categories 347/348 and 647/648, as provided under the terms of the bilateral agreement of February 26, 1979, as amended and extended¹:

Category	Adjusted 1987 Limit ¹
347/348	1,571,185 dozen
647/648	1,635,050 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22804 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DR-M

¹ The agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; (3) special shift of ten percent shall be available between the specific limits for Categories 347/348 and 647/648; an additional five percent special shift shall be available between sublimits 347 and 348 between 647 and 648; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1986.

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 29, 1987.

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 September 29, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limit for Category 443 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated March 11, 1987 (52 FR 7918) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including individual specific limits within Group I and a limit for categories in Group II which do not have specific limits, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Pursuant to a request from the Government of the Republic of the Philippines and under the terms of the Bilateral Textile Agreement of March 7, 1987, between the Governments of the United States and the Republic of the Philippines, Category 443 is being increased by application of swing and carryforward. The limit for Group II has been reduced to account for the swing applied to Category 443.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983

(48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the **TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)**.

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions take pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.
September 29, 1987.

Committee for the Implementation of Textile Agreements

September 29, 1987.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on March 11, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on September 29, 1987, the directive of March 11, 1987 is amended to include adjustments to the following previously established restraint limits, under the terms of the Bilateral Textile Agreement of March 7, 1987: ¹

Category	Adjusted 12-month limit ¹
443	3,396 dozen.
Group II: 300-320, 330, 332, 349, 350, 353, 354, 359-O ² , 360-363, 369-O ³ , 400-429, 432, 434-442, 444, 448- 459, 464-469, 600-603, 605-627, 630, 632, 644, 653, 654, 659-O ⁴ , 665-670 and 831-859, as a group.	67,184,970 square yards.

¹ The limit has not been adjusted to account for any imports exported after December 31, 1986.

² In Category 359-O, all TSUSA numbers except 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810,

384.0815, 384.0820, 384.0825, 384.3451, 384.3452,
384.3453, 384.3454, 384.5162, 384.5163, 384.5167,
384.5169 and 384.5172.
³ In Category 369-O, all TSUSA numbers except 366.3840.
⁴ In Category 659-O, all TSUSA numbers except 384.2105,
384.2115, 384.2120, 384.2125, 384.2646, 384.2647,
384.2648, 384.2649, 384.2652, 384.8651, 384.8652,
384.8653, 384.8654, 384.9356, 384.9357, 384.9358,
384.9359, 384.9365, 703.0510, 703.0520, 703.0530,
703.0540, 703.0550, 703.0560, 703.1000, 703.1610,
703.1620, 793.1630, 703.1640 and 703.1650.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22805 Filed 10-1-87; 8:45 am]
BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) from Imported Parts

September 29, 1987.

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 October 5, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the limit for sweaters in Categories 345, 445, 446, 645 and 646 which are assembled in the Commonwealth of the Northern Mariana Islands and exported during the twelve-month period which began on November 1, 1986 and extends through October 31, 1987.

Background

On November 3, 1986 a notice was published in the **Federal Register** (51 FR 39902), which continued and increased the import restraint limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which were determined by the U.S.

Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI) during the period which began on November 1, 1986 and extends through October 31, 1987. A subsequent notice published on September 10, 1987 (52 FR 34271) announced the reduction of this limit.

As an interim measure pending amendment to the existing bilateral agreement regarding sweaters panels assembled in the CNMI, the Commonwealth of the Northern Mariana Islands has requested that the limit for Categories 345, 445, 446, 645 and 646 be increased by application of carryforward for the period which began on November 1, 1986 and extends through October 31, 1987. This action will re-open the limit which is currently embargoed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the *Federal Register*.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on October 29, 1986, as amended on September 4, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, assembled in the Commonwealth of the Northern Mariana Islands from foreign parts and exported during the twelve-month period which began on November 1, 1986 and extends through October 31, 1987.

Effective on October 5, 1987 the directive of October 29, 1986, as amended, is hereby further amended to adjust the previously established limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, as provided under the terms of the Arrangement of October 17, 1986 to 100,000 dozen.¹

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. (a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22806 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

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 October 5, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the restraint limits for Categories 335, 338/339, 340/640, 342/642, 347/348, 359-I, 445/446, 634, 635, 638/639, 645/646 and 659-H for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated March 11, 1987 (52 FR 7918) established limits for certain specified categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including individual specific

¹ The limit has not been adjusted to account for any imports exported after October 31, 1986.

limits within Group I and a limit for categories in Group II which do not have specific limits, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Pursuant to a request from the Government of the Republic of the Philippines and under the terms of the Bilateral Textile Agreement of March 7, 1987, between the Governments of the United States and the Republic of the Philippines, Categories 355, 338/339, 340/640, 342/642, 347/348, 359-I, 445/446, 634, 635, 638/639, 645/646 and 659-H are being increased by application of swing and carryforward. The 1987 limit for Group II is being reduced to account for the swing applied to these categories. In addition, special carryforward is being granted for Categories 338/339, 340/640, 342/642, 347/348, 359-I, 634, 638/639, and 659-H

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the *Federal Register*.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

September 29, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on March 11, 1987 by the Chairman, Committee for the Implementation of Textile Agreements,

concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 5, 1987, the directive of March 11, 1987 is amended to include the following adjusted restraint limits under the terms of the Bilateral Textile Agreement of March 7, 1987:¹

Category	Adjusted 12-mo limit ¹
335.....	113,000 dz.
338/339.....	1,298,000 dz.
340/640.....	630,000 dz.
342/642.....	324,500 dz.
347/348.....	1,180,000 dz.
359-I ²	819,000 dz.
445/446.....	27,841 dz.
634.....	189,000 dz.
635.....	345,003 dz.
638/639.....	1,333,400 dz.
645/646.....	565,000 dz.
659-H ³	1,260,000 pds.
<i>Group II:</i>	
300-320, 330, 332, 349, 350, 353, 354, 359-0 ⁴ , 360-363, 369-0 ⁵ , 400-429, 432, 434-442, 444, 448-459, 464-469, 600-603, 605-627, 630, 632, 644, 653, 654, 659-0 ⁶ , 665- 670, and 831-859, as a group.	61,330,438 sq yds equivalent.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1986.

² In Category 359-I, only TSUSA numbers 384.0439, 384.0441, 384.0442, 384.444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

³ In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 793.1620, 703.1630, 703.1640 and 703.1650.

⁴ In Category 359-0, all TSUSA numbers except 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 3894.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

⁵ In Category 369-0, all TSUSA numbers except 366.2840.

⁶ In Category 659-0, all TSUSA numbers except 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365 (659-I), 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610,

703.1620, 703.1630, 703.1640 and 703.1650 (659-H).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-22803 Filed 10-1-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition

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

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1987 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 2, 1987.

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 August 10, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 29564 of a proposed addition to Procurement List 1987, November 3, 1986 (51 FR 39945).

After consideration of the relevant matter presented, the Committee has determined that the service 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 service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial

U.S. Department of Justice,
Northwestern Bank Building, 1405
Eye Street NW., Washington, DC

C W. Fletcher,

Executive Director.

[FR Doc. 87-22813 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions and Deletions

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

ACTION: Proposed additions and deletions to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities and services produced or provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 2, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

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 services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Service

Assembly of Kit

Camouflage Support System, U.S.
Army Troop Support Command, St.
Louis, Missouri

Janitorial

Federal Building, 601 East 12th Street,
Kansas City, Missouri

Deletions

It is proposed to delete the following commodities from Procurement List 1987, November 3, 1986 (51 FR 39945):

Commodities

Frame, Picture

7105-00-986-7356

7105-00-149-1277

Pencil, Mechanical

7520-00-285-5818

C.W. Fletcher,

Executive Director.

[FR Doc. 87-22814 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board Task Force on Follow on Forces Attack (FOFA); Advisory Committee Meetings****ACTION:** Notice of advisory committee meetings.**SUMMARY:** The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on November 23-24, 1987 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

September 29, 1987.

Patricia H. Means,

*OSD Federal Register Liaison Officer
Department of Defense.*

[FR Doc. 87-22770 Filed 10-1-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****Federal Acquisition Regulation (FAR);
Information Collection Under OMB
Review****AGENCY:** Department of Defense (DOD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Notice.**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Qualifications Requirements.**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.**FOR FURTHER INFORMATION CONTACT:** Mr. Chester Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.**SUPPLEMENTARY INFORMATION:****a. Purpose**

The solicitation provision at FAR 52.209-1, Qualifications Requirements, requires offerors who have met the qualifications requirements to identify the offeror's name, the manufacturer's name, the item name and the test number.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,882; responses per respondent, 100; total annual responses 788,200; hours per response, .084; and total burden hours, 66,209.

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0083, Qualifications Requirements.

Dated: September 22, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-22775 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-1-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket Nos. ER87-614-000 et al.]

**Electric Rate and Corporate Regulation
Filings; Washington Water Power et al.**

Take notice that the following filings have been made with the Commission:

1. Washington Water Power

[Docket No. ER87-614-000]

September 25, 1987.

Take notice that on September 14, 1987, Washington Water Power (WWP) tendered for filing an amendment of a list of customers that have agreed to the settlement offer extended by WWP in the Alternative Fourteenth Revision of Schedule 61. WWP states that wholesale customers, Citizens Utilities Company, the City of Chewelah, and the City of Plummer have signed settlement agreements. WWP requests that the Commission consider these settlement agreements at the time the Commission acts on WWP's rate filing. If the Commission approves the settlement agreements, WWP requests that Alternate Fourteenth Revision of Schedule 61 be approved effective November 1, 1987 applicable to all five of its wholesale electric customers and that the Commission's Order specifically approve the 64.1% level and method of recovery of WWP's investment in BPA Settlement Exchange Power addressed in the settlement agreement.

A copy of this filing is being served on all parties to this proceeding.

Comment date: October 6, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER87-418-000]

September 25, 1987.

Take notice that on September 8, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment with additional information to the application filed May 1, 1987 in this docket for a change in the rates Niagara Mohawk charges the New York Power Authority (Power Authority) for the transmission and delivery of power and energy under Niagara Mohawk FERC Rate Schedule No. 138. This filing was in response to an August 7, 1987 letter from Mr. Jerry R. Milbourn requesting additional information.

Pursuant to 18 CFR 35.11 (1987), Niagara Mohawk requests that the Commission waive its notice requirements for good cause shown and allow the proposed rates to become effective on July 1, 1987, the effective date requested in the May 1, 1987 application. Niagara Mohawk states the affected customers and the Commission have had notice of the proposed change in rates and the proposed effective date since May 1, 1987, and that this amendment to the filing does not involve revisions to the originally proposed rates. Thus, neither the affected

customers nor the Commission would not be prejudiced by such waiver.

Niagara Mohawk also renews its request, as set forth in its May 1, 1987 transmittal letter, that the Commission suspend the proposed rates, if at all, for no more than one day.

Comment date: October 6, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Pacific Gas and Electric Company

[Docket No. ER87-424-000]

September 28, 1987.

Take notice that on September 24, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing in compliance with Commission Order dated June 26, 1987:

(1) A letter agreement with Western Area Power Administration (WAPA), dated December 21, 1979 (Letter Agreement). This is the amendment to PGandE's agreement with WAPA that clearly sets forth the energy rate methodology.

(2) An explanation of the derivation of all the components of the energy rate.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER87-665-000]

September 28, 1987.

Take notice that on September 24, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing a Revised Letter of Understanding (Letter Concerning the WSPP Agreement and the Interconnection Agreement between PGandE and the Northern California Power Agency (NCPA).

The Letter defines how PGandE will provide transmission services for NCPA for transactions under the Western Systems Pool (WSPP) experiment. NCPA requires transmission services from PGandE to participate in the WSPP experiment. The Letter specifies which transmission services shall be provided under the Western Systems Power Pool Agreement (Pool Agreement) and which shall be provided under the Interconnection Agreement between PGandE and NCPA.

All firm transmission services will be provided under the Pool Agreement. All non-firm transmission services will be provided under the Interconnection Agreement. WSPP transactions will be billed separately from Interconnection Agreement transactions and compensation for a WSPP transaction will in no way effect either party's

obligation for services offered under the Interconnection Agreement.

The Letter is to effective only for the year term of the experiment.

Comment date: October 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 87-22799 Filed 10-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-67-000]

Regulation of Independent Power Producers; Technical Conference

September 25, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference.

SUMMARY: This Notice is establishing a schedule for a technical conference conducted by the Staff of the Federal Energy Regulatory Commission (Commission) to allow the public to comment on the Commission's regulation of independent power producers (IPPs) under the Federal Power Act, 16 U.S.C. 791A-825R.

Although written comments may be given regarding any aspect of IPPs regulation, the Staff is particularly interested in receiving comments in five major topic areas:

1. The need for new policies toward IPPs;
2. Identifying and regulating producers lacking market power;
3. Rate regulation of IPPs;
4. Utility ownership of IPPs;
5. FERC/State issues.

In addition, the Staff will make available to the public no later than

October 9, 1987 a preliminary working paper exploring the technical and policy issues associated with the regulation of IPPs. The Staff wishes to receive comments from the public on this paper.

DATES: Panels will be created around the five major topics listed above. Each party wishing to speak should file a request to speak, indicating the panels on which it wishes to participate ranked by order of preference. Because of time limitations, parties may not be granted the opportunity to participate on every panel that they request. However, parties may file written comments on as many issues as they wish. The Commission encourages every party who plans to make an oral presentation to file written comments with the Commission in advance of the conference. Every person desiring to make an oral presentation must file a request to speak. An original plus fourteen (14) copies of requests to speak must be received by the Commission's Secretary by 5:00 p.m. EDT on October 16, 1987. An original plus fourteen (14) copies of written comments on the technical conference and working paper must be received by the Commission's Secretary by 5:00 EST on November 6, 1987. The public conference will be held on October 22 and 23, 1987 beginning at 9:00 a.m. each day in Hearing Room A at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC.

ADDRESSES: All filings should refer to Docket No. EL87-67-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

Notice is hereby given that the Staff of the Federal Energy Regulatory Commission will hold a technical conference to receive comments on initiatives involving independent power producers (IPPs) under the Federal Power Act (FPA). This notice is establishing a schedule for this conference and an opportunity to provide written and oral comments on the issues set forth below.

Background

One of the main objectives of public utility regulation is to protect the public against the abuses of market power.¹

¹ See, e.g., *Associated Gas Distributors v. FERC*, D.C. Circuit, No. 85-1811, slip opinion at 20.

Market power is the ability of a seller to raise its prices substantially without substantially losing sales. The Commission has regulatory authority under the FPA to pursue this objective in four broad areas:

- (a) Pricing and review of contracts (Sections 205 and 206).
- (b) Reporting (Section 301).
- (c) Financial and real asset transactions (Sections 203 and 204).
- (d) Intercorporate affiliations (section 305).

The Commission's jurisdiction to regulate in these areas extends both to traditional electric utilities and to independent power producers other than qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978. For purposes of this Notice, we define an IPP to be a generating entity (other than a QF) that lacks significant market power and that is independent of any local electric utility where the IPP provides service, i.e., independent of the company possessing the exclusive franchise to sell electricity at retail. This definition could encompass facilities owned by utilities outside their zone of economic influence (i.e., the geographic area where they possess an exclusive franchise or otherwise possess significant market power).

To aid the Commission in fulfilling its statutory responsibilities to promote efficiency and maintain competition in bulk power markets,² the Commission Staff is reexamining the Commission's regulatory policies toward IPPs. The Staff wishes to receive comments from the public to assist it in that reexamination. The Staff will hold a technical conference for this purpose on October 22 and 23, 1987 beginning at 9 a.m. each day in Hearing Room A at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC. A transcript of the conference will be taken. The conference will focus on technical and policy issues.

II. Request for Specific Comments

Interested parties may make oral presentations at the technical conference without filing written comments. However, all parties who plan to make an oral presentation are encouraged to file written comments with the Commission's Secretary in advance of the conference. Parties may also choose to file written comments only, without making an oral presentation.

Although written comments may be given on any aspect of the Commission's regulatory policy toward IPPs, the Staff is particularly interested in receiving comments on the following topics:

Topic Area No. 1: The Need for New Policies Toward IPPs

(1) What role should independent or third party generation play in meeting our nation's future energy needs? Should utilities be afforded the opportunity to purchase from third party or independent power producers under rates set through competitive bidding or rate negotiations in workably competitive markets when such sources are less costly than other alternatives available to utilities?

(2) Can third party or independent power production be integrated into the wholesale power market in a fashion consistent with utilities' obligations to provide their customers with adequate, reasonably priced and reliable service?

(3) Do current Commission regulatory policies create barriers to the development of independent power producers? If so, which policies operate to constrain IPPs? What classes of IPPs are constrained?

(4) What problems currently exist that could be alleviated by reducing the Commission's regulation of IPPs? Would greater development of IPPs provide benefits that are not already being provided in sale-leaseback arrangements?

(5) Does the Public Utility Holding Company Act (PUHCA) impede the development of IPPs? If so, how?

Topic Area No. 2: Identifying and Regulating Producers Lacking Market Power

(6) Are there any public policy objectives served by traditional embedded cost regulation of the price of power sold by producers who do not have significant market power? Are any purposes served by the Commission imposing on such producers an obligation to provide service beyond the terms of their contracts? Are any purposes served by regulating the corporate and financial structure and activities of such producers?

(7) Can certain power producers be identified generically as not having significant market power, and thus classified as IPPs? What specific criteria should be used to identify these producers?

Topic Area No. 3: Rate Regulation of IPPs

(8) Which of the following pricing mechanisms should be used for regulating the rates of IPPs in order to

promote economic efficiency in the electric industry?

(a) Rates set at or below avoided costs determined administratively;

(b) Rates set through a bidding mechanism;

(c) Rates set through private negotiation;

(d) Rates set through other pricing mechanisms.

(9) What would be the appropriate role, if any, for IPPs in a competitive bidding system that the states might adopt under PURPA?

(10) If the states were to allow IPPs to directly participate in a competitive bidding process, what flexibility should be afforded to the purchasing utilities and state public utility commissions to determine the role of nonprice factors in the bidding evaluation process?

(11) How can concerns about the reliability, dispatchability, and performance of IPPs be adequately addressed?

Topic Area No. 4: Utility Ownership of IPPs

(12) Under what circumstances, if any, should generating facilities be eligible for IPP status if they are owned by utilities possessing a monopoly franchise to serve retail customers?

(a) Should a utility-owned facility be eligible for IPP status only if it is located outside the utility's zone of economic influence? If so, what factors are relevant to identify a utility's zone of economic influence?

(b) Should utility-owned generating facilities be eligible for IPP status if they are located in the utility's service territory but their power is sold in markets beyond the utility's zone of economic influence?

(c) If utility-owned generating facilities are eligible for IPP status, what steps should FERC take to protect against potential abuses (e.g., self-dealing, daisy chaining, reciprocal dealing, cost misallocation, etc.)?

(d) Should a joint venture be eligible for IPP status if the local utility is a part owner of the venture? If so, what limits should be placed on the ownership share of the utility? What other restrictions, if any, should be placed on the venture or the utility owning a portion of the venture?

Topic Area No. 5: FERC/State Issues

(13) What are the policy ramifications of third party or independent wholesale power producers on the division of jurisdiction between FERC and state commissions?

² Conference on the Public Utility Regulatory Policies Act, H.R. Rep. No. 95-110, 95th Congress, 2nd Session, 70, (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 7797.

Staff Working Paper

A preliminary Staff working paper exploring the technical policy issues associated with the regulation of IPPs will be made available to the public no later than October 9, 1987. In addition to comments on the above questions, the public may file comments on this working paper.

Ground Rules for the Conference

The issues surrounding IPPs regulation are numerous and complex. The conference will be more productive if detailed and well supported comments, rather than broad generalities, are received. To focus the oral presentations, the conference will be organized around the five major topic areas listed above. Panels will be created for each major topic area. Each party wishing to speak at the conference should file a request to speak with the Commission. The request should indicate the panels on which the party wishes to participate, ranked by order of preference. Because of time limitations, parties may not be allowed to participate on every panel that they request. If parties request to speak on subjects not covered in the 5 topics, listed above, other panels may be created. While parties may not be allowed to speak on every topic requested, written comments may cover as many areas as the party wishes.

Each speaker may be allowed up to 5 minutes to make his or her presentation. However, this time limit may be modified depending on the number or parties who request to speak. Following the presentation, the Staff may ask questions of the speaker. The conference will be chaired by Dr. Douglas R. Bohi, Director of the Commission's Office of Economic Policy. Dr. Bohi may announce additional ground rules at the beginning of the conference.

III. Comment Procedures

The Commission's Staff invites interested persons to submit written comments, data, and other information concerning the matters set forth in this Notice. Due to the numerous comments that are expected, every person desiring to make an oral presentation must file a request to speak. The Commission Staff urges persons with common points of view to jointly submit their written comments and to appoint a single spokesperson for oral presentations. Requests to speak should be filed with the Secretary of the Commission by 5:00 p.m. EDT on October 16, 1987. Requests to speak should identify the name of the speaker, the group represented, and the major topic areas that the speaker

wishes to discuss ranked by order of preference.

Written comments must be received by 5:00 p.m. EST on November 6, 1987. However, as noted earlier, we encourage parties making oral presentations to file written comments in advance of the conference. All filings should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, and should refer to Docket No. EL87-67-000.

All filings will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-22846 Filed 10-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF87-2011-001]

Order Granting Interim Approval of Rates, Noting and Granting Interventions, Denying Motion for Final Approval, Denying Request for Waiver of Regulations, and Directing the Filing of Supplemental Information; United States Department of Energy-Bonneville Power Administration

Issued: September 29, 1987.

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

On July 31, 1987, the Bonneville Power Administration (BPA) filed with the Commission a proposed surplus firm power rate schedule (SL-87) in Docket No. EF87-2011-001. BPA requests long-term final approval of its proposed SL-87 rate as of October 1, 1987, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning & Conservation Act (Northwest Power Act)¹ and the Commission's regulations for the confirmation and approval of the rates of Federal Power Marketing Administrations,² for as long as BPA has surplus firm power available for sale.

BPA also requests waiver of the five year limit on the rate approval period³

¹ 16 U.S.C. 839e(a)(2) (1982).

² 18 CFR Part 300 (1987).

³ 18 CFR 300.21(e)(1) (1987).

and waiver of the 180-day advance filing requirement for final approval of a rate.⁴ The rate schedule was developed as a part of BPA's overall system power and transmission rate filing, Docket Nos. EF87-2011-000 and EF87-2021-000, parts of which are incorporated by reference in this filing.

BPA projects a continued firm capacity surplus of about 2,000 megawatts of power well past the year 2000 and a firm energy surplus of 1,000 average megawatts into the mid-1990s. At the same time, sales to existing customers—principally aluminum smelters and California utilities—have faltered in the recent past. Accordingly, BPA is now attempting to diversify its product and customer mix by marketing some of its surplus firm power on a long-term basis for twenty years.

The proposed rate schedule would only apply to 1,350 megawatts of capacity and 725 average megawatts of energy currently available for sale. This comprises less than seven percent of BPA's total firm obligations. The SL-87 rate schedule does not, however, obligate BPA to acquire any new power resource to meet long-term obligations. When the surplus is gone there will be no firm power to which this schedule might apply and sales will cease. According to BPA, the duration of BPA's surplus is indefinite and cannot be estimated precisely at this time.

BPA claims that regulatory delay is one of the key difficulties it has experienced in the marketing of surplus power. The alternative to long term surplus firm sales, BPA asserts, would be to sell this power through the highly volatile spot market. BPA points out that it is not attempting to structure a transaction that would allow it to sell all of its surplus power to a single buyer, but rather would prefer to have a series of small transactions that would increase its customer diversity and diminish its risk of revenue underrecovery.

In its wholesale power and transmission rate filings in Docket Nos. EF87-2011-000 and EF87-2021-000, BPA has made estimates of the sales it expects to make under the SL-87 rate schedule during Fiscal Years (FY) 1988 and 1989. In FY 1988, BPA estimates that it will sell 1015 average megawatts of surplus firm power, 17 percent through contractual sales and the remainder through sales on the spot market as nonfirm energy. In FY 1989, BPA estimates a total of 1099 average megawatts of surplus firm power sales with 20 percent through contractual

⁴ 18 CFR 300.10(a)(3)(ii) (1987).

sales and the remainder on the spot market as nonfirm energy sales. BPA has assumed that the price of gas which fuels the alternative source during this period will increase from the current price of \$1.83 per MMBTU to \$2.25 per MMBTU in FY 1988 and to \$2.67 per MMBTU in FY 1989.

Notice of the filing was published in the *Federal Register* on August 17, 1987,⁵ with comments due on or before August 25, 1987. Fourteen separate motions to intervene were filed by individual petitioners or groups of petitioners.⁶ Six of the interventions were timely filed. On August 27, 1987, late motions to intervene were filed by the Pacific Power & Light Company and by the Pacific Northwest Generating Company. On August 28, 1987, late motions to intervene were filed by Dow Corning Corporation and by Cascade Steel Rolling Mills, Inc. Late motions to intervene were filed on August 31, 1987, by the Washington Utilities and Transportation Commission, by the Atlantic Richfield Company, by Portland General Electric Company, and by the Public Generating Pool.

All petitioners have requested party status in these proceedings. Only the Public Power Council (PPC) has raised substantive issues. The PPC asserts that BPA's request for a final decision within 60 days provides insufficient time for comments and adequate Commission review. It also states that the market may be too volatile for a 20-year rate, and alleges that SL-87 is excessively unstructured.

On September 9, 1987, BPA filed an answer to comments of the Public Power Council regarding final approval of the proposed SL-87 surplus power rate. BPA alleges that the PPC believes that BPA should continue to rely exclusively on the spot market. BPA, however, notes that firm power customers, including PPC members, bear all costs of unsold surplus power not recovered through spot-market transactions. BPA alleges that the proposed SL-87 rate schedule would lessen the total amount of its revenues that PPC would view as "at risk." Furthermore, BPA states that the nine months of proceedings before the Administrator have provided the Commission with sufficient information to accomplish a full and deliberate review by October 1, 1987, and have provided any potential intervenors with adequate time to prepare comments.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make those movants parties to this proceeding. Given the shortened comment period in this docket, the early stage of this of this proceeding, and the fact that the interventions filed late should not unduly delay the proceeding or prejudice any other party, the late filed motions to intervene of the Pacific Power & Light Company, the Pacific Northwest Generating Company, Dow Corning Corporation, Cascade Steel Rolling Mills, Inc., the Washington Utilities and Transportation Commission, the Atlantic Richfield Company, Portland General Electric Company, and the Public Generating Pool shall be granted.

As noted above, BPA requests approval of these rates as of October 1, 1987. In the alternative, BPA seeks interim approval as of that date. Due to the complexities of the filing, we are unable to make a determination at this time with respect to BPA's request for final approval. Therefore, our current review will be limited to consideration on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis. We note that BPA has also filed its wholesale power rates and its transmission rates to be acted upon within the same 60-day review period, and thus our efforts are also focused on BPA's general rate cases.⁸

BPA also requests waiver of the Commission's regulations governing the final approval of rates, under which the filing entity is required to give the Commission 180 days from the time a rate is filed until the proposed effective date. 18 CFR 300.10 (1987). This time is necessary to weigh the revenue impacts of the proposal, to review the public comments received, and to determine whether the rate is adequate to meet all the financial obligations including the amortization of the Federal investment on a timely basis. We shall deny this request for waiver because 60 days does not allow sufficient time to review and analyze BPA's submittals and does not give the parties an adequate opportunity to intervene and to prepare and submit comments and reply comments for the Commission's consideration and analysis. The 60 days that BPA proposes

is an inadequate amount of time to review and analyze such a complex filing.

The Commission's regulations set forth the standards to be used in considering appropriate action with respect to a request by the Administrator of BPA for interim approval of rates. The rate schedules proposed in the filing are to be developed at a level which, assuming accurate cost and revenue estimates, and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations, and to repay deficits incurred in previous years. 18 CFR Part 300 (1987).

BPA's proposal for an open-ended rate approval period is also contrary to the Commission's regulations which limit approval of PMA rates to a maximum of 5 years. 18 CFR 300.1(b)(6) (1987). While there have been instances where longer approval periods have been granted, it has been done only after the Commission has satisfied itself that such a finding can be made after an adequate review of the filing documents and independent studies by the Commission. Time for that level of investigation does not exist to make a final determination by October 1, 1987.

Additional time is also needed because BPA's proposed new SL-87 rate is a new innovation in rate design that has not been reviewed before. Rate schedule SL-87 does not establish a fixed or even a formula-type rate. BPA states that it has concluded from past experience that flexible pricing is a key to successful marketing, and thus the SL-87 rate schedule allows a negotiated rate that may be unique to each contract. At the end of each fiscal year, in order to establish a floor and ceiling level for proposed contracts negotiated during the next fiscal year under the SL-87 rate schedule, BPA will make 21-year projections of the following: (1) BPA's priority firm power rate (an average of 23.9 mills per kWh during the proposed current rate period); (2) the value of surplus firm power in the opportunity market; and (3) the fully allocated cost of BPA's highest-cost power resource (currently Washington Public Power Supply System (WPPSS) Unit No. 2). The floor is the projected priority firm power rate or the projected value of power in the opportunity market, whichever is greater. Similarly, the ceiling will be the projected cost of the expected highest-cost power resource on BPA's system.

Any contract signed during that year must specify rates or rate formulas that, when applied to contract loads, will

⁷ 18 CFR 385.214 (1987).

⁸ The rates involved there, in Docket Nos. EF87-2011-000 and EF87-2021-000, represent an estimated \$5.88 billion in revenues during the rate approval period whereas the SL-87 rate would account for \$435 million in revenues during the same period.

⁵ 52 F.R. 30,721 (1987).

⁶ See Attachment 1 for a complete list of intervenors.

provide a stream of revenues, the present worth of which will lie between the present worths of the forecasted floor and ceiling levels applied to the same loads. The rates or rate formulas specified in each contract will not be revised annually when projections are revised but will be fixed for the duration of the contract.

Before we could approve such a scheme on a final basis, more information from BPA is needed, such as the actual mechanics of its forecasting procedures and an estimate of the downside risks to BPA's cost/revenue situation in the event the forecast should prove to be inaccurate. This type of information and analysis cannot be developed in the review period BPA has proposed. In addition, the PPC states that "[t]he circumstances surrounding the SL-87 rate in fact appear to be precisely those that justify full and deliberate consideration by the Commission; that is, a twenty-year rate with no clearly defined structure, revenue projections, or future safeguards ensuring Commission review." The PPC goes on to recommend that the Commission review the actual rates established for each sale "[r]ather than approve another amorphous rate with unreviewable implementation for twenty years * * * *". In light of the

fact that we have had an insufficient amount of time to review and analyze the SL-87 rate, and because of the concerns expressed by the PPC, we shall only grant interim approval of the SL-87 rate schedule at this time.

For the above reasons, final approval of BPA's surplus firm power rate schedule SL-87 shall not be granted now. Because BPA has been negotiating with California parties and appears to be ready to sign some sort of contract with them based on the SL-87 rate schedule, we shall approve the proposed rate schedule on an interim basis at this time, thus preserving any final decisions until a later time.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow an additional period during which parties may comment on any and all issues related to final confirmation and approval of BPA's rates.

The Commission Orders

(A) The untimely motions to intervene of the Pacific Power & Light Company, the Pacific Northwest Generating Company, Dow Corning Corporation, Cascade Steel Rolling Mills, Inc., the Washington Utilities and Transportation Commission, the Atlantic Richfield Company, Portland General Electric

Company, and the Public Generating Pool are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) BPA's request for interim approval of its surplus firm power rate schedule is hereby granted.

(C) BPA's requests for final approval effective October 1, 1987, and the request for waiver of the 180-day filing requirement are hereby denied.

(D) BPA is hereby directed to provide additional information, as needed, to supplement the record and fully define the parameters of the SL-87 rate schedule, as discussed in the body of this order.

(E) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's rates. All parties who wish to do so shall file cross comments within twenty (20) days thereafter. All timely comments will be considered by the Commission in determining the ultimate disposition of BPA's rate proposals.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.
Kenneth F. Plumb,
Secretary.

Bonneville Power Administration Surplus Firm Power Rate (SL-87)

[Docket No. EF87-2011-001]

Petitions Received

No.	Petitioner	Representing
1	California Public Utilities Commission.....	Same
2	Association of Public Agency Customers.....	Boise Cascade Corporation, James River Corporation, Georgia Pacific Corporation, International Paper Company, Longview Fiber Company, Occidental Chemical Corporation, Penwalt Corporation, Scott Paper Company, Simpson Timber Company, and The Boeing Company.
3	Public Power Council.....	113 members which are publicly or cooperatively-owned electric utilities in the Pacific Northwest.
4	The California Utilities.....	Southern California Edison Company, Dept. of Water And Power of the City of Los Angeles, Public Service Dept. of the City of Glendale, Public Service Dept. of the City of Burbank, and Water and Power Dept. of the City of Pasadena.
5	Puget Sound & Light Company.....	Same.
6	Portland General Electric Company.....	Same.
7	Pacific Power & Light Company.....	Same.
8	Pacific Northwest Generating Company.....	Same.
9	Dow Corning Corporation.....	Same.
10	Cascade Steel Rolling Mills, Inc.	Same.
11	Atlantic Richfield Company.....	Same.
12	Public Generating Pool.....	Chelan County PU Dist. No. 1, Seattle, City Light Dept., Grant County Utility Dist. No. 2, Douglas County PU Dist. No. 1, Tacoma, Dept. of PU, Light Div., Eugene Electric & Water Board.
13	Washington Utilities & Transportation Commission.....	Same.
14	Direct Service Industrial Customers.....	Aluminum Company of America, Columbia Falls Aluminum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation, Northwest Aluminum Company, Oregon Metallurgical Corporation, Penwalt Corporation, and Reynolds Metals Company.

[Docket Nos. EF87-2011-000 and EF87-2021-000]

Order Granting Interim Approval of Rates, Noting and Granting Interventions, Denying Motions for Final Approval, and Directing Filing of Supplemental Information; United States Department of Energy-Bonneville Power Administration

Issued: September 29, 1987.

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

On July 31, 1987, the Bonneville Power Administration (BPA) filed proposed wholesale power rates and transmission system rates in Docket Nos. EF87-2011-000 and EF87-2021-000, respectively, in accordance with sections 7(a)(2) and 7(i)(6) of the Pacific Northwest Power Planning and Conservation Act (Northwest Power Act)¹ and the Commission's regulations for the confirmation and approval of the rates of Federal Power Marketing Administrations.² Final rate approval is requested by October 1, 1987, but, in the alternative, interim approval is requested pending the Commission's review of the request for final approval, pursuant to § 300.20 of the Commission's regulations.³

The proposed rates will increase wholesale power revenues by an average of 5.2 percent, and decrease transmission revenues an average of 17.4 percent. The proposed rates would generate an estimated \$5.88 billion in revenues for BPA during the proposed 2-year rate approval period.

The wholesale power rate schedules submitted for approval in Docket No. EF87-2011-000 are PF-87 (Priority Firm Power Rate), IP-87 (Industrial Firm Power Rate), VI-87 (Variable Industrial Power Rate), SI-87 (Special Industrial Power Rate), CF-87 (Firm Capacity Rate), CE-87 (Emergency Capacity Rate), NR-87 (New Resource Firm Power Rate), SP-87 (Short Term Surplus Firm Power Rate), NF-87 (Nonfirm Energy Rate), SS-87 (Share-the-Savings Rate), and RP-87 (Reserve Power Rate). In addition to these rate schedules BPA has also requested extension of approval of the Impact Aid Methodology, first approve in a subdocket of the 1985 rate filing.

The transmission rate schedules submitted for approval in Docket No. ER87-2021-000 are FPT-87.1 (Formula Power Transmission), FPT-87.3 (Formula Power Transmission), IR-87

(Integration of Resources), IS-87 (Southern Intertie Transmission), IN-87 (Northern Intertie Transmission), IE-87 (Eastern Intertie Transmission), ET-87 (Energy Transmission), MT-87 (Market Transmission), and extension of the UFT-2 (Use-of-Facilities Transmission).

BPA requests rate approval for the 2-year period from October 1, 1987, through September 30, 1989, for all rate schedules, except for transmission rate schedules UFT-2 and FPT-87.3. BPA requests extension of current rate schedule UFT-2 for the period October 1, 1987, through June 30, 1990. The proposed approval period for schedule FPT-87.3 is October 1, 1987, through September 30, 1990.

BPA also requests approval of the General Rate Schedule Provisions (GRSP) for a 12-year period, from October 1, 1987 through September 30, 1999, and requests waiver of the Commission's regulations⁴ which limit the approval period to 5 years.

BPA asserts that the proposed rates would protect against its estimated total annual revenue risk during the rate period of approximately \$350 to \$400 million. The revenue forecast from nonfirm energy and surplus firm power sales assumes poorer water conditions than average. BPA has increased its revenue requirement to provide an average interest coverage of 1.08 on interest payments to the Federal Treasury. The proposal also contains a provision for a one-time upward or downward adjustment to rates based on the difference between BPA's planned and actual financial performance as of the end of Fiscal Year (FY) 1988. The upward adjustment is for as much as 10 percent for the last nine months of FY 1989.

Concurrent with this filing, on July 31, 1987, in Docket No. EF87-2011-001, BPA filed a proposed surplus firm power rate schedule (SL-87). The SL-87 rate schedule is addressed in a separate order.

Notice of the filing was published in the *Federal Register* on August 17, 1987,⁵ with comments due on or before August 25, 1987. Sixteen separate notices of intervention or motions to intervene were filed by individual petitioners or groups of petitioners.⁶ Eight of the interventions were timely filed. On August 27, 1987, a late motion to intervene was filed by the Pacific Power and Light Company. On August 28, 1987, late motions to intervene were filed by Cascade Steel Rolling Mills, Inc., and

Dow Corning Corporation. Late motions to intervene were filed on August 31, 1987, by the Washington Utilities and Transportation Commission, the Portland General Electric Company, the Atlantic Richfield Company, and the Public Generating Pool. The California Energy Commission (CEC) filed a late motion to intervene on September 3, 1987.

Most of the motions to intervene raised no substantive issues but stated that an additional opportunity should be provided for comments after the interim approval question is resolved. Puget Sound Power and Light Company and the Public Generating Pool allege that the filing contains substantive and procedural errors that should be addressed later in the proceedings. Only the Public Power Council (PPC), the California Utilities, and the CEC raised specific issues.

The PPC alleges that various BPA practices relative to determination of revenue requirements, refinancing bonds, treatment of depreciation and replacements, risk management strategies, design of the nonfirm rate schedule, and the lack of specific guidelines to ensure Federal repayments render the 60-day review time BPA has requested for final approval inadequate for detailed review.

The California Utilities protest even interim approval of certain rate schedules, contending that even refund provisions do not provide a remedy for transactions that do not occur due to excessive BPA pricing. They contend that NF-87, SP-87, and MT-87 were established on a value-based concept which, in conjunction with the Intertie Access Policy (IAP) and the Exportable Energy Agreement (EEA), do not promote economic efficiency. They maintain that BPA should be ordered to explain, at least, how the IAP and the EEA interact with flexible pricing.

The CEC raises issues relative to rate schedules that will affect BPA's customers in California. The CEC opposes adoption of the MT-87 rate schedule; opposes the inclusion of certain BPA costs in the NF-87 rates as contrary to statutory standards; opposes certain costs used to develop a "rate cap" for rate schedules NF-87 and SS-87, and opposes other elements of the design of the nonfirm energy rates.

On September 9, 1987, BPA filed an answer in opposition to the motion to intervene of the California Utilities. BPA points out that the California Utilities chose not to participate in a recent evidentiary hearing on BPA's proposed rates, despite a warning by BPA that failure to attend the hearings could be

¹ 16 U.S.C. 839e(a)(2) and 839e(i)(6) (1982).

² 18 CFR Part 300 (1987).

³ 18 CFR 300.20 (1987).

⁴ 18 CFR 300.1(b)(6) (1987).

⁵ 52 F.R. 30721 (1987).

⁶ See Attachment 1 for a complete list of intervenors.

construed as a failure to exhaust remedies.

On September 9, 1987, BPA also filed an answer in opposition to comments of the California Utilities regarding interim approval of proposed rates. BPA maintains that the California Utilities are attempting to hold it to an economic efficiency standard, notwithstanding the fact that none of the statutes or case law governing review contains such a standard. Moreover, BPA alleges that all of the disputed rates are market-based and are, by their very nature, economically efficient.

On September 18, 1987, the California Utilities filed a motion to strike BPA's answer to protest. They assert that BPA's September 9, 1987 answer in opposition to comments is, in fact, an answer to a protest and, thus, specifically disallowed by the Commission's regulations.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make those movants parties to this proceeding. Notwithstanding BPA's opposition to the California Utilities' motion to intervene, we find that good cause exists to grant their motion. We are satisfied that the California Utilities have expressed an interest in the outcome of these proceedings that is not represented by another party and that their participation may be in the public interest. Accordingly, we shall grant their motion to intervene. Given the shortened comment period necessitated in these dockets, the early stage of these proceedings, and the fact that the interventions should not unduly delay the proceeding or prejudice any other party, the late-filed motions of the Pacific Power and Light Company, the Cascade Steel Rolling Mills, Inc., the Dow Corning Corporation, the Washington Utilities and Transportation Commission, the Portland General Electric Company, the Atlantic Richfield Company, the Public Generating Pool, and the California Energy Commission shall also be granted. Given that we are granting the California Utilities' motion to intervene, and are inviting additional comments in these proceedings, for the reasons set forth below, the California Utilities' motion to strike BPA's answer need not be acted upon and will be treated as moot.

In *Central Lincoln Peoples' Utility District v. Johnson*,⁸ the court

interpreted the Northwest Power Act as setting a narrow scope for Commission review of BPA's regional wholesale power and transmission rates. We are to review these rates to determine whether they meet three specific, limited statutory requirements: (1) The rates must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting BPA's other costs; (2) the rates must be based on BPA's total system costs; and (3) the transmission rates must equitably allocate the cost of the Federal transmission system between Federal and non-Federal power using the system.⁹ Thus, we are not concerned with rate design or with allocation of costs between customer classes except as they relate to the equitable allocation of transmission cost between Federal and non-Federal users of that system.¹⁰

However, due to the complexities of the filing, we are unable to make a determination at this time with respect to the BPA's request for final approval. Therefore, our current review will be limited to consideration of approval on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis.

The Commission's regulations also set forth the standards to be used in considering appropriate action with respect to a request by the Administrator of BPA for interim approval of rates. The rate schedules proposed in the filing are to be developed at a level which, assuming accurate cost and revenue estimates and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations, and to repay deficits incurred in previous years. 18 CFR Part 300 (1987).

By order of April 29, 1987, we approved BPA's general system power and transmission rates on a final basis, to be effective for the period July 1, 1985 through September 30, 1987.¹¹ We noted certain deficiencies in the content of BPA's filing, noted that other weaknesses had surfaced in our review, and directed BPA staff to meet with our staff in an effort to improve the content of BPA's future filings. It appears that the Commission's directive and the staff efforts have had salutary effects in some areas but appear to have been less successful in others. For example, BPA has provided, as required by the

Commission's and the Department of Energy's regulations, repayment studies which demonstrate the long-term effect of continued application of the existing rates. The current repayment study for the generation function demonstrates that if BPA were to continue its currently approved rates, repayment of the generation investments would not be accomplished on a timely basis. BPA studies also indicate that the transmission investments, on the other hand, would be repaid ahead of schedule. As the result of this projection of future revenues, BPA has proposed rates which will increase power revenues and reduce wheeling revenues. BPA continues, however, to provide repayment studies in support of the filed rates that do not demonstrate that the proposed rates, if continued over the entire repayment period, will repay the Federal investment in the transmission system in a timely manner as required by law. Therefore, more detailed analysis is required in order to determine whether the revenue deficiency warrants disapproval of the rates.

Another filing improvement relates to the statutory requirement that costs of the transmission system be equitably apportioned between Federal and non-Federal users of the system. BPA has now provided a lengthy analysis of power and wheeling operations from FY 1978 through FY 1986 that, purportedly, demonstrates that revenues from Federal and non-Federal users of the transmission system have been applied in conformance with the requirements of the Northwest Power Act.

There has been some failure to follow our staff's suggestion that each filing clearly identify which rate schedules, contract rates, or rate schedule provisions are being submitted for Commission approval, which have already been approved in previous dockets, and which are being filed only for the Commission's information, which has resulted in some confusion.

Furthermore, in Statement A, BPA has identified a source of revenues from a WNP-3 exchange amounting to approximately \$24 million annually. We are aware that this is the result of a settlement under which BPA has agreed to sell at negotiated rates a certain block of power to investor-owned-utilities (IOU) that had participated in the financing of the Washington Public Power Supply System (WPPSS) Unit #3. As the \$24 million annual revenue would appear to have an effect on BPA's cost or revenue requirements, it would appear that the exchange terms should require Commission confirmation and

⁷ Section 7(a)(2) of the Northwest Power Act, 18 U.S.C. 839e(a)(2); see also 26 FERC ¶ 61,096 (1984).

¹⁰ 735 F.2d at 1115.

¹¹ 39 FERC ¶ 61,078 (1987).

⁷ 18 CFR 385.214 (1987).

⁸ 735 F.2d 1101 (9th Cir. 1984).

approval under the Northwest Power Act. Accordingly, we will direct BPA to show cause why the WNP-3 exchange should not be submitted for approval under the Northwest Power Act. It is noted that the IOU portion of the exchange has already been filed and approved by the Commission under the Federal Power Act.

Based on the data filed by BPA, we are convinced that BPA needs some increase in its power rates. We are less certain, however, that the decrease in transmission rates is appropriate. BPA states that it expects to incur, in the aggregate, an operating loss of over \$400 million in FY 1987. It appears possible that BPA, as has happened in previous years, might encounter difficulties in making its scheduled amortization payments toward the Federal transmission investment. Nevertheless, the filed revenue requirement study, the only test prescribed by the Department of Energy for determining the adequacy of revenues, indicates that (assuming all of BPA's data and projections are valid) the proposed rates, if continued over the balance of the repayment periods, would provide revenues reasonably sufficient to repay the investment on a timely basis as required by law.

We agree with the PPC's position that 60 days does not provide adequate time for detailed review of the issues involved in these proceedings. We, therefore, shall not grant final approval of the proposed rates at this time.

We take note of the allegations of the California Utilities that they may never be made whole if the rates in effect on an interim basis should ultimately be disapproved. Nevertheless, the Commission's interim approval option was specifically provided by statute as

the best tool available to balance the competing requirements of the parties involved. Accordingly, we will grant interim approval of the proposed rates at this time.

Given that we are only approving these rates on an interim basis, we do not believe that the issues raised by the CEC must be resolved at the present time.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow an additional period during which parties may comment on any and all issues related to final confirmation and approval of BPA's rates. In particular, the parties are invited to comment on the need for a further hearing before this Commission.

The Commission Orders

(A) The California Utilities motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The untimely motions to intervene of the Pacific Power & Light Company, the Cascade Steel Rolling Mills, Inc., Dow Corning Corporation, the Washington Utilities & Transportation Commission, the Portland General Electric Company, the Atlantic Richfield Company, the Public Generating Pool, and the California Energy Commission are hereby granted, subject to the Commission's Rules of Practice & Procedure.

(C) BPA's request for interim approval of its system wholesale power rates, general rate schedule provisions, and impact aid methodology schedule, in Docket No. EF87-2011-000, is hereby granted, until the Commission takes

final action on either their approval or disapproval.

(D) BPA's request for interim approval of its transmission rates, in Docket No. EF87-2021-000, is hereby granted, until the Commission takes final action on either their approval or disapproval.

(E) BPA's request for final approval of the rates in Docket No. EF87-2011-000 is hereby denied.

(F) BPA's request for final approval of the rates in Docket No. EF87-2021-000 is hereby denied.

(G) BPA is hereby directed to show cause within thirty (30) days from the date of the issuance of this order why its rates for the sale of power under the WNP-3 exchange should not be filed for confirmation and approval under the Northwest Power Act.

(H) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's rates. All parties who wish to do so shall file cross comments within twenty (20) days thereafter. The parties should specifically delineate in their comments any and all issues that they feel should properly be set for hearing under section 7(k) of the Act in light of the Commission's interpretation of the Act as set forth in its September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292). All timely comments will be considered by the Commission in determining the ultimate disposition of BPA's rate proposal.

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

Attachment 1—Bonneville Power Administration 1987 Wholesale Power and Transmission Rate Filing

[Docket Nos. EF87-2011-000 and EF87-2021-000]

PETITIONS RECEIVED

No.	Petitioner	Representing
1	California Public Utilities	Same.
2	Direct Service Industrial Customers	Aluminum Company of America, Columbia Falls Aluminum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum and Chemical Corporation, Northwest Aluminum Company, Oregon Metallurgical Corporation, Pennwalt Corporation, and Reynolds Metals Company.
3	Association of Public Agency Customers	Boise Casase Corporation, James River Corporation, Georgia Pacific Corporation, International Power Company, Longview Fiber Company, Occidental Chemical Corporation, Pennwalt Corporation, Scott Paper Company, Simpson Timber Company, and The Boeing Company.
4	Western Public Agencies Group	Public Utilities Districts of Clallam, Clark, Grays Harbor, Klickitat, Lewis, Mason No.1, Mason No. 3, Pacific, Skamania, Snohomish, and Wahkiakum Counties, Washington; Mutuals of Elmhurst and Ohop, Canby Utility Board, Lakeview Light and Power Company, Parkland Light and Water Company, and Peninsula Light Company and Tillamook People's Utility District.
5	Public Power Council	113 members which are publicly or cooperatively-owned electric utilities in the Pacific Northwest.
6	The California Utilities	Southern California Edison Company, Dept. of Water And Power of the City of Los Angeles, Public Service Dept. of the City of Glendale, Public Service Dept. of the City of Burbank, and Water and Power Dept. of the City of Pasadena.
7	Puget Sound Power and Light Company	Same.
8	The Washington Water Power Company	Same.

No.	Petitioner	Representing
9	Portland General Electric Company.....	Same.
10	Pacific Power and Light Company.....	Same.
11	Dow Corning Corporation.....	Same.
12	Cascade Steel Rolling Mills, Inc.....	Same.
13	Atlantic Richfield Company.....	Same.
14	Public Generating Pool.....	Chelan County PU Dist. No. 1, Seattle, City Light Dept. Grant County Utility Dist. No. 2, Douglas County PU Dist. No. 1, Tacoma, Dept. of PU, Light Div., and Eugene Electric and Water Board.
15	Washington Utilities and Transportation Commission.....	Same.
16	California Energy Commission.....	Same.

[FR Doc. 87-22820 Filed 10-1-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3272-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the *Federal Register* a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: FIFRA Sec. 29 Annual Report on Conditional Registrations.

(EPA ICR #0601) (Renewal)

Abstract: FIFRA Sec. 29 requires that an annual report on Conditional Registrations (registrations for which the submission of some supporting data has been deferred to a future date) be supplied to members of Congress to monitor the Conditional Registration program.

EPA obtains pesticide production data needed to complete the report through this information collection.

Respondents: Pesticides Manufacturers.

Estimated Annual Burden: 350.

Comments on the abstracts in this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460
and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503.

Date: September 24, 1987.

Daniel J. Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 87-22790 Filed 10-1-87; 8:45 am].

BILLING CODE 6560-50-M

[ER-FRL-3271-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed September 21, 1987 Through September 25, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870325, Draft, FHW, OH, Trotwood Connector Construction, OH-49 to US 35 and Turner Road Extension, Turner Road/Wolf Road Intersection to the Trotwood Connector, Montgomery County, Due: November 16, 1987, Contact: Fred Hempel, (614) 496-6896

EIS No. 870326, Final, AFS, MT, Gallatin National Forest, Land and Resource Management Plan. Due: November 2, 1987, Contact: Robert Breazeale, (406) 587-6701

EIS No. 870327, Final, AFS, MT, Deerlodge National Forest, Land and Resource Management Plan, Due: November 2, 1987, Contact: Frank Salomonson, (406) 496-3400

Amended Notice:

EIS No. 870280, Draft, Joint Lead, BLM/AFS, WY, Sohare Creek Unit

Exploratory Oil Well No. 1-35, Lease and Permit, Bridger-Teton National Forest, Teton County, Due: October 27, 1987, Published FR 8-21-87—
Review period extended.

Dated: September 29, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-22796 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3272-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

This notice announces the Availability of EPA comments prepared September 14, 1987 through September 18, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

DRAFT EISs

ERP No. D-BIA-L35003-WA, Rating EO2, Swinomish Marina and Associated Facilities Development, Lease Approval, Swinomish Channel, WA. **SUMMARY:** EPA has several major concerns with this project. The draft EIS does not sufficiently address and analyze the relative impacts of potential less environmentally damaging alternatives to the proposed project. The proposed project entails the filling of wetlands for non-water dependent uses and specific mitigation is not proposed to offset losses of wetland and intertidal habitat through the proposed dredge and fill activities. The draft EIS does not sufficiently address both direct and secondary impacts of the marina on the

biota of the adjacent Padilla Bay Estuarine Sanctuary.

ERP No. D-BLM-J61071-WY, Rating EO2, Medicine Bow and Divide Resource Areas, Land and Mineral Mgmt. Plan, Bennett Mtn., Encampment River Canyon, and Prospect Mtn. WSA's, Wilderness Designation, WY. SUMMARY: Although some commendable actions for managing water quality and watershed resources are proposed, EPA expressed concerns regarding the following: insufficient and/or inconsistent information for meeting surface water quality standards, including aquatic life, and for protecting ground water; lack of a framework for Clean Water Act and ground water monitoring; adequacy of grazing management direction; riparian area management objectives and plans; potential impacts to areas of Critical Environmental Concern (ACECs); inconsistent ACEC recommendations; oil, gas, and coal planning; decisions on wilderness designations and management; and the need for a chapter or appendix regarding plan implementation.

ERP No. DS-COE-K35024-CA, Rating EU2, Marathon Industrial/Commercial Business Park Development, Fill Permit, Additional Alternative and Information, 404 and 10 Permits, CA. SUMMARY: EPA rated the supplemental draft EIS environmentally unsatisfactory because the proposed project would cause the unacceptable loss of 90 acres of wetlands that provide valuable wildlife habitat in south San Francisco Bay area. EPA noted that the loss of these wetlands would be severe because they provide important habitat for migratory birds and possibly an endangered species (salt marsh harvest mouse). EPA requested that the final EIS contain an Endangered Species Act Section 7 biological opinion and documentation of California water quality certification. EPA also requested further analysis of air and water quality impacts and commitments to mitigate adverse air and water impacts. EPA stated that the project as proposed fails to comply with three of the four major substantive criteria of the Clean Water Act Sect. 404(b)(1) Guidelines. EPA recommended that the Corps deny the 404 permit. EPA stated that if these issues were not resolved in the final EIS, the project could be a candidate for referral to the Council on Environmental Quality.

ERP No. D-NOA-B90009-NH, Ration LO, New Hampshire Coastal Program, NH. SUMMARY: From the standpoint of EPA's jurisdiction and expertise, EPA believes approval of the program will

not result in adverse environmental impacts.

ERP No. DS-USA-L11001-WA, Rating LO, Ft. Lewis Military Installation, Ft. Lewis and Yakima Firing Center, High-Technology Motorized Division Conversion, 9th Infantry Division, Updated Information, WA. SUMMARY: EPA reviewed the project and has no objections to the proposed action as described.

Final EISs

ERP No. F1-BLM-K65068-NV, Wells Resource Areas Wilderness Study Areas, Wilderness Designation, Recommendations, NV. SUMMARY: EPA concurred with BLM's proposed recommendations of four wilderness study areas for inclusion in the National Wilderness System, and noted that air and water quality will be best protected by wilderness designation.

ERP No. F-FHW-K40156-CA, I-680/CA-24 Interchange Reconstruction and Freeway Improvements, Rudge Rd. in Walnut Creek to Willow Pass Rd. in Pleasant Hill/Concord, 404 Permit, CA. SUMMARY: EPA expressed continuing concerns regarding High Occupancy Vehicle (HOV) lanes and ozone impacts, in particular the effects of transportation projects on continuing violations of ozone standards. EPA recommended that the FHW implement its new procedures on HOV policy to the fullest extent for future I-680 projects.

Dated: September 29, 1987.

Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 87-22797 Filed 10-1-87; 8:45 am]
BILLING CODE 6560-50-M

[OPP-00249; FRL-3271-3]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, October 20 and 21, 1987, and the Working Committee on Registration and

Classification will meet on Thursday and Friday, October 22 and 23, 1987. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meetings will be held at: Omni San Diego Hotel, 910 Broadway Circle, San Diego, CA 92101, 619-239-2200.

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Endangered species enforcement policy;
2. Conservation Reserve Programming (CRP) policy;
3. Tracking and reporting of state regulatory actions;
4. Uniform reporting of outputs;
5. Justification for increased grant funding for state enforcement programs;
6. Bulk mixing of pesticides and fertilizers;
7. State regulation of bulk pesticide containers;
8. Priority of Experimental Use Permit monitoring;
9. Chromated copper arsenate: possible problems with use as wood preservative;
10. Office of Compliance Monitoring reports on various topics;
11. Pesticide Certification and Training Office reports on various topics;
12. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Endangered species maps and labeling;
2. Ground water protection strategy: Registration and labeling implications for potential contaminants;
3. Concentrate ground application equipment: Review of need for EPA policy allowing use of aircraft diluent rates;
4. Regulating Pesticides in Food: EPA strategy in response to NAS report;
5. Genetically Engineered Microbial Pesticides: State need for registration and shipping guidelines;
6. Clarification of crop grouping scheme with regard to pesticide use on similar but unlabeled crops;

7. Status of a number of ongoing EPA programs and projects including section 24(c) review criteria, inert ingredients policy, generic labeling, termiticide regulation, farm worker protection, and Statements of Practical Treatment for labels;

8. Other topics as appropriate.

Dated: September 23, 1987.

Douglas D. Camp,

Director, Office of Pesticide Programs.

[FR Doc. 87-22789 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140086; FRL-3271-5]

Access to Confidential Business Information by Planning Research Corporation, Government Information System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Planning Research Corporation, Government Information System (PRC), of McLean, VA, for access to information which has been submitted to EPA under all sections 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 October 13, 1987.

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, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract No. 68-01-7361, EPA's contractor, PRC, 1500 Planning Research Drive, McLean, VA, will assist the Office of Toxic Substances' Information Management Division in developing a national toxic chemical inventory database under the requirements of

section 313 of Title III, of the Emergency Planning and Community Right to Know Act of 1986. In designing this database, it is important that it be compatible with other databases maintained under TSCA so that EPA can use the databases together when assessing chemicals under TSCA. This will require reviewing pretest confidential databases and hard copy documents to make comparisons in design, data elements, and data handling to assure consistency. PRC will not conduct substantive review of the CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-01-7361, PRC will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. PRC personnel will be given access to all information submitted under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide PRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

PRC personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures and must pass a test on those security procedures before they are permitted access to TSCA CBI. Access is authorized on a yearly basis.

Dated: September 21, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-22792 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44502; FRL-3271-4]

Diethylenetriamine; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces test data submissions on diethylenetriamine (DETA; CAS No. 111-40-0) received by EPA on September 18, 1987, pursuant to a test rule under the Toxic Substances Control Act (TSCA). This action is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799); Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St.,

SW., Washington, DC 20460, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the *Federal Register* reporting the receipt of test data submitted pursuant to test rules or consent orders promulgated under section 4(a). In the *Federal Register* of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Orders (ECO's) under section 4 of TSCA. Those procedures provide that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECO's. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (i.e., not under test rules or ECO's) on chemical substances or mixtures EPA has considered for testing under section 4.

Test Data Submissions

This notice announces the test data submissions received by EPA on September 18, 1987, from the Dow Chemical Company pursuant to a test rule under section 4 of TSCA for the chemical substance DETA which is codified at 40 CFR 799.1575. The test substance is widely used as an hardening agency for epoxy resins.

The submission describes an *in vitro* chromosomal aberration assay utilizing Chinese Hamster Ovary (CHO) cells. The clastogenicity of the test material was assessed in the absence and presence of a metabolic activation system at dose levels of 250, 833, and 2,500 micrograms/ml of culture medium. DETA was reported to be non-clastogenic to the CHO cells in culture. The applicable test standards were revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA); and can be found at 40 CFR 799.1575(c)(2)(ii). The final report was required to be submitted to the Agency by September 19, 1987.

EPA has initiated its review and evaluation process for this data submission. At this time the Agency is unable to provide any determination as to the submission's completeness, adequacy or validity.

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44502). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE-C004, 401 M St.,

SW., Washington, DC 20460. The rulemaking public record for DETA is assigned docket number [OPTS-42012].

Dated: September 25, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-22793 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-83002E; FRL-3273-2]

Receipt of Request for Exclusion From/Waiver of Testing of Ethyl Corp. and Great Lakes Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Requests for Exclusion/Waiver of Testing Requirements.

SUMMARY: EPA requires testing of specified chemical substances to see if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs) and reporting of the results. However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA has received such requests for exclusions from and waivers of these requirements from Ethyl Corporation and Great Lakes Chemical Corporation and this document gives notice of their receipt. Comments may be made on these requests.

DATE: Comments should be received by October 19, 1987.

ADDRESS: Submit comments in triplicate, identified with the document control number OPTS-83002E, to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

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, (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1) (i) and (ii), a person may be granted an exclusion from the testing requirements of Part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are

such that HDDs/HDFs would not be produced.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32(a)(2) (i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to prohibit its production and the chemical substance will be produced in such a manner that there will be no unreasonable risk during its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

The requests from Ethyl Corporation and Great Lakes Chemical Corporation ask that exclusions and waivers of testing be granted with respect to a number of chemicals the companies manufacture. A public file has been established for this proceeding; it is located in Room NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: September 27, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-22910 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3271-2]

Sole Source Aquifer Petition; Final Determination; Catawba Island, OH

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the Bass Islands Dolomite Aquifer, which underlies Catawba Island Township in Ottawa County, Ohio, hereafter called the Bass Islands Aquifer, is the sole or principal source of drinking water for Catawba Island Township and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially

assisted projects constructed in the Bass Island Aquifer area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 16, 1987.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG-TUB8, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312-353-1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), Pub. L. 93-523) states:

"(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On March 17, 1986, EPA received a petition from the Catawba Island Residents Association and the Fairway Association, both of Port Clinton, Ohio, which petitioned EPA to designate the Bass Islands Aquifer as a Sole Source Aquifer. On May 15, 1987, EPA published to announce a public comment period regarding the petition. The public was permitted to submit comments and information on the petition until July 19, 1987. During this

period a request for a public meeting was received and a notice announcing the meeting was published in the same newspaper. The meeting was held July 6, 1987, and the public comment period was extended to July 19, 1987, to allow for additional written comments subsequent to the meeting.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the Bass Island Aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The Bass Island Aquifer currently serves as the "sole source" of drinking water for approximately 4,600 permanent residents, 7,100 seasonal residents, and up to 20,000 transient users.

2. Catawba Island Township is a peninsula which extends into Lake Erie. However, due to the absence on the peninsula of a central water distribution system, Lake Erie water is not available for use as a source of drinking water. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost effective potential source capable of replacing the drinking water needs of for the Catawba Township community that are presently supplied by the aquifer.

3. The Bass Islands Aquifer is an unconfined to semi-confined aquifer that transmits water along joints and solution cavities, which are common features in the dolomite bedrock. The majority of the area residents draw their drinking water from private wells which are typically 30 to 60 feet deep. Because of the ease by which water is transmitted through the relatively large conduits in the bedrock, downward migration of surface or near-surface contaminants to the saturated zone could occur in a relatively short time, with little opportunity for attenuation of the contaminants. Sources for such contamination include, but are not limited to: (A) Effluent from residential or commercial sewage disposal sites, (B) use and improper storage of agricultural chemicals, (C) leaking underground storage tanks, (D) leachment of fertilizers associated with golf course maintenance. Should any of the above

sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality with a consequent adverse effect on public health.

III. Description of the Bass Islands Aquifer, Along With its Recharge Zone

The Bass Islands Aquifer is a bedrock aquifer consisting of jointed and brecciated dolomite (a calcium-magnesium carbonate rock) which also contains many solution cavities. The joints and cavities provide the conduits along which ground water is transmitted to any wells that intersect them. The dolomite formation is approximately 100-120 feet thick, and is underlain by the anhydrite-rich Salina Group. Water wells which penetrate as deep as the Salina Group encounter sulfur-rich water due to the calcium sulfate composition of anhydrite.

Principal recharge of the aquifer is due mainly to infiltration of precipitation through soils and unsaturated bedrock. Therefore, the entire surface of the designated area is the effective recharge zone. However, because of the undeveloped nature of the center of the area, and because of the presence of karst sinkholes, ponds and collapse features, this portion of the recharge area not only contributes a larger volume to recharge, it is potentially a more vulnerable location for contaminants to enter the aquifer.

The review area for Federal financially assisted projects will be the entire peninsula north of the 580 foot contour (which marks the contact between the Bass Islands Dolomite and the Salina Group) on the U.S.G.S. 7½ minute topographic map called the *Gypsum Quadrangle, Ohio*.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 230 S. Dearborn (5WG-TUB8), Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by

Federal agencies for projects which could contaminate the Bass Islands Aquifer, upon which Catawba Island Township depends for its sole or principal source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the Bass Islands Aquifer. Included in the review of any Federal financially assisted project will be the coordination with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

The primary issues that came out of the public comment period revolve around a pending sewer project which is being planned for Catawba Island Township by the Ottawa County Commissioners. Catawba Island is number one on the Ohio EPA priority list for funds to unsewered areas. Federal funds have been set aside for, but not yet committed to the project. The county is concerned that Sole Source designation would delay approval of funding and/or necessitate costly modifications to the construction plans. EPA response was that this is a possibility, but that the fact of a pending sewer project was not germane to a finding as to the eligibility of the aquifer for designation.

The petitioners are concerned about the possible effects that trench blasting for the sewer could have on the quantity of their water. EPA response was that this concern, again, was something to be addressed in a project review, and did not impact on a designation decision.

Neither the County, the public, nor any other entity submitted comments which substantially refuted the data

provided in the petition. Based on this data, and verified thru technical review, the area proposed for designation was determined to be dependent upon one aquifer for its sole or principal drinking water source and which aquifer, if contaminated, would pose a serious threat to the health of the residents of Catawba Island Township.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Catawba Island Township area. The only affected entities will be those area-based businesses, organizations or governmental jurisdiction that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 431, et seq. Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of \$100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of

United States enterprises to compete in domestic or export markets. Today's action only affects the Bass Islands Aquifer and the Catawba Island Township, Ohio, area. It provides an additional review of ground water protection measures, incorporating State and local measures, whenever possible, for only those projects which request Federal financial assistance.

Dated: September 21, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87-22791 Filed 10-1-87; 8:45 am]

BILLING CODE 6560-50-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 § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.:

(1) 202-010636-025

(2) 202-010637-022

Title:

(1) U.S. Atlantic-North Europe Conference

(2) North Europe-U.S. Atlantic Conference

Parties (1) & (2):

Atlantic Container Line, B.V.

Dart-ML Limited

Hapag-Lloyd AG

Sea-Land Service, Inc.

Gulf Container Line (GCL), B.V.

Trans Freight Lines

Compagnie Generale Maritime (CGM)

Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would expressly stipulate that the current effective authority of each conference to engage in activities concerning the European inland transportation segment of cargo shipments within its scope, whether or not performed under through bills of

lading, and as elsewhere provided thereby, includes determination of prices paid to European inland carriers in connection therewith.

Agreement No.: 212-010746-002.

Title: Columbus/PACE/SCNZ/BSL/PAD Space Charter and Sailing Agreement.

Parties:

Columbus Line

Associated Container Transportation (Australia), Ltd.

The Shipping Corporation of New Zealand, Limited

Blue Star Line, Ltd.

Pacific Australia Direct Line

Synopsis: The proposed amendment would extend the period during which a party may withdraw from the agreement on immediate notice to December 15, 1987 and would delay the implementation of the previous amendment (Agreement No. 212-010746-001) until January 1, 1988.

Agreement No.: 203-011137-001.

Title: Pacific Coast/Australia-New Zealand Discussion Agreement.

Parties:

Pacific Coast/Australia-New Zealand Tariff Bureau

Hong Kong Islands Line America S.A.

Synopsis: The proposed amendment would admit Leif Hoegh & Co., A.S. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 29, 1987.

[FR Doc. 87-22821 Filed 10-1-87; 8:45 am]

BILLING CODE 6230-01-M

[Docket No. 87-19]

Filing of Complaint and Assignment; Atlantis Lines, Ltd. v. American President Lines, Ltd.

Notice is given that a complaint filed by Atlantis Lines, Ltd. ("Atlantis") against American President Lines, Ltd. ("APL") was served September 28, 1987. Atlantis alleges that APL has violated sections 10(b)(1) and 10(b)(3), Shipping Act of 1984, 46 U.S.C. app. 1709 (b)(1) and (b)(3) by its failure to make available certain tariff rates applicable to cargo tendered by Atlantis.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing

shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September 28, 1988, and the final decision of the Commission shall be issued by January 28, 1989.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-2282 Filed 10-1-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 28, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. *Report title:* Application for Prior Written Consent To Effect a Merger
Agency form number: FR2070
OMB Docket number: 7100-0045
Frequency: on occasion
Reporters: State chartered banks that are members of the Federal Reserve System

Annual reporting hours: 1,540
Significant effect on small businesses is not expected.

General description of the report: This

form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest. The proposed revisions include clarifications, changes to conform with recent revisions of bank holding company application forms (FR Y-1, FR Y-2), and requests for certain financial data in accord with changes in the Board's capital guidelines.

This report is required by law [12 U.S.C. 1828 (c)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. *Report title:* Change in Bank Control Form

Agency form number: FR 2081
OMB Docket number: OMB No. 7100-0134

Frequency: on occasion
Reporters: Persons proposing to acquire control of a bank holding company or State member bank
Annual reporting hours: 11,067
Significant effect on small businesses is not expected.

General description of report: This form is mandatory under the Change in Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions include certain additional information and publication requirements pursuant to the Anti-Drug Abuse Act of 1986.

This information collection is required by law [12 U.S.C. 1817(j)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

3. *Report title:* Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer

Agency form number: FR MSD-4
OMB Docket number: 7100-0100
Frequency: on occasion

Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives

Annual reporting hours: 773

Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o-4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions are deletion of certain spaces for notations by receiving agency personnel, since these items are rarely used; and changing the requested record of residential addresses from the past ten years to the past five, corresponding to changes in MSRB rule G-7.

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Report

1. *Report title:* Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer

Agency form number: FR MSD-5
OMB Docket number: 7100-0101
Frequency: on occasion

Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives

Annual reporting hours: 47
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o-4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on interagency computer system of records.

Board of Governors of the Federal Reserve System, September 28, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-22746 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Cook Investment Inc., et al; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-22236) published at page 36301 of the issue for Monday, September 28, 1987.

Under the Federal Reserve Bank of Kansas City, the entry for Cook Investment, Inc. is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cook Investment, Inc.*, Beatrice, Nebraska; to acquire Gage, Inc., Beatrice, Nebraska, and thereby engage in leasing real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by October 13, 1987.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22742 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Equimark Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of The Liberty Financial Group, Inc., Horsham, Pennsylvania, and thereby indirectly acquire Liberty Savings Bank, Horsham, Pennsylvania. Applicant also proposes to acquire Liberty Service Corporation, Horsham, Pennsylvania, and thereby indirectly acquire Wynnewood Plaza, Inc., Horsham, Pennsylvania, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

In connection with this application, Equimark Acquisition Incorporated, Pittsburgh, Pennsylvania, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Savings Bank, Horsham, Pennsylvania.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22743 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Midwest Financial Group

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois; to acquire Central Computing Company, Decatur, Illinois, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22744 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

Application to Engage de Novo in Permissible Nonbanking Activities; The Mitsubishi Bank, Limited

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 October 22, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsubishi Bank Trust Company of New York, New York, New

York, in trading and underwriting obligations of the United States and general obligations of states and their political subdivisions pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22745 Filed 10-1-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Availability of Environmental Assessment and Finding of No Significant Impact (FONSI) Regarding Construction; Phase II; Paul Laxalt Mineral Engineering Center, Mackay School of Mines, University of Nevada-Reno

AGENCY: General Services Administration, Federal Property Resources Service.

ACTION: Notice of the availability of Environmental Assessment and the Finding of No Significant Impact (FONSI) regarding construction of Phase II of the Paul Laxalt Mineral Engineering Center at the Mackay School of Mines, University of Nevada-Reno.

SUMMARY: The University of Nevada-Reno was awarded Grant No. DN-001 on February 18, 1986, by the General Services Administration, Federal Property Resources Service, Office of National Defense Stockpile for the construction of Phase II, as noted. In developing its proposal to finalize the grant award, the University of Nevada-Reno (UNR) has used the architectural engineering firm of Casazza, Peetz & Hancock Architects, 480 Casazza Drive, Reno, NV 89502, and the consulting engineers (for environmental assessment and historic preservation purposes) of Kennedy/Jenks/Chilton, 160 Hubbard Way, No. 2, Reno, NV 89502. The Environmental Assessment entailed standard indicators of significance. The General Services Administration monitored and reviewed the progress and development of the environmental report including Historic Preservation. An environmental report (final draft, dated 3/12/87) presented a detailed analysis of all indicators of significance. After independent review and assessment of the data and analysis of the final environmental report, dated August 1987, and after execution of a Memorandum of Agreement (dated August 19, 1987) providing for recordation documentation, Earl E.

Jones, Commissioner of the Federal Property Resources Service, issued his determination of no significant impact (FONSI) on September 24, 1987. Notice is hereby given pursuant to section 102(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines and 36 CFR 800.15 (Protection of Historic and Cultural Properties-Public Participation) that the proposed construction of Phase II, as noted, will not create any significant adverse impact on the physical environment and that no significant controversy related to the natural or cultural resources environment is associated with this action. As a result of these findings, the Commissioner, FPRS, has determined that the preparation of an Environmental Impact Statement is not required in this case. The Environmental Assessment, the Finding of No Significant Impact and the Memorandum of Agreement are on file and may be viewed by interested parties.

DATE: Administrative action or implementation of the decision will be deferred up to and including November 2, 1987 at which time implementation will begin unless comments are received which result in a contrary determination. For further information contact: Miss Cheryl A. Deister, General Services Administration, FPRS/Office of National Defense Stockpile, 18th & F Streets, NW, Room 5207, Washington, DC 20405, Telephone Number—(202) 535-7234.

Dated: September 24, 1987.

Daniel B. McMorro,

Contracting Officer.

[FR Doc. 87-22776 Filed 10-1-87; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Public Affairs

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the Freedom of Information Act and Privacy Act appeals for documents denied by officials in the Office of the Secretary from the Office of Administrative and

Management Services to the Office of Public Affairs. Specifically, Chapter AP, Office of Public Affairs, as last published at 51 FR 41158, Nov. 13, 1986 is revised as follows:

1. In Chapter AP, Section AP.20 Functions, paragraph "B.1 FOIA/Privacy Act Division," add as last paragraph, "Analyzes and recommends action on Freedom of Information Act and Privacy Act appeals for documents denied by officials in the Office of the Secretary."

Date: September 25, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-22739 Filed 10-1-87; 8:45 am]

BILLING CODE 4150-04-M

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 August 28, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Reporting Events—SSI—0960-0128—This form is used by recipients of Supplemental Security Income to report changes which may effect their benefits to the Social Security Administration. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 8,333 hours.

2. Disabled Beneficiary Add-on to SIPP-Feasibility Study—NEW—SSA needs to have a factual basis upon which to evaluate and implement program incentive to encourage return to work. The survey shall provide data on post-entitlement labor force behavior not available from SSA administrative records. SSA needs to determine if combining a SSA based sampling frame with Survey of Income and Program Participation (SIPP) data is feasible. Respondents: Individuals or households. Number of Respondents: 2310; Frequency of Response: Occasionally; Estimated Annual Burden: 3,580 hours.

3. Application for Child's Insurance Benefits—0960-0010—This form is used to collect information from applicants for child's insurance benefits. The

information is needed to determine eligibility of the applicant. Respondents: Individuals or households. Number of Respondents: 1,740,000; Frequency of Response: Occasionally; Estimated Annual Burden: 357,917 hours.

Desk Officer: Elana Norden

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

1. HHS Acquisition Regulations—HHSAR Part 337 Service Contracting—0990-0132—Contractors are required to furnish information on consultants to the HHS contracting officer for cost-reimbursement contracts. The information is used to monitor the use of consultants. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,661; Frequency of Response: Occasionally; Estimated Annual Burden: 1,661 hours.

2. HHS Acquisition Regulations—HHSAR Part 352—Solicitation Provisions and Contract Clauses—0990-0130—The Key Personnel Clause requires contractors to justify changes to key personnel which were specified in the contract. The information is used to ascertain the qualifications of substitute personnel. The Publication and Publicity Clause requires contractors to inform the project officer of each publication resulting from the contractual effort. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,429; Frequency of Response: Occasionally; Estimated Annual Burden: 2,585 hours.

3. HHS Acquisition Regulations—HHSAR Part 370—Special Programs Affecting Acquisition—0990-0129—Reporting and recordkeeping requirements are established to assure that contractors conducting meetings use facilities which are accessible to disabled individuals, and to assure contractor compliance with the Indian Preference program (Public Law 93-638 Section 7(b)). Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 769; Frequency of Response: Occasionally; Estimated Annual Burden: 12,368 hours.

4. HHS Acquisition Regulations—HHSAR Part 353—Forms—0990-0091—This form is used to monitor contract costs. It is completed by contractors for cost type contracts. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions,

Small businesses or organizations. Number of Respondents: 1,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,500 hours.

5. Acknowledgement of Receipt of Public Service Announcement (PSA)—0991-0001—The acknowledgement card is used when Public Service Announcements are distributed to the media. Respondents are requested to acknowledge receipt, indicate preferences and comment on the quality of the materials, so that the Office of Public Affairs can monitor the distributions of PSAs. Respondents: Businesses or other for-profit. Number of Respondents: 5,000; Frequency of Response: Occasionally; Estimated Annual Burden: 84 hours. OMB Desk Officer: Shannah Koss-McCallum

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. ICRs is BQC-18-F, CPAS—0938-0431—Purpose is to reduce reporting burden on States under current MQC to consolidate the monitoring of claims processing under the MMIS approval and annual reapproval process. Respondents: State or local governments. Number of Respondents: 1; Frequency of Response: 1; Estimated Annual Burden: 1 hour.

2. Home Health Agency Survey Report Form (Test)—NEW—This is a pilot test of a revised process and test forms for surveying Home Health Agencies for Medicare participation. Respondents: Individuals or households, State or local governments. Number of Respondents: 7; Frequency of Response: One-time; Estimated Annual Burden: 116 hours.

3. Quarterly Periodic Interim Payment (PIP) Report—0938-0384—This form provides HCFA with a current assessment of those providers receiving advanced funding through the PIP program. HCFA needs this data in order to monitor intermediary performance and detect significant trends. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 55; Frequency of Response: Quarterly; Estimated Annual Burden: 220 hours.

OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Outline for Preparation of the Part IV Narrative of the UAF and Satellite Center for Competing Continuation Application—0980-0016—Legislative requirements found at section 153 (a)

and (b) of the ADD Act and 45 CFR Part 1388 require that University Affiliated Facilities and Satellite Centers must be in compliance with established standards in order to receive a grant. Proposed standards are found in Part 1388. Respondents: Non-profit institutions. Number of Respondents: 42; Frequency of Response: Annual; Estimated Annual Burden: 2,016 hours.

2. Certification of Maintenance of Effort—Administration on Aging—0980-0180—The Department is unable to identify funds solely from State sources because information currently collected on financial reports combines funds from State and local sources. The certification of maintenance of effort form is used to collect data on State sources jointly. Respondents: State or local governments. Number of Respondents: 59; Frequency of Response: Annual; Estimated Annual Burden: 30 hours.

3. Program Performance Report, Title IV of the Older Americans Act, Grants to Indian Tribes for Supportive and Nutritional Services—0980-0120—The Congress has mandated that the Administration on Aging (AoA) and the Secretary provide such information on activities of Older Americans among Indian tribes as necessary in order that AoA can determine the progress of its programs. Both Houses of Congress have indicated their desire for more information. Respondents: Indian Tribes. Number of Respondents: 133; Frequency of Response: Semi-Annually; Estimated Annual Burden: 399 hours.
OMB Desk Officer: Shannah Koss-McCallum

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

2. FY 1988 Winter Grantee Survey of the Low Income Energy Assistance Program—0970-0063—The survey collects FY 1988 Winter fiscal and caseload estimates and updates FY 1987 uses of funds if necessary. The survey results will be displayed in tables for an information memorandum to be sent to Congress, States and other interested parties. Respondents: State or local governments. Number of Respondents: 51; Frequency of Response: Annually; Estimated Annual Burden: 117 hours.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. Established Populations for Epidemiologic Studies of the Elderly (EPESE) (In-person Follow-up—Year 6)—

0925-0271—These large community-based epidemiologic studies of elderly persons will determine the influences of physiological, behavioral, social and environmental forces on the mortality, morbidity, and utilization of health services in the elderly. Eligible respondents are the participants in the three EPESE study sites; East Boston, Iowa, and New Haven. Respondents: Individuals or households. Number of Respondents: 9,410; Frequency of Response: Single-time study; Estimated Annual Burden: 9,410 hours.

Food and Drug Administration

1. Survey to Determine Patient Knowledge and Perceptions on Hemodialysis Reuse—NEW—The PHS Interagency Task Force on Dialysis determined that hemodialysis patients have a need for education on hemodialysis reuse. In order to assure that information prepared is effective and adequate, FDA recommended, and the Task Force agreed, that a patient survey be conducted prior to preparing education material to assess patient's educational needs. Respondents: Individuals or households. Number of Respondents: 1,700; Frequency of Response: One-time; Estimated Annual Burden: 379 hours.

2. General Biological Products Standards, Additional Standards for Human Blood and Blood Products Serologic Test for Human Immunodeficiency Virus (HIV)—0910-0227—FDA is proposing to require that each unit of blood or blood components be tested for HTLV-III. The rules will effect 1400 blood banks and 500 plasma collection centers. The rules would reduce the risk of transmitting Acquired Immune Deficiency Syndrome by the use of blood products. Respondents: Blood Banks and Plasma Collection Centers. Number of Respondents: 1; Frequency of Response: 1; Estimated Annual Burden: 1 hour.

OMB Desk Officer: Shanna Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
SSA: 301-594-5706
OS: 202-245-6511
HDS: 202-472-4415
HCFA: 301-594-1238
FSA: 202-245-0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk

Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Date: September 29, 1987.

James F. Trickett,
Deputy Assistant Secretary, Office of Administrative and Management Services.
[FR Doc. 87-22835 Filed 10-1-87; 8:45 am]
BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Management and Budget

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the Freedom of Information Act appeals for documents denied by officials in the Office of the Secretary function from the Office of Management Programs to the Office of the Assistant Secretary for Public Affairs. Specifically, Chapter AMS, Office of Administrative and Management Services, as last published at 52 FR 25312, July 6, 1987 is revised as follows:

1. In Chapter AMS, Section AMS.20 Functions, paragraph "F. Office of Management Programs," delete item (8); and renumber (9) as item (8).

Dated: September 25, 1987.

S. Anthony McCann,
Assistant Secretary for Management and Budget.
[FR Doc. 87-22740 Filed 10-1-87; 8:45 am]
BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Personnel Administration

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect a realignment of functions in the Office of the Assistant Secretary for Personnel Administration. In the Office of Human Resource Information Management, a new Division entitled Systems and Networking Division is established and the existing Systems Design and Analysis Division is restructured.

Specifically, Chapter AH, Office of the Assistant Secretary for Personnel Administration, as last published at 50 FR 20850, May 20, 1985, is revised as follows:

1. In Chapter AH, Section AH.20 Functions, paragraph "B.3 Systems Design and Analysis Division," delete entire paragraph and insert new paragraph as follows:

3. *Systems Design and Analysis Division.* Performs analysis and design for changes, enhancements, and new requirements to the Department's Human Resource Information systems; determines feasibility, benefits, impact, and estimates of staff, hardware, software, and telecommunications required for system development requests; develops prototype systems as needed to assist in the identification of user requirements or for purpose of preliminary design; develops test criteria for evaluating performance, system interfaces, audit checks, security, and other requirements of new software; provides design and analysis support to user requested reporting requirements; serves as Office of Human Resource Information Management (OHRIM) contact with external organizations that are developing requirements or prototypes for DHHS system modernization applications; coordinates user needs, system planning and information management into a consolidated program for the Department's Human Resource Information systems; serves as a representative to internal and external Information Resource Management (IRM) committees and related efforts; develops and maintains long term strategic plans and near term action plans for system change; provides assistance to the OHRIM Director in the structure and application on the principles and procedures of project management and system life cycle management; provides technical assistance to users of DHHS Human Resource Information systems in the development of functional needs statements, operational concept documentation, and acceptance criteria; provides focal point within OHRIM for receiving and responding to requests for system services and resolution of system problems; develops or approves all technical documentation and other literature intended for distribution to the user community; develops or coordinates system training for staff and users of the Department's interactive field system; and participates in the evaluation and selection of hardware and packaged software.

2. In Chapter AH, Section AH.20 Functions, paragraph "B.3. Systems Design and Analysis Division", add new paragraph "7. *Systems and Networking Division*", to read as follows:

7. *Systems and Networking Division.* Provides responsibility for designing, obtaining, installing and maintaining automatic data processing systems required to support the field systems (Regions and OPDIVs) and to support office automation activities of the Assistant Secretary for Personnel Administration (ASPER) at Headquarters. Additionally, provides office automation programmatic support to all sites nationwide outside ASPER Headquarters. The Division provides automated data processing services and distributed configuration management services for computer systems located in the regional offices and the Department's OPDIV level Servicing Personnel Offices. The Division also provides the personnel offices with technical expertise in such areas as data communications, data center hardware and related equipment, data center operating systems, general purpose software and data center management. The Systems and Networking Division staff advise and assist ASPER program offices in related areas and conduct independent research and development studies related to hardware, systems software and data communications. The Division serves as initial contact for ADP hardware, software, and services vendors; provides technical assistance to the development of acquisitions including cost benefit analyses, requirements statements and performance criteria; and participates in the evaluation and selection of vendors and equipment. The Division also maintains coordination with Parklawn Computer Center and Division of Research and Technology telecommunications managers in the areas of networking support for the Department's centralized and distributed data processing facilities. The Systems and Networking Division consists of an Immediate Office, Computer Facilities Group and a Distributed Network Management Group.

Dated: September 25, 1987.

S. Anthony McCann,
Assistant Secretary for Management and Budget.

[FR Doc. 87-22836 Filed 10-1-87; 8:45 am]
BILLING CODE 4150-04-M

Delegation of Authorities to the Commissioner of Social Security for Experimental, Pilot and Demonstration Projects

The Secretary of Health and Human Services (the Secretary) has authority, under section 505(a) of Public Law (Pub. L.) 96-265, to conduct experimental and demonstration projects involving persons who are receiving Disability Insurance benefits under title II of the Social Security Act, as amended (the Act), and authority, under section 505(b) of Pub. L. 96-265, to conduct experimental, pilot and demonstration projects involving persons who are Supplemental Security Income (SSI) recipients under title XVI of the Act.

Section 505(a) of Pub. L. 96-265 also provides the Secretary with authority to waive compliance with benefit requirements of titles II (cash benefits) and XVIII (Medicare) of the Act, to the extent necessary to conduct experimental and demonstration projects under section 505(a) of Pub. L. 96-265 involving Social Security Disability Insurance beneficiaries under title II of the Act.

Section 505(b) of Pub. L. 96-265, which amends section 1110 of the Act and is incorporated in the Act as section 1110(b), also provides the Secretary with authority to waive or add to any of the requirements, conditions or limitations of title XVI of the Act, to the extent necessary to conduct experimental, pilot and demonstration projects under section 505(b) of Pub. L. 96-265 involving SSI recipients under title XVI of the Act.

Under section 505(c) of Pub. L. 96-265, authority to initiate projects under sections 505 (a) and (b) of Pub. L. 96-265 expired as of June 9, 1985. However, this authority was reinstated and extended for an additional period to June 9, 1990, for section 505(a) projects, and reinstated on a permanent basis for section 505(b) projects, by amendments to section 505 of Pub. L. 96-265 contained in section 12101 of Pub. L. 99-272, which was enacted into law on April 7, 1986.

Notice is hereby given that the Secretary has delegated to the Commissioner of Social Security (the Commissioner) the authorities vested in the Secretary under section 505 of Pub. L. 96-265, as amended by section 12101 of Pub. L. 99-272, provided that:

1: The waiver of compliance with benefit requirements under title XVIII of the Act, as authorized under section 505(a)(3) of Pub. L. 96-265, as amended, shall require the concurrence of the Administrator, Health Care Financing

Administration, Department of Health and Human Services (HHS);

2. The functions concerning submission of certain reports to Congress, under sections (a)(3), (a)(4) and (c) of Pub. L. 96-265, as amended, shall be exercised only by the Secretary; and

3. The authorities are exercised in accordance with all pertinent provisions of law, as well as applicable Federal and HHS regulations, policies, procedures, requirements and operating instructions.

This delegation is effective on the date that it is published in the **Federal Register**. The Commissioner may redelegate.

I affirm and ratify any actions by the Commissioner, or by other Social Security Administration officials acting with the Commissioner's approval, which may constitute the exercise of the above delegated authorities before the date that notice of this delegation is published in the **Federal Register**.

Dated: September 24, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-22837 Filed 10-1-87; 8:45 am]

BILLING CODE 4110-12-M

Food and Drug Administration

[Docket No. 87F-0287]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][2,2,6,6-tetramethyl-4-piperidyl]imino]hexamethylene[2,2,6,6-tetramethyl-4-piperidyl]imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4021) has been filed by Ciba-Geigy Corp., Three Skyline Dr.,

Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][2,2,6,6-tetramethyl-4-piperidyl]imino]hexamethylene[2,2,6,6-tetramethyl-4-piperidyl]imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 25, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-22751 Filed 10-1-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ-143-FN]

Medicare Program: End-Stage Renal Disease Program; Revised Network Area Designations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice provides for 18 End-Stage Renal Disease (ESRD) network areas and sets forth the geographic areas of the new network organizations and the criteria used to designate the new areas. This notice also sets forth evaluation criteria and performance indicators for monitoring the performance of network organizations.

EFFECTIVE DATE: These regulations are effective on November 2, 1987.

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594-3413.

SUPPLEMENTARY INFORMATION:

I. Background

Previous Legislative Activity and Regulations

The Social Security Amendments of 1972 (Pub. L. 92-603) extended Medicare coverage to individuals with end-stage renal disease (ESRD) who require dialysis or transplantation. The End-

Stage Renal Disease Amendments of 1978 (Pub. L. 95-292) authorized the establishment of ESRD network areas and network organizations under the Medicare program, consistent with the criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits.

In June 1984, Congress (House Report 98-861, p. 1336) directed the Secretary to consider consolidating the existing 32 network areas.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272) was enacted. Section 9214 of that law requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act (Act) and not merge the network organizations into other organizations or entities. The Secretary was permitted to consolidate network organizations, but only if such consolidation did not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99-272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and a final rule on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate the ESRD networks and improve their administration. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

Omnibus Budget Reconciliation Act of 1986

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99-509) was enacted. Sections 9335(d) through (h) of Pub. L. 99-509 amend, in several ways, section 1881(c) of the Act. Those sections require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987 (section 9335(d)(1) and (2)).

- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board (section 9335(d)(1) and (2)).

- Consult with professional and patient organizations regarding the

redesignation of network areas and publish in the *Federal Register* a description of each network area and the criteria on the basis of which network determinations were made (section 9335(d)(1)).

- Publish in the *Federal Register* the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions (section 9335(d)(1)).

- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price (section 9335(d)(1)).

- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition (section 9335(d)(1)).

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area (section 9335(d)(3)).

Section 9335 of Pub. L. 99-509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. Those provisions require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e)).

- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragement (section 9335(f)(1), (2), and (4), and (h)).

- Report on those facilities and providers not providing appropriate medical care (section 9335(f)(3)).

- Implement a procedure for evaluating and resolving patient grievance (section 9335(f)(5)).

- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established

by the network organization to assure proper medical care (section 9335(f)(5)).

- Collect, validate, and analyze ESRD program data (section 9335(f)(5)).

- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

Federal Register Documents

On April 9, 1987, we published a notice in the *Federal Register* (52 FR 11550) that proposed 17 new network areas and designations. In accordance with the provisions of section 9335(d) of Pub. L. 99-509, we invited every national renal professional and patient organization to provide counsel with respect to the network area designations and to submit proposed network area configurations. The April 9, 1987 proposed notice contains a detailed discussion of a proposed configuration of the network areas and our rationale for the proposed network designations.

The April 9, 1987 notice also contains the proposed criteria, standards, and procedures to evaluate the performance of network organizations and the potential capabilities of an applicant organization as required by section 9335(d)(1) of Pub. L. 99-509.

On May 12, 1987, we published a proposed rule (52 FR 17777) that announces the proposed responsibilities of network organizations as required by sections 9335(d) through (h) of Pub. L. 99-509. A final rule addressing those requirements will be forthcoming.

II. Analysis of and Responses to Public Comments

We received 160 timely comments on the proposed notice. Comments were submitted by 16 of the 32 existing ESRD networks, the Renal Physicians Association, the National Renal Administrators Association, the American Nephrology Nurses' Association, the National Association of Patients on Hemodialysis and Transplantation, the Forum of ESRD Networks, 30 hospitals, 12 ESRD facilities, 16 ESRD patients, 2 ESRD facility chain organizations, 4 local chapters of kidney organizations, 1 member of Congress, 1 State health department, and 1 State dialysis

organization. The remaining comments were submitted by physicians, nurses, social workers, dietitians, and other interested parties.

The majority of comments related to the proposal to combine the entire State of California into a single network and network assignment for the State of Connecticut. In the case of California, the commenters expressed concern that the dialysis population of the proposed network area would be too large to administer. In the case of Connecticut, the commenters requested that Connecticut be included with New York State. The specific comments and our responses follow.

California

Comment: Approximately half of the commenters suggested that California be divided into network areas. These commenters stated that a single network that would encompass the entire State of California would be too large to accomplish the tasks of the network and that the new network would incur unnecessary costs in consolidating the existing network data systems. The commenters suggested that the success of a network depends upon the communication and the personal relationships that develop between the provider community and the network staff. In an area that includes nearly 200 dialysis facilities and 9,400 dialysis patients, the commenters believe that those personal relationships would be compromised. In addition, some commenters stated that the patient population would permit two independent networks to function successfully. Commenters further stated that driving California into two networks would not interfere with the ability to function with other agencies within the State, such as the State Health Department and the HCFA regional office. Finally, some commenters stated that a number of national organizations, such as the ESRD Network Forum, NAPHT, and RPA also endorse two networks in California.

Other commenters stated that California should be a single network area as proposed. The commenters believe that a single network would allow the organization to relate to the State and Federal governments with one data system, one set of goals and objectives, and one program and one executive director. This would result in cost savings and other efficiencies.

Response: We have accepted the rationale of the majority of commenters that the population of California is large enough to support two networks and

that designating a single area might compromise the working relationships that have been developed in the past. Therefore, we will establish two networks in California.

Connecticut

Comment: Approximately one third of the commenters recommended that Connecticut be included with New York because of existing patient referral patterns and because the Connecticut network had worked closely with the New York City network in the past. Other commenters recommended that the New England network should be retained as previously configured without Connecticut. Those commenters stated that the population of New England without Connecticut can support a network organization.

Response: Our primary criterion for designating network areas is patient population because that determines the funding for each area. Placing Connecticut (approximately 1,000 patients) with New York would jeopardize the financial soundness of the New England network. In addition, a network consisting of New York and Connecticut would be too large to function adequately. We do not believe that the referral patterns of Connecticut are so interconnected with New York to warrant redesignating those two areas. Connecticut previously stood alone as a network area, and we believe that New England and Connecticut can form a successful network area. Therefore, we have rejected the comments supporting combining Connecticut with New York.

Georgia

Comment: Eight commenters recommended that Georgia be combined with North Carolina and South Carolina rather than with Florida as proposed. These commenters stated that this configuration would allow two areas of equal patient population, would maintain existing referral patterns and relationships, and would not require combining complex data systems. In addition, the commenters state that Florida and Georgia have populations with significant socio-economic differences and that both States would be better served by maintaining separate network areas.

One commenter stated that the interests of patients in Georgia would be best served by combining Georgia and Florida into one network because the Florida network is well organized, active and progressive.

Response: The configuration of Georgia, North Carolina, and South Carolina was previously considered when we prepared the proposed notice

and was one proposed option of the Forum of ESRD Networks. This configuration meets all of our criteria for establishing networks and would adequately serve the needs of the patients. Therefore, we have accepted this comment and will include Georgia in the network with North Carolina and South Carolina.

Hawaii

Comment: Several commenters suggested that Hawaii be included with Northern California because it is part of that medical trade area. Other commenters from the northwest suggested that combining Hawaii with the northwest would strain the resources of the area. These commenters suggest that the revenue generated from dialysis treatments of the Hawaii patients would be insufficient to overcome the expenses necessary to administer that area from the northwest.

Response: We initially designated Hawaii as part of the northwest to assure adequate funding for the northwest. However, the patient population of Hawaii is relatively small and commenters from the region believe that combining Hawaii with Northern California would not negatively affect the financial capabilities of the northwest. Therefore, we accept these comments and have designated Hawaii, American Samoa, Guam, and the Trust Territory of the Pacific Islands as part of the Northern California network (Network Area #17).

Michigan

Comment: Two commenters requested that Michigan be retained as a single network area.

Response: Again, we must assure that each network area is comprised of an adequate population base to finance the respective network organizations. Designating Michigan as a single area would jeopardize the financial capabilities of Michigan and the rest of network area #11.

Puerto Rico and the Virgin Islands

Comment: One commenter stated that Puerto Rico and the Virgin Islands should remain a separate network and not be included with New Jersey. The commenter stated that given the growth rate of the patient population, Puerto Rico will soon realize the minimum patient loan requirement. The commenter also stated that communication between Puerto Rico and New Jersey would be difficult because of geographic distance and because most patients from Puerto Rico speak only Spanish. The commenter also stated that there is an existing

collaboration among the facilities and the professionals in Puerto Rico and that it would be difficult to interact with New Jersey professionals, because no professional ties exist between the two areas.

Response: We realize that communication between Puerto Rico and any other network area will be difficult and not without problems. However, no geographical area, including Puerto Rico, would be able to accomplish the network requirements unless it is composed of the minimum patient population. Combining Puerto Rico and New Jersey will create a population base to permit adequate network funding and will allow both areas to be better served by the resulting network organization. In addition, that configuration will allow the interchange of medical perspectives between the two areas. Therefore, we reject the comment.

Random Case Reviews

Comment: Several commenters expressed concern over our proposed evaluation criteria relating to the requirement that networks perform medical case reviews. Those commenters believe that networks should gather data and evaluate trend data to identify facility problems. One commenter stated that the networks should create a mini-medical staff organization to participate in a broad-based, team oriented quality assurance effort. In addition, one commenter stated that case review would duplicate the functions of the State agencies, which would result in a waste of financial resources. Other commenters expressed concern over a case review requirement modeled after those reviews performed by Utilization and Quality Control Peer Review Organizations (PROs) for the network organizations. Those commenters state that the PRO-model case review is based upon hospital inpatient experience, will cause problems in record review, and is antagonistic in its relationship with providers.

Response: We believe that case review is the best method to assure that networks perform their statutory responsibility to evaluate the appropriateness of care within the network area. The evaluation of trend data is certainly an acceptable technique but will best be accomplished on a national level by the ESRD Registry. The networks will have the opportunity to evaluate trend data from the national program management and medical information system and to identify local aberrations from the

national data. The strength of the networks will be access to facility records from which to supplement data on specific issues. Therefore, we reject the comment and networks will be required to conduct case reviews.

Demonstrating Contractor Financial Integrity

Comment: Two commenters asked how the current networks interested in bidding on the new contracts can demonstrate financial integrity when they are currently funded solely by HCFA. In addition, one of the commenters asked whether, if a contract is awarded to an existing network, HCFA could advance it three months start-up funding. One commenter stated that every effort should be made to encourage the existing organizations to be primary candidates for the new designations.

Response: It is the responsibility of any potential bidders to demonstrate the financial soundness of their organizations and to acquire independently the necessary financial support. We do not plan to advance any network contract funds. With respect to encouraging the current networks to bid on the new areas, government contract

regulations forbid special consideration to any potential bidders. All current networks will be placed on the bidders list for the network contract solicitation and all proposals will be judged on their merits.

Variations in Network Size

Comment: Several commenters noted that the geographic size of the networks will vary considerably and they are concerned that this geographic variance will hinder the performance of the larger geographic networks. The commenters believe that the availability of professionals to serve as "expert" volunteers will be severely hampered due to distance and time commitment. The commenters believe that the access to care and the grievance procedure for patients will also be adversely affected in the large geographic networks. These commenters also believe that in the larger areas the facilities will have less input into the development of network goals and objectives.

Response: We do not believe that a difference in geographic size of the organizations will greatly affect their capabilities. Our proposed network requirements have been designed to be accomplished from the network office

and will not require a great amount of travel. In addition, the contracting mechanism will allow the network organizations to reimburse their staff for their activities.

Network Funding

Comment: Several commenters suggested that the funding mechanism be revised to account for transplant patients and include transplant centers in the funding formula. Other commenters suggested that the funding mechanism be revised to distribute the network revenue more equitably.

Response: Section 9335(j) of Pub. L. 99-509 amended section 1881(b)(7) of the Act and specifies the funding mechanism for the network organizations. We have no administrative authority to modify the funding formula. In the request for proposals, we will specify the maximum funding available for each area based upon the current estimates of patient population. Each network contract proposal will be evaluated for technical content and proposed price. Each network business proposal will be assigned point values according to the following formula:

$$20 - \frac{(\text{Price of proposal} - \text{Lowest priced proposal}) \times 20}{\text{Lowest priced proposal}}$$

The points assigned for the price of the proposal will not exceed 20 percent of the total evaluation score. If there are no significant technical or financial and management differences, price alone may be the determining factor for source selection.

Data Collection and Analysis

Comment: One commenter stated that the network role in data collection for the national patient registry should be closely monitored by HCFA and the National Institutes of Health (NIH). Another commenter stated that the regulations should address data system administration through clear statements about the level of data management and analysis skills required of network organizations.

Response: We are working closely with NIH to assure the success of the national patient registry, and we will assure that the networks also cooperate in this effort. We will specify the technical data collection specifications and requirements in the network contracts.

Representation in Network Activities

Comment: One commenter stated that the network contracts specify the role of the patients in the network administration. Other commenters requested that dieticians be included on the medical review boards, that transplant surgeons be required to be members of the board, and that a cross section of the provider community be mandated to participate in the governing body.

Response: The requirement for patient representation on the medical review board and other network committees will provide active patient representation and participation in each network organization. In addition, each network will have the latitude to appoint various professionals to the medical review board. There is nothing that would preclude a dietician, a transplant surgeon, or other professional specialties from being appointed to the medical review board. We will evaluate the proposals of the prospective contractors to determine how the contractor intends to represent the

provider community. During this process we will ensure that the contractor develops a plan that fully represents the full spectrum of dialysis professionals.

Sanctions

Comment: One commenter stated that if networks are given the clear ability to sanction ESRD facilities, then we must provide an avenue of administrative redress for the facilities.

Response: The administrative procedures for implementing alternative sanctions against ESRD facilities that fail to participate in network activities and pursue network goals are being prepared in a separate rule. We will apply those sanctions on the basis of recommendations from the network organizations. The final rule implementing the alternative sanctions requirements will be published shortly.

Periodic Adjustments of Network Designations

Comment: One commenter stated that further changes in network designations could be disruptive to network

operations and should be avoided because networks are small businesses dependent upon relationships with their constituents.

Response: We agree that changes in the network areas disrupt the program and we only intend to revise the areas when a need to change an area is apparent.

Onsite Reviews

Comment: One commenter stated that onsite reviews by the network be conducted only on an as needed basis and only in new facilities.

Response: Section 9335(f) of Pub. L. 99-509 added section 1881(c)(2)(E) to the Act, which gives the networks the responsibility to conduct on-site reviews of facilities and providers as necessary, utilizing standards of care established by the network organization to assure proper medical care. Each network organization will develop criteria and standards for assessing the need for onsite reviews and will conduct onsite reviews in response to those criteria. We do not intend to restrict the authority of the networks in this important area.

Monthly Progress Reporting

Comment: One commenter stated that a quarterly system of progress reporting would be more efficient and more illustrative of accomplishments of the networks than preparing monthly reports.

Response: We will require monthly reports from network organizations so that we can assure that contract requirements are performed satisfactorily. Since many of the network requirements will be performed on a monthly basis, the monthly reports will allow us to assure that the networks will not fall behind in fulfilling these tasks.

Contractor Eligibility

Comment: One commenter stated that we should prohibit two classes of organizations from bidding on network contracts. The commenter stated that providers of kidney dialysis services, manufacturers of dialysis supplies and/or consortia representing or controlled by providers or manufacturers would be unsuitable for obtaining a network contract because of an inherent risk of conflict of interest. In addition, the commenter believes that PROs should not be selected as network contractors because the ESRD program would become secondary to their role of conducting inpatient hospital reviews.

Response: At this time, we have not restricted who may respond to the request for proposals. (See section IV

below.) All potential bidders will be required to demonstrate their ability to fulfill the contract requirements in an unbiased manner. All successful bidders will be required to perform the contract requirements in a fully acceptable manner or their contracts will be terminated.

Development of Criteria and Standards to Evaluate Appropriateness of Care

Comment: One commenter is concerned about the development of the criteria and standards of medical care. The commenter is concerned that a wide variety of criteria and standards will be developed nationwide, many of which may not be appropriate. The commenter believes that we should review the standards to assure that minimum requirements are met.

Response: The medical review board of each network will be responsible for developing the criteria and standards for each network area. We expect that the medical experts of the member facilities will participate in this activity to assure that reasonable standards are developed. While we intend to review the standards that are developed, we believe that the medical experts in the networks are qualified to develop reasonable standards for medical care of the patients. Therefore, we do not intend to change or revise the standards that are developed.

Vocational Rehabilitation

Comment: Several commenters are concerned that the term "vocational rehabilitation"; as mentioned in the law, is too narrow and should be revised to consider factors such as demographics, age, job skills, and employment history for each patient.

Response: Each network will be responsible for developing the criteria and standards and methods for encouraging vocational rehabilitation within the network area. The networks will have the latitude to define the criteria appropriate for their network area and apply their standards accordingly.

Technical Changes

In the proposed notice, we inadvertently referred to the Trust Territory of the Pacific as the Trust Territories of the Pacific. That error has been corrected in this final notice.

III. Provisions of the Final Notice

This final notice implements new network area designations and sets forth the criteria, standards and procedures we will use to evaluate new network organizations as required by section 9335(d) of Pub. L. 99-509. As we

stated in the April 9, 1987 notice, we will also issue area designations through revisions to the ESRD Facility Manual and the Provider Reimbursement Manual. We will require facilities to notify patients of the area designation changes, and we will notify patient advocacy groups (for example, The National Association of Patients on Hemodialysis and Transplantation and The National Kidney Patients Association) directly.

Network Area Designations

Based on the public comments, we changed the network area designations that we proposed on April 9, 1987 as follows:

- We will designate Florida as a single State network area (Network Area #7).
- We will combine Georgia with North Carolina and South Carolina to form one network area (Network Area #6).
- We will split California into two district network areas—Northern California (Network Area #17) and Southern California (Network Area #18).
- We will combine Hawaii, America Samoa, Guam, and the Trust Territory of the Pacific Islands with Northern California (Network Area #17).

The new network area designations follow:

Network Area #1

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Network Area #2

New York

Network Area #3

New Jersey
Puerto Rico
Virgin Islands

Network Area #4

Delaware
Pennsylvania

Network Area #5

District of Columbia
Maryland
Virginia
West Virginia

Network Area #6

Georgia
South Carolina
North Carolina

Network Area #7

Florida

Network Area #8

Alabama
Mississippi
Tennessee

Network Area #9

Indiana
Kentucky
Ohio

Network Area #10

Illinois

Network Area #11

Michigan
Minnesota
North Dakota
South Dakota
Wisconsin

Network Area #12

Iowa
Kansas
Missouri
Nebraska

Network Area #13

Arkansas
Louisiana
Oklahoma

Network Area #14

Texas

Network Area #15

Arizona
Colorado
Nevada
New Mexico
Utah
Wyoming

Network Area #16

Alaska
Idaho
Montana
Oregon
Washington

Network Area #17

The following counties in Northern California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

Hawaii. American Samoa. Guam. The Trust Territory of the Pacific Islands.

Network Area #18

The following counties in Southern California: Imperial, Inyo, Kern, Kings,

Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, Ventura.

Evaluation Criteria

We have made no changes to the criteria, standards, and procedures that will be used to evaluate the performance of network organizations and the potential capabilities of an applicant organization with respect to the statutory duties of the network organizations. The evaluation criteria that we will use to assess the capabilities of organizations that submit proposals in response to the request for contract proposals follows:

- I. Understanding of Work and Approach
 - A. Analysis of scope and purpose
 - B. Technical approach
- II. Experience
 - A. Developing and conducting medical review programs
 - B. Managing data and conducting data analysis and studies
 - C. Coordinating work groups in the health field
- III. Personnel
 - A. Project Director
 - B. Subordinate staff
- IV. Management Plan

We will use the following evaluation criteria and performance indicators to assess the effectiveness or potential effectiveness of network organizations.

Criteria	Evaluation indicator
I. MEDICAL REVIEW	
A. General: The network organization appoints a qualified Medical Review Board.....	The network demonstrates an ability to appoint a medical review board in accordance with the regulatory requirements.
The network develops and adopts criteria for the evaluation of patient care and for encouraging participation in vocational rehabilitation programs and network goals for placing patients in settings for self care and transplantation.	The Network demonstrates an ability to adopt criteria and standards for the evaluation of the quality and appropriateness of patient care.
B. Case Review: The network develops a protocol for the receipt and review of a representative sample of individual patient cases per month. The review of individual cases includes the evaluation of at least: Individual care plans, Long term and short term plans, Appropriateness of treatment modality, Adverse effects, Incident reports involving the patient, and Patient suitability for home dialysis, transplantation and vocational rehabilitation.	The network proposes a mechanism to identify individual cases for review against criteria and standards established under I.A. above. The network proposes a mechanism to evaluate these areas.
C. Systems Assessment: The network successfully identifies specific network problems in the delivery of patient care..... The organization assists individual facilities and acts to resolve identified problems within the network area. The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. The network documents these activities. The network develops a protocol to select a sample of member facilities for evaluation of patient placement. The network heightens both patient and physician interest and awareness of alternative treatment modalities and facilitates entry into those treatment modalities when medically indicated. The network objectively assesses and assists facilities efforts to correct problems identified through the network medical review program.	Proposed studies and a written mechanism to implement corrective actions or suggestions. Proposed activities required of facilities to improve care. The network proposes policies and procedures to gain voluntary compliance from facilities in meeting HCFA goals and objectives. Recalcitrant facilities will be reported to HCFA. The network uses established criteria and standards to evaluate the procedures used at each facility in assessing patients for placement in appropriate treatment settings. The Network proposes to initiate patient and professional education and information activities in this area. Other initiatives to increase the percentage of patients or alternative treatments are proposed and implemented. The network proposes to develop a review mechanism to determine if benefits are achieved from the medical review programs.
D. Patient Services Evaluation: The network assists ESRD beneficiaries in obtaining access to all types and levels of care..... The network is responsive to patient concerns and encourages responsible patient participation. Responsiveness is documented. The network provides, maintains, and directs an effective patient grievance mechanism: Standard policies and procedures, Evaluation of complaints legitimacy, Rationale for complaints not pursued is documented, Investigation, Corrective actions, Follow-up of corrective action, Notification of parties concerned and resolution/corrective action is clearly explained, and The network assumes the responsibility of assuring that a result is obtained.	The network has mechanisms to assist patients in obtaining access to care with respect to proper treatment settings and treatment schedules compatible with patient employment. Proposed methods of assuring appropriate consumer representation. Documented procedures.

Criteria	Evaluation indicator
<p align="center">II. DATA ACTIVITIES</p> <p>The network maintains a patient and facility specific data system that meets the needs of the network and HCFA requirements.</p> <p>Data handling is physically and administratively structured to assure patient privacy and confidentiality.....</p> <p>The network data management system provides for collection, analysis, verification and reporting on a timely basis.</p> <p>The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. These activities are documented.</p> <p>The network data system is adequate to support current activities, including the activities of the medical review board.</p> <p>The network has established a periodic internal audit procedure to assure the effectiveness of its system and its performance in: submitting reports, meeting deadlines, and identifying and correcting errors.</p>	<p>The proposed data system includes at least the required specific data items as specified by HCFA.</p> <p>Information must be released only in accordance with the provisions of the contract or as otherwise specified in writing by HCFA.</p> <p>The network proposes to meet its obligation in providing information to HCFA as specified in the provisions of the contract and program instructions.</p> <p>The network proposes policies and procedures to gain voluntary compliance from its facilities in meeting data gathering requirements.</p> <p>The network proposal assures that there will be no curtailment of network activities due to a lack of data or meaningful analysis. A periodic analysis of patient morbidity and mortality trends will be performed. Data findings that may be indicative of inadequate patient care will be tracked and reported to the medical review board.</p> <p>The network proposes procedures to identify and correct problems in its data activities. The network has planning activities to identify and address future data needs.</p>
<p align="center">III. PROGRAM ADMINISTRATION AND MANAGEMENT</p> <p>The network plans and manages network activities to enhance the achievement of ESRD national priorities.</p> <p><i>Record Systems:</i></p> <p>The network maintains all appropriate systems in a standardized manner.....</p> <p>The network maintains an effective liaison role to the Federal government.....</p> <p>The network arranges, as required, to have audits performed and audit reports sent to HCFA.....</p>	<p>The network prepares a comprehensive contract proposal, and submits acceptable deliverables.</p> <p>Organization's records must be maintained in accordance with sound business practices.</p> <p>The network proposal clearly indicates that there will be specific individuals in the network organization to coordinate communications with HCFA. The network will adhere to specific reporting mechanisms specified in the contract.</p> <p>External (independent) audit.</p>

IV. Request for Proposals

We have developed separately an announcement of a request for proposals (RFP) to solicit prospective contractors as the new ESRD network organizations for the newly designated areas. We will publish the announcement in the Commerce Business Daily (CBD) for 15 consecutive days. During those 15 days, interested parties can request copies of the RFP. On the fifteenth day that the announcement appears in the CBD, we will distribute copies of the RFP to existing organizations that currently have the expertise to perform network organization functions and any other parties that request copies. We will accept proposals within 45 days from the date that we publish the announcement of the RFP in the CBD.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (REA) (5 U.S.C. 601 through 612), unless the

Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities.

Because ESRD networks are such a small activity, with a total FY 1987 budget of less than \$6 million, these changes do not meet any of the criteria for a major rule under Executive Order 12291, and a regulatory impact analysis is not required. However, the planned reductions in numbers of network areas and organizations will clearly affect all or almost all existing network organizations. Since these organization are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply. Nonetheless, they are small organizations and a substantial number of them will experience a significant adverse economic effect as a result of our changes. Therefore, the following discussion, in combination with other sections of this notice, serves as a voluntary regulatory flexibility analysis.

Existing network organizations will be affected only when we actually redesignate network areas and make arrangements with new network organizations. We do not expect the redesignation of network areas to have an adverse affect on ESRD facilities or beneficiaries. Rather, to the extent that network performance relative to available resources is enhanced, the entire ESRD program will benefit.

The Criteria for the designation of these new network areas will have an impact upon the networks, the beneficiaries, and the facilities. For

example, one of the criteria that we will use as a basis for area designation is patient population. This criterion will determine the funding level of each network organization because the network funding mechanism is based on the number of treatments provided within the network area. (Section 1881(b)(7) of the Act, as amended by section 9335(j) of Pub. L. 99-509 requires the Secretary to reduce the amount of each composite rate payment for each treatment by \$0.50 and provide for the payment of such amount to meet the necessary and proper administrative costs of the network organization in the area where the treatment is provided.)

The area designations and the total number of patients per area follow:

Network area:	Number of patients
1.....	3,917
2.....	7,641
3.....	4,436
4.....	4,914
5.....	5,273
6.....	6,674
7.....	4,625
8.....	4,935
9.....	5,743
10.....	3,733
11.....	5,113
12.....	3,497
13.....	3,277
14.....	5,785
15.....	2,977
16.....	2,354
17.....	3,954
18.....	5,934

For purposes of estimating revenue, we have assumed that the average number of dialysis treatments per week

is 2.6 at \$50 per treatment. We assume an allocation of \$67.60 per patient per year. The smallest area will thus be allocated about \$185,000 and the largest area will be allocated approximately \$520,000.

The patient population criterion should ensure that there is a sufficient level of funding to ensure the survival of small network organizations and ensure a basic level of services provided to the beneficiaries and the providers. Appropriate application of this factor could prevent the growth of disparities among the services provided to the ESRD beneficiaries throughout the country.

We intend to replace existing network organizations with a more effective and efficient system. As a desirable by-product, these changes will reduce the regulatory burden on the suppliers of ESRD services, while continuing to assure the health and safety of Medicare beneficiaries. Also, these criteria should result in a good management information system defining patients' treatment modalities and a quality control system that justify the costs and burden imposed on the networks and which are expected to benefit the beneficiary and society.

In conclusion, although our evaluation criteria may appear to be burdensome, we have made an effort to assure that network areas of sufficient size will perform these functions. We believe that the adverse economic impact of this notice will be limited to the affected entities and their immediate employees. Such adverse consequences as may be anticipated will not be of sufficient magnitude to offset the advantages to be gained by anticipated improvements in efficiency, effectiveness, economy, and quality of care.

VI. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

(Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr))
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: August 24, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: September 14, 1987.

Otis R. Bowen,
Secretary.

[FR Doc. 87-22738 Filed 10-1-87; 8:45 am]
BILLING CODE 4120-010-M

Office of Human Development Services

Meeting of the Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting:
Administration for Children, Youth and Families.

Times and Dates: 9:00 a.m. November 4, 1987 to 12:00 a.m. November 6, 1987.

Place: DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Status: Advisory Board meetings are open for public observation.

Matters to be Considered: At this meeting, the Advisory Board will discuss: The National Symposium on Child Victimization, FY'88 Child abuse and Neglect priorities, interagency agreements, future efforts of the Advisory Board and other matters of importance.

Contact Person for More Information:
Jan Kirby-Gell, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013; 202/245-2856.

Date: September 28, 1987.

Carolyn Garnett,
HDS Committee Management Officer.
[FR Doc. 87-22768 Filed 10-1-87; 8:45 am]
BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA-650-07-4121-09]

Establishment of the Fort Union Regional Coal Team

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is establishing a regional coal team (RCT) for the Fort Union (Montana and North Dakota) Federal coal production region. The RCT is an independent subcommittee of the Federal-State Coal Advisory Board renewed by the Secretary on October 3, 1986. As such, the RCT will guide all

phases of coal activity planning in the region and will specifically provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing levels and on Federal coal lease sale schedules and the tracts to be offered.

Further information regarding the committee may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Fort Union Regional Coal Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Donald Paul Hodel,
Secretary of the Interior.
September 17, 1987.

[FR Doc. 87-22800 Filed 10-1-87; 8:45 am]
BILLING CODE 4310-04-M

Bureau of Land Management

[AA820-07-4830-14]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Payments in Lieu of Taxes, 43 CFR Part 1881.

Abstract: The information requested is statutorily required to compute payments due units of local government under the Payments in Lieu of Taxes Act (31 U.S.C. 6901 through 6907). The Act requires that the Governor of each State

furnish a statement as to the amounts paid to units of local government under 11 receipt sharing statutes in the prior fiscal year. CFDA Number 15.216.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: States supplying Federal land payment information to the Bureau of Land Management.

Annual Response: 50.

Annual Burden Hours: 1,000.

Bureau Clearance Officer (alternate): Rick Iovaine (202) 653-8853.

Dated: July 15, 1987.

Andrew J. Ondrof,

Deputy Assistant Director, Management Services.

[FR Doc. 87-22777 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-84-M

[AA320-07-4212-2]

Bureau Form Submitted For Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collections requirement and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone number (202) 395-7340.

Title: Desert Land Entry Application, 43 CFR Part 2520.

Abstract: To initiate and process a desert land entry application with the Bureau of Land Management. The information aids the Bureau in determining the application's eligibility and whether certain statutory requirements have been met.

Bureau Form Number: 2520-1.

Frequency: Once.

Description of Respondents: Any citizen of the United States subject to the laws of any State of the United States desiring to apply for a desert land entry.

Annual Responses: 20.

Annual Burden House: 30.

Bureau Clearance Officer: Rick Iovaine at (202) 653-8853.

July 2, 1987.

Guy E. Baier,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 87-22778 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-84-M

[ES-970-4121-12-2410; ES 36413]

Competitive Coal Lease Offering By Sealed Bid, Fayette and Tuscaloosa Counties, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that certain coal resources in the Sandy Point Tract, Fayette and Tuscaloosa Counties, Alabama, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). The Sandy Point Tract is being offered for lease as the result of Emergency Coal Lease Application ES 36413, filed by Chevron U.S.A. Inc. The applicant has satisfactorily demonstrated under the Emergency Coal Leasing Regulation 43 CFR 3425.1-4, that if these coal deposits are not leased, they will be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years.

DATES: The lease sale will be held at 10:30 a.m., Thursday, October 29, 1987. Sealed bids must be submitted on or before 4:00 p.m., Wednesday, October 28, 1987.

ADDRESS: The lease sale will be held in the Public Room of the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Sealed bids should be sent by certified mail, return receipt or hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Ivy J. Garcia, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274-0151.

SUPPLEMENTARY INFORMATION: The Sandy Point Tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for this tract is \$100 per acre, or fraction thereof. No bid that is less than \$100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value of this tract will be determined by the authorized office after the sale.

The lands included in Emergency Coal Lease Application ES 36413 are described as follows:

Sandy Point Tract

T. 17S., R. 11-W., Huntsville Meridian, Alabama.
Sec. 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Fayette County.
Sec. 13, E $\frac{1}{2}$ NW $\frac{1}{4}$, Tuscaloosa County.
Containing approximately 120 acres.

The Sandy Point Tract represents the continuation of an existing underground mining operation. The primary group and bed of interest is the Pratt. This tract is to be mined from the existing underground mine.

The proximate analysis of the Pratt Tract is:

1. Moisture (%)—2.5
2. Ash (%)—8.2
3. Sulfur (%)—1.8
4. BTU/lb.—13,833
5. Approx. tons in place—1.2 million
6. Medium-Volatile B bituminous in rank.

Rental and Royalty

A lease issued as the result of this offering will provide for payment of an annual rental of \$3.00 per acre or fraction thereof and a royalty payable to the United States of 8.0 percent of the value of the coal produced by underground mining methods. The value of the coal shall be determined in accordance with 30 CFR 203.200.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 87-22773 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-GJ-M

[NV-030-07-4212-21; N-47283]

Realty Action; Noncompetitive Lease of Public Land in Douglas County, NV

The following described parcel of public land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732), at not less than fair market value:

Mount Diablo Meridian, NV

T. 14 N., R. 20 E.,
Sec. 8, N $\frac{1}{2}$ NW $\frac{1}{4}$.

The parcel comprises 80 acres.

Seniors' Mobilehome Village, Inc., has requested a lease authorizing construction of a mobilehome park to benefit low income senior citizens. The proposal is consistent with land use planning for the site and the land is considered generally suitable for the proposed use. The development proposal will be evaluated in accordance with the National Environmental Policy Act to assess

impacts upon the filing of an application.

Information regarding the proposal can be reviewed at the Bureau of Land Management, Carson City District office. Environmental Assessments concerning the physical capabilities of the land are also available for review.

For a period of 45 days from the date of publication of this Notice in the **Federal Register** interested parties may submit comments to the District Manager, Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be evaluated and the Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice will become the final determination of the Department of the Interior.

Norman L. Murray,

Acting District Manager, Carson City District.

Dated this 23rd day of September 1987.

[FR Doc. 87-22733 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-HC-M

[CA-060-07-4410-04]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally Thursday, October 29, 1987, beginning at 9 a.m. and Friday, October 30, 1987, beginning at 8 a.m., at the Carriage Inn, 901 China Lake Boulevard, Ridgecrest, California. A field trip to Short Canyon and Homewood Canyon will be conducted for Council members Thursday, October 29, from 1 p.m. to 5 p.m. Any members of the public wishing to participate in the field trip must provide their own transportation, food and beverages.

Agenda items will include a review and recommendations on the 1987 proposed amendments to the California Desert Plan; recommendations from the Council on the East Mojave National Scenic Area Management Plan; Council review and recommendations on the joint Draft Environmental Impact Statement/Environmental Impact Report on the Western Mojave Land Tenure Adjustment Project; and, staff reports on the status of plans for Afton Canyon, Desert Tortoise Natural Area and other ACEC plans scheduled for FY 1988; discussion of status of FY 1988 budget

allocations (appropriations, State OHV and other sources); pipeline and utility right of way updates; and, briefings on current issues such as wilderness reclamation, Prado Basin oil and gas leases and El Mirage OHV project.

All formal Council meetings are open to the public, with time allocated for public comments and time for comment made available by the Council Chairman during the presentation of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507.

FOR FURTHER INFORMATION AND MEETING

CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6383.

Dated: September 25, 1987.

Wesley T. Chambers,

Acting, District Manager.

[FR Doc. 87-22928 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8:30 a.m. to 4:45 p.m., November 4, 1987, and 8:30 a.m. to 5 p.m., November 5, 1987, at the Holiday Inn—Emerald Beach to Corpus Cristi, Texas (512-883-5731).

The agenda for the meeting will cover the following principal subjects:

November 4

- EPA Report to Congress
Impact of considering drilling muds, cuttings, and produced waters as toxic waste
- Impact of dredging on organisms and water quality
- Changes in agreements with coastal States regarding access to privileged and proprietary G&G data

November 5

- What constitutes an adequate biological/water quality monitoring program
- Effect of seismic activity on fish and fishing
- Gulf States perspective

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Committee. Such requests should be made no later than October 16, 1987, to the OSC Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington DC 20240

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, John B. Rigg, at 202-343-3530.

Minutes of the meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: September 29, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-22838 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix 1, and the Office of Management and Budget Circular A-63, Revised.

Subcommittees of the OCS Advisory Board Scientific Committee will meet at the Holiday Inn—Emerald Beach, 1102 South Shoreline Blvd., Corpus Christi, Texas 78401 (telephone 512-882-5731), from 8 a.m. to 5 p.m. on November 4, 1987, from 2:30 p.m. to 5:30 p.m. on November 5, 1987, and from 8 a.m. to 5 p.m. on November 6, 1987.

The agenda for the meetings will include the following subjects:

- Discussion of Proposed Fiscal Year 1989 Studies;
- Update on Status of Fiscal Year 1988 Program;
- Update on Status of Long Range Study Plan; and
- Update on Status of GAO Audit.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning

these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230 (MS-644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone (202)-343-7744.

Dated: September 29, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-22839 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Women's Rights National Historical Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 section 10) that a meeting of the Women's Rights National Historical Park Advisory Commission will be held October 21, 1987.

The Commission was established pursuant to Public Law 96-607. The purpose of the Commission is to advise the Secretary of the Interior, or his designee, with respect to matters relating to the administration of Women's Rights National Historical Park.

The meeting will convene at the Park Visitors Center, 116 Fall Street, Seneca Falls, New York, from 7 a.m. to 8 a.m. and then move to the Old Village Hall, 136 Fall Street, Seneca Falls, New York, from 8 a.m. to 3 p.m.

The topic of discussion will be Funding Strategies for the Chapel Block. The meeting is open to the public.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Women's Rights National Historical Park, P. O. Box 70, Seneca Falls, New York 13148.

Dated: September 23, 1987.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 87-22815 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-70-M

Intent To Negotiate Concession Contract; West Park Hospital

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby

given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with West Park Hospital, authorizing it to provide medical services for the public at Yellowstone National Park, Wyoming for a period of seven (7) years from November 1, 1985, through October 31, 1992.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired October 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposal received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed contract.

Richard A. Strait,

Acting Regional Director, Rocky Mountain Region.

Dated: August 11, 1987.

[FR Doc. 87-22816 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-67-M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Tuesday, November 10, 1987 at the Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service

systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
 Ms. Amy Meyer, Vice Chair
 Mr. Ernest Ayala
 Mr. Richard Bartke
 Dr. Howard Cogswell
 Brig. Gen. John Crowley, USA (ret.)
 Mr. Margot Patterson Doss
 Mr. Neil D. Eisenberg
 Mr. Jerry Friedman
 Mr. Steve Jeong
 Ms. Daphne Greene
 Ms. Gimmy Park Li
 Mr. Gary Pinkston
 Mr. Merritt Robinson
 Mr. R.H. Sciaroni
 Mr. John J. Spring
 Dr. Edgar Wayburn
 Mr. Joseph Williams

The main agenda item will be a joint presentation by the staffs of Golden Gate National Recreation Area and the Presidio of San Francisco on plans for development of Crissy Field in San Francisco. The plans for those Crissy Field lands under U.S. Army management were developed by the Directorate of Engineering and Housing at the Presidio of San Francisco. Plans for the Golden Gate National Recreation Area portions of Crissy Field were developed with the assistance of John Northmore Roberts Landscape Architects and Land Planners of Berkeley, California, under the auspices of the Golden Gate National Park Association. The San Francisco City Planning Commission staff has also participated in the formulation of this plan. The joint U.S. Army/National Park Service planning effort has been undertaken to assure that the requirements of both the Army and the National Park Service are addressed in development of this critical urban shoreline.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after December 4, 1987. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National

Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: September 25, 1987.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 87-22817 Filed 10-1-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub-No. 108X)]

Exemption: The Chesapeake and Ohio Railway Co.; Abandonment in Ross County, OH

CXS Transportation (CSX) ¹ has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between valuation station 4395+00 (milepost 83.33) near Scioto Junction and valuation station 4528+11 (milepost 85.85) near VA Junction, in Ross County, OH a distance of approximately 2.52 miles.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).²

Grand Trunk Western Railroad Company has trackage rights over this line, and applicant acknowledges that discontinuance of trackage rights must be granted before this line can be

¹ Preliminary notice of the exemption was given by The Chesapeake and Ohio Railway Company (C&O) which was subsequently merged into CSXT. The docket number used by C&O is used here for continuity and to avoid confusion.

² The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

abandoned. This notice of exemption is conditioned upon receipt of authority to discontinue Grand Trunk Western Railroad Company's trackage rights over the line in Docket No. AB-31 (Sub-No. 25X), *The Grand Trunk Western Railroad Co.—Exemption Abandonment—In Fayette, Ross and Pike Counties, OH*, filed August 10, 1987.

This exemption will be effective on October 30, 1987 (unless stayed pending reconsideration) or on the effective date of our decision in Docket No. AB-31 (Sub-No. 25X), whichever occurs later. Petitions to stay must be filed by October 12, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 22, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22669 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 212 X)]

Exemption: CSX Transportation, Inc.; Abandonment of Service in Perry County, KY

Applicant has filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments* to abandon its 2.63-mile line of railroad between milepost VO-266.37 and milepost VO-269 in Perry County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of a rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period.

The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 2, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 13, 1987, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by October 22, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 18, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22389 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-244 (Sub-No. 2X)]

Abandonment Exemption in Comanche and Cotton Counties, OK; The Oklahoma, Kansas and Texas Railroad Co.

The Oklahoma, Kansas and Texas Railroad Company has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 15.5-mile line of railroad between milepost L-498.0 and milepost L-513.5 in Comanche and Cotton Counties, OK.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service

over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 2, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 13, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 22, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael E. Roper, Oklahoma, Kansas and Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 18, 1987.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-22390 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

[No. 40154]

Extension of Expiration Date of Master Tariff Increases; Amendments No. 5 and 12 To Special Tariff Authority

Decided: September 25, 1987.

AGENCY: Interstate Commerce Commission.

¹ This proceeding was originally numbered: Amendment No. 12 to Special Tariff Authority No. 80-1748 and Amendment No. 5 to Special Tariff Authority No. 84-8933.

ACTION: Date for filing comments extended 45 days and formal docket number assigned.

SUMMARY: On August 27, 1987 a notice was served requesting comments on a proposal for incorporation of master tariff increases in basic tariffs. (Published in the *Federal Register* at 52 FR 32611, August 28, 1987.) Comments on the proposal were due September 28, 1987. Based upon the requests received, I will extend the date comments are due for 45 days. I am also assigning the formal docket No. 40154 to this proceeding to facilitate processing.

DATES: Comments are due on November 12, 1987.

ADDRESSES: Please refer to docket No. 40154, and send (an original and 10 copies if possible) to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Elaine A. Sehart, (202) 275-7899

or

Joseph H. Dettmar, (202) 275-7245

(TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: In this proceeding, the Commission has proposed an alternative approach for incorporation of master tariff increases in basic tariffs. Comments on this proposal were due September 28th. Eight requests for extensions of time to file comments have been filed.² Generally, the parties contend that the Commission's proposal requires analysis which cannot be completed within the 30 days allowed. They contend that time is needed to complete studies on the feasibility and effects of the proposal. I will grant an extension so that parties will have an opportunity to submit meaningful comments. However, the parties have not shown that 90 days are needed to prepare their analysis; accordingly, I will grant a 45-day extension. I would also assure the parties that this Commission is sensitive to shippers' concerns and will consider the issues they raise in this proceeding.³

² Requests were filed by: Rail Publication Services (Southern Freight Association and Traffic Executive Association—Eastern Railroad Agents); the Society of the Plastics Industry, Inc.; Himont U.S.A., Inc.; Hercules Incorporated and Aqualon Company; Dow Chemical U.S.A.; the National Industrial Transportation League; Chevron Chemical Company; and the Board of Trade of the City of Chicago.

³ The request for a separate rulemaking proceeding should be addressed in the comments.

Finally, to facilitate processing, this proceeding has been assigned a formal docket No. 40154.

This action will not significantly affect either the quality of the human environment or energy conservation, and will not have an impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321 and 10762.

By the Commission, Chairman Heather Gradison.

Noreta R. McGee,
Secretary.

[FR Doc. 87-22670 Filed 10-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree Pursuant To The Clean Air Act; Atlantic Marine and Industrial Services, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Atlantic Marine & Industrial Services, Inc.; John E. Snyder, Inc.; and the Franklin Borough Board of Education* was lodged with the United States District Court for the District of New Jersey on September 24, 1987. This agreement resolves a judicial enforcement action brought by the United States against the defendants which alleged violations of the Clean Air Act and the asbestos National Emission Standard For Hazardous Air Pollutants (NESHAP) at the Franklin Elementary School in Franklin, New Jersey.

The consent decree provides for compliance with the Clean Air Act and NESHAP and payment of \$40,000 in settlement of the action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to "*United States v. Atlantic Marine & Industrial Services, Inc.; John E. Snyder, Inc.; and the Franklin Borough Board of Education*, D.J. Ref. 90-5-2-1-900."

The proposed consent decree may be examined at the office of the United States Attorney for the District of New Jersey or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, District of New Jersey,

502 Federal Building, 970 Broad Street, Newark, New Jersey 07102

EPA

Office of Regional Counsel, Region II, 26 Federal Plaza, New York, New York 10278

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at the address above. In requesting a copy of the decree, please enclose a check payable to the Treasurer of the United States in the amount of \$1.90 (\$.10 per page reproduction cost).

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-22779 Filed 10-1-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notification Pursuant to National Cooperative Research Act; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Vitesse Semiconductor Corporation, ("Vitesse") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

Vitesse is a Delaware corporation with its principal place of business at 741 Calle Plano, Camarillo, California 93010.

Bellcore and Vitesse entered into an agreement effective June 16, 1987 to collaborate on research to better

understand the applications for exchange and exchange access services of technology related to monolithic integrated circuits utilizing Gallium Arsenide substrates.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-22784 Filed 10-1-87; 8:45 am]

BILLING CODE 4410-01-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

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.

Who will be required to or asked to report or keep records.

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) 534-6331. 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 Connecticut Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

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.

Revision

Bureau of Labor Statistics

Work Injury Report

1220-0047; BLS 980

Non-recurring

Selected injured workers

2,100 responses; 350 hours; 1 form

The Work Injury Report program examines selected types of work injuries/illnesses to develop information based on the data needs of the Occupational Safety and Health Administration. The current survey will focus on inhalation of toxic substances and assist in the development of safety standards, compliance and training programs.

Extension

Mine Safety and Health Administration
Radiation Sampling and Exposure

Records

1219-0003

Weekly; annually

Businesses or other for profit; small businesses or organizations

35 respondents; 13,563 hours

Requires underground uranium mine operators and underground non-uranium mine operators, where concentrations of radon daughters exceed 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters.

Extension

Occupational Safety and Health
Administration

Powered Platforms for Exterior

Maintenance

1218-0121;

On occasion

Businesses and other for-profit; 19,500 respondents; 243,750 burden hours; no forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a powered platform and for taking the necessary preventive action to assure employee safety.

Signed at Washington, DC, this 29th day of September, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-22843 Filed 10-1-87; 8:45 am]

BILLING CODE 4510-43-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to

issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

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

Florida

FL87-17 (January 2, 1987)—p. 154

New Jersey

NJ87-2 (January 2, 1987)—p. 617, pp. 619-620

NJ87-3 (January 2, 1987)—pp. 637-639

NJ87-4 (January 2, 1987)—p. 661

New York

NY87-5 (January 2, 1987)—p. 721

Pennsylvania

PA87-4 (January 2, 1987)—pp. 874-875

Virginia

VA87-5 (January 2, 1987)—pp. 1134-1135

Volume II

Illinois

IL87-2 (January 2, 1987)—pp. 96-99

IL87-3 (January 2, 1987)—p. 114

IL87-4 (January 2, 1987)—p. 120

IL87-5 (January 2, 1987)—p. 126

IL87-6 (January 2, 1987)—p. 132

IL87-7 (January 2, 1987)—pp. 136, 138

IL87-8 (January 2, 1987)—pp. 143-146

IL87-9 (January 2, 1987)—pp. 148-149

IL87-11 (January 2, 1987)—pp. 158-160

IL87-12 (January 2, 1987)—pp. 164-165

IL87-13 (January 2, 1987)—pp. 176-178

IL87-14 (January 2, 1987)—pp. 186, 188

IL87-15 (January 2, 1987)—pp. 196-198

IL87-16 (January 2, 1987)—pp. 206-208

IL87-17 (January 2, 1987)—p. 216

Indiana

IN87-2 (January 2, 1987)—pp. 250-254, pp. 259-264

IN87-3 (January 2, 1987)—pp. 268-270, pp. 272-275

IN87-5 (January 2, 1987)—pp. 292-300

IN87-6 (January 2, 1987)—pp. 305-306

Michigan

MI87-2 (January 2, 1987)—pp. 426-428, pp. 432-434

Ohio

OH87-2 (January 2, 1987)—p. 743

Texas

TX87-7 (January 2, 1987)—pp. 936-938

Volume III

California

CA87-2 (January 2, 1987)—pp. 46-48, 50, pp. 52-62d

Colorado

CO87-2 (January 2, 1987)—p. 112

Nevada

NV87-5 (July 10, 1987)—pp. 276b-276s

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 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

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. 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 25th day of September 1987.

Alan L. Moss,

Director, Division of Wage Determinations.
[FR Doc. 87-22581 Filed 10-1-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on November 6, 1987. The business session of the meeting will be held at Kennedy Space Center, Florida. An executive session of the meeting will be held at the Operation and Check Out Building.

Business Session

- Call to Order
- Welcome from Kennedy Space Center
- Government response to NSTAC VII Recommendations
- Report from Industry
- NSTAC VIII Deliberation
- Closing Remarks
- Adjournment

Executive Session

- Call to Order
- Discussion with Government Officials
- NSTAC Closing Discussion
- Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 892-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Robert V. Downey

Captain, U.S. Navy, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 87-22794 Filed 10-1-87; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the task force followed by a public hearing on October 29, 1987.

Meeting

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: October 29, 1987.

Time: 7:30 am—9:15 am.

Place: 35th Floor Conference Room, 300 South Wacker Drive, Chicago, Illinois 60606.

Type of meeting: Open.

Purpose: The purpose of the task force on Women, Minorities, and the Handicapped is to: examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally assisted research programs; coordinate existing Federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers; suggest cooperative interagency programs for promoting such employment; identify exemplary programs in the state, local or private sectors; and develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education, and Social Aspects, as well as other business of the task force.

Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date: October 29, 1987.

Time: 9:30 am—4:45 pm.

Place: 35th Floor Conference Room, 300 Wacker Drive, Chicago, Illinois 60606.

Type of meeting: Open.

Purpose: The task force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education, and social aspects.

Testimony will be heard in three ways: 1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; 2) summary statements from the floor of 3-minute duration accompanied by any longer written statements or materials for the record; and 3) written testimony submitted to the task force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task

Force on Women, Minorities, and the Handicapped in Science and Technology; 330 C Street, SW; Washington, DC 20201.

All meetings and public hearings of the task force are open to the public and all proceedings will be recorded and will be available at the task force offices.

September 25, 1987.

Sue Kemnitzer,

Executive Director, (202) 245-7477.

[FR Doc. 87-22852 Filed 10-1-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 20, 1986 (51 FR 37241), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full Committee and Subcommittee meetings are conducted in accordance with sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.).

General Rules Regard ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and for each Subcommittee meeting which is partially or fully open to public

attendance. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 202-634-3265, ATTN: the Designated Federal Official specified in the **Federal Register** Notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, DC time.

(d) Questions may be asked only by ACRS Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before

and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: September 29, 1987.

John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 87-22828 Filed 10-1-87; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0503]

Issuance of a Small Business Investment Company License; Bishop Capital, L.P.

On June 26, 1987, a notice was published in the **Federal Register** (52 FR 24083) stating that an application has been filed by Bishop Capital, L.P., Newark, New Jersey, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business July 30, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0503 on August 27, 1987, to Bishop Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: September 22, 1987.

[FR Doc. 87-22735 Filed 10-1-87; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates; Quarterly Determinations

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is nine and five-eighths (9 $\frac{5}{8}$) percent for the fiscal quarter beginning October 1, 1987.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1987,

this rate will be eight and one-half (8½) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 87-22736 Filed 10-1-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1028]

Designation of Palestine Information Office as a Foreign Mission

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301-4314 (hereinafter referred to as "the Act"), I hereby designate the Palestine Information Office ("PIO") as a "foreign mission" within the meaning of section 202 (a)(4) of the Act (22 U.S.C. 4302(a)(4)), in that the Palestine Information Office is a foreign mission as defined by that section.

Designation of the Palestine Information Office as a foreign mission is based on the following:

- It is an entity.
- It is substantially owned and/or effectively controlled by the PLO.
- The PIO conducts its functions on behalf of an organization which has received privileges and immunities under U.S. law. The PLO is accorded certain privileges and immunities by virtue of its status as an observer to the United Nations. Further, the PLO clearly engages in "some aspect of the conduct of international affairs," as evidenced by, for example, its membership in the League of Arab States and its status at the United Nations.
- It is involved in "other activities." The PIO registration statement under the Foreign Agents Registration Act indicates that the PIO engages in political activity and political propaganda on behalf of the PLO.

Dated: September 15, 1987.

John C. Whitehead,

Deputy Secretary of State.

[FR Doc. 87-22781 Filed 10-1-87; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1029]

Determination and Designation of Benefits Concerning Palestine Information Office

Pursuant to the authority of the President of the United States to conduct foreign affairs under Article II of the United States Constitution, including his authority to receive

ambassadors, and the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301-4314 (hereinafter referred to as "the Act"), I hereby determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office cease operation as a mission representing the Palestine Liberation Organization.

The Palestine Information Office is being required to cease operation as a mission representing the PLO because of U.S. concern over terrorism committed and supported by individuals and organizations affiliated with the PLO, and as an expression of our overall policy condemning terrorism. The organizations and individuals associated with the PLO who support terrorism include, among others, Abu Al-Abbas, recently retained as a member of the PLO Executive Committee, who was responsible for the Achille Lauro hijacking, which included the murder of an American citizen, Leon Klinghoffer. At the Palestine National Congress meeting in April, 1987 other groups which have been responsible for terrorist acts in recent years against many peoples, including Palestinians, were reunited with the PLO. The United States supports the legitimate rights of the Palestinian people. It acknowledges and respects the right of the Palestinian people to achieve their legitimate rights through a process of peaceful negotiations designed to achieve a resolution of the Arab-Israeli conflict and the Palestinian issue. It is important that Palestinian representatives participate in all stages of that process. However, the U.S. believes that acts of terrorism, committed purportedly on behalf of the Palestinian people by some groups and individuals associated with the PLO and others, have done grievous damage to the achievement of legitimate Palestinian rights which are broadly supported by individuals and states opposed to terrorism, but which support instead the peaceful settlement of disputes. Terrorism by this minority of Palestinians and their supporters has been a serious obstacle to the realization of a peaceful settlement of the Arab-Israeli conflict, and an accommodation between Israelis and Palestinians.

In order to achieve the objective of terminating operation of the Palestine Information Office as a foreign mission, I hereby also determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office divest itself of all real property which it currently occupies or in which it has a real property interest (through

ownership, lease or otherwise) in the United States, pursuant to 22 U.S.C. 4305(b)(3). I also hereby determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office and its employees and agents acting on its behalf acquire and dispose of real property (by purchase, lease, exchange, construction or otherwise) from or through the Office of Foreign Missions under such terms and conditions as may be established by the Director of the Office of Foreign Missions, pursuant to 22 U.S.C. 4304(b). In addition, and for the same purpose, under the authority of section 4303(b)(2) to protect the interests of the United States, I hereby designate as benefits for the purposes of the Act the acquisition from any person or entity subject to the jurisdiction of the United States or use in the United States by the Palestine Information Office and its agents or employees acting on its behalf of the following services and goods:

Services

- (1) Public utilities and services, including telephone and telegraph, mail, public transportation and sanitation services; and
- (2) Personal services of individuals engaged within the United States for whatever purposes, whether on a temporary or regular basis. Such personal services include:
 - (a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;
 - (b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;
 - (c) Packing, shipping, cartage and related services, including provision of packing materials; and
 - (d) Financial services.

Goods

- (1) Motor vehicles;
- (2) Construction equipment and materials;
- (3) Equipment and materials for the maintenance of the mission, including typewriters, telephones, xerox machines and related materials;
- (4) Computers and automated data processing equipment; and
- (5) Furnishings for offices.

I hereby determine that it is reasonably necessary to protect the interests of the United States to require that the Palestine Information Office and its agents or employees acting on its behalf discontinue use and dispose of all benefits defined in the Act and this Determination and Designation of Benefits which it currently owns or uses.

I also hereby require that the Palestine Information Office and its employees and agents acting on its behalf acquire and dispose of all benefits defined in the Act or this Determination and Designation of Benefits from or through the Office of Foreign Missions under such terms and conditions as the Director of the Office of Foreign Missions may specify. 22 U.S.C. 4304(b).

The Palestine Information Office must comply with the terms of this Determination and Designation of Benefits within thirty days, unless further time is extended upon a showing of good cause.

It shall be unlawful for any person subject to the jurisdiction of the United States directly to supply, or contract to supply, the aforementioned benefits to the Palestine Information Office, or to any agent or employee thereof acting on its behalf, other than in accordance with section 4311(a) of the Act, this determination and any subsequent determination.

Persons wishing clarification as to the applicability of this determination or information on subsequent determinations may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520; or by telephone: (202) 647-3416.

Dated: September 15, 1987.

John C. Whitehead,

Deputy Secretary of State.

[FR Doc. 87-22780 Filed 10-1-87; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice CM-8/1123]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radio Communications; Meeting Change

The October 15, 1987 meeting of the Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea has been changed to October 22, 1987 at 0930 in room 9230 of the Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. The Working Group will discuss the following topic:

Global Maritime Distress Safety System (GMDSS). Members of the Public may attend the meeting up to the seating capacity of the room.

For further information contact LT McDannold, U.S. Coast Guard Headquarters (G-TTS-1/63), 2100 Second Street SW., Washington, DC 20593-0001. Telephone: (202) 267-1354.

Date: September 24, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-22747 Filed 10-1-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1121]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Notice of Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 5, 1987 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to discuss the activities of the 30th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held June 1 to 5, 1987, and to prepare for the 31st Session of IMO DE, tentatively scheduled for March 7 to 11, 1988.

The major items of discussion will include the following:

1. Review of the Mobile Offshore Drilling Unit (MODU) Code—At the 30th Session of IMO DE, the MODU and Machinery and Electrical Installations ad hoc working groups, due to time limitations, were only able to consider Chapters 1 & 3-11 of the MODU Code with the following results: accepting in principle the proposed changes to Chapters 4 & 10, using the U.S. position as the base document for revision of Surveys and Certification, forwarding ongoing stability studies for consideration by the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety at its 32nd Session, recommending that the MODU Code be considered as equivalent to rather than duplicative of SOLAS, urging the Subcommittee on Fire Protection to finalize its review of Chapter 9 at its 33rd Session, and proposing numerous amendments covering Chapters 5-8.

2. Materials other than steel for pipes—The Maritime Safety Committee (MSC) at its 53rd Session instructed the DE Subcommittee, in cooperation with the Subcommittee on Fire Protection, to consider a new agenda item covering materials other than steel for pipes. The DE Subcommittee agreed to establish a working group at its 31st Session with the goal of initially defining basic design parameters for various shipboard piping systems.

Other items of discussion include:

3. Maneuverability of ships, maneuvering standards.

4. Helicopter facilities offshore.
5. Operating mechanisms for watertight doors.
6. Below deck openings into cargo tanks.

7. Design and construction of sea inlets under slush ice conditions.

8. Requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel.

9. Comprehensive Code on Alarms.

10. Amendments of regulations II-1/41, 42, and 43 of SOLAS, as amended.

11. Ventilation of vehicle decks during loading and unloading, surveillance of vehicle spaces, warning lights and operational procedures covering vehicle spaces.

12. Review of sections of the International Maritime Dangerous Goods (IMDG) Code.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain G. G. Piche, or Commander C. E. Bills, U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001; Telephone: (202) 267-2967.

Date: September 23, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87- Filed 10-1-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 45163, Order 87-9-62]

Aviation Proceedings; Order Instituting Spokane-Vancouver Service Case

AGENCY: Department of Transportation.

ACTION: Institution of *Spokane-Vancouver Service Case*, Docket 45163, Order 87-9-62.

SUMMARY: The Department has decided to institute the *Spokane-Vancouver Service Case*, Docket 45163, to select one primary and one backup carrier to provide scheduled foreign air transportation of persons, property, and mail between Spokane, Washington, and Vancouver, British Columbia, Canada. The proceeding will be set for an oral evidentiary hearing before an Administrative Law Judge. The Department is inviting interested air carriers to file applications for certificate authority to serve the route at issue.

DATES: Applications for Spokane-Vancouver certificate authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 87-9-62, should be filed by October 23, 1987. Answers shall be due 7 calendar days thereafter. Parties to the docket listed above may obtain a service copy of the order by calling the Documentary Services Division, (202) 366-9329, or by writing to the address below.

ADDRESS: Applications (Spokane-Vancouver), motions to consolidate, petitions for leave to intervene and petitions for reconsideration of Order 87-9-62, should be filed in Docket 45163, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45163.

Dated: September 28, 1987.

Philip Haseltine,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-22761 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending September 25, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45159 R-1 & R-2

Parties: Members of International Air Transport Association

Date Filed: September 25, 1987

Subject: Within European Fares

Proposed Effective Date: November 1, 1987

Docket No. 45160 R-1 - R-7

Parties: Members of International Air Transport Association

Date Filed: September 25, 1987

Subject: Composite Resolutions—Recommended Practice

Proposed Effective Date: August 22, 1987 and April 1, 1988

Docket No. 45161

Parties: Members of International Air Transport Association

Date Filed: September 25, 1987

Subject: PEX Fares—Within So. America

Proposed Effective Date: November 1, 1987

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-22847 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended September 25, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion 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 in appropriate cases a final order without further proceedings.

Docket No. 45148

Date Filed: September 22, 1987

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1987

Description: Application of America West Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled foreign air transportation of persons, property, and mail between the terminal point San Francisco, California and the coterminal points Calgary and Edmonton, Alberta, Canada and pursuant to section 401(g) (1) and (3) of the Act, to suspend or revoke the existing authority of United Air Lines, Inc. for that route.

Docket No. 45154

Date Filed: September 23, 1987

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 21, 1987

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity which will authorize Continental to provide foreign air transportation of persons, property and mail between Cleveland, Ohio, on the one hand, and Merida, Cancun, and Cozumel, Mexico, on the other hand.

Docket No. 45155

Date Filed: September 24, 1987

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 1987

Description: Joint Application of Blue Bell, Inc., Wrangler Aviation, Inc. and W.A. Services, Inc. pursuant to section 401(h) of the Act and Subpart Q of the Regulations, requests the Department to disclaim jurisdiction over the transfer of certificate authority from Blue Bell to Wrangler as such a transfer is independent of any other subsequent proposed transactions and is a corporate reorganization which will result in a change of form, not substance.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-22848 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become Party to an Exemption; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications of renewal or modification of exemptions or application to become a party to an exemption; correction.

SUMMARY: This document corrects a notice published in the *Federal Register* on Thursday, September 17, 1987 on Page 35181. The comment period should have been October 6, 1987.

Issued in Washington, DC, on September 28, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation

[FR Doc. 87-22849 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for Exemptions; Correction.

SUMMARY: This document corrects a notice published in the *Federal Register* on Thursday, September 17, 1987 on Page 35183. The comment period should have been October 20, 1987.

Issued in Washington, DC, on September 28, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-22850 Filed 10-1-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0095

Form Number: MSD, MSD-W, MSD-4, MSD-5

Type of Review: Extension

Title: Registration and Withdrawal of Municipal Bond Securities Brokers, Dealers and Associated Individuals

Description: The Government Securities Act of 1986 requires all financial institutions that act as municipal securities brokers and dealers and associated individuals, to notify designated Federal regulatory agencies of their broker/dealer activities.

Respondents: Businesses or other for-profit

Estimated Burden: 1,787 hours

Clearance Officer: Eric Thompson, (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman, (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-22749 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: September 28, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW, DC 20220.

Internal Revenue Service

OMB number: 1545-0227

Form Number: 6251

Type of Review: Resubmission

Title: Alternative Minimum Tax-Individuals

Description: Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amounts together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The information is needed to see whether taxpayers are complying with the law.

Respondents: Individuals or households

Estimated Burden: 346,616 hours

OMB Number: 1545-0865

Form Number: 8264

Type of Review: Resubmission

Title: Application for Tax Shelter Registration Number

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.

Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations

OMB Number: 1545-1009

Form Number 8798

Type of Reviews: Resubmission

Title: Computation of Deductible Home Mortgage Interests.

Description: Internal Revenue Code section 163(h) disallows personal interest as a deduction. Qualified residence interest paid on mortgage loans or residences is not treated as personal interest. The form is needed to determine the amount of qualified residence interest. The data is used to help verify that the deduction claimed is proper.

Respondents: Individuals or households
Estimated Burden: 8,533,264 hours

Clearance Officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-22750 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

Senior Executive Service; Departmental Performance Review Board

ACTION: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 52 FR 19793, May 27, 1987, in accordance with 5 U.S.C. 4313(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, and certain other positions. The Board makes recommendations to the Secretary or his designee as Appointing Authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review proposed SES bonus distributions and Presidential Rank nominations from the bureaus upon request.

Composition of PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members of the PRB shall consist of career appointees. The names and titles of the PRB members are as follows:

Chairperson, John F. W. Rogers,

Assistant Secretary of the Treasury (Management)

Paul W. Bateman, Deputy Treasurer
Thomas J. Berger, Deputy Assistant Secretary (International Monetary Affairs)

William J. Bremner, Deputy Assistant Secretary (Federal Finance)

O. Donald Chapoton, Acting Assistant Secretary (Tax Policy)

James W. Conrow, Deputy Assistant Secretary (Developing Nations)

Roger M. Cooper, Deputy Assistant Secretary (Information Systems)

Robert A. Cornell, Deputy Assistant Secretary (Trade and Investment Policy)
 William E. Douglas, Commissioner, Financial Management Service
 Stephen J. Entin, Deputy Assistant Secretary (Economic Forecasting)
 Eugene H. Essner, Deputy Director, U.S. Mint
 Richard L. Gregg, Commissioner, Bureau of Public Debt
 Stephen E. Higgins, Director, Alcohol, Tobacco and Firearms
 Michael R. Hill, Inspector General
 Francis A. Keating, II, Assistant Secretary (Enforcement)
 Jill E. Kent, Deputy Assistant for Departmental Finance and Management
 Robert J. Leuver, Director, Bureau of Engraving and Printing
 Samuel T. Mok, Comptroller
 Gerald Murphy, Fiscal Assistant Secretary
 Michael J. Murphy, Senior Deputy Commissioner, Internal Revenue Service
 Howard W. Nester, Deputy Director (Revenue Estimating)
 Thomas P. O'Malley, Director, Office of Procurement
 Katherine D. Ortega, Treasurer of the United States
 Marcus W. Page, Deputy Fiscal Assistant Secretary
 Charles B. Respass, Director, Facilities Management Division
 Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)
 Charles O. Sethness, Assistant Secretary (Domestic Finance)
 John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)
 Edward T. Stevenson, Special Assistant to the Assistant Secretary (Legislative Affairs)
 Margaret D. Tutwiler, Assistant Secretary of the Treasury (Public Affairs and Public Liaison)
 D. Edward Wilson, Jr., Deputy General Counsel
 Gregory P. Wilson, Deputy Assistant Secretary (Financial Institutions Policy)
 Robert B. Zoellick, Executive Secretary

FOR FURTHER INFORMATION CONTACT:

Stephen C. Benowitz, Director of Personnel, Room 7115, ICC Building, 1201 Constitution Avenue, NW., Washington, DC 20220, Telephone: (202) 566-2701.

This notice does not meet the Department's criteria for significant regulations.

Dated: September 25, 1987.

John F. W. Rogers,
 Assistant Secretary of the Treasury
 (Management)

[FR Doc. 87-22748 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-05-M

Intent to Examine Depreciation of Scientific Instruments, Rental Clothing, Horses, and Assets Used in the Manufacture of Electronic Components, Products, and Systems and Notice of Public Meetings

The Office of Depreciation Analysis intends to initiate studies of the depreciation of four classes of assets:

Scientific Instruments

Rental Clothing

Horses

Assets used in the manufacture of electronic components, products, and systems (Asset guideline class 36.0)

Pursuant to the mandates of the Tax Reform Act of 1986 (Pub. L. 99-514), the Office of Depreciation Analysis will solicit information relating to the anticipated useful life and anticipated decline in economic value of the above noted assets from the owners and users of these assets. This information, together with additional information such as the depreciation methods used in accounting for such assets in the taxpayer's financial reports, and the terms under which such assets are financed or leased, will be used to determine appropriate class lives for these assets.

The Office of Depreciation Analysis will hold public meetings with all interested parties to discuss the precise definition of the assets to be included in these studies, the specific nature of the information sought, and other related issues. The schedule for these meetings is as follows:

Scientific instruments, Friday, October 16, at 10:00-12:00 a.m.

Horses, Monday, October 19, at 2:00-4:00 p.m.

Assets used in the manufacture of electronic components, products, and systems, Friday, October 23, at 10:00-12:00 a.m.

Rental clothing, Monday, October 26, at 2:00-4:00 p.m.

All meetings will be held in Room 4121, Main Treasury Building, 15th Street and Pennsylvania Avenue, Washington, DC. Names of those wishing to attend these meetings, and any inquiries, comments, or other materials relating to these studies should be sent to: The Office of

Depreciation Analysis, Room 4217, Main Treasury, Washington, DC 20220.

O. Donaldson Chapoton,
 Acting Assistant Secretary (Tax Policy),
 September 21, 1987.

[FR Doc. 87-22829 Filed 10-1-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 29, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Survivors' and Dependents' Educational Assistance (Under Chapter 35, Title 38, U.S.C.).
3. VA Form 22-5490.
4. This information is used to determine eligibility and entitlement to educational benefits.
5. On occasion.

6. Individuals or households.
7. 12,672 responses.
8. 6,336 hours.
9. Not applicable.
1. Department of Veterans Benefits.
2. Compliance Inspection Report.
3. VA Form 26-1839.
4. This information is used by fee compliance inspectors to report acceptability of new home residential construction for guaranteed home loans.
5. On occasion.
6. Individuals or households, Small businesses or organizations.
7. 350,000 responses.
8. 87,500 hours.
9. Not applicable.

[FR Doc. 87-22812 Filed 10-01-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 191

Friday, October 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 2, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22863 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 9, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22864 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., October 2, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22865 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rulemaking on Federal Speculative Limit Rules and related petitions.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22866 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22867 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3:00 a.m., October 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22868 Filed 9-30-87; 11:36 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 16, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22869 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 23, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22870 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., October 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Final rulemaking on Rule 4.6-relief from Regulation as a Commodity Trading Advisor for Certain Persons.

Application of the Commodity Exchange, Inc. as a contract market in Moody's Investment Grade Corporate Bond Index.

Application of the Chicago Board of Trade as a contract market in Long-Term Corporate Bond Index.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22871 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., October 27, 1987.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Financial Rule Enforcement review.

CONTACT PERSON FOR MORE**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22872 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****TIME AND DATE:** 11:30 a.m., October 27, 1987.**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Hearing Room.**STATUS:** Closed.**MATTERS TO BE CONSIDERED:**

Enforcement Matters.

CONTACT PERSON FOR MORE**INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22873 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING
COMMISSION****TIME AND DATE:** 11:00 a.m., October 30, 1987.**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.**STATUS:** Closed.**MATTERS TO BE CONSIDERED:** Market Surveillance Matters.**CONTACT PERSON FOR MORE****INFORMATION:** Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-22874 Filed 9-30-87; 11:37 am]

BILLING CODE 6351-01-M

**CONSUMER PRODUCT SAFETY
COMMISSION****TIME AND DATE:** Commission Meeting, Wednesday, October 7, 1987, 10:00 a.m.**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.**STATUS:** Open to the Public.**MATTERS TO BE CONSIDERED:** 1. *Bunk Bed Petition: CP 86-2.* The staff will brief the Commission on Petition CP 86-2, which requests the Commission to issue a consumer product safety standard for bunk beds.2. *FY 88 Operating Plan.* The Commission will consider the Fiscal Year 1988 Operating Plan.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL**INFORMATION:** Sheldon D. Butts, Office

of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

September 30, 1987.

[FR Doc. 87-22905 Filed 9-30-87; 2:41 pm]

BILLING CODE 6355-01-M

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Thursday, September 24, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) the application of Commonwealth Thrift and Loan, an operating noninsured industrial bank located near the intersection of Hawthorne and Sepulveda Boulevards, Torrance, California, for Federal deposit insurance; (2) a recommendation regarding an administrative enforcement proceeding initiated against an insured bank; and (3) matters relating to the possible failure of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 29, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-22906 Filed 9-30-87; 2:42 pm]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Friday, September 25, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of an insured bank: Name and location of bank authorized to be exempt from disclosure pursuant to subsections (c)(8),

(c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 29, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-22907 Filed 9-30-87; 2:42 pm]

BILLING CODE 6714-01-M

**FEDERAL HOME LOAN MORTGAGE
CORPORATION****DATE AND TIME:** Tuesday, October 6, 1987, 10:00 a.m.**PLACE:** 1776 G Street, NW., Washington, DC, Conference Room 8C.**STATUS:** Closed.**CONTACT PERSON FOR MORE****INFORMATION:** Alan Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789-5097.**MATTERS TO BE CONSIDERED:**

Closed—Minutes of September 8, 1987 Board of Directors' Meeting

Closed—Business Operations Report

Closed—Status of 1988 Plan and Budget

Closed—Multifamily Financing

Closed—Financial Report

Date sent to Federal Register: September 30, 1987.

Alan Hausman,

Assistant Secretary.

[FR Doc. 87-22892 Filed 9-30-87; 11:41 am]

BILLING CODE 6719-01-M

FEDERAL MARITIME COMMISSION**TIME AND DATE:** 10:00 a.m.—October 7, 1987.**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.**STATUS:** Closed.**MATTER TO BE CONSIDERED:**

1. Section 19 Review: Restrictive Practices Concerning Dockside Facilities and Equipment/Container Terminals in Taiwan.
2. Docket No. 87-6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade—Consideration of Comments.
3. Docket No. 86-7—The Secretary of the Army on Behalf of the Department of Defense v. The Port of Seattle—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 87-22877 Filed 9-30-87; 11:38 am]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 35992, September 24, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Thursday, October 1, 1987.

CHANGES IN THE MEETING:

1. Addition of the following closed item to the meeting: Proposed statement to be presented to the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on the role of financial institutions in the economy.
2. Change in the time of the above meeting to 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: September 30, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-22857 Filed 9-30-87; 11:35 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:00 a.m., Tuesday, October 6, 1987.

PLACE: 1776 G Street, NW., Board Conference Room, 8th Floor, Washington, DC 20456 (202) 357-1100.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Personnel Action. Closed pursuant to exemptions (2) and (6).

TIME AND DATE: 1:30 p.m., Thursday, October 8, 1987.

PLACE: Charleston Marriott Town Center, 200 Lee Street, Charleston West Virginia 25301 (304) 345-6500.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Overhead Transfer Rate for FY 88.
6. Request for Comment; Definition of Risk Assets.
7. Board Briefing: Community Development Revolving Loan Program for Credit Unions.
8. Guidelines on Bank Bribery Law.
9. Field of Membership Expansion Requests: Citadel Federal Credit Union and First Financial of Maryland Federal Credit Union.
10. Proposed Amendments to Part 792, Employee Conduct and Responsibilities.
11. Proposed Community Charter Application: Austin/West Garfield Federal. CU.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,
Secretary of the Board.

[FR Doc. 87-22908 Filed 9-30-87; 2:43 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: October 16, 1987, 8:35 a.m., Closed Session; 8:45 a.m., Open Session.

PLACE: National Science Foundation, Washington, DC.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED OCTOBER 16:

Closed Session (8:35 a.m. to 8:45 a.m.)

1. Minutes—August 1987 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (8:45 a.m.—12:00 noon)

4. Chairman's Report
5. Minutes—August 1987 Meeting
6. Director's Report
7. Proposed 1988 Award Review Exemptions
8. Presentation of Biodiversity
9. Report of the Committee on Centers and Individual Investigator Awards
10. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87-22924 Filed 9-30-87; 2:57 pm]

BILLING CODE 7555-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.—5:00 p.m., Thursday, October 8, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue NW., Washington, DC 20035.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the sixteenth meeting. Report on Grants Program Changes. Update on National Peace Essay Contest. Consideration of grant applications and individual personnel matters.

CONTACT: Mrs. Olympia Diniak, Telephone (202) 789-5700.

Dated: September 30, 1987.

Robert F. Turner,
President, United States Institute of Peace.

[FR Doc. 87-22896 Filed 9-30-87; 12:10 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register

Vol. 52, No. 191

Friday, October 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement The International Energy Program; Meeting

Correction

In the issue of Wednesday, September 23, 1987, in the document beginning on page 35756 in the third column, make the following correction:

On page 35757, in the first column, in the file line at the end of the document, "FR Doc. 87-21754" should read "FR Doc. 87-21954".

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Correction

In notice document 87-22260 appearing on page 36303 in the issue of Monday, September 28, 1987, make the following corrections:

1. In the second column, the heading should read as set forth above.
2. In the table, in the heading the dates should read "September 1, 1987 and September 16, 1987".
3. In the first column, in the last line, the FR Doc. "Filed" date should read "9-25-87".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Proposed Customs Regulations Amendments Relating to Sureties

Correction

In proposed rule document 87-21497 beginning on page 35274 in the issue of Friday, September 18, 1987, make the following corrections:

PART 113—[CORRECTED]

1. On page 35277, in the first column, the line before paragraph number 6. should read:

§ 113.23 [Amended]

§ 113.38 [Corrected]

2. On the same page, in the third column, in § 113.38(c)(1), in the eighth line, "case" should read "cause".

§ 113.39 [Corrected]

3. On page 35278, in § 113.39, in the second column, in the sixth line, "filed" should read "failed".

BILLING CODE 1505-01-D

FRIDAY
OCTOBER 2, 1987

Friday
October 2, 1987

Part II

**Department of
Health and Human
Services**

Food and Drug Administration

21 CFR Part 291

**National Institute on Drug Abuse;
Methadone in Maintenance and
Detoxification; Joint Proposed Revision
of Conditions for Use; Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

[Docket No. 83N-0249]

National Institute on Drug Abuse; Methadone in Maintenance and Detoxification; Joint Proposed Revision of Conditions for Use

AGENCY: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) are proposing to revise the conditions for the use of methadone in maintenance and detoxification treatment. One revision would provide standards for long-term detoxification. This change is necessary because Pub. L. 98-509 revised the statutory definition of detoxification treatment from 21 days up to 180 days. Other proposed revisions do not involve major substantive changes but rather are designed to streamline the regulation, to delete the requirement that treatment programs using methadone submit annual reports to FDA, and to promote more efficient operation of methadone treatment programs. Another revision would convert to guidelines the provisions in the current regulation that do not impose specific requirements.

DATE: Comments by December 1, 1987.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

Background

The conditions for the use of methadone in the maintenance and detoxification treatment of narcotic addicts are provided for in 21 CFR Part 291 (the methadone regulation). The methadone regulation also delineates the appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of addicts (see 21 CFR 291.505). The methadone regulation was last reviewed, evaluated, and substantially revised in the *Federal Register* of September 19, 1980 (45 FR 62694).

Under the Regulatory Flexibility Act, the Paperwork Reduction Act of 1980, and Executive Order 12291, FDA is conducting a retrospective review of its existing regulations. The purpose of the review is to identify regulations that should be revised or revoked. FDA encouraged public participation in this process by publishing a notice in the *Federal Register* of July 14, 1981 (46 FR 36333) seeking public comment on which regulations are burdensome, and by establishing agencywide review priorities including incorporation of retrospective review status reports into the agency's regulation planning process. Also, by notice published in the *Federal Register* of August 5, 1983 (48 FR 35668), FDA, at the request of the Office of Management and Budget (OMB), announced its intention to propose changes with regard to the collection of information requirements in the methadone regulation.

Accordingly, in the *Federal Register* of September 13, 1983 (48 FR 41049), FDA and NIDA published a notice of intent and request for comments. The September 13, 1983, notice focused on whether FDA and NIDA should make portions of the methadone regulation into guidelines and whether the agencies should modify the recordkeeping and reporting requirements. An additional issue involved whether revising the requirements would impair enforcement and compliance with the regulation, affect the quality of patient care, and increase the likelihood of the diversion of methadone for illicit use.

Summary of the Proposal

The methadone regulation has, in general, facilitated the efficient and safe management and rehabilitation of narcotic addicts. According to most of the comments received on the September 1983 notice, the requirements of the methadone regulation are generally neither unreasonable nor burdensome. In fact, most comments argued that the methadone regulation should not be substantially revised. FDA and NIDA agree, and the proposed rule generally retains current requirements necessary to achieve the goals of the 1974 Narcotic Addict Treatment Act (NATA) (21 U.S.C. 823(g)) without substantial change, except for the proposed revision regarding the length of time allowed for detoxification treatment. This change is necessary in light of a recent amendment to the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) that now allows detoxification treatment to extend up to 180 days, as opposed to the 21 days provided formerly in the law and currently in the regulation. The recent

amendment requires that this change be implemented through regulation; during the interim period before the new rule implementing the 180-day period becomes final, FDA will not take enforcement action against treatment centers that are otherwise in compliance with the existing regulations, but that provide detoxification treatment for periods up to 180 days as provided in the proposed rule.

FDA and NIDA are proposing many revisions that are designed to streamline the regulation and to promote more efficient operation of methadone treatment programs. The responses to the comments that follow discuss in detail the proposed revisions. The most significant of the revisions involves the development of separate guidelines consisting of those provisions of the current regulation that are not legal requirements. Although these provisions are, in effect, already guidelines, their inclusion in the Code of Federal Regulations makes it difficult to distinguish them from other provisions that are legal requirements. Accordingly, the paragraphs in the current regulation that begin with the phrase: "It is recommended practice that * * *" are not contained in the proposed regulation and will be incorporated into guidelines that FDA and NIDA will make available at the time a final rule resulting from the proposal is published in the *Federal Register*.

Comments

In response to the September 13, 1983, notice, the agencies received 47 comments. Government authorities and agencies, including Federal agencies (Drug Enforcement Administration and Veterans' Administration), State agencies (Single-State Authorities, Departments of Health, and a Department of Correction), and county and city health or "substance abuse" agencies submitted most of the comments (about 60 percent). Many privately operated treatment programs and three private physicians also submitted comments. The American Medical Association also commented.

1. One comment favored any change in the regulation that would emphasize the rehabilitation aspects of treatment.

The methadone regulation already emphasizes the rehabilitation aspects of treatment. For example, several paragraphs of the regulation are devoted to the development of an initial treatment plan and periodic treatment plan evaluations. These plans help to ensure that patients receive the necessary psychosocial, economic, legal, and other supportive services available

at the program and in the community. The current regulation also already requires that a comprehensive range of medical and rehabilitation services be provided to patients. Counselors are assigned to each patient to help ensure that patients participate, for example, in educational or job training programs or obtain gainful employment. Accordingly, FDA and NIDA believe that no major or substantive revisions in this area are necessary.

2. Several comments stated that the statutory requirement that detoxification be completed within 21 days is unrealistic. The comments suggested that the regulation allow a longer time period for detoxification or that the time frames should be within the treating physician's discretion.

The statutory definition of detoxification treatment in the CSA has been revised and now allows detoxification treatment to extend up to 180 days. See Pub. L. 98-509, enacted on October 19, 1984, which amends 21 U.S.C. 802(28). The legislative history to Pub. L. 98-509 provides that, " * * * it would appear to be more efficacious to permit, *when appropriate*, a long-term detoxification period which is more humane and increases client retention, * * * " (emphasis supplied). FDA and NIDA agree that for some patients (not all patients) a detoxification period in excess of 21 days is appropriate. Accordingly, the agencies are proposing two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment (see proposed § 291.505(a)(1) for the definitions of the two terms). The agencies are soliciting comments on the usefulness of these two definitions, and on whether it is appropriate to provide separately for short-term and long-term treatment as outlined below.

The agencies are proposing that short-term detoxification treatment would have essentially the same requirements as the current detoxification requirements except that treatment may last 30 days. The agencies believe that the 30-day period, for those for whom detoxification is the treatment of choice, would lessen the chance that a patient would suffer from withdrawal. This would be the case, for example, for a patient whose initial or stabilizing dosing requirements are relatively high (more than 40 milligrams of methadone). The agencies believe that 30 days instead of the 21 days previously allowed is more consistent with normal recordkeeping, reporting, accounting practices, and available clinical data.

The agencies are proposing that long-term detoxification treatment require,

among other things, that a program physician document that short-term detoxification is not a sufficiently long enough treatment course for rehabilitation and that the services supplied during long-term detoxification treatment (e.g., employment or educational counseling, monthly testing for drug use, treatment plans and treatment plan evaluations, and the full range of medical and rehabilitative services required for maintenance patients) would benefit the patient. The proposed long-term detoxification regulation would also allow no more than a 1-day supply of take-home medication, whereas no take-home medication is permitted in short-term detoxification treatment.

The requirement that the program physician document that long-term detoxification is necessary for rehabilitation is designed to ensure that not all detoxification patients are indiscriminantly placed in longer-term treatment. The agencies believe that the requirement is necessary because clinical experience shows that short-term detoxification does work for some patients. The requirement reflects the fact that the goal of detoxification treatment is to help a patient achieve a drug-free existence in as short a time as is consistent with effective treatment.

The agencies are proposing to permit that programs may issue a 1-day take-home supply of methadone to a patient assigned to long-term detoxification treatment. The agencies recognize that many programs offering long-term treatment are not in operation 7 days a week and that it may not be a feasible for a patient to come to the program facility 7 days a week over a period of 6 months. Also, the agencies believe that there may be some patients receiving long-term treatment who exhibit greater responsibility in handling methadone than patients receiving short-term detoxification treatment. FDA and NIDA are especially interested in receiving comments on this aspect of the proposed regulation (see proposed § 291.505(d)(8)).

3. A few comments suggested that all Federal involvement concerning methadone should end because States are already responsible for licensing, monitoring, and implementing the prescribing of methadone and because each State could regulate the area according to its own specific needs.

States are responsible for many of the aspects of regulating the use of methadone. The involvement of Federal agencies in the regulation of the use of methadone in the treatment of addicts, however, is required by NATA. Congress enacted NATA to ensure that only bona fide narcotic addicts are

admitted to maintenance or detoxification treatment and that they receive quality care. Another reason for NATA was to limit the potential for illicit diversion of addictive substances used in the treatment of narcotic addiction. NATA also sets out minimum standards for the treatment of narcotic addicts with methadone.

4. One comment called for the elimination of the minimum staffing ratio of 1 counselor to 50 patients (current § 291.505(d)(7)(iii)) because, although patients recently admitted to treatment may need counseling, those patients who have been in treatment for some time (e.g., those who have made progress in rehabilitation, working, or in school) need less intensive counseling. Another comment wanted the patient to counselor ratio changed from 1 to 50 to 1 to 30 so that effective clinical intervention can take place.

While the agencies believe that a 1 to 50 counselor/patient ratio is generally reasonable, the agencies have decided that there may be circumstances in which greater flexibility is required. For example, some methadone treatment programs that have been in operation a number of years may have a considerable number of patients who have been treated for 3 years or more and have made considerable progress in rehabilitation; in such circumstances, the need for counselors could be much less than for programs with proportionately greater numbers of "new" patients. The agencies have, therefore, decided to eliminate the requirement for a minimum of 1 counselor for every 50 patients, and to rely on the principles expressed in proposed § 291.505(d)(5) to provide flexibility and an adequate framework for determining staffing requirements. This would not prohibit a finding that the circumstances of a particular program required a counselor to patient ratio as low as the 1 to 30 sought by 1 comment.

5. One comment asked that the take-home requirements be revised to allow a program the flexibility to provide for more than a 2-week supply of medication for a patient on maintenance treatment who desires to or must travel. Another comment requested that the take-home requirements be revised to provide the treating physician with the discretion to determine how much take-home medication a program can provide. Another comment asked that the take-home requirements be liberalized to reduce the required number of visits to or contacts with the clinic or program. The comment reasoned that such a modification would

help reduce the crowding at programs and the opportunities for illicit dealings. Another comment suggested that the limit of 1-day take-home for patients during the first 3 months of treatment be removed because it was inconvenient for some patients, especially those living far away from their programs. Other comments asked that the regulation be revised to permit programs to limit or restrict take-home medication to a 2-day supply.

In adopting the requirements in the current regulation concerning take-home medication, the agencies recognized that regular attendance at a treatment program may not always be compatible with a patient's employment, family responsibilities, and other obligations. At the same time, however, the agencies recognized that illicit diversion may occur when patients take medication from the treatment program for self administration. FDA and NIDA believe that the current requirements strike a necessary balance between the risk of diversion and the benefit of enhancing a patient's progress toward rehabilitation and, therefore, should not be substantively revised. The comments that requested stricter take-home rules overlook the fact that the methadone regulation does not mandate that take-home privileges be made available. In fact, the regulation provides that any treatment program may choose not to allow take-home medication at all or may choose to impose stricter requirements than the minimum Federal requirements contained in the regulation.

6. One comment requested the revocation of all the requirements that may limit a program's capacity to treat patients, e.g., minimum staffing requirements.

As explained in comment 4 above, the minimum staffing requirement of 1 counselor for every 50 patients is proposed to be eliminated. In addition, the agencies are proposing to delete the requirement at current § 291.505(b)(2)(i) that the number of patients treated at a methadone treatment medication unit may not exceed 30 patients. The agencies believe that the requirements for program approval by the State authority and the Drug Enforcement Administration are sufficient to ensure that medication units are of appropriate size.

7. Comments requested the deletion of the 2-year limitation in current § 291.505(d)(3)(iii)(C) concerning the 2-year time limit on the readmission of previously treated patients without evidence of current physiologic addiction.

As is discussed above, Congress enacted NATA to ensure, among other things, that only narcotic addicts are admitted to maintenance or detoxification treatment. FDA and NIDA believe that some minimum admission criteria are necessary to ensure that only those who need treatment are admitted. The 2-year limit on readmission is necessary and reasonable because over 90 percent of patients who return to drug use after detoxification do so within the first 2 years (see 45 FR 62697; September 19, 1980).

8. One comment stated that "longtime, well-established" patients do not need many, if any, rehabilitation services, do not need treatment plans, and do not need treatment plan evaluations or updates. Another comment added that the regulation should be revised to require counseling for patients who have been in treatment for 2 years or more only on an as needed schedule. Other comments stated, however, that the treatment plan requirements including periodic evaluations must be kept as regulations because they are the key to successful treatment.

Rehabilitation services included in treatment plans and treatment plan evaluations and updates are important to successful treatment because they are part of the remedial approach that will be used to address the medical, psychosocial, economic, legal, and other problems a patient may have. The agencies agree that newly admitted patients are more likely to need and benefit from these types of requirements than patients who have been in treatment for some time and who show good progress towards rehabilitation. Therefore, the agencies are proposing to revise these requirements to allow treatment programs to focus the resources for these types of services on those patients who need them the most. The proposed changes make clear that these services would be discretionary for patients either who are not ready for such services or who show substantial progress in rehabilitation, i.e., the program physician can decide if the services are needed for such patients (see proposed § 291.505(d)(3)(v)(D) and current § 291.505(d)(6)(v)(B)).

9. Two comments asked that the minimum urine testing requirements be eliminated and left entirely to the physicians' discretion. Another comment suggested that all the urine testing requirements be made guidelines. Another comment suggested that the urine testing requirements be revised so that only the type of drugs prominent in the particular program area be tested

for, i.e., that not every program be required to test patient's urine for drugs that may not affect a patient's treatment progress. Other comments stated that urine testing was one area that should not be converted to guidelines because it would have negative consequences on treatment programs, and that more, not less, urine testing should be required.

An objective evaluation (by someone other than the program staff or the patient) is necessary to determine whether there is diversion of take-home medication and whether there is risk of the patient suffering a drug overdose. The agencies also believe that it is important to the patient as well as to the program to require a minimum drug-screening testing because it is an important way to objectively monitor and assess a patient's clinical course. Monitoring is especially important because certain patient benefits (e.g., take-home privileges and reduced attendance at programs) are determined in large part by a patient's progress in rehabilitation, including the absence of diversion and abuse by the patient.

Therefore, FDA and NIDA are not proposing any changes in the existing regulation concerning the initial drug-screening testing requirements and the existing requirements for a monthly test for 6-day take-home patients. The agencies do propose, however, to revise current § 291.505(d)(4) to allow for different testing or analyses to meet these minimum requirements, e.g., blood testing. FDA and NIDA welcome comments suggesting other appropriate objective analyses methods. FDA and NIDA also recommend that programs require more analyses if they deem them necessary or useful. Finally, the agencies believe that each program must test for opiates, methadone, cocaine, amphetamines, and barbiturates. The agencies are unaware of any data that would merit deleting the testing requirement for any of these substances. Therefore, the agencies have retained the requirement in the proposed regulation. The requirement, however, does not preclude the testing for other substances if the testing is required by the program physician or required by the State authority (see proposed § 291.505(d)(2)).

10. One comment requested the agencies to amend the regulations to require or recommend "ongoing psychotherapy."

Any treatment program or State authority in its discretion may require "ongoing psychotherapy." FDA and NIDA do not believe it is necessary to require it for all patients in all programs

and are, therefore, not proposing to modify the regulation as requested.

11. One comment suggested eliminating the requirement that methadone be dispensed in liquid form only. The comment stated that no diversion would result if this were done.

FDA and NIDA believe that diversion would increase if methadone were dispensed in nonliquid form, e.g., tablets. Tablets would be very easy to hide, hard to detect, and, thus, could easily be diverted.

12. One comment suggested that the Federal regulation be made stricter concerning screening of applicants for program sponsorship.

FDA and NIDA do not conduct investigations concerning the character of applicants who apply to sponsor a narcotic treatment program. The State and local authorities are in a better position to have knowledge of the character of the sponsor. However, the application submitted by a sponsor to FDA is scrutinized closely to ensure that appropriate protocol, facilities, personnel, including physicians, nurses, and counselors, are part of the program. FDA grants program approval only after receipt of the recommendations for approval from (1) the State methadone authority that the applicant meets the State's standards and (2) the Drug Enforcement Administration (DEA) that the applicant meets DEA's security and recordkeeping requirements. Therefore, FDA and NIDA believe that it is not necessary to propose the requirements suggested in the comment.

13. One comment suggested that the current regulation is too flexible and that, therefore, the standards from the Joint Commission of Hospital Accreditation Consolidated Standards for Alcoholism and Drug Abuse Facilities (Joint Commission) should be adopted.

FDA and NIDA are proposing changes to the current methadone regulation to increase, not decrease, the flexibility of the clinical standards. Furthermore, FDA and NIDA believe that the Joint Commission's standards are inappropriate for the methadone regulation. For example, the Joint Commission's standards are not specific to drug abuse, i.e., they are intended also to apply to alcohol abuse. The agencies believe, therefore, that Federal regulation provides more meaningful guidance concerning the appropriate methods of professional practice for medical treatment of narcotic addiction than will the Joint Commission's standards.

14. One comment suggested that the regulation be revised to provide that no Federal inspection of treatment

programs should be conducted if State inspections are conducted and conducted well.

The regulation does not need to be revised to implement this suggestion. The regulation has not prevented FDA from entering into contracts with States to conduct inspections of treatment programs. Several such contracts were in effect between 1975 and 1981. Under these contracts, State agencies inspected treatment programs to determine compliance with both State and Federal requirements. No separate or additional FDA inspection was necessary after a State inspection, conducted pursuant to contract, resulted in the finding that a program was operating in compliance with Federal requirements.

15. One comment said that the requirement for keeping records of batch or code marks is unnecessary and should be eliminated.

The requirement for keeping batch and code mark records (current § 291.505(d)(15)(ii)) is in keeping with the more extensive recordkeeping and reporting regulations of DEA regarding security of drug supplies. See, for example, 21 CFR 1304.28 and 1304.29. The requirements provide important checks on the illicit diversion of stocks of narcotic drugs. Batch and code mark records are also important in carrying out efficient recalls of defective drug stocks. The records are also invaluable in those rare, but critical situations where patients who have received drugs from a particular batch or drug must be identified.

16. One comment requested that the regulation be revised to permit the administration of more than 100 milligrams (mg) of methadone to patients who need it.

The regulation does not require preapproval of the administration of doses of more than 100 mg of methadone, but it does require, at current § 291.505(d)(8)(i)(c), notification to FDA and the State authority within 72 hours when a patient is administered such a dose. The proposed regulation deletes this notification requirement because the agencies believe that the purposes of the regulation are adequately achieved by the provision that a licensed physician shall ensure that a daily dose greater than 100 mg is justified in the patient's record. The regulation also provides that the program physician who administers a dose of more than 100 mg of methadone must ensure that the dose is justified. An additional provision (current § 291.505(a)(8)(v)(D)) requires that patients receiving more than 100 mg of methadone must be kept under regular

observation. These requirements help protect against the illicit diversion of methadone and also ensure that patients will be observed for signs of overdose.

17. One comment said that the reporting requirements concerning (1) patient deaths and (2) newborns of patients showing adverse reactions are not clear. The comment recommended eliminating the requirements unless more specific reporting standards are developed and more in depth analyses are required in evaluating the data received.

Because of the novelty involved in using an addictive drug to treat addiction, FDA and NIDA in promulgating the regulations required that specific information concerning adverse reactions to methadone be reported in addition to the adverse reaction information already specifically required under § 314.80 (21 CFR 314.80). These specific reporting requirements are contained in current § 291.505(d)(13)(i) and (ii). In light of the experience the agencies have gained over the years in this area, the agencies now believe that there is no longer a need for the special reporting requirements and are proposing to delete them from the regulation.

18. One comment suggested that the regulation be revised to include a definition (and presumably specific regulations) for "iatrogenic treatment."

Patients with iatrogenic addiction (medically related addiction) are not excluded from treatment by the existing regulatory scheme. Any practitioner who wishes to treat an iatrogenically addicted patient may apply for a one-patient program approval. Also, a treatment program may, on a case-by-case basis, follow the exemption procedure under current § 291.505(d)(12) to treat such patients separately. The agencies, therefore, do not believe it is necessary to issue any additional regulations for such patients.

19. One comment requested that the regulation include specific criteria for dealing with maintenance patients who have been arrested and are expected to be incarcerated. The comment suggested that the regulation require that patients be detoxified prior to trial, and if that is not possible, to require that patients be detoxified during any subsequent incarceration (assuming incarceration is to exceed 3 weeks). The comment mentioned that the American Medical Association in its "Standards for Health Services in Jails" has specified suitable detoxification schedules.

FDA and NIDA believe that the issues raised by this comment are best dealt

with by the State and/or local jurisdictions involved.

20. One comment suggested that new treatment programs not be approved by FDA and that existing programs not be allowed to expand unless the new program can show that there is a need in the area for additional treatment facilities.

The State and local entities are in the best position to determine whether new programs or expanded treatment program facilities are needed in a given jurisdiction. The agencies do not believe that it is appropriate to prescribe the extent to which State and local entities should document the need for additional treatment facilities.

21. One comment suggested that all Federal regulations dealing with methadone be placed in one document so that it would be easy for an affected party to comply.

All of the regulations issued jointly by FDA and NIDA on drugs used in the treatment of narcotic addiction are included in 21 CFR Part 291. In addition, DEA's regulations in this area are included in 21 CFR Part 1300 to end. Copies of these volumes are available in most major libraries or may be obtained from the Government Printing Office, Washington, DC 20402.

22. One comment requested that the regulation be revised to require that a patient be ineligible for treatment if the patient misses appointments for 1 month without notifying the program. The current regulation (§ 291.505(d)(15)(iii)) provides for a 2-week period, which the comment believes is too strict.

In FDA's and NIDA's view, the current requirement is not too strict. A patient who misses appointments may be demonstrating that he or she does not need his or her usual stabilization dose, is abusing other narcotic drugs, or is not committed to treatment. Therefore, upon return to the program, the patient is considered to be readmitted and must be stabilized to protect against the danger of overmedication and the possibility of illicit drug diversion.

23. One comment wanted the word "physician" changed throughout the regulations to "program director" or a similar phrase except where purely medical areas and decisions are involved. The reason for the request, the comment said, is to make it clear that the person who is required to monitor, evaluate, and be responsible for the services of the entire methadone treatment program need not be a physician.

Current § 291.505(c)(1) already states that the program sponsor is responsible for the operation of a treatment program and that the sponsor need not be a

licensed practitioner (physician). A medical director, however, licensed to practice medicine in the jurisdiction in which the program is located, must direct the medical affairs of the program (see current § 291.505(d)(6)(ii)). Also, the agencies are unaware of the use of the word "physician" in places other than where medical areas or decisions are involved. Accordingly, the agencies do not believe that the requested revisions are necessary.

24. A comment submitted by two treatment programs objected to the requirement that the program physician review and countersign the patient's treatment plan at least annually and suggested that the supervisory counselor could conduct the annual review and also countersign the plan. Another comment stated, however, that the requirement should remain unchanged.

As discussed above, FDA and NIDA believe that counseling, rehabilitative services, and treatment plans, including periodic treatment plan evaluations, are important tools that treatment programs need to use to help ensure quality patient care. The agencies also believe, however, that these tools may be generally more beneficial to newer patients than to "older" patients who have demonstrated good, steady, and substantial progress towards rehabilitation. (See discussion under comment 8 above.) Thus, FDA and NIDA are proposing to revise current §§ 291.505(d) (5)(vi) and (6)(ii)(E) so that it is clear that the supervisory counselor—instead of a program physician—may conduct the annual review and sign the treatment plan but only for certain qualified patients who have been in treatment for 3 years or more. For patients in treatment for less than 3 years, no rule changes are proposed. The agencies believe that during the first 3 years of maintenance treatment it is important to have the treating physician closely involved in the treatment plan procedures. See proposed §§ 291.505(d) (3)(v) and (4)(ii)(E).

25. One comment suggested the establishment of a pilot program to determine whether maintenance treatment should be expanded beyond formal treatment programs, i.e., to allow physicians in the private practice setting to offer maintenance treatment.

Although approximately 95 percent of applications for narcotic treatment programs involve fairly large patient populations, the current regulation already provides for much smaller programs, i.e., one or two patient programs in a private practice setting. Because smaller "programs" already exist under the current regulation, there

is no need to establish new or additional Federal regulations for a pilot program as requested.

26. The proposed rule contains editorial revisions to the current regulation. These revisions include moving sections or subsections of the existing regulation that are definitional in nature into the definition section of the regulation (current § 291.505(a)) and deleting the word "methadone" where it is not necessary and adding the word "narcotic" in its place where appropriate, e.g., methadone treatment program would become narcotic treatment program and methadone maintenance treatment would become maintenance treatment. These minor changes are not substantive and would not affect the substantive requirements of the existing rule. Simply stated, the changes would make the existing regulation clearer and more easily understood.

27. The proposed rule eliminates the requirement at current § 291.505(c)(4)(iii) for submission of Form FDA-2634 "Annual Report for Treatment Program Using Methadone." FDA is proposing to eliminate this requirement because data from the report are not routinely utilized for any specific purpose and are considered to be of very little value, particularly as compared with the burden of preparing, assembling, and reviewing the data. FDA believes that the information collected on the form has no practical utility, as the term is used in the Paperwork Reduction Act of 1980, and that continued use of the form is thus not allowable under that Act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a) (8) and (11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency finds that the proposed rule is not a major rule inasmuch as the revisions proposed would not result in any increase in cost (significant or otherwise) to narcotic treatment programs or to the State and local authorities that would enforce the proposed rule. Moreover, this proposed rule would provide treatment programs with more flexibility than exists under

the current regulation and thus allow such programs alternative and presumably more cost efficient means to comply with the proposed requirements. For these reasons, therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 291.505 of this proposed rule contains collection of information requirements. In addition, this proposed rule would delete the information collection requirement at current § 291.505(c)(4)(iii) for submission of Form FDA-2634 "Annual Report for Treatment Program Using Methadone." As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

Request for Comments

Interested persons may, on or before December 1, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Narcotic Addict Treatment Act of 1974, and applicable delegations of authority thereunder, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 291 be amended as follows:

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

1. The authority citation for Part 291 is revised to read as follows:

Authority: Secs. 505, 701(a), 52 Stat. 1052-1053 as amended, 1055 (21 U.S.C. 355, 371(a)); sec. 303(a), 70 Stat. 929 as amended (42 U.S.C. 242a(a)); sec. 4, 84 Stat. 1241 (42 U.S.C. 257a); sec. 3, 88 Stat. 124-125 (21 U.S.C. 823(g)); 21 CFR 5.10.

2. By revising § 291.505 to read as follows:

§ 291.505 Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(a) *Definitions.* As used in this part:

(1) "Detoxification treatment" means the dispensing of a narcotic drug in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period. There are two types of detoxification treatment: short-term detoxification treatment and long-term detoxification treatment.

(i) "Short-term detoxification treatment" is for a period not in excess of 30 days.

(ii) "Long-term detoxification treatment" is for a period more than 30 days but not in excess of 180 days.

(2) "Maintenance treatment" means the dispensing of a narcotic drug in the treatment of an individual for dependence on heroin or other morphine-like drugs.

(3) A "medical director" is a physician, licensed to practice medicine in the jurisdiction in which the program is located, who assumes responsibility for the administration of all medical services performed by the narcotic treatment program including ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding the medical treatment of narcotic addiction with a narcotic drug.

(4) A "medication unit" is a facility established as part of but geographically dispersed, i.e., separate from a narcotic treatment program from which licensed private practitioners and community pharmacists—

(i) Are permitted to administer and dispense a narcotic drug and

(ii) Are authorized to conduct drug testing or analysis for narcotic drugs.

(5) "Narcotic dependent" means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

(6) A "narcotic treatment program" is an organization (or a person, including a private physician) that administers or dispenses a narcotic drug to a narcotic addict for maintenance or detoxification treatment, provides, when appropriate or necessary, a comprehensive range of medical and rehabilitative services, is approved by the State authority and the Food and Drug Administration, and that is registered with the Drug Enforcement Administration to use a narcotic drug for the treatment of narcotic addiction.

(7) A "program sponsor" is a person (or representative of an organization) who is responsible for the operation of a narcotic treatment program and who assumes responsibility for all its employees including any practitioners, agents, or other persons providing services at the program (including its medication units).

(8) The term "services," as used in this part, includes medical evaluations, counseling, rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement), which will help the patient become a productive member of society.

(9) A "State authority" is the agency designated by the Governor or other appropriate official to exercise the responsibility and authority within the State or Territory for governing the treatment of narcotic addiction with a narcotic drug.

(b) *Organizational structure and approval requirements—*(1) *Organizational structure.* (i) A narcotic treatment program may be an independent organization or part of a centralized organization. For example, if a centralized organizational structure consists of a primary facility and other outpatient facilities, all of which conduct initial evaluation of patients and administer or dispense medication, the primary facility and each outpatient facility are separate programs, even though some services (e.g., the same hospital or rehabilitative services) are shared.

(ii) The program sponsor shall submit to the Food and Drug Administration and the State authority a description of the organizational structure of the program, the name of the persons responsible for the program, the address of the program, and the responsibilities of each facility or medication unit. The sources of funding for each program shall be listed and the name and

address of each governmental agency providing funding shall be stated.

(iii) Where two or more programs share a central administration (e.g., a city or State-wide organization), the person responsible for the organization (administrator or program sponsor) is required to be listed as the program sponsor for each separate participating program. An individual program shall indicate its participation in the central organization at the time of its application. The administrator or sponsor may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval.

(iv) One physician may assume primary medical responsibility for more than one program and be listed as medical director. If a physician assumes medical responsibility for more than one program, a statement documenting the feasibility of the arrangement is required to be attached to the application.

(2)(i) *Program approval.* Before a narcotic treatment program may be lawfully operated, the program, whether an outpatient facility or a private practitioner, shall submit the applications specified in this section simultaneously to the Food and Drug Administration and the State authority and must receive the approval of both, except as provided for in paragraph (h)(5) of this section. Before granting approval, the Food and Drug Administration will consult with the Drug Enforcement Administration, Department of Justice, to ascertain if the program is in compliance with Federal controlled substances laws. Each physical location within any program is required to be identified and listed in the approval application. At the time of application for approval, the program sponsor shall indicate whether medication will be administered or dispensed at the facility. Before medication may be administered or dispensed at a location not previously approved for this purpose, the program is required to obtain approval from FDA and the State agency. However, no approval is necessary, but notification is required when a facility in which medication is administered or dispensed is deleted by a program; the program shall notify the Food and Drug Administration and the State authority within 3 weeks of the deletion. Similarly, addition or deletion of facilities which provide services other than administering or dispensing medication is also permitted without approval, but notification must be made within 3 weeks to the Food and Drug

Administration and the State authority about the addition and/or deletion.

(ii) *Exemption of Federal programs.* The provisions of this section requiring approval (or permitting disapproval or revocation of approval) by the State authority, compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority do not apply to programs operated directly by the Veterans' Administration or any other department or agency of the United States. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal narcotic treatment programs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(iii) *Services.* Each narcotic treatment program shall provide medical and rehabilitative services and programs. (See paragraph (d)(4) of this section.) These services should normally be made available at the primary facility, but the program sponsor may enter into a formal documented agreement with private or public agencies, organizations, or institutions for these services, if they are available elsewhere. The program sponsor, in any event, must be able to document that medical and rehabilitative services are fully available to patients.

(iv) *Prohibition against unapproved use of narcotic drugs.* No prescribing, administering, or dispensing of a narcotic drug for the treatment of narcotic addiction may occur without prior approval by the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section, unless specifically exempted by this section.

(v) *Approved narcotic drugs for use in treatment programs.* The following narcotic drug has been approved for use in the treatment of narcotic addiction: Methadone.

(3)(i) *Medication unit.* A program may establish a medication unit to facilitate the needs of patients who are stabilized on an optimal dosage level. To lawfully operate a medication unit, the program shall, for each separate unit, obtain approval from both the Food and Drug Administration and the State authority, except as provided for in paragraph (h)(5) of this section. The Food and Drug Administration, in determining whether to approve a medication unit, will consider the distribution of units within a particular geographic area. Any new medication unit is required to receive

approval before it may lawfully commence operation.

(ii) *Narcotic drug supply.* A medication unit must receive its supply of the narcotic drug directly from the stocks of the primary facility. Only persons permitted to administer or dispense the drug or security personnel licensed or otherwise authorized by State law to do so may deliver the drug to a medication unit.

(iii) *Revocation of approval.* If the Food and Drug Administration revokes the primary program's approval, the approval for any medication unit associated with the program is deemed to be automatically revoked. The Food and Drug Administration's revocation of the approval of a particular medication unit, will not, in and of itself, affect the approval of the primary program.

(iv) *Referral.* The patient shall be stabilized at his or her optimal dosage level before he or she may be referred to a medication unit. Since the medication unit does not provide a range of services, the program sponsor shall determine that the patient to be referred is not in need of frequent counseling, rehabilitative, and other services which are only available at the primary program facility.

(v) *Responsibility for patient.* After a patient is referred to a medication unit, the program sponsor retains continuing responsibility for the patient's care. The program sponsor shall ensure that the patient receives needed medical and rehabilitative services at the primary facility.

(c) *Conditions for approval of the use of a narcotic drug in a treatment program—(1) Applicants.* An individual listed as program sponsor for a treatment program using a narcotic drug need not personally be a licensed practitioner but shall employ a licensed physician for the position of medical director. Persons responsible for administering or dispensing the narcotic drug shall be practitioners as defined by section 102(20) of the Controlled Substances Act (21 U.S.C. 802(20)) licensed to practice by the State in which the program is to be established.

(2)(i) *Assent to regulation.* A person who sponsors a narcotic treatment program, and any persons responsible for a particular program, shall agree to adhere to all the rules, directives, and procedures, set forth in this section, and any regulation regarding the use of narcotic drugs in the treatment of narcotic addiction which may be promulgated in the future. The program sponsor has responsibility for all personnel and individuals providing services, who work in the program at the

primary facility or at other facilities or medication units. The program sponsors shall agree to inform all personnel and individuals providing services of the provisions of this section and to monitor their activities to assure compliance with the provisions.

(ii) The Food and Drug Administration and the State authority are required to be notified within 3 weeks of any replacement of the program sponsor or medical director. Activities in violation of this regulation may give rise to the sanctions set forth in paragraph (i) of this section.

(3) *Description of facilities.* Only program site(s) approved by Federal, State, and local authorities may treat narcotic addicts with a narcotic drug. To obtain program approval, the applicant shall demonstrate that he or she will have access to adequate physical facilities to provide all necessary services. A program must have ready access to a comprehensive range of medical and rehabilitative services so that the services may be provided when necessary. The name, address, and description of each hospital, institution, clinical laboratory, or other facility available to provide the necessary services are required to be included in the application submitted to the Food and Drug Administration and the State authority. The application is also required to include the name and address of each medication unit.

(4) *Submission of proper applications.* The following applications shall be filed simultaneously with both the Food and Drug Administration and the State authority:

(i) Form FDA-2632 "Application of Approval of Use of a Narcotic Drug in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor and submitted in duplicate to the Food and Drug Administration and the State authority.

(ii) Form FDA-2633 "Medical Responsibility Statement for Use of a Narcotic Drug in a Treatment Program." This form, required by paragraph (k) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense narcotic drugs and submitted in duplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed even if they are not at present responsible for administering or dispensing the drug.

(5) *State and Federal approval, denial, and revocation of approval of narcotic treatment programs.* (i) The Food and

Drug Administration may grant approval to a program only after FDA has received notification from both the State authority and the Drug Enforcement Administration that the program conforms to all pertinent State and Federal requirements.

(ii) The Food and Drug Administration will revoke the approval of a narcotic treatment program if so requested by the State authority or the Drug Enforcement Administration. If approval of a program is denied or revoked by the State or the Drug Enforcement Administration, the program shall have a right to appeal to the Commissioner, as provided for in paragraph (h)(5) of this section.

(iii) No shipment of a narcotic drug may lawfully be made to any program which does not have current approval from the Food and Drug Administration. Within 60 days after receipt of the application from the program sponsor for approval, the Food and Drug Administration will notify the sponsor whether the application is approved or denied.

(d)(1) *Minimum standards for admission—(i) History of addiction and current physiologic dependence.* (A) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least 1 year before admission for maintenance treatment. A 1-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least 1 year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may, in his or her reasonable clinical judgment, admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiologic dependence at a time approximately 1 year before admission.

(B) The program physician or an appropriately trained staff member designated and supervised by the physician shall record in the patient's record the criteria used to determine the patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate his or her agreement with the evaluation.

The program physician shall make the final determination concerning a patient's physiologic dependence and history of addiction. The program physician shall sign, date, and record a statement that he or she has reviewed all the documented evidence to support a 1-year history of addiction and the current physiologic dependence and that in his or her reasonable clinical judgment the patient fulfills the requirements for admission to maintenance treatment. The program physician shall complete and record the statement before the program administers any methadone to the patient.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: A patient voluntarily chooses to participate in a program; all relevant facts concerning the use of the narcotic drug used by the program are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent to Methadone Treatment" Form (FDA-2635) (see paragraph (k) of this section); a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign for patients under the age of 18 the second part of Form FDA-2635 "Consent to Methadone Treatment."

(iii) *Exceptions to minimum admission criteria—(A) Penal or chronic care.* A person who has resided in a penal or chronic care institution for 1 month or longer may be admitted to maintenance treatment within 14 days before release or discharge or within 6 months after release from such an institution without documented evidence to support findings of physiological dependence provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and, in the reasonable clinical judgment of a program physician, treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional

within 72 hours of administration of the initial dose to the patient.

(B) *Pregnant patients.* (1) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may be in direct jeopardy of returning to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and, in his or her reasonable clinical judgment, finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health care providers.

(2) If a program cannot provide direct prenatal care for pregnant patients in treatment, the program shall establish a system for informing the patients of the publicly or privately funded prenatal care opportunities available. If there are no publicly funded prenatal referral opportunities and the program cannot provide such services or the patient cannot afford them or refuses them, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as part of its counseling service.

(3) Counseling records and/or other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the physician to whom she is referred is required to be notified that she is in maintenance treatment, provided that notification is in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct treatment or appropriate referral for treatment, the treating program physician should consider using informed consent procedures, e.g., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician, consistent with the confidentiality regulations, shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. If the program physician does

not receive a response to the request, he or she shall document in the record that such a request was made.

(4) Within 3 months after termination of pregnancy, the program physician shall enter an evaluation of the patient's treatment state into her record and state whether she should remain in the maintenance program or be detoxified.

(5) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if treatment is deemed necessary. The program sponsor shall ensure that each female patient is fully informed of the possible risks to her or to her unborn child from the use of a narcotic drug administered or dispensed by the program.

(C) *Previously treated patients.* Under certain circumstances a patient who has been treated and later voluntarily detoxified from maintenance treatment may be readmitted to maintenance treatment, without evidence to support findings of current physiologic dependence, up to 2 years after discharge if the program attended is able to document prior narcotic drug maintenance treatment of 6 months or more, and the admitting program physician, in his or her reasonable clinical judgment, finds readmission to maintenance treatment to be medically justified. For patients meeting these criteria, the quantity of take-home medication will be determined in the reasonable clinical judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time the patient voluntarily terminated previous treatment. The admitting program physician or a program employee under supervision of the admitting program physician must enter in the patient's record documented evidence of the patient's prior treatment and evidence of all decisions and criteria used relating to the admission of the patient and the quantity of take-home medication permitted. The admitting program physician shall date and sign these entries in the patient's record or review the health-care professional's entries therein before the program administers any medication to the patient. In the latter case, the admitting program physician shall date and sign the entries in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(iv) *Special limitation; treatment of patients under 18 years of age.* A person under 18 is required to have had two

documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A 1-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No person under 18 years of age may be admitted to a maintenance treatment program unless a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FDA-2635 "Consent to Methadone Treatment."

(v) *Denial of admission.* If in the reasonable clinical judgment of the medical director a particular patient would not benefit from treatment with a narcotic drug, the patient may be refused such treatment even if the patient meets the admission standards.

(2) *Minimum testing or analysis for drugs: Uses and frequency.* (i) The person(s) responsible for a program shall ensure that: An initial drug-screening test or analysis is completed for each prospective patient; at least eight additional random tests or analyses are performed on each patient during the first year in maintenance treatment; and at least quarterly random tests or analyses are performed on each patient in maintenance treatment for more than 1 year, except that a random test or analysis is performed monthly on each patient who receives a 6-day supply of take-home medication. When such test or analysis is done for each patient it must be done in a manner that minimizes falsification. Each test or analysis must be analyzed for opiates, methadone, amphetamines, cocaine, barbiturates, as well as other drugs as indicated. Any laboratory that performs the testing required under these regulations shall be in compliance with all applicable Federal proficiency testing and licensing standards and all applicable State standards. Any time a program desires to change a laboratory used for such testing or analysis, the program shall approve the change with the Food and Drug Administration.

(ii) The person responsible for a program shall ensure that test results are not used as the sole criterion to force a patient out of treatment but are used as a guide to change treatment approaches. The person responsible for a program shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(3) *Patient evaluation; minimum admission and periodic requirements—*

(i) *Minimum contents of medical evaluation.* Each patient is required to have a medical evaluation by a program physician or an authorized health-care professional under the supervision of a program physician on admission to a program. At a minimum, this evaluation is required to consist of a medical history which includes the required history of narcotic dependence, evidence of current physiologic dependence unless excepted by the regulations, and a physical examination, and includes the following laboratory examinations: Serological test for syphilis, a tuberculin skin test, and a test or analysis for drug determination. The physical examination is required to consist of an investigation of the organ systems for possibilities of infectious disease, pulmonary, liver, and cardiac abnormalities, and dermatologic sequelae of addiction. In addition, the physical examination is required to include a determination of the patient's vital signs (temperature, pulse, and blood pressure and respiratory rate); an examination of the patient's general appearance, head, ears, eyes, nose, throat (thyroid), chest (including heart, lungs, and breasts), abdomen, extremities, skin, and neurological assessment; and the program physician's overall impression of the patient.

(ii) *Recordings of findings.* The admitting program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. In each case the admitting program physician shall date and sign these entries, or date, review, and countersign these recordings in the patient's record to signify his or her review of and concurrence with the history and physical findings.

(iii) *Admission evaluation.* (A) Each patient seeking admission or readmission for treatment services is required to be interviewed by a well-trained program counselor, qualified by virtue of education, training, or experience to assess the psychological and sociological background of drug abusers, to determine the appropriate treatment plan for the patient. To determine the most appropriate treatment plan for a patient, the interviewer shall obtain and document in the patient's record the patient's history.

(B) A patient's history includes information relating to his or her

educational and vocational achievements. If a patient has no such history, i.e., he or she has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(iv) *Initial treatment plan.* (A)(1) The initial treatment plan is required to contain a statement that outlines realistic short-term treatment goals which are mutually acceptable to the patient and the program. The initial treatment plan is also required to spell out the behavioral tasks a patient must perform to complete each short-term goal and the medical, psychosocial, economic, legal, or other supportive services that a patient needs immediately. The plan is also required to identify the frequency with which these services are likely to be provided.

(2) A primary counselor is one who is assigned by the program to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The primary counselor shall enter in the patient's record the counselor's name, the contents of a patient's initial assessment, and the initial treatment plan. The primary counselor shall make these entries immediately after the patient is stabilized on a dose or within 4 weeks after admission, whichever is sooner.

(B) It is recognized that patients need varying degrees of treatment and rehabilitative services which are often dependent on or limited by a number of variables, e.g., patient resources, available program, and community services. It is not the intent of this regulation to prescribe a particular treatment and rehabilitative service or the frequency at which a service should be offered.

(C) The program supervisory counselor or other appropriate program personnel so designated by the program physician shall review and countersign all the information and findings required by this paragraph (d)(3)(iv) to be recorded in each patient's record.

(v) *Periodic treatment plan evaluation.* (A) The program physician or the primary counselor shall review, reevaluate, and alter where necessary each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment.

(B) The program physician shall ensure that the periodic treatment plan becomes part of each patient's record and that it is signed and dated in the patient's record by the primary

counselor and is countersigned and dated by the supervisory counselor.

(C) At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of and the reasons for prescribing any medication for emotional or physical problems.

(D) The requirement for annual physician review and signature by the program physician in paragraph (d)(3)(v)(C) of this section is discretionary, however, as it applies to a patient who has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program and who has made substantial progress in rehabilitation.

(4) *Minimum program services—*(i) *Access to a range of services.* (A) A treatment program shall provide a comprehensive range of medical and rehabilitative services to its patients especially during the first 3 years of treatment. Also, for pregnant patients in a treatment program who were not admitted under paragraph (d)(1)(iii)(B) of this section, a treatment program shall give them the opportunity for prenatal care either by the narcotic treatment program or by referral to appropriate health-care providers. If a program cannot provide direct prenatal care for pregnant patients in treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there is no publicly funded prenatal care available to which a patient may be referred, and the program cannot provide such services, or the patient cannot afford or refuses prenatal care services, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(B) Counseling records and other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the program refers a patient for prenatal services, it shall inform the physician to whom she is referred that the patient is in maintenance treatment, provided such notification is in accordance with the Department of Health and Human

Services' confidentiality regulations (42 CFR Part 2). If a pregnant patient refuses direct prenatal services or appropriate referral for prenatal services, the treating program physician should consider using informed consent procedures, i.e., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. The information should be obtained in accordance with the Department of Health and Human Services' confidentiality regulations (42 CFR Part 2). If no response is received, the program physician shall document in the record that such a request was made and no response was received.

(C) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if continued treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman and her unborn child from the use of a narcotic drug.

(D) Any service not furnished at the primary facility is required to be listed in any application for approval submitted to the Food and Drug Administration or to the State authority. The addition, modification, or deletion of any program services is required to be reported immediately to the Food and Drug Administration.

(ii) *Minimum medical services: designation of medical director and responsibilities.* Each program shall have a designated medical director who assumes responsibility for administering all medical services performed by the program. The medical director and other authorized program physicians are required to be licensed to practice medicine in the jurisdiction in which the program is located. The medical director is responsible for ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding medical treatment of narcotic addiction. In addition, the medical director or other authorized physicians shall:

(A) Ensure that evidence of current physiologic dependence, length of history of addiction, or exceptions to criteria for admission are documented in the patient's record before the patient receives the initial dose.

(B) Ensure that a medical evaluation including a medical history has been taken, and physical examination has

been done before the patient receives the initial dose (except that in an emergency situation, the initial dose may be given before the physical examination).

(C) Ensure that appropriate laboratory studies have been performed and reviewed.

(D) Sign or countersign all medical orders as required by Federal or State law. (Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(E) Review and countersign treatment plans at least annually as qualified by paragraph (d)(3)(v)(D) of this section.

(F) Ensure that justification is recorded in the patient's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physical disability, or prescribing any medication for physical or emotional problems.

(iii) *Use of health-care professionals.* Although the final decision to accept a patient for treatment may be made only by the medical director or other designated program physician, it is recognized that physicians can train program personnel to detect and document narcotic abstinence symptoms and that some jurisdictions allow State-licensed or certified health-care professionals, e.g., physician's assistants, nurse practitioners, to perform certain functions—record medical histories, perform physical examinations, and prescribe, administer, or dispense certain medications—that are ordinarily performed by a licensed physician. These regulations do not prohibit licensed or certified health-care professionals from performing those functions in narcotic treatment programs if it is authorized by Federal, State, and local laws and regulations, and if those functions are delegated to them by the medical director, and records are properly countersigned by the medical director or a licensed physician.

(iv) *Vocational rehabilitation, education, and employment.* (A) Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job-training programs or to obtain gainful employment as soon as possible.

(B) The patient's needs and readiness for vocational rehabilitation, education, and employment should be evaluated

and recorded in the patient's records during the preparation of the initial treatment plan and reviewed and updated as appropriate in subsequent periodic treatment plan evaluations.

(5) *Staffing patterns—(i) Program personnel.* The person(s) responsible for a program shall determine program personnel requirements after considering the number of patients who are vocationally and educationally impaired; the number of patients with significant psychopathology; the number of patients who are also nonnarcotic drug or alcohol abusers; the number of patients with behavioral problems in the program; and the number of patients with serious medical problems.

(ii) *Supportive services.* The person(s) responsible for the program shall take notice, when considering the staffing pattern, that maintenance treatment programs need to establish supportive services in accordance with the varying characteristics and needs of their patient populations. The person(s) responsible for a program shall also take notice of the availability of existing community resources which may complement or enhance the program's delivery of supportive services and then establish a staffing pattern based on a combination of patient needs and available, accessible community resources.

(6) *Frequency of attendance; quantity of take-home medication; dosage of methadone; initial and stabilization—(i) Dosage and responsibility for administration.* (A) The person(s) responsible for the program shall ensure that the initial dose of methadone does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(B) A licensed physician shall assume responsibility for the amounts of the narcotic drug administered or dispensed and shall record, date, and sign in each patient's record each change in the dosage schedule.

(C) The administering licensed physician shall ensure that a daily dose greater than 100 milligrams is justified in the patient's record.

(ii) *Authorized dispensers of narcotic drugs; responsibility.* A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the

practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health-care professional authorized by the Federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedule.

(iii) *Form.* Methadone may be administered or dispensed in oral form only when used in a treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone in parenteral form when the attending physician judges it advisable. Although tablet, syrup concentrate, or other formulations may be distributed to the program, all oral medication is required to be administered or dispensed in a liquid formulation. The oral dosage form is required to be formulated in such a way as to reduce its potential for parenteral abuse. Take-home medication is required to be labeled with the treatment center's name, address, and telephone number and must be packaged in special packaging as required by 16 CFR 1700.14 in accordance with the Poison Prevention Packaging Act (Pub. L. 91-601, 15 U.S.C. 1471 et seq.) to reduce the chances of accidental ingestion. Exceptions may be granted when these provisions conflict with State law with regard to the administering or dispensing of drugs.

(iv) *Take-home medication.* (A) Take-home medication may be given only to a patient who, in the reasonable clinical judgment of the program physician, is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinical visits, she or he or a designated staff member shall record the rationale for the decision in the patient's clinical record. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record where this information is recorded.

(B) The program physician shall consider the following in determining whether, in his or her reasonable clinical judgment, a patient is responsible in handling narcotic drugs:

(1) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(2) Regularity of clinic attendance;

(3) Absence of serious behavioral problems at the clinic;

(4) Absence of known recent criminal activity, e.g., drug dealing;

(5) Stability of the patient's home environment and social relationships;

(6) Length of time in maintenance treatment;

(7) Assurance that take-home medication can be safely stored within the patient's home; and

(8) Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(v) *Take-home requirements.* The requirement of time in treatment is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician may, in his or her reasonable judgment, deny or rescind the take-home medication privileges of a patient.

(A)(1) In maintenance treatment it is required that a patient come to the clinic for observation daily or at least 6 days a week. If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 months, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (1) through (8) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her attendance at the clinic for observation to three times weekly. The patient may receive no more than a 2-day take-home supply of medication.

(2) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 2 years from his or her entrance into the program, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (1) through (8) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce his or her clinic attendance at the clinic for observation to twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication.

(3) If, in the reasonable clinical judgment of the program physician, a patient demonstrates that he or she has satisfactorily adhered to program rules for at least 3 consecutive years from his or her entrance into the maintenance treatment program, has made substantial progress in rehabilitation,

has no major behavioral problems, is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (1) through (8) of this section), and would improve his or her rehabilitative progress by decreasing the frequency of his or her clinic attendance for observation, the patient may be permitted to reduce clinic attendance for observation to once weekly, provided that the following additional criteria are met: The program physician has written into the patient's record an evaluation that the patient is responsible in handling narcotic drugs (paragraphs (d)(6)(iv)(B) (1) through (8) of this section); the patient is employed (or actively seeking employment), attends school, is a homemaker, or is considered unemployable for mental or physical reasons by a program physician; the patient is not known to have abused drugs including alcohol in the last year; and the patient is not known to have engaged in criminal activity, e.g., drug dealing, in the last year. A patient permitted to reduce clinic attendance for observation to once weekly may receive no more than a 6-day take-home supply of medication.

(B)(1) If a patient, after receiving a supply of take-home medication, is inexcusably absent from or misses a scheduled appointment with a treatment program without authorization from the program staff, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation. For such a patient, the program physician shall not reduce the frequency of the patient's clinic attendance for drug ingestion under observation until she or he has had at least three consecutive monthly tests or analyses that are neither positive for morphinelike drugs (except from the narcotic drug administered or dispensed by the program) or other drugs of abuse nor negative for the narcotic drug administered or dispensed by the program, and until she or he is again determined by a program physician to be responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (1) through (8) of this section) and to meet the criteria in paragraph (d)(6)(v)(A) of this section.

(2) If a patient, after receiving a 6-day supply of take-home medication, has a test or analysis which is confirmed to be positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse or negative for the narcotic drug administered or dispensed by the program, the program physician shall place the patient on probation for 3 months. If, during this probation, the

patient has a test or analysis either positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse or negative for the narcotic drug administered or dispensed by the program, the program physician shall increase the frequency of the patient's clinic attendance for observation to at least twice weekly. Such a patient may receive no more than a 3-day take-home supply of medication until she or he has had at least three consecutive monthly tests or analyses which are neither positive for morphinelike drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse nor negative for the narcotic drug administered or dispensed by the program, and the program physician again determines that the patient is responsible in handling narcotic drugs (see paragraphs (d)(6)(iv)(B) (1) through (8) of this section) and meets the criteria contained in paragraph (d)(6)(v)(A) of this section.

(C) In calculating the number of years of maintenance treatment, the period is considered to begin on the first day the medication is administered, or on readmission if a patient has had a continuous absence of 90 days or more. Cumulative time spent by the patient in more than one program is counted toward the number of years of treatment, provided there has not been a continuous absence of 90 days or more.

(D) Each patient whose daily dose is above 100 milligrams is required to be under observation while ingesting the drug at least 6 days per week irrespective of the length of time in treatment, unless the program has received prior approval from the State authority and the Food and Drug Administration.

(vi) *Exceptions to take-home requirements.* If, in the reasonable clinical judgment of the program physician:

(A) A patient is found to have a physical disability which interferes with his or her ability to conform to the applicable mandatory schedule, she or he may be permitted a temporarily or permanently reduced schedule provided she or he is also found to be responsible in handling narcotic drugs.

(B) A patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule she or he may be permitted a temporarily reduced schedule provided she or he is also found to be responsible in handling narcotic drugs. The rationale for an exception to a mandatory schedule is to

be based on the reasonable clinical judgment of the program physician and shall be recorded in the patient's record by the program physician or by program personnel supervised by the program physician. In the latter situation, the physician shall review, countersign, and date the patient's record where this rationale is recorded. In any event, a patient may not be given more than a 2-week supply of narcotic drugs at one time.

(7) *Minimum standards for short-term detoxification treatment.* (i) For short-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered daily, under close observation, in reducing dosages over a period not to exceed 30 days. All requirements for maintenance treatment apply to short-term detoxification treatment with the following exceptions:

(A) Take-home medication is not allowed during short-term detoxification.

(B) A history of 1 year physiologic dependence is not required for admission to short-term detoxification.

(C) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be placed in short-term detoxification treatment, regardless of age.

(D) No test or analysis is required except for the initial drug screening test or analysis.

(E) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for short-term detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term detoxification and possible drug-free treatment referral.

(F) The requirements of paragraph (d)(4) of this section, except paragraphs (d)(4)(ii) (A) through (D) and (iii) of this section, do not apply to short-term detoxification treatment.

(ii) A patient is required to wait at least 7 days between concluding a short-term detoxification treatment episode and beginning another. Before a short-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. The provisions of these requirements, except as noted in paragraph (d)(7)(i) of this section, apply

to both inpatient and ambulatory short-term detoxification treatment.

(iii) Short-term detoxification treatment is not recommended for a pregnant patient.

(8) *Minimum standards for long-term detoxification treatment.* (i) For long-term detoxification from narcotic drugs, the narcotic drug is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician. The narcotic drug is required to be administered on a regimen designed to reach a drug-free state and to make progress in rehabilitation in 180 days or less. All requirements for maintenance treatment apply to long-term detoxification treatment with the following exceptions:

(A) In long-term detoxification treatment it is required that the patient be under observation while ingesting the drug daily or at least 6 days a week, for the duration of the long-term detoxification treatment.

(B) A history of 1 year physiologic dependence is not required for admission to long-term detoxification.

(C) The program physician shall document in the patient's record that short-term detoxification is not a sufficiently long enough treatment course to provide the patient with the additional program services he or she deems necessary for the patient's rehabilitation. The program physician shall document this information in the patient's record before long-term detoxification may begin.

(D) Patients who have been determined by the program physician to be currently physiologically dependent on narcotics may be placed in long-term detoxification treatment, regardless of age.

(E) An initial drug screening test or analysis is required for each patient. And at least one additional random test or analysis must be performed monthly on each patient during long-term detoxification.

(F) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are also required for long-term detoxification patients except that the required periodic treatment plan evaluation is required to occur monthly.

(ii) A patient is required to wait at least 7 days between concluding a long-term treatment episode and beginning another. Before a long-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic

drugs. The provisions of these requirements apply to both inpatient and ambulatory long-term detoxification treatment.

(iii) Long-term detoxification is not recommended for a pregnant patient.

(9) *Inspections of programs; patient confidentiality.* A program shall allow inspections by duly authorized employees of the State authority, and in accordance with Federal controlled substances laws and Federal confidentiality laws, by duly authorized employees of the Food and Drug Administration, the Drug Enforcement Administration of the Department of Justice, and the National Institute on Drug Abuse.

(10) *Exemptions from specific program standards.* (i) A program is permitted, at the time of application or any time thereafter, to request exemption from or revision of specific program standards. The rationale for an exemption or revision shall be thoroughly documented in an appendix to be submitted with the application or at some later time. The Food and Drug Administration will approve such exemptions or revisions of program standards at the time of application with the concurrence of the State authority.

(ii) The Food and Drug Administration has the right to withhold the granting of an exemption until such time as a program is in actual operation in order to assess if the exemption is necessary. If periodic inspections of the program reveal that discrepancies or adverse conditions exist, the Food and Drug Administration shall reserve the right to revoke any or all exemptions previously granted.

(11) *Research.* When a program conducts research on human subjects or provides subjects for research, there must be written policies and written review to assure the rights of the patients involved. Appropriate informed consent forms are required to be signed by the patient and to be retained in his or her patient record at the program. All research, development, and related activities which involve human subjects and which are funded by grants from or contracts with the Department of Health and Human Services are required to comply with the Department of Health and Human Services' regulations on the protection of human subjects, 45 CFR Part 46, and confidentiality of information, 42 CFR Part 2. All investigational research involving human subjects conducted for submission to the Food and Drug Administration must be conducted in compliance with 21 CFR Part 312.

(12) *Patient record system—(i) Patient care.* The person(s) responsible for a

program shall establish a record system to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to methadone. All records are required to be kept confidential and in accordance with all applicable Federal and State regulations regarding confidentiality.

(ii) *Drug dispensing.* The person(s) responsible for a program shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed. These records must be retained for a period of 3 years from the date of dispensing.

(iii) *Patient's record.* An adequate record must be maintained for each patient. The record is required to contain a copy of the signed consent form(s), the date of each visit, the amount of drug administered or dispensed, the results of each test or analysis for drugs, any significant physical or psychological disability, the type of rehabilitative and counseling efforts employed, an account of the patient's progress, and other relevant aspects of the treatment program. For recordkeeping purposes, if a patient misses appointments for 2 weeks or more without notifying the program, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, this is considered a readmission and is to be so noted in the patient's record. This method of recordkeeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of narcotic drugs (e.g., the patient who has received no medication for several days or more and upon return receives the usual stabilization dose). An annual evaluation of the patient's progress must be entered in the patient's record.

(13) *Security of drug stocks.* Adequate security is required to be maintained over drug stocks, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 CFR 1301.72–1301.76).

(e) *Multiple enrollments—(1) Administering or dispensing to patients enrolled in other programs.* There is a danger of drug dependent persons

attempting to enroll in more than one narcotic treatment program to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, except in an emergency situation, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program.

(2) *Patient attendance requirements.* The patient shall always report to the same treatment facility unless prior approval is obtained from the program sponsor for treatment at another program. Permission to report for treatment at the facility of another program shall be granted only in exceptional circumstances and shall be noted on the patient's clinical record.

(f) *Conditions for use of narcotic drugs in hospitals for detoxification treatment—(1) Form.* The drug may be administered or dispensed in either oral or parenteral form (see paragraph (d)(6)(iii) of this section).

(2) *Use of narcotic drugs in hospitals—(i) Approved uses.* For hospitalized patients, the use of a narcotic drug for narcotic addict treatment may be administered or dispensed only for detoxification treatment. If a narcotic drug is administered for treatment of narcotic dependence for more than 180 days, the procedure is no longer considered detoxification but is, rather, considered maintenance treatment. Only approved narcotic treatment programs may undertake maintenance treatment. This does not preclude the maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of his or her stay or whose enrollment in a program which has approval for maintenance treatment using narcotic drugs has been verified (see 21 CFR 1306.07(c)). Any hospital which already has received approval under this paragraph (f) may serve as a temporary narcotic treatment program when an approved treatment program has been terminated and there is no other facility immediately available in the area to provide narcotic drug treatment for the patients. The Food and Drug Administration may give this approval upon the request of the State authority or the hospital, when no State authority has been established.

(ii) *Individuals responsible for supplies.* Hospitals shall submit to the Food and Drug Administration and the State authority the name of the individual (e.g., pharmacist) responsible for receiving and securing supplies of

narcotic drugs for the treatment of narcotic addicts. The individual responsible for supplies shall ensure that the only persons who receive supplies of narcotic drugs are those who are authorized to do so by Federal or State law.

(iii) *General description.* The hospital shall submit to the Food and Drug Administration and the State authority a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(iv) *Anticipated quantity of drug needed.* The hospital shall submit to the Food and Drug Administration and the State authority the anticipated quantity of narcotic drugs for narcotic addict treatment needed per year.

(v) *Records.* The hospital shall maintain accurate records showing dates, quantity, and batch or code marks of the drug used for inpatient treatment. The hospital shall retain the records for at least a period of 3 years.

(vi) *Inspection.* The hospital shall permit the Food and Drug Administration and the State authority to inspect supplies of the drug at the hospital and evaluate the uses to which the drug is being put. The Food and Drug Administration and the State authority will keep the identity of the patients confidential in accordance with confidentiality requirements of 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(vii) *Approval of hospital pharmacy.* Application for a hospital pharmacy to provide narcotic drugs for detoxification treatment must be submitted to the Food and Drug Administration and the State authority and approval from both is required, except as provided for in paragraph (h)(5) of this section. Within 60 days after the Food and Drug Administration receives the application, it will notify the applicant of approval or denial or will request additional information, when necessary.

(viii) *Approval of shipments to hospital pharmacies.* Before a hospital pharmacy may lawfully receive shipments of narcotic drugs for detoxification treatment, a responsible official shall complete, sign, and file in duplicate with the Food and Drug Administration and the State authority Form FDA-2636 "Hospital Request for Narcotic Drugs for Detoxification Treatment" (see paragraph (k) of this section) and must have received from

the Food and Drug Administration a notice that the request has been approved.

(ix) *Sanctions.* Failure to abide by the requirements described in this section may result in revocation of approval to receive shipments of narcotic drugs for narcotic addict treatment, seizure of the drug supply on hand, injunction, and criminal prosecution.

(g) *Confidentiality of patient records.* (1) Except as provided in paragraph (g)(2) of this section, disclosure of patient records maintained by any program is governed by the provisions of 42 CFR Part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel. In addition to the restrictions upon disclosure in 42 CFR Part 2, and in accordance with the authority conferred by section 303(a) of the Public Health Service Act (42 U.S.C. 242(a)), every program is authorized to protect the privacy of patients therein by withholding from all persons not employed by such program or otherwise connected with the conduct of its operations the names or other identifying characteristics of such patients under any circumstances under which such program has reasonable grounds to believe that such information may be used to conduct any criminal investigation or prosecution of a patient. Programs may not be compelled in any Federal, State, or local civil, criminal, administrative, or other proceedings to furnish such information, but this paragraph does not authorize withholding information authorized to be furnished under 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(2) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Food and Drug Administration to have access to and to copy all records on the use of narcotic drugs in accordance with the provisions of 42 CFR Part 2. A treatment program may reveal such records only when necessary in a related administrative or court proceeding.

(h) *Denial or revocation of approval.*

(1) Complete or partial denial or revocation of approval of an application to receive shipments of narcotic drugs

(Forms FDA-2632 "Application for Approval of Use of Narcotic Drugs in a Treatment Program" and FDA-2636 "Hospital Request for Narcotic Drugs for Detoxification and Maintenance Treatment") may be proposed to the Commissioner of Food and Drugs by the Director of the Food and Drug Administration's Center for Drugs and Biologics, on his or her own initiative or at the request of representatives of the Drug Enforcement Administration, Department of Justice, National Institute of Drug Abuse, the State authority, or any other interested person.

(2) Before presenting such a proposal to the Commissioner, the Director of the Center for Drugs and Biologics or his or her representative will notify the applicant in writing of the proposed action and the reasons therefor and will offer the applicant an opportunity to explain the matters in question in an informal conference and/or in writing within 10 days after receipt of such notification. The applicant shall have the right to hear and to question the information on which the proposal to deny or revoke approval is based, and may present any oral or written information and views.

(3) If the explanation offered by the applicant is not accepted by the Center for Drugs and Biologics as sufficient to justify approval of the application, and denial or revocation of approval is therefore proposed, the Commissioner will evaluate information obtained in the informal hearing before the Director of the Center for Drugs and Biologics. If the Commissioner finds that the applicant has failed to submit adequate assurance justifying approval of the application, the Commissioner shall issue a notice of opportunity for hearing with respect to the matter pursuant to § 314.200 of this chapter and the matter shall thereafter be handled in accordance with established procedures for denial or revocation of approval of a new drug application. If the Secretary determines that there is an imminent hazard to health, revocation of approval will become effective immediately and any administrative procedure will be expedited. Upon revocation of approval of an application, the Commissioner will notify the applicant, the State authority, the Drug Enforcement Administration, Department of Justice, and all other appropriate persons that the applicant may no longer receive shipments of narcotic drugs, and will require the recall of all of the drugs from the applicant. Revocation of approval may also result in criminal prosecution.

(4) Denial or revocation of approval may be reversed when the

Commissioner determines that the applicant has justified approval of the application.

(5) A treatment program or medication unit or any part thereof, including any facility or any individual, may appeal to the Food and Drug Administration a complete or partial denial or revocation of approval by the State authority unless the denial or revocation is based upon a State law or regulation. The appeal shall first be made to the Director of the Center for Drugs and Biologics, who shall hold an informal conference on the matter in accordance with paragraph (h)(2) of this section. The State authority may participate in the conference. The appellant or the State authority may appeal the Director's decision to the Commissioner, who shall decide the matter in accordance with paragraph (h)(3) of this section. If the Commissioner denies or revokes approval, such action shall be handled in accordance with paragraph (h)(3) of this section. The Commissioner may not grant or retain Food and Drug Administration approval if the Commissioner finds that the appellant is not in compliance with all applicable State laws and regulations and with this section.

(i) *Sanctions*—(1) *Program sponsor or individual responsible for a particular program.* If the program sponsor or the person responsible for a particular program fails to abide by all the requirements set forth in these regulations, or fails to adequately monitor the activities of those employed in the program, he or she may have the approval of his or her application revoked, his or her narcotic drug supply seized, an injunction granted precluding operation of his or her program, and criminal prosecution instituted against him or her.

(2) *Persons responsible for administering or dispensing narcotic drugs.* If a person responsible for administering or dispensing narcotic drugs for narcotic addict treatment fails to abide by all the requirements set forth in this regulation, criminal prosecution may be instituted against him or her, his or her drug supply may be seized, the approval of the program may be revoked, and an injunction may be granted precluding operation of the program.

(j) *Requirements for distribution by manufacturers of narcotic drugs for narcotic addict treatment*—(1) *Distribution requirements.* Shipments of narcotic drugs for narcotic addict treatment are restricted to direct shipments by manufacturers of the drugs to approved treatment programs using the narcotic drugs and to approved hospital pharmacies. If requested by a manufacturer or State authority, wholesale pharmacy outlets in some regions or States may be authorized to stock narcotic drugs for narcotic addict treatment for that area and then transship the drug to approved narcotic treatment programs and approved hospital pharmacies. Alternative methods of distribution will be permitted if they are approved by the Food and Drug Administration and the State authority. Prior to any approval of an alternative method of distribution there will be consultation with the Drug Enforcement Administration, Department of Justice, to assure compliance with its regulations regarding controlled substance distribution.

(2) *Information regarding approved programs and hospitals.* The Food and Drug Administration will provide manufacturers and the public with names and locations of programs and

hospitals that have been approved to receive shipments of narcotic drugs for narcotic addiction treatment. All information contained in the forms required by paragraph (k) of this section is available for public disclosure except for names or other identifying information with respect to patients.

(3) *Acceptance of delivery.* Delivery shall only be made to a licensed practitioner employed at the facility. At the time of delivery the licensed practitioner shall sign for the drugs and place his or her specific title and identification number on any invoice. Copies of these signed invoices shall be kept by the manufacturer.

(k) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Scientific Investigations, Regulatory Management Branch (HFN-342), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Forms are available upon request from the Regulatory Management Branch (HFN-342), at the same address.

Form

FDA-2632—Application for Use of Narcotic Drugs in a Treatment Program.

FDA-2633—Medical Responsibility Statement.

FDA-2635—Consent to Methadone Treatment.

FDA-2636—Hospital Application.

Charles R. Schuster,
Director, National Institute on Drug Abuse.

Frank E. Young,
Commissioner of Food and Drugs, Food and Drug Administration.

Dated: May 1, 1987.

[FR Doc. 87-22626 Filed 10-1-87; 8:45 am]

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FRIDAY

Friday
October 2, 1987

Part III

**Department of
Education**

Office of Postsecondary Education

34 CFR Parts 656 and 657

**National Resource Centers Program for
Foreign Language and Area Studies or
Foreign Language and International
Studies and Foreign Language and Area
Studies Fellowships Program; Notices of
Proposed Rulemaking**

DEPARTMENT OF EDUCATION

34 CFR Part 656

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the National Resource Centers Program. The amendments are needed to implement changes made in Title VI of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498. The major statutory change requires separate criteria for evaluating applications for comprehensive and undergraduate Centers. The proposed regulations implement that statutory change.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to: Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, Room 3054, ROB-3, 400 Maryland Avenue SW., Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte, Telephone: (202) 732-3304.

SUPPLEMENTARY INFORMATION: The National Resource Centers Program is authorized by section 602(a) of the HEA and is designed to provide grants to institutions of higher education and combinations of those institutions to establish, operate, and strengthen national resource centers for the teaching of modern foreign languages plus area studies, international studies, and the international and foreign language aspects of professional studies. Before section 602(a) was amended by the Higher Education Amendments of 1986, it referred to graduate and undergraduate centers. After the amendments it specifically defined each type of Center and required separate evaluate criteria for comprehensive and undergraduate Center applications. Before the amendments, the same criteria were used to evaluate both types of Centers. The major regulatory

change in these proposed regulations is therefore the separate listing of these funding criteria.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Respondents to this program are major higher education institutions with enrollments of well over 500 students. They are not defined as small entities.

Paperwork Reduction Act of 1980

Sections 656.20, 656.21, and 656.22 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, ROB-3, 7th and D Streets SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any

other agency or authority of the United States.

List of Subjects in 34 CFR Part 656

Colleges and universities, Education, Educational study programs, Fellowship, Foreign Languages, Grant programs—education, Resource center, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.015A)

Dated: September 9, 1987.

William J. Bennett,
Secretary of Education.

The Secretary proposes to revise Part 656 of Title 34 of the Code of Federal Regulations to read as follows:

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.

- 656.1 What is the National Resource Centers Program?
- 656.2 Who is eligible to receive a grant?
- 656.3 What activities define a comprehensive or undergraduate National Resource Center?
- 656.4 What types of Centers receive grants?
- 656.5 What activities may be carried out?
- 656.6 What regulations apply?
- 656.7 What definitions apply?

Subpart B—How Does One Apply for a Grant?

- 656.10 What combined application may an institution submit?

Subpart C—How Does the Secretary Make a Grant?

- 656.20 How does the Secretary evaluate an application?
- 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?
- 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?
- 656.23 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

- 656.30 What are allowable costs and what are the limitations on allowable costs?

Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program For Foreign Language and Area Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards

grants to institutions of higher education and combinations of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

- (a) Stimulating the attainment of foreign language acquisition and fluency;
- (b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the foreign language is commonly used;
- (c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and
- (d) Instruction and research on issues in world affairs which concern one or more countries.

(Authority: 20 U.S.C 1122)

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C 1122)

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

- (a) Teaches modern foreign languages;
- (b) Provides—
 - (1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the languages taught are commonly used;
 - (2) Resources for training and research in international and foreign language aspects of professional and other fields of study; or
 - (3) Opportunities for training and research on issues in world affairs that concern one or more countries;
- (c) Provides outreach and consultative services on a national, regional, and local basis;
- (d) In the case of a comprehensive Center—
 - (1) Maintains specialized library collections; and
 - (2) Employs scholars engaged in research which relates to the subject area of the center; and
- (e) In the case of an undergraduate Center—

(1) Maintains library holdings, basic reference works, journals, and works in translation; and

(2) Employs faculty with strong credentials in language area, and international studies.

(Authority: 20 U.S.C 1122)

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

- (a) Focus on—
 - (1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or
 - (2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and
- (b) Provide training at the—
 - (1) Graduate, professional, and undergraduate levels, as a comprehensive center; or
 - (2) Undergraduate level only, as an undergraduate center.

(Authority: 20 U.S.C 1122)

§ 656.5 What activities may be carried out?

A Center may carry out any of the activities described in § 656.3 under a grant received under this part.

(Authority: 20 U.S.C 1122)

§ 656.6 What regulations apply?

The following regulations apply to this part:

- (a) 34 CFR Part 655.
- (b) The regulations in this Part 656.
- (c) The Education Department General Administrative Regulations [EDGAR] in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C 1122)

§ 656.7 What definitions apply?

The following definitions apply to this part:

- (a) The definitions in 34 CFR Part 655.
- (b) "Area studies" means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.
- (c) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.
- (d) "Comprehensive Center" means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization; and

(4) Makes training available to a graduate, professional, and undergraduate clientele.

(e) For purposes of this section, "intensive language instruction" means instruction of at least 5 contact hours per week during the academic year.

(f) "Undergraduate Center" means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree programs;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR Part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the criterion in § 656.21(1) or § 656.22(1) is used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary uses the following criteria in evaluating an application for a comprehensive Center:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Budget and cost effectiveness.* (5) (See 34 CFR 655.31(c)).

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(e) *Commitment to the subject area on which the center focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution will provide financial and other support to the Center, faculty members, and qualified students in fields related to the Center.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area and the educational levels (graduate, professional, undergraduate) on which the Center focuses; and

(2) The extent to which the institution will provide financial support for the acquisition of library materials and for library staff in the subject area of the Center.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality and extent of the Center's language training program including the adequacy of its instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the Center to carry out its purposes.

(h) *Quality of the Center's relationships within the institution.* (10) The Secretary reviews each application to determine the extent to which the Center—

(1) Provides multi- and interdisciplinary instruction; and

(2) Has entered into cooperative arrangements with departments, schools, and professional programs of the institution.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, organizations, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project in improving the knowledge of languages, areas, issues in world affairs which concern one or more countries, or international studies at the national level and in providing a national example of excellence and innovation in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center will provide to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to activities such as curriculum development, professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary uses the following criteria in evaluating an application for an undergraduate Center:

(a) *Plan of operation.* (10) [See 34 CFR 655.31(a)].

(b) *Quality of key personnel.* (15) [See 34 CFR 655.31(b)].

(c) *Budget and cost effectiveness.* (5) [See 34 CFR 655.31(c)].

(d) *Evaluation plan.* (5) [See 34 CFR 655.31(d)].

(e) *Commitment to the subject area on which the Center focuses.* (10) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area;

(2) The extent to which the institution is committed to the center by providing financial and other support to the Center and to tenured faculty members of the Center; and

(3) The extent to which students matriculate into advanced language and area or international studies programs or related professional programs.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area on which the Center focuses; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality of the Center's language training program, including the adequacy of instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the center to carry out its purposes.

(h) *Quality of the center's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which the Center provides multi- and interdisciplinary instruction;

(2) The extent to which the Center has entered into cooperative arrangements with departments, schools, and professional programs of the institution; and

(3) The extent to which substantial instruction in the subject area and languages on which the Center focuses have been incorporated into baccalaureate degree programs.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

- (1) The extent to which the proposed activities serve national needs;
- (2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and
- (3) The potential impact of the proposed project—those activities for which funding is requested—in improving the knowledge of languages, areas, or international studies at the national level and in providing a national example of excellence and innovation for undergraduate education in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

- (1) The quality and extent of the services the Center provides to persons and organizations outside the Center as these services relate to the provision of information and training primarily for national groups, but, also, for regional and local groups; and
 - (2) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.
- (l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Authority: 20 U.S.C. 1122)

§ 656.23 What priorities may the Secretary establish?

- (a) The Secretary may select one or more of the following funding priorities:
- (1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.
 - (2) Specific focus of a center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.
 - (3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours per week.
 - (4) Types of activities to be carried out, for example, cooperative summer intensive language programs or teacher training activities.
- (b) The Secretary announces any priorities in the application notice published in the *Federal Register*.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

- (1) Faculty and staff salaries and travel;
- (2) Library acquisitions;
- (3) Teaching and research materials;
- (4) Curriculum planning and development; and
- (5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops.

(b) *Limitations on allowable costs.*

The following are limitations on allowable costs:

- (1) Equipment costs exceeding ten percent of the grant are not allowable.
- (2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center focuses.
- (3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

[FR Doc. 87-22624 Filed 10-1-87; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

34 CFR Part 657

Foreign Language and Area Studies Fellowships Program

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Foreign Language and Area Studies Fellowships Program. These amendments are needed to implement changes made in Title VI of the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1986, Public Law 99-498. The statute and the proposed regulations increase the program's emphasis on language training and permit awards only to students taking languages for which their institution has developed or is developing competency-based instruction. The Higher Education Amendments of 1986 also authorized a

new Direct Individual Foreign Language and Area Studies fellowship program for which regulations will be developed in another Part.

DATE: Comments must be received on or before November 2, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3054, ROB-3), Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte; Telephone: (202) 732-3304.

SUPPLEMENTARY INFORMATION: The Foreign Language and Area Studies Fellowships Program was originally established under the National Defense Education Act of 1958 and has been included in the Higher Education Act authorization since 1980. Under this program institutions of higher education apply to the Secretary for allocations of fellowship funds which are in turn awarded to students undergoing advanced training in study of a modern foreign language in combination with either area studies, international studies, or international aspects of professional fields.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Respondents to this program are major higher education institutions with enrollments of well over 500 students. They are not small entities.

Paperwork Reduction Act of 1980

Sections 657.3, 657.20, and 657.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations, and in particular, the proposed definition of competency-based language training in § 657.5(f).

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, 7th & D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 657

Colleges and universities, Education, Educational study program, Fellowships, Foreign languages, Grant program—Education, Reporting and recordkeeping requirements.

Dated: August 24, 1987.

William J. Bennett,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.015, Foreign Language and Area Studies Fellowships Program)

The Secretary proposes to revise Part 657 of Title 34 of the Code of Federal Regulations to read as follows:

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.
657.1 What is the Foreign Language and Area Studies Fellowships Program?

Sec.
657.2 Who is eligible to receive an allocation of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply?
657.5 What definitions apply?

Subpart B—How Does an Institution or a Student Submit and Application?

657.10 What combined application may an institution submit?
657.11 How does a student apply for a fellowship?

Subpart C—How Does the Secretary Select An Institution for an Allocation of Fellowships?

657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?
657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?
657.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met By a Grantee and a Fellow?

657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?
657.31 What is the amount of a fellowship?
657.32 What is the payment procedure for fellowships?
657.33 What are the limitations on the use of funds for overseas fellowships?
657.34 Under what circumstances must an institution terminate a fellowship?
Authority: 20 U.S.C. 1122, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowship Program?

Under the Foreign Language and Area Studies Program, the Secretary awards fellowships, through institutions of higher education, to students who are—

- (a) Enrolled for advanced training in a center or program approved by the Secretary under this part; and
- (b) Undergoing competency-based modern foreign language training or training in a program for which competency-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

§ 657.2 Who is eligible to receive an allocation of Fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a combination of institutions of higher education that—

- (1) Operates a center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of competency-based training or developing a competency-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program 34 CFR Part 656, or the Undergraduate International Studies and Foreign Language Program, 34 CFR Part 658, to receive an allocation of fellowships under this Part.

(Authority: 20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a) (1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement, based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(d) Is enrolled in modern foreign language training in a language for which the institution has developed or is developing competency-based instruction.

(Authority: 20 U.S.C. 1122)

§ 657.4 What regulations apply?

The following regulations apply to the program:

- (a) 34 CFR Part 655.
- (b) The regulations in this Part 657.
- (c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations), and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1122)

§ 657.5 What definitions apply?

The following definitions apply to this Part:

- (a) The definitions in 34 CFR 655.4.
- (b) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.
- (c) "Fellow" means a person who receives a fellowship under this Part.
- (d) "Fellowship" means the payment a fellow receives under this Part.
- (e) "Program" means a concentration of educational resources and activities in modern foreign language training and related studies.
- (f) "Competency-based language training" means a training program which has defined functional language use objectives and whose evaluation measures for students can be linked to established national standards.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR Part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

- (a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.
- (b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship

and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's center or program. The applicant's center or program is evaluated and approved under the criteria in § 657.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary selects applicants for an allocation of fellowships on the basis of the quality of the applicant's center or program. The Secretary uses the following criteria in evaluating the applicant's center or program:

- (a) *Plan of operation.* (5) (See 34 CFR 655.31(a)).
- (b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).
- (c) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).
- (d) *Commitment to the subject area on which the center or program focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area of the center or program as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution provides financial and other support to the center or program, to faculty members of the center or program, and to qualified students in fields related to the center or program.

(e) *Strength of library.* (15) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area of the center or program; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(f) *Quality of the center's or program's instructional program.* (40) The Secretary reviews each application to determine—

(1) The quality and extent of the course offerings (15);

(2) The quality of the modern foreign language training program, as measured by the scope of the competency-based language instruction which is being used or developed, the adequacy of instructional resources, and the nature of language proficiency requirements (15);

(3) The extent to which a sufficient number of scholars or teaching faculty are employed to enable the center or program to carry out its purposes (5); and

(4) The relationship of the language program to area studies, international studies, or international aspects of professional studies (5).

(g) *Quality of the center's or program's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which multi- and interdisciplinary instruction is included; and

(2) The extent to which cooperative arrangements with departments, schools, and professional programs of the institution exist.

(h) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(i) *Need and potential impact.* (5) The Secretary reviews each application to determine—

(1) The extent to which the center or program supports training that is needed nationwide;

(2) The extent to which the center or program's plans for selection and training of fellows in language and area studies or language and international studies will foster an improved supply of specialists in the subject area of the center or program.

(j) *Priorities.* (20) If one or more priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the center or program meets these priorities.

(Authority: 20 U.S.C. 1122)

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships—

- (1) Specific world areas, or countries, such as East Asia or Mexico;
- (2) Languages, such as Chinese;
- (3) Levels of language offerings;
- (4) Academic disciplines, such as linguistics or sociology;
- (5) Professional studies, such as business, law, or education;
- (6) Particular subjects, such as population growth and planning, or international trade and business;
- (7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the *Federal Register*.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?**§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?**

(a) *Duration*. An institution may award a fellowship to a student for—

- (1) One academic year; or
- (2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies*. If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

- (1) The student meets the eligibility requirements in § 657.3; and
- (2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester or summer

session as described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a fellowship in an amount that covers the cost of the fellow's tuition and fees and an allowance for subsistence.

(2) If permitted by the Secretary, the institution may include an allowance for travel and an allowance for dependents.

(b) The Secretary announces in the annual application notice published in the *Federal Register*—

(1) The amount of subsistence allowances which may range from \$5,000 to \$8,000 for an academic year and from \$1,250 to \$2,000 for a summer session;

(2) Whether dependents' and travel allowances will be permitted; and

(3) The amount of dependents' and travel allowances which may be up to \$500 per dependent for the dependency allowance and up to the lesser of \$750 or the actual travel cost for the travel allowance.

(c) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center or program focuses.

(Authority: 20 U.S.C. 1122)

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(Authority: 20 U.S.C. 1122)

§ 657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an advanced overseas modern foreign language program approved by the institution at which the student is enrolled in the United States; or

(2) Engaged in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§ 657.34 Under what circumstances must an institution terminate a Fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

[FR Doc. 87-22625 Filed 10-1-87; 8:45 am]

BILLING CODE 4000-01-M

Friday
October 2, 1987

REGISTRATION
OF
RADIOACTIVE
MATERIALS

Part IV

**Department of
Transportation**

**Research and Special Programs
Administration**

**Connecticut Statute and Regulations
Governing Transportation of Radioactive
Materials; Notice**

DEPARTMENT OF TRANSPORTATION

[Inconsistency Ruling No. IR-21; Docket IRA-38]

Connecticut Statute and Regulations Governing Transportation of Radioactive Materials

Applicant: Citizens Against Nuclear Trucking.

State Regulations Affected: Sections 16a-106 (a) and (b) of the Connecticut General Statutes and sections 19-409d-51, 53, 54, and 55 of the Connecticut Regulations governing transportation of certain radioactive materials.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Mode Affected: Highway.

Issue Date: September 28, 1987.

Ruling: Connecticut General Statutes sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54 and 55 are inconsistent with the HMTA and the HMR.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Connecticut General Statutes sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54, and 55 are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201 through 107.209.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366-4362].

I. Background

A. Chronology

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain

notice, routing, permit, information, documentation and time requirements.

CANT alleges that its members live and work near, and utilize, a highway (Interstate 84) affected by the cited provisions, and thus are affected by the Connecticut provisions.

CANT specifically requested that the Connecticut provisions be tested for inconsistency with Appendix A to 49 CFR Part 177 and with 49 CFR 177.825. However, as indicated in the Public Notice and Invitation To Comment (51 (FR) 34524, September 29, 1986), comparison with Appendix A will not be undertaken because Appendix A is not a law or regulation, but merely a statement of DOT policy. Thus, comparison of the Connecticut provisions will be made only with 49 CFR 177.825 and any necessarily-related HMTA or HMR provisions and in accordance with relevant prior inconsistency rulings.

CANT asserts that the Connecticut provisions are inconsistent for three general reasons:

(1) They impose routing and filing requirements for shipments of materials that are exempted from such requirements under Federal rules;

(2) They require filing of additional documents beyond those required by Federal rules; and

(3) They create time and escort restrictions in conflict with Federal rules.

In response to the previously cited Public Notice and Invitation To Comment, the State of Connecticut (the State) filed comments opposing CANT's application. The State contends that CANT's application fails to demonstrate that CANT has the requisite standing to challenge the State's provisions. It also argues that the application fails to articulate how or in what manner the Connecticut provisions are inconsistent with Federal law and thus fails to provide an adequate basis for an informed decision.

B. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts " * * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision. If a State or political subdivision requirement is found to be inconsistent, the State or local government may apply to the Administrator of the Research and Special Programs Administration (RSPA) of DOT for a waiver of Preemption. (49 App. U.S.C. 1811(b); 49 CFR 107.215 through 107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a State or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a)

"in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37-38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

II. CANT's Standing To Apply For Inconsistency Ruling

Connecticut contends that CANT has not demonstrated that it has the requisite standing to request an inconsistency ruling and that the application should be dismissed on that basis. The State cites the language of 49 CFR 107.203 providing that " * * * any person affected by a requirement of a State * * * may apply to OHMT for an administrative ruling as to whether a particular existing requirement of the State * * * is inconsistent with a requirement of the Act or the regulations issued under the Act." (Connecticut's emphasis added.)

The State contends that CANT has failed to demonstrate how the Connecticut statute and regulations affect CANT itself. It adds that the application is silent as to how the Connecticut provisions jeopardize the safety of CANT's members.

The State says that standing must be considered "within the context of administrative proceedings and in light of the purpose of the Federal law and regulations under which the Application is filed." It further argues that, in view of the "judicial character of the inconsistency ruling proceeding" (49 FR 46633, November 27, 1984), CANT must meet the judicial standard for standing. Connecticut cites numerous court decisions on judicial standing and explains why it believes CANT does not meet the applicable tests.

Finally, the State contends that CANT also fails to allege a sufficient interest to establish standing under nonjudicial standards applicable to administrative proceedings. It cites *Koniag, Inc. v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978) for the proposition that administrative standing should be tailored to the concerned agency's functions. It then

argues that the HMR are aimed at shippers and carriers of hazardous materials, that CANT and its members are neither, and that CANT's application fails to show any relationship between CANT and its members and the Connecticut regulatory scheme.

On the issue of standing, CANT states the following in its original application:

CANT members live and work near the Interstate 84 portion of the designated route used by shippers of irradiated nuclear fuel from nuclear power plants in New England and are thus in the zone considered at risk by such shipments according to "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" (DOT Guidelines), page 18. Members also utilize the route during the hours required by the Connecticut regulation. CANT members are therefore affected in several ways by Connecticut's rules restricting commercial shipments of irradiated nuclear fuel.

In response to Connecticut's objections to its standing in this matter, CANT responds that judicial standing requirements do not apply in administrative proceedings and that it meets the requirements for standing in such proceedings. It cites *Ingalls Shipbuilding Division v. White*, 681 F.2d 275, 285 (5th Cir. 1982), for the proposition that:

" * * * administrative proceedings * * * are not Article III proceedings to which either the "case or controversy" or judicial standing requirements apply. Within their legislative mandates, agencies are free to hear actions brought by parties who might be without standing if the same issues happened to be before a federal court.

CANT contends that its standing should be evaluated under the following five-point functional test of administrative standing set forth by Judge Bazelon in a concurring opinion in *Koniag, Inc. v. Andrus, supra*, at 616:

- (1) The nature of the interest asserted by the potential participant.
- (2) The relevance of this interest to the goals and purposes of the agency.
- (3) The qualifications of the potential participant to represent this interest.
- (4) Whether other persons could be expected to represent adequately this interest.
- (5) Whether special considerations indicate that an award of standing would not be in the public interest.

CANT indicates that it is a person or organization speaking for the affected public as were the plaintiffs in *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966), and *National Welfare Rights Organization v. Finch*, 429 F.2d (D.C. Cir. 1970). It asserts:

CANT is uniquely qualified to represent the interests of those persons in the tri-state New York metropolitan area because of the

professional qualifications of many of its key members * * * and because it is the only organization in that metropolitan area which has safe transportation of nuclear materials as its sole objective.

Finally, CANT attaches an affidavit of its member and Technical Director Lindsay Audin in which he asserts that he is a frequent user of I-84 in both New York and Connecticut.

Through its inconsistency ruling process, the Research and Special Programs Administration (RSPA) provides a means of resolving, through non-binding, advisory opinions, preemption issues arising under the HMTA. The process may alleviate expensive and time-consuming litigation of such issues and may produce an inherently consistent body of interpretations. It also enables RSPA to advise State and local governments concerning what types of requirements are consistent or inconsistent with the HMTA and the HMR, thereby possibly assisting in the avoidance of inconsistent enactments.

This RSPA function is prompted by broad construction of the "person affected" test contained in § 107.203 of the HMR. RSPA has considerable discretion to adopt such a broad construction of its administrative standing regulation. *Koniag, Inc. v. Andrus, supra*; *American Trucking Associations v. U.S.*, 627 F.2d 1313 (D.C. Cir. 1980).

In fact, the issue of standing is rendered moot if the Director, OHMT, decides to address the preemption of a particular state or local requirement. This is because § 107.209(b) of the HMR authorizes the Director, *sua sponte*, to issue inconsistency rulings. In fact, five inconsistency rulings have been issued under this authority. IR-11 (49 FR 46647), IR-12 (49 FR 46650), IR-13 (49 FR 46653), IR-14 (FR 46656), IR-15 (49 FR 46660) (all November 27, 1984).

OHMT encourages use of its inconsistency ruling process to resolve preemption issues under the HMTA in as expeditious and inexpensive a manner as possible. Thus, OHMT will apply a broad interpretation of the "person affected" standard in this and future inconsistency proceedings. In the case at hand, therefore, CANT does have standing to apply for an inconsistency ruling, and an inconsistency ruling is being issued concerning the Connecticut statutory and regulatory provisions challenged by CANT.

III. Connecticut Statutory and Regulatory Provisions

A. Overview

Connecticut General Statutes (CGS) section 16a-106(a) prohibits transportation in Connecticut without a permit of certain radioactive wastes, "large quantity" radioactive materials, and radioactive materials and wastes which are required to be placarded. CGS section 16a-106(b) specifies information which must be submitted to the Commissioner of the Department of Transportation (the Commissioner) to obtain a permit; sets a standard for permit issuance; provides time requirements for permit processing; authorizes the Commissioner to require date, time and route changes or the use of escorts; and requires the Commissioner of Public Safety to establish inspection procedures to ensure compliance with permit conditions and the Commissioner's regulations.

The Commissioner's implementing regulations are in Connecticut Regulations sections 19-409d-51, 53, 54 and 55. Those sections, respectively, address the purpose of the regulations, definitions, permit application requirements, and permit conditions.

B. Statutory Provisions

CGS sections 16a-106(a) provides:

No person shall transport into or through the state any of the following materials: (1) Any quantity of radioactive material specified as a "large quantity" by the Nuclear Regulatory Commission in 10 CFR, Part 71, entitled "Packaging of Radioactive Material for Transport"; (2) any quantity of radioactive waste which has been produced as part of the nuclear fuel cycle and which is being shipped from or through the state to a waste disposal site or facility or (3) any shipment of radioactive material or waste which is carried by commercial carrier and which is required in 10 CFR or 49 CFR to have a placard unless such person has been granted a permit to transport such material from the commissioner of transportation.

In general, hazardous materials transportation permits are not inconsistent *per se*, and their consistency depends upon their specific requirements. IR-2 (44 FR 75566, Dec. 20, 1979); IR-3 (46 FR 18198, March 26, 1981); IR-20 (52 FR 24396, June 30, 1987). However, the field of radioactive materials transportation safety is unique. Because the HMTA and HMR have almost completely occupied the field of radioactive materials transportation safety, state and local transportation requirements relating thereto are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of alternative preferred

routes under 49 CFR 177.825(b), (3) adoption of Federal or consistent requirements or those for which preemption has been waived, (4) enforcement of the requirements described in (3), and (5) imposition of transit fees to finance the enforcement described in (4) as well as emergency response. IR-8 (Appeal) (52 FR 13000, April 20, 1987); IR-10 through IR-15 (49 FR 46645 to 46660, November 27, 1984); IR-15 (Appeal) (52 FR 13062, April 20, 1987); IR-17 (51 FR 20925, June 9, 1986); IR-17 (Appeal) (52 FR 36200, September 25, 1987); IR-18 (52 FR 200, January 2, 1987); IR-19 (52 FR 24404, June 30, 1987); IR-20, *supra*. RSPA's Administrator discussed this issue in rejecting Vermont's appeal of the OHMT Director's decision in IR-15, *supra*. In IR-15 (Appeal), the Administrator said:

In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR. IR-8 (49 FR 46637), IR-10 (49 FR 46645), IR-11 (49 FR 46647), IR-12 (49 FR 46650), IR-13 (49 FR 46653) (all Nov. 27, 1984). Vermont's Rule V purports to authorize state approvals, conditions, and limitations in this field and thus is inconsistent.

52 FR 13063.

In light of this broad preemption of radioactive materials transportation permitting, CGS section 16a-106(a) is inconsistent with the HMTA and the HMR and, therefore, is preempted.

The other statutory provision at issue, CGS section 16a-106(b), provides:

Prior to the transporting of such materials, such person shall apply to the commissioner of transportation for a permit and provide said commissioner with the following information: (1) Name of shipper, (2) name of carrier, (3) type and quantity of radioactive material or waste, (4) proposed date and time of shipment, (5) starting point, scheduled route, and destination and (6) any other information required by the commissioner. Said commissioner shall grant such permit upon a finding that the transporting of such material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the state. Such permit shall be granted or denied not later than three days, Saturdays and Sundays excluded, after such person has applied for such permit, except that if the commissioner determines that such additional time is required to evaluate such application, the commissioner shall notify such person not later than such three-day period that additional time is required. Said commissioner may require changes in dates, routes or time for the

transporting of such material or the use of escorts in the transporting of such material or waste if necessary to protect the public health and safety. The commissioner may consult with the commissioner of environmental protection and the commissioner of public safety prior to the granting of any permit and of the terms and conditions of such permit. The commissioner of public safety shall establish an inspection procedure along scheduled routes to ensure compliance with permit conditions and with regulations adopted by the commissioner of transportation pursuant to subsection (c).

Because this section is inextricably related to, and "fleshes out," the inconsistent permitting requirements of CGS section 16a-106(a), it also is inconsistent with the HMTA and the HMR and thus preempted.

There are several additional reasons that this section is inconsistent with the HMTA and the HMR. First, it contains radioactive materials transportation information requirements exceeding those in the HMR. In the Action on Appeal concerning IR-15, *supra*, RSPA's Administrator addressed the consistency of such requirements:

It is clear that DOT and NRC have determined what information and documentation requirements should be imposed on carriers for the safe transportation of radioactive materials, including information needed for emergency response. Therefore, state and local requirements applicable to carriers going beyond the Federal requirements create confusion for transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. (IR-2 (44 FR 75566, Dec. 20, 1979); IR-6 (48 FR 760, Jan. 6, 1983); IR-8 (49 FR 46637, Nov. 27, 1984).

52 FR at 13062. The Connecticut information requirements go beyond those in the HMR, and, therefore, are inconsistent with the HMTA and the HMR.

Second, although CGS section 16a-106(b), unlike the Nevada PSC regulations in IR-19, *supra*, does contain a standard for issuance or denial of a permit, it shares with those regulations a fatal propensity to cause delay in the transportation of hazardous materials. RSPA's concerns about delays in such transportation are long-standing. This issue was addressed in an early ruling: "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with such transportation." IR-2, *supra*, at 75571. Section 177.853 of the HMR directs that highway shipments proceed without unnecessary delay. The Connecticut statute at issue

here provides three working days for a decision and further allows additional time if the Commissioner determines it is required to evaluate the application. Unnecessary delay is inherent in such a provision; therefore, it is inconsistent with the HMTA and the HMR. IR-6, 48 FR 760 (January 6, 1983); IR-16, 50 FR 20872 (May 20, 1985); IR-19, *supra*.

Third, CGS section 16a-106(b) authorizes the Commissioner to require date, time or route changes or the use of escorts for transport of radioactive materials or wastes. The time issues are discussed below under "Regulatory Provisions." However, discretionary state routing requirements for the transportation of radioactive materials are inconsistent with § 177.825 of the HMR because they are neither identical to that section nor state-designated alternative routes authorized by that section. IR-8 (Appeal), IR-16, IR-18, IR-20, all *supra*; *Jersey Central Power & Light Co. v. State of New Jersey*, Civil No. 84-5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3rd Cir. 1985). In addition, requirements to provide escorts for radioactive materials shipments beyond those escorts required by the HMR (including Nuclear Regulatory Commission (NRC) requirements incorporated therein) are inconsistent with the HMR. IR-11, IR-13, IR-15 (Appeal), IR-18, all *supra*. Thus, the Connecticut routing and escort provisions both are inconsistent with the HMR.

Fourth, CGS section 16a-106(b) authorizes the establishment of inspection procedures to ensure compliance with permit conditions and the Commissioner's regulations. Although inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are themselves consistent (IR-2, IR-15, IR-20, all *supra*; IR-8, 49 FR 46637 (November 27, 1984); IR-17, 51 FR 20925 (June 9, 1986)), inspection requirements, such as this one, relating to inconsistent permitting requirements are themselves inconsistent. IR-20, *supra*.

In summary, for the foregoing reasons, CGS sections 16a-106 (a) and (b) are inconsistent with the HMTA and the HMR.

Regulatory Provisions

The challenged Commissioner's regulations, Connecticut Regulations sections 19-409d-51, -53, -54 and -55 (printed in Appendix A to the Public Notice and Invitation to Comment concerning this inconsistency ruling application, 51 FR 34526-7, September 29, 1986) merely implement the State's inconsistent statutory permitting system and, therefore, are themselves

inconsistent with the HMTA and the HMR. In addition, they contain several independently inconsistent provisions, which are discussed in the following paragraphs.

Section 19-409d-51 states that the regulations relate to the transport of, among others, "large quantities of radioactive materials." Section 19-409d-53 defines "large quantity" as the same definition in the NRC regulations at 10 CFR Part 71. The HMR previously contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM-169, 48 FR 10218), the term "highway route controlled quantity" replaced "large quantity radioactive materials." Continued use of this superseded terminology over four years later could cause confusion and undermine compliance with the HMTA and the HMR. In light of the exclusive Federal role in defining hazardous materials (IR-5, 47 FR 51991 (November 18, 1982); IR-6, IR-8, IR-12, IR-15, IR-16, all *supra*) and of a finding in IR-18, *supra*, that a similar provision is inconsistent, the Connecticut definition is inconsistent with the HMR.

Section 19-409d-54 contains the following sentence regarding time requirements:

No applications will be processed without a two-hour advance notice nor will an application be accepted more than one working day in advance of the scheduled move except that the Commissioner reserves the right to waive the advance requirement notice when it is in the best interest of public health and safety.

A similar two-hour advance notice requirement with no stated purpose was found inconsistent in IR-20, *supra*. The prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tends to ensure delays in hazardous materials transportation. As indicated above in the discussion of delays under "Statutory Provisions," this prohibition, therefore, is inconsistent with the HMTA and the HMR. IR-2, IR-3, IR-8 (Appeal), IR-18, IR-19, IR-20, all *supra*. That same section requires two extensive certificates, one from the shipper concerning compliance with NRC and DOT regulations and another from the carrier concerning proper loading, blocking and securing and compliance with DOT regulations. These certification/documentation requirements are similar to the statutory information requirements discussed above. Requirements for information or documentation in excess of the HMR requirements create an additional burden or delay and are inconsistent

with the HMTA and the HMR. IR-2, IR-6, IR-8, IR-8 (Appeal), IR-15, IR-15 (Appeal), IR-18, IR-19, all *supra*. Specifically, requirements for certification to a state of a shipment's compliance with law are redundant, constitute obstacles to the HMTA, and thus are inconsistent. IR-8, IR-15, both *supra*. For all these reasons, the Connecticut regulatory certification/documentation requirements are inconsistent with the HMTA and the HMR.

The final provision at issue is Connecticut Regulations section 19-409d-55, which states:

In the interest of public health and safety, the following requirements are to be considered a condition of the permit.

1. All routes will be determined by the Connecticut department of energy.
2. All shipments are to be made during daylight hours between the hours of 9:00 a.m. thru 4:00 p.m.
3. The permit is void on Saturdays, Sundays, and holidays.
4. The permit or a confirmation of it must be in the possession of the operator of the vehicle while transporting the radioactive materials over Connecticut state highways.

Paragraph 1. is inconsistent with the HMTA and the HMR because, as indicated above, discretionary state routing requirements for the transportation of radioactive materials have been preempted by RSPA's total occupation of the field of radioactive materials transportation through the promulgation of the HMR. Transportation of radioactive materials in accordance with the HMR, including the routing requirements thereof, are presumptively safe, and, therefore, state and local routing requirements applicable to them (except for state designation of alternative preferred routes under § 177.825b) are inconsistent.

Paragraphs 2. and 3. are inconsistent statewide delay-inducing restraints on the transportation of certain radioactive materials. Cumulatively they would restrict that transportation anywhere in Connecticut to 9 a.m. to 4 p.m. on non-holiday weekdays. On the one hand, limited citywide rush-hour or weekday time restrictions may be consistent with the HMTA and the HMR. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2nd Cir. 1982), *affirming City of New York v. Ritter Transportation Co.*, 515 F. Supp. 663 (S.D.N.Y. 1981); IR-3, *supra*. However, statewide time restrictions are of much greater concern because of their greater tendency to redirect and delay hazardous materials transportation. For example, Rhode Island's statewide

prohibition on hazardous materials transportation between 7-9 a.m. and 4-6 p.m. on weekdays was held inconsistent in IR-12, *supra*, and *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983).

Although those inconsistent Rhode Island provisions prohibited hazardous materials transportation during only 20 of the 168 hours in a week, the Connecticut regulatory provisions at issue here prohibit certain radioactive materials transportation during 133 of the 168 hours in a week (or 140 of the 168 hours when a holiday occurs on a weekday).

Connecticut supports its weekday hours time restrictions with the following data:

[In percent]

Time period	Total daily traffic on highways statewide	Total daily accidents on highways statewide
9 am to 4 pm	41	34
7 pm to 6 am	20	36
4 pm to 7 pm	21	23
6 am to 9 am	18	8

CANT responds that this data supports CANT's contention that the State creates a safety hazard by restricting shipments to the busiest traffic period. It says that the data shows that the State restricts shipments to the seven hours a day when 41% of

the traffic is on its highways and over one-third of the accidents occur.

The State's data indicates that a total of 41% of its traffic moves and that 34% of its accidents occur during the 7 daily hours (29% of each day) when it allows this radioactive materials transportation, and that 59% of its traffic moves and that 66% of its accidents occur during the 17 daily hours (71% of each day) when it prohibits this transportation. The data thus indicates that both traffic and accidents are proportionately *less* during the hours when radioactive materials transportation is prohibited than when such transportation is authorized. That data does not provide adequate justification for Connecticut's burdensome and delay-inducing statewide weekday restrictions, let alone its weekend and holiday transportation prohibition. As in IR-14, *supra*, the term "holiday" is not defined; it is unclear whether it includes Federal, state or local holidays.

Paragraph 4., which is essentially identical to a provision in Connecticut Regulations 19-409d-54, is an additional inconsistent documentation requirement. Requirements for carriage of documents additional to those required by the HMR for radioactive materials transportation are inconsistent with the HMTA and the HMR. IR-2, IR-8 (Appeal), IR-15, IR-15 (Appeal), all *supra*.

IV. Summary

Connecticut's statutory and regulatory permitting system for the transportation of certain radioactive materials contains information, documentation, certification and operational requirements exceeding those of the HMTA and the HMR. It also contains burdensome time of application requirements and time of transport restrictions which are likely to cause delays in hazardous materials transportation. For these reasons, the State's statutory and regulatory provisions constitute an obstacle to the accomplishment and execution of the HMTA and the HMR and, therefore, are inconsistent with them.

V. Ruling

For the foregoing reasons, I find Connecticut General Statutes sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54, and 55, inconsistent with the HMTA and the HMR and, therefore, preempted under 49 App. U.S.C. 1811(a).

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on September 28, 1987.

Alan I. Roberts,
 Director, Office of Hazardous Materials Transportation.
 [FR Doc. 87-22851 Filed 10-1-87; 8:45 am]
 BILLING CODE 4910-60-M

NOTICE

**Friday
October 2, 1987**

Part V

**Department of
Education**

**Educational Grant Research Program;
Proposed Funding Priority and Invitation
of Applications for New Awards for
Fiscal Years 1988 and 1989; Notices**

DEPARTMENT OF EDUCATION**Educational Research Grant Program; Proposed Funding Priority for Fiscal Years 1988 and 1989****AGENCY:** Department of Education.**ACTION:** Notice of proposed funding priority for Fiscal Years 1988 and 1989.**SUMMARY:** The Secretary proposes to establish a funding priority by reserving a portion of the funds available for the Educational Research Grant Program, for Fiscal Years 1988 and 1989, to support research projects led by teachers in public and private elementary and secondary schools.**DATE:** Comments must be received on or before November 2, 1987.**ADDRESS:** Comments should be addressed to Joseph C. Vaughan, Research Applications Division, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., (Room 504C—M/S 1508), Washington, DC 20208.**FOR FURTHER INFORMATION CONTACT:** Joseph C. Vaughan Telephone: (202) 357-6193.**SUPPLEMENTARY INFORMATION:** The purpose of the Educational Research Grant Program (ERGP) is to support scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.**Proposed Absolute Priority**

The Secretary proposes to give an absolute priority under the ERGP for Fiscal Years 1988 and 1989, for a portion of the total funds to be appropriated for the ERGP during Fiscal years 1988 and 1989, to applications that respond to the priority described below. Only applications which meet this priority will be considered under this competition.

Teacher-Led Research Projects Endorsed by Appropriate Education Officials and Addressing One or More Selected Topics

The Secretary proposes to support only those applications which are for teacher-led research projects. Teacher-led research projects are those in which one or more classroom teachers serve as principal investigators for the project, although involvement of other personnel such as school administrators, supervisors of teachers, curriculum specialists, and staff developers may also be appropriate.

Under this proposed priority, each application must also be endorsed by appropriate education officials. An application for a teacher-led research

project at a public school must include an endorsement from appropriate officials of the local educational agency (LEA). An application for a teacher-led research project at a private school must include an endorsement from the leadership of that school if the school is not a part of a larger local organization of private schools. If the application is for a teacher-led research project in a larger local organization of private schools, the endorsement must come from appropriate officials of the larger local organization of schools. To satisfy the requirement for an endorsement, an application must contain assurances from the entity providing the endorsement that the proposed project addresses issues important to local educational improvement, that the appropriate education officials will provide the project participants with adequate time, facilities and support to conduct the project, and that the appropriate education officials will give the results of the project the fullest possible consideration in addressing related improvements.

The Secretary also proposes that each grantee, in carrying out its teacher-led project, must address one or more of the following topics. Following each topic are examples, illustrative only, of specific study emphases which might be included under that topic.

1. Teachers' roles and teaching functions (e.g., instructional roles, roles as a professional educator, parent-teacher interactions in teaching).
2. Specific instructional processes and materials (e.g., effective teaching techniques, classroom management strategies, organizing learning groups).
3. Effective teaching of subject matter content (e.g., subject specific approaches, interdisciplinary strategies, examining appropriateness of content).
4. Approaches to professional development of educational personnel (e.g., inservice education, induction of beginning teachers, school-based preservice initiatives).
5. Alternative patterns of school management and organization (e.g., administrator-teacher shared decision-making, differentiated staffing, career ladder programs).
6. Ways for schools to find, understand, and use research and practice-based knowledge more effectively in local improvement initiatives (e.g., development of local problem-solving capacity, diagnosing readiness for change, implementing and assessing research-based improvements).
7. More effective strategies to assess student, teacher or school indicators of

excellence (e.g., student testing strategies, measurement of achievement of school-wide objectives, teacher performance assessment).

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 504C, 555 New Jersey Avenue, NW., Washington, DC 20208 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1221e)

(Catalog of Federal Domestic Assistance No. 84.117; Educational Research Grant Program)

Dated: September 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-22844 Filed 10-1-87; 8:45 am]

BILLING CODE 4000-01-M

[#84.117K]

Education Grant Research Program; Invitation of Applications for New Awards for Fiscal Years 1988 and 1989

Purpose: To invite applications for research projects led by teachers in public and private elementary and secondary schools.

Deadline for Transmittal of Applications: December 4, 1987.

Applications Available: October 9, 1987.

Estimated Available Funds for FY 1988 and 1989: \$150,000 in Fiscal Year 1988 and \$250,000 in Fiscal Year 1989. Both Fiscal Year 1988 and Fiscal Year 1989 awards for this competition are subject to availability of funds in those fiscal years.

While this notice describes a single grant competition, it is the intent of the U.S. Department of Education's Office of Educational Research and Improvement (OERI) to make two sets of awards from this competition. Applicants should indicate proposed start and end dates for their projects. Pending availability of funds for Fiscal Year 1988, OERI intends to make approximately 30 awards for projects that may begin as early as April 1, 1988. If funds are available for Fiscal Year 1989, OERI also intends to make approximately 50 additional awards for projects that would have start dates no earlier than October 1, 1988. For this reason, applicants who propose a start date prior to October 1, 1988, should also indicate if they would be willing to negotiate a later start date.

Estimated Maximum Size of Award: \$5,000.

Estimated Number of Awards: 30 in Fiscal Year 1988 and 50 in Fiscal Year 1989.

Project Period: Up to 12 months.

Priorities

Proposed Absolute Priority: The Secretary has proposed, in a notice in this issue of the **Federal Register**, an absolute priority for research projects led by teachers in public and private elementary and secondary schools. Subject to the Secretary's adoption of a final priority after consideration of public comments, applications must meet this proposed absolute priority in order to be eligible to be considered for an award.

Weighting for Selection Criteria

The program regulations at 34 CFR 700.30(d) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.31 to bring the total to a maximum of 100 points. The Secretary

will distribute the reserved 25 points as follows:

Plan of Operation (§ 700.31(a)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 15 points;

Adequacy of Resources (§ 700.31(e)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 10 points;

Technical Soundness (§ 700.31(g)): Five (5) additional points will be assigned to the criterion, bringing the possible total for this criterion to 20 points;

Applicant's Commitment and Capacity (§ 700.31(h)): Ten (10) additional points will be assigned to the criterion, bringing the possible total for this criterion to 10 points.

Applicable Regulations

(a) The Educational Research Grant Program Regulations, in 34 CFR Part 700, (b) when adopted in final form, the Notice of Proposed Funding Priority for Fiscal Year 1988 and 1989, published in this issue of the **Federal Register**, and (c)

the Education Department General Administrative Regulations, in 34 CFR Parts 74, 75, 77 and 78. Applicants should prepare their applications based on the regulations, the Notice of Proposed Funding Priority for Fiscal Years 1988 and 1989 and this application notice. If there are any substantive changes made in the Notice of Proposed Funding Priority for Fiscal Years 1988 and 1989 when it is published in final form, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Joseph Vaughan, OERI, Programs for the Improvement of Practice, Research Applications Division, Room 504C, 555 New Jersey Avenue, NW., Washington, DC 20208-1430, (202) 357-6193.

Program Authority: 20 U.S.C. 1221e.

Dated: September 29, 1987.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87-22845 Filed 10-1-87; 8:45 am]

BILLING CODE 4000-01-M

NOTICE
OF
APPROVAL

Friday
October 2, 1987

Part VI

**Office of Personnel
Management**

**Personnel Management Demonstration
Project; Alternative Personnel
Management System at the National
Bureau of Standards; Notice of Approval**

OFFICE OF PERSONNEL MANAGEMENT

Personnel Management Demonstration Project; Alternative Personnel Management System at the National Bureau of Standards

AGENCY: Office of Personnel
Management.

ACTION: Notice of approval of a
demonstration project final plan.

SUMMARY: The National Bureau of Standards Authorization Act For Fiscal Year 1987 (Pub. L. 99-574) directed the Office of Personnel Management (OPM) and the National Bureau of Standards (NBS) to "jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards." Section 10 of the Act, which covers the project, further provides that "The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code . . ." Section 4703 requires the Office of Personnel Management to publish the final project plan in the *Federal Register*. This notice meets that requirement.

DATES: *Approval date:* The demonstration project plan was approved by the Office of Personnel Management on September 29, 1987. *Project implementation date:* January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

NBS: Allen Cassidy, (301) 975-3031.
Mailing address: U.S. Department of
Commerce, National Bureau of
Standards, Room A-123,
Administration Bldg., Gaithersburg,
Maryland 20899.

OPM: Paul Thompson, (202) 632-6164.
Mailing address: U.S. Office of
Personnel Management, Room 7H34,
Washington, DC 20415.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management published the proposed project plan in the *Federal Register* on July 1, 1987 (52 FR 24906). Copies of the proposed plan were transmitted to both Houses of Congress, as required by 5 U.S.C. 4703(b)(4). The period for public comment on the proposal continued through August 31, 1987. The notice of the proposed plan also announced the times and locations of public hearings during which interested persons or organizations could present their written or oral views on the proposed demonstration project plan. The Office held the public hearings as scheduled at

the two NBS sites: in Gaithersburg, Maryland, on August 10, 1987, and in Boulder, Colorado, on August 18, 1987. The hearing record was left open for additional data, views, and arguments until September 1, 1987.

2. Summary of Comments

Six letters were received commenting on the *Federal Register* notice. In addition, three individuals made statements at the public hearings. The following is a summary by general topic of these written and oral comments.

(1) *Conversion to project pay system.* Objections were raised to the manner in which NBS employees are to be compensated for foregone within-grade pay increases. The project plan stipulates (in accordance with Pub. L. 99-574) that they receive a pro rata share of their next within-grade increase as of the day before they enter the project, to be paid in a lump sum. It was proposed that the share be paid instead as an addition to base pay, on the grounds that the lump sum payment would result in a short-term (and in some cases long-term) loss of salary for many employees.

(2) *Cost neutrality.* Opinions were expressed that the project could not achieve some of its objectives—i.e., competing more effectively for highly qualified employees, motivating and retaining those on board—if personnel costs are maintained at the levels they would have reached were the project not implemented.

(3) *Performance appraisal.* Concerns were voiced that a quota would be placed on favorable performance ratings under the project, and that persistent differences among supervisors in the severity of the ratings they give would produce inequitable results for employees working under a strict supervisor.

One respondent also urged that peer ratings be introduced, that is, peers rate each other's performance. The project plan calls instead for subordinate peers to be ranked by their supervisors in order of the quality of their performance.

(4) *Classification system changes.* It was argued that the banding of adjacent grades would result in the loss of status for employees formerly in the upper of the two grades and that these employees would also be disadvantaged in a RIF situation. Concern was also expressed that movement of qualified employees between career paths be encouraged, and that the delegation of classification authority to line managers be accompanied by extensive training. Finally, a question was raised regarding how employees would be converted back to the General Schedule system if

they leave the project or at its termination.

(5) *Probationary periods.* The observation was made that the provision for probationary periods of up to three years for new hires in the scientist and engineering career path is too open-ended. This could make for excessive uncertainty among employees regarding when their probation might be ended.

(6) *Promotion.* The suggestion was received that employees be included on promotion panels for their peers.

Demonstration Project Changes

Only a few comments were received on the preliminary project plan, especially considering that about 3000 employees will come under the project at implementation. Of those received, only a few were critical of the content of the substance of the plan. Most were cautionary in nature, urging that certain steps be taken to ensure success in applying the planned provisions.

Some of the provisions whose contents were directly challenged, such as payment of the lump sum pro rata share at conversion and pay banding, were mandated by Congress in the act authorizing the project and are not open to change. Others—extended probationary periods and the requirement of cost neutrality—were not mandated but have been retained in the final plan. The probationary period provision was modified to establish points in time at which supervisors must decide whether the probationary period will be ended. This provides a regular schedule under which each employee's probation is reviewed. In the case of cost neutrality, no substantive changes were made in the final project plan. Basic project objectives can be met within these constraints, which will also make the experiment more applicable to other government agencies.

Additional changes were made to the final version in order to clarify and expand on its provisions. A few editorial changes were also made. The substantive changes, by section, are: (1) *Position Classification:* further explanation of the process of generating position descriptions, (2) *Total Compensation Comparability:* more information on the method of measuring benefits, (3) *Staffing:* More information on the applications of direct hire, the extended probationary period, recruitment and retention allowances, travel expenses, and the link between promotion and performance ratings (the promotion subsection was moved from the classification section to the staffing section), (4) *Pay Administration:*

expanded explanation of the linkage between performance ratings and pay increases, the criteria for supervisory differentials, pay setting for new hires, and prorating lump sum payouts upon conversion, and (5) Implementation: more detailed criteria on determining grades if the project terminates and employees must be converted back to the General Schedule System.

Public Law 99-574, National Bureau of Standards Authorization Act For Fiscal Year 1987:

Because many elements of the proposed demonstration plan are required by section 10 of Pub. L. 99-574, the complete text of section 10 is presented here.

Section 10, "Demonstration Project Relating to Personnel Management"

Sec. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) Subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) Chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) The rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) The minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) Positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other

units which would otherwise be used in classifying the positions involved;

(4) Employees shall be evaluated under a performance appraisal system which—

(A) Uses peer comparison and ranking wherever appropriate; and

(B) Affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5)(A) The rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) Subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) Appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) Performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances, (but shall not be considered a part of basic pay);

(8) There shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) Payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) The methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

- (A) Basic pay;
- (B) Bonuses;
- (C) Allowances;
- (D) Retirement benefits;
- (E) Health insurance benefits;
- (F) Life insurance benefits; and
- (G) Leave benefits.

(2) The director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) Shall include findings as to—

(i) The extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(iii) With respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) Shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) Shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) The percentage recommended; or

(ii) The overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) If and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) To make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) After making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) The maximum rate of basic pay payable under any pay band may not

exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) The amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) In the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) In the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a

lump sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) The Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) The Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

Office of Personnel Management.

Constance Horner,

Director.

Project Plan

The demonstration project plan reads as follows:

An Alternative Personnel Management System to Improve the Ability of the National Bureau of

Standards to Attract Highly Qualified Candidates, Motivate Employees, and Retain Successful Performers.

Executive Summary

The project was designed by the National Bureau of Standards, with participation of and review by the U.S. Department of Commerce (DoC) and the Office of Personnel Management (OPM). The Bureau will conduct the project over a 5-year period beginning January 1, 1988. The Office of Personnel Management will evaluate the project annually through contract; the Comptroller General will make a final report to Congress that will make any recommendations for legislation or other action which the Comptroller General considers appropriate.

The project is built upon the concepts of (1) total compensation comparability, rather than pay comparability only; (2) market sensitivity, by surveying compensation for private sector positions similar to NBS positions, linking entry salary to market forces by occupation, and selectively granting recruiting and retention allowances; (3) performance, by linking performance to pay for all covered positions; (4) administrative simplicity, by simplifying paperwork and processing in classification and other personnel systems; (5) management flexibility and accountability, through the delegation of classification and other authorities to line managers; and (6) Government-wide applicability, by designing an alternative system not just for NBS but for use by any agency.

The demonstration system is designed to (1) improve hiring and allow NBS to compete more effectively for high-quality researchers, through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff, through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management, through delegation of personnel authorities; and (4) increase the efficiency of personnel systems, through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The Director of the National Bureau of Standards will conduct the project through a Personnel Management Board (PMB) under the chairmanship of the NBS Deputy Director, with the directors

of the six NBS major organizational units (MOUs) as voting members and the NBS Personnel Officer and NBS EEO Officer as non-voting members. A Project Office within the Personnel Division will provide administrative support, communicate with individuals and groups outside NBS, and oversee NBS evaluations of the project.

In presenting the FY 1987 NBS Authorization bill to the Senate, Senator Slade Gorton stated that the bill "creates a National Bureau of Standards demonstration project relating to personnel compensation and management. The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel especially in high-technology fields."

Participating Organizations

Both sites of the National Bureau of Standards will participate in the project. The two sites are located at Gaithersburg, Maryland, which is also the headquarters of NBS, and at Boulder, Colorado. The two sites are similar in employment profiles, with the following exceptions: (1) Of the approximately 3050 positions covered by the project, about 85 percent are in Gaithersburg; (2) all heads of major organizational units and all but one center head are located in Gaithersburg; and (3) certain administrative services at the Boulder facility, such as personnel administration and procurement, are provided by the DoC administrative support center in Boulder, which is not covered by the project and which services other DoC organizations also not covered by the project; in Gaithersburg those services are provided by NBS positions under the coverage of the project.

Types and Numbers of Participating Employees

The project will cover approximately 3050 NBS employees. By pay category, the coverage is 87.5 percent General Schedule (GS) positions, 9 percent Performance Management and Recognition System (PMRS) positions, percent 5 U.S.C. 3104 positions, and 3 percent Senior Executive Service (SES) positions. Under the PATCO categories, the coverage is 51 percent "professional," 12 percent "administrative," 18 percent "technician," 16 percent "clerical," and 3 percent "other." The professional

category is 98 percent scientists, engineers, and mathematicians.

The ten most populous occupations are Physicist (427), Chemist (258), Secretary (249), Engineering Technician (170), Electronics Engineer (155), Physical Science Technician (152), General Physical Scientist (146), Computer Scientist (134), Computer Specialist (110), and Mechanical Engineer (93).

Of the approximately 3050 covered employees, 78 percent are full-time permanent (FTP), 5 percent are part-time permanent (PTP) and 17 percent are "other" than FTP or PTP. The "other" category, made up of such categories as student, post-doctoral, temporary, and intermittent, shifts significantly during the year, particularly in the summer when many students are hired.

Labor Participation

A few General Schedule employees are represented by labor unions. These employees at the Gaithersburg site are represented by the International Association of Firefighters (IAFF), and at the Boulder site by the American Federation of Government Employees (AFGE). Union representatives have been separately notified about the project. NBS is proceeding to fulfill its obligation to consult or negotiate with them, as appropriate, in accordance with 5 U.S.C. 4703(f).

Project Implementation Date

January 1, 1988.

Project Ending Date

In accordance with section 4703 of title 5, United States Code, the project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond that period to the extent necessary to validate the results of the project. The Comptroller General is required to submit a final report to Congress not later than 4 years after the date on which the project commences, including any recommendations for legislation or other action.

Methodology

This proposal explains the methodology for introducing the following innovations in personnel management and demonstrating their results over a 5-year period: (1) Simplified position classification through pay banding, occupational groupings by career paths, and delegation of classification authority to managers; (2) compensation comparability based on total compensation; (3) improved staffing

through direct examination and hiring, extended probation, qualification standards more in line with private sector practice, more flexible use of recruiting tools such as paid advertising and retention allowances, travel expenses, and competitive areas based on career paths; (4) pay-for-performance, supervisory and managerial pay differentials, and market-based entry salaries; and (5) sabbaticals.

Senior Executive Service and 5 U.S.C. 3104 Positions

The personnel systems for SES positions will not change for the project, SES classification, staffing, compensation, performance appraisal, awards, and reduction in force will be based on current methods.

The personnel systems for 5 U.S.C. 3104 positions will change only to the extent that 3104 positions are in the same performance appraisal, awards, and reduction in force systems as General Schedule positions. Classification, staffing, and compensation, however, will not change.

Neither SES nor 5 U.S.C. 3104 employees will be subject to the pro rata share payouts upon conversion to the demonstration system. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to SES and 3104 pay adjustments.

Performance Management and Recognition System (PMRS) and General Schedule (GS) Positions

The PMRS and GS categories will no longer exist as identified categories under the project. Both will be incorporated in the new career-path/pay-band system. The step increases of the General Schedule and the merit increases of the PMRS system will be replaced by the annual performance pay increases described under "Pay Administration". Laws and regulations pertaining to the General Schedule that have not been waived for this project, however, such as those pertaining to overtime pay, will continue in force for all covered positions to which they now apply.

Position Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers.

Coverage

All positions listed under "Types and Numbers of Participating Employees" above will be accounted for in the classification structure. All General Schedule occupations currently represented at NBS will be included. Provisions will be made for including others as employment requirements change in response to changing technical programs.

Career Paths

Occupations at NBS which can be treated in a similar fashion will be aggregated into career paths. Occupations will be grouped according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at NBS and in the private sector will also be considered. The current occupations and grades at NBS have been examined, and their characteristics and distribution have served as guidelines to the development of career paths.

Four career paths will be established:

(a) *Scientific and Engineering*. This path will include all technical professional positions, such as physical, biological, and social scientists, engineers, computer scientists, mathematicians, and computer specialists. Ordinarily, specific course work or educational degrees are required for these occupations.

(b) *Scientific and Engineering Technician*. This path consists of the jobs that support the various scientific and engineering activities. Employees in these jobs are not required to have college course work. However, training and skills in the various electrical, mechanical, chemical, or computer crafts and techniques are required.

(c) *Administrative*. This career path contains specialized functions in such fields as finance, procurement, personnel, public information, technical

information, accounting, administrative computing, and management analysis. Special skills in administrative fields or special degrees are involved.

(d) *Support*. This career path is composed of positions for which an minimal formal education is needed, but for which special skills and knowledge, such as typing or shorthand, are usually required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, firefighters, and mail clerks.

Pay Bands

Each career path will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all career paths. Each career path will be divided into either five or six pay bands, each pay band covering the same pay range now covered by one or more grades. The maximum rate of a pay band will be the highest rate possible for positions within that career path and band, including any position with a special pay rate. A salary overlap, similar to the current overlap between grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Superior qualifications may lead to a higher entrance level within a band.

For each pay band, a corresponding band will be established for employees qualifying for supervisory/managerial differentials. The supervisory pay band will have the same minimum rate as the non-supervisory band, but its maximum rate will be 6 percent higher than the maximum rate of the non-supervisory band. Positions in the supervisory pay bands will include division chiefs and group leaders in the Scientific and

Engineer Career Path, positions with formal supervisory authority over at least three positions (excluding support positions), and other positions approved by the PMB on a case-by-case basis.

The proposed pay bands for the four career paths appear in Chart I. The General Schedule (GS) grades being replaced appear at the bottom of the figure.

The pay band concept has the following advantages:

Reduces the number of classification decisions required during an employee's career: In the current system a classification action is required for each promotion to a higher grade, while in the new system a classification action is required for promotion to a higher band. Because there will be fewer bands than grades, there will be fewer classification decisions.

Simplifies the classification decision-making process and paperwork: A pay band is a larger target than a grade, and thus may be defined in shorter and simpler language. At the same time the definition for one band can be made more distinct from the definition for adjacent bands, reducing the potential for disagreement.

Supports delegation of classification authority to line managers with review or post-audit by personnel specialists.

Provides a broader range of performance-related pay for each level: In many cases, employees whose pay would have been frozen at the top step or a grade will now have more potential for upward movement in the broader pay band.

The chart below shows all four proposed career paths and how their pay bands relate to the current General Schedule grades. Each regular pay band is considered to have a corresponding pay band for supervisors and managers who qualify for the supervisory/managerial differential, though it is unlikely that the lower bands will ever be filled by supervisory positions.

CHART I: CAREER PATHS AND PAY BANDS

Career Path	Levels (or Bands)															
Scientific and Engineering	I					II					III	IV	V	3104/SES		
Scientific and Engineering Technician	I			II			III	IV	V							
Administrative	I					II					III	IV	V	3104/SES		
Support	I	II	III	IV	V											
GS Grade	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	3104/SES

Occupational Series

The present General Schedule classification system has 434 occupations (also called series) which are divided into 22 groups. NBS has positions in 115 occupations and in 16 groups. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. New series may be added as physical, chemical, and biological sciences, engineering, and computer science change in other career paths, such as a new series in the Support Career Path to describe clerical and assistant support of the internal administrative functions of an organizational unit. Chart II lists the occupations currently represented at NBS by career path. This arrangement may be modified from time to time as experience is gained in applying it.

Classification Standards

The present system of classification standards will be simplified for routine use by NBS managers. The objective is to record the essential criteria for each pay level within each career path by stating the general duties and

responsibilities and the knowledges, skills, and abilities required. Each pay band or level of each standard is described in two categories or factors: (1) General duties and responsibilities, and (2) knowledges, skills, and abilities. These two categories complement each other at each level and may not be separated in classifying a position.

Position Descriptions

New position descriptions will emphasize the knowledges, skills, and abilities required. Line managers will follow an automated menu-driven process to classify positions and produce position descriptions. The objectives in developing these new descriptions are to:

- Simplify the description by using short standard-format descriptors rather than long narrative descriptions and by holding the length of a position description to no more than two pages;
- Allow supervisors to prepare descriptions on a personal computer; and
- Make the position description a more useful and accurate tool for other functions of personnel management,

such as recruiting, reduction in force, performance appraisal, and employee development.

Classification and Position Description Process

Part 1 of the position description corresponds to the following steps by the supervisor:

1. *Statement of Position Objective* (a supervisor creates a "statement" by typing free-form at appropriate points in the menu-driven system).
2. *Selection of Career Path, Occupational Series, Function, Pay Band or Level, Specialty Areas, Supervision Exercised, FLSA Status, and Minimum Qualifications Required* (a supervisor makes a "selection" by selecting from options in the menu).
3. *Statement of Position Title, Organizational Location, and Supervisor.*

Part 2 of the position description is the supervisor's *statement of position-specific duties and responsibilities and position-specific knowledges, skills, and abilities.*

In producing a position description the supervisor first states the general purpose to be met, or mission objective

to be accomplished, by the position (position objective). The supervisor then selects from the menu a career path, an occupational series, a functional code, and a level description (see level descriptions under "Classification Standards") commensurate with the position objective. When producing part 2 of the position description, the supervisor will confirm the selections and classification against the position-specific duties and responsibilities and the position-specific knowledges, skills, and abilities.

The menu-driven system incorporates the four career paths and the occupational series listed below. Descriptors of these occupations are available in the program if needed. The "functions" are those currently used by OPM for science and engineering positions, including research, development, planning, etc., as well as functional descriptions associated with maintaining and servicing the facilities and providing technical and administrative services and support to the scientific and engineering staff.

"Specialty Areas" are subdisciplines or subsets of the disciplines as practiced at NBS. Descriptors of these specialties have been prepared by NBS staff and are available in the program. Selection of the appropriate supervisory responsibilities automatically determines the appropriate affirmative action obligations. The FLSA status can generally be matched to Career Path and Level, but a selection of FLSA "exempt" or "non-exempt" must be consistent with OPM guidance. Minimum qualifications are determined by the selection of career path, occupation, and level, and appear automatically after these three items have been selected.

Delegation of Classification Authority

Line managers will have classification authority. Supervisors at the lowest levels will have recommendation authority only. Higher-level managers will have approval authority, the level of approval depending on the proposed career path and pay band. The current system of approval of SES and 5 U.S.C. 3104 positions will be maintained. Classification actions will receive post audits by the personnel office. Periodic audit reports will be made to the NBS Director. Errors in classification will be corrected when discovered.

Chart II: Occupational Series by Career Path

I. Scientific and Engineering

101—Social Scientist
110—Economist

180—Psychologist
185—Social Worker
334—Computer Specialist
401—Biologist
403—Microbiologist
690—Industrial Hygienist
801—General Engineer
804—Fire Prevention Engineer
806—Materials Engineer
808—Architect
810—Civil Engineer
830—Mechanical Engineer
840—Nuclear Engineer
850—Electrical Engineer
855—Electronics Engineer
858—Biomedical Engineer
892—Ceramic Engineer
893—Chemical Engineer
896—Industrial Engineer
899—Engineering Student
1301—General Physical Scientist
1306—Health Physicist
1310—Physicist
1320—Chemist
1321—Metallurgist
1330—Astronomer
1360—Oceanographer
1372—Geodesist
1384—Textile Technologist
1399—Physical Science Student
1515—Operations Research Analyst
1520—Mathematician
1529—Mathematical Statistician
1530—Statistician
1550—Computer Scientist
1599—Mathematics Student

II. Scientific and Engineering Technicians

332—Computer Operator
404—Biology Technician
462—Forestry Technician
802—Engineering Technician
809—Construction Inspector
856—Electronics Technician
1311—Physical Science Technician
1521—Mathematics Technician

III. Administrative

018—Safety Specialist
080—Security Officer
099—Student Trainee
201—Personnel Management Specialist
221—Position Classification Specialist
230—Employee Relations Specialist
235—Employee Development Specialist
260—Equal Employment Specialist
301—Miscellaneous Administration and Program
340—Program Manager
341—Administrative Officer
343—Management Analyst
345—Program Analyst
393—Communication Specialist
501—Financial Administrator
510—Accountant
511—Auditor
560—Budget Analyst
1001—General Arts and Information

1020—Illustrator
1035—Public Affairs Specialist
1060—Photographer
1071—Audio-Visual Production Specialist
1082—Writer/Editor
1083—Technical Writer/Editor
1084—Visual Information Specialist
1101—General Business Specialist
1102—Contracts Specialist
1410—Librarian
1412—Technical Information Specialist
1420—Archivist
1601—General Facilities Manager
1640—Facility Manager
1654—Printing Manager
2001—General Supply Specialist
2003—Supply Manager
2010—Inventory Manager
2050—Supply Cataloger
2130—Traffic Manager
2150—Transportation Operator

IV. Administrative Support

081—Firefighter
085—Guard
203—Personnel Clerk/Assistant
303—Miscellaneous Clerk/Assistant
304—Information Receptionist
305—Mail and File Clerk
309—Correspondence Clerk
312—Clerk-Stenographer
318—Secretary
322—Clerk-Typist
335—Computer Clerk/Assistant
344—Management Clerk/Assistant
350—Equipment Operator
351—Printing Clerk
357—Coding Clerk
382—Telephone Operator
392—General Communications Assistant
394—Communications Clerk
525—Accounting Technician
544—Payroll Clerk/Technician
561—Budget Clerk/Assistant
1021—Office Draftman
1087—Editorial Clerk/Assistant
1105—Purchasing Agent
1106—Procurement Clerk/Assistant
1152—Production Controller
1411—Library Technician
2005—Supply Clerk/Assistant
2102—Transportation Clerk/Assistant
2132—Travel Clerk/Assistant

Total Compensation Comparability

Introduction

An objective of the demonstration project is to improve the quality of NBS by making compensation more competitive. The Bureau will provide for the preparation of reports, by contract or otherwise, that include findings as to the extent to which the overall average level of total compensation for covered NBS positions is deficient in comparison

with the overall average level of total compensation for similar positions in the private sector. Annually thereafter during the project, the Bureau will determine the change in the deficiency.

Definition of Total Compensation

The legislation defines compensation as the total value of the various forms of compensation, including:

- (A) Basic pay;
- (B) Bonuses;
- (C) Allowances;
- (D) Retirement benefits;
- (E) Health insurance benefits;
- (F) Life insurance benefits; and
- (G) Leave benefits.

NBS will develop a comparability measurement system, with contractor assistance, based on calculations and comparisons of the costs of compensation to the private sector and to the Federal Government.

NBS will use the "level-of-benefits" or "standardized" cost approach to measure benefits. This approach estimates what it would cost to provide private sector and Federal Government benefit plans to a standard workforce. By determining the cost of the various benefits to a workforce with constant demographic characteristics and using a constant set of actuarial and economic assumptions, cost data can be generated that reflect the difference in the benefit plan provisions. The NBS workforce covered by the demonstration project will be the standard workforce population used in the benefit comparisons.

Process To Determine Overall Deficiency and Net Changes in the Deficiency

The NBS Director is authorized to adjust the ranges of pay bands based on surveys conducted of total compensation paid to individuals in positions in private sector firms and universities that are similar in levels of work and responsibility to NBS positions. The Director will determine the criteria for selecting private sector organizations to be surveyed. The first survey will establish the extent to which compensation for covered NBS positions is deficient in comparison with compensation for comparable positions in the private sector prior to the start of the project, thus setting a baseline. Additional surveys will be conducted annually to determine the change occurring from year to year in private sector total compensation.

NBS will select a representative sample of private sector firms to be used in the surveys on the following basis:

- (A) National coverage for scientists and engineers based on peer groups of

private sector firms and universities that perform R&D work similar to that performed at NBS;

(B) Regional coverage for administrative positions; and

(C) Local coverage (Gaithersburg, Maryland, and Boulder, Colorado) for science and engineering technicians, and for administrative support positions.

To the extent possible NBS will use available data and will participate in existing compensation surveys. As an example, NBS is participating in the Department of Energy's National Compensation Survey of Research and Development Scientists and Engineers. NBS, using contractor support, will devise ways to build hybrid queries to access various compensation data bases in order to match the pay and benefits components of compensation of individual private sector positions in a mix of occupations similar to those at NBS. The nation's leading actuarial and compensation consulting firms have developed and tested costing models for the various benefit plans. NBS will use one or more of these models to generate total compensation values.

Comparability Decision by the Director

Each year, the NBS Director will receive three comparability figures: (1) The annual percentage pay increase for General Schedule employees (General Federal Increase); (2) the net percentage by which the overall average level of compensation for NBS positions covered by the project has fallen behind the overall average level of compensation for similar private sector positions over the past year (Net Increase in the Deficiency); and (3) the overall percentage by which the average level of compensation for NBS positions covered by the project was deficient, as of the commencement of the project, as compared with the average level of compensation for similar private sector positions (Overall Deficiency). The Director must select at least the lesser of the first two figures as the annual NBS comparability percentage increase. If the Net Increase in the Deficiency is larger than the General Federal Increase, the Director may increase the comparability percentage by some or all of the difference, if budget considerations permit. If the Director makes up all of the Net Increase in the Deficiency, he may, if budget considerations permit, authorize an additional adjustment to further decrease the Overall Deficiency.

The percentage comparability increase selected by the Director will apply directly to: (1) The minimum and maximum rates of basic pay for each pay band (the same percentage increase will apply to all pay bands), and (2) the

basic pay of each employee receiving a fully successful or higher performance rating. An employee receiving a rating of less than fully successful will not receive an increase in basic pay.

Staffing

Introduction

New examining and hiring procedures coupled with simplified classification procedures will shorten the hiring process. Other features, such as payment of recruiting allowances, will help attract candidates in essential occupations. Retention allowances will be used to retain highly skilled and productive employees. Line managers will work with the personnel offices to develop hiring strategies. Priority placement, reemployment priority, and the merit assignment process will be addressed in developing these strategies. The personnel offices will ensure that proper procedures are followed. Line managers will participate actively in the examining and hiring process.

NBS will use a full range of staffing options. These options are Direct Hire (shortage occupations and shortage highly-qualified candidates), Agency-Based Staffing, Merit Assignment, Reinstatement, and Reassignment. All vacancies will be treated on a case-by-case basis and managers will have the option of choosing one or a combination of the applicable staffing options. The necessary examination and hiring procedures will be administered by NBS. NBS will not rate applicants for non-NBS positions. This will be made clear to all applicants.

NBS will use two options for candidates not employed by the government (non-status candidates): Direct Examination and Hiring and Agency-Based Staffing. Direct Examination and Hiring will be used for shortage categories. Agency-Based Staffing will be used for shortage categories. Agency-Based Staffing will be used for non-shortage categories to provide NBS with applicants who are specifically interested in, and available for, positions at NBS. Managers working with personnel office staff will determine the appropriate hiring strategy in each case.

Direct Examination and Hiring: Critical Shortage Occupations

NBS will use direct examination and hiring procedures for occupations defined as critical shortage occupations. Critical shortage occupations will be defined as hard-to-fill occupational series which have special pay rates or

require essential job-specific skills that are in short supply. Shortage occupations with special pay rates now include all Engineers, Mathematical Statisticians, Computer Scientists, and Metallurgists in the Scientific and Engineering Career Path, and Clerk-Typists, Clerk-Stenographers, Dictating Machine Transcribers, and all clerical and secretarial positions requiring typing, stenography, or dictating machine transcribing skills in Levels I through IV of the Support Career Path. In addition, all occupations in the Scientific and Engineering Career Path at Level III and above and Nuclear Engineering Technicians (Nuclear Reactor Operators) at Level III in the Scientific and Engineering Technician Career Path are in short supply and are shortage occupations.

NBS will recruit and make immediate offers of appointment to qualified candidates for critical shortage occupations without further competitive steps or procedures. Applications will be solicited through various recruitment activities, and applicants will be asked to submit a Personal Qualifications Statement (SF-171). A completed copy of the Federal Automated Examining System (FAES), Key Entry Examination System (KEES), or other appropriate appointment package will be provided to OPM's Office of Examining Services for all individuals appointed. All applications must be signed and contain information on citizenship, date of birth, removals, and convictions. Candidates who apply pending completion of education must submit verification that they meet all requirements prior to entering on duty.

Appropriate staff of the personnel offices and some non-personnel staff will be trained to rate applicants. Examiners will also be trained to review applications for completeness and to determine whether all legal and suitability requirements have been met. Examiners will not rate the applications of personal acquaintances or relatives. The basis for rating applicants will be documented on the OPM rating sheet. Examiners will initial and date each rating sheet and the front of the corresponding application. NBS will submit monthly reports to OPM showing the previous month's appointment activity. The report will include the name, date of birth, enter-on-duty, pay band, and job series for each appointee.

Each applicant will be rated only for the level and occupational series for which the applicant is being considered for employment. No numerical ratings will be assigned. Applicants will be determined eligible or ineligible only.

OPM Handbook X-118: Qualifications Standards for Positions Under the General Schedule will be used to determine an applicant's basic qualifications, except that NBS will not use the testing requirements. Selective or special qualification factors will be considered where warranted.

NBS may appoint any individual who is certified eligible. Although no registers will be maintained, NBS will accept applications on an open-continuous basis for all direct hire categories.

All selections will be subject to the Department of Commerce Priority Placement and Reemployment Priority Programs, the OPM Displaced Employees Program, and the Interagency Placement Assistance Program. If there are available priority placement candidates, NBS will appoint a priority candidate or justify why priority candidates were not appointed.

Direct Examination and Hiring: Critical Shortage Highly-Qualified Candidates

Candidates who meet high academic and training standards are also a critical shortage category. Critical shortage highly qualified candidates may be directly hired for entry level positions in the Scientific and Engineering, Scientific and Engineering Technician, and Support Career Paths.

Under the Demonstration Project, quality candidates (those with bachelors degrees with a 2.9 GPA, out of 4.0, or masters degrees) may be directly hired at Level I or II of the Scientific and Engineering path. Quality candidates for Level I or II Technicians positions must have a 2.9 GPA, out of 4.0, in 2 or 4 years of study in an accredited college, junior college, or technical institute. Candidates who apply on the basis of superior academic achievement must submit verification that they meet all requirements prior to entering on duty.

The procedures for recruiting and examining critical shortage highly qualified candidates will be the same as those used above for critical shortage occupations, except that veteran preference candidates who meet the minimum quality-candidate standard will be given priority consideration. NBS will justify the nonselection of any quality candidate with veteran preference.

If any of these categories of critical shortage occupations or critical shortage highly-qualified candidates cease to be shortage categories, NBS will place them in the agency-based hiring system. If additional shortage categories arise, they will be negotiated with OPM before being included for direct hire.

Agency-Based Staffing

NBS will carry out the examination and certification of applicants in the agency-based system. Agency-Based Staffing will follow competitive principles, requiring that each position be advertised within NBS, at OPM Federal Job Information Center(s), and at State Employment Services. Each selection will be subject to the Department of Commerce Priority Placement and Reemployment Priority Programs, the OPM Displaced Employees Program, and the Interagency Placement Assistant Program.

NBS will publicize each vacancy, examine and certify applicants (except that tests will not be used), develop rating schedules where needed, evaluate and rank applicants, issue lists of best qualified candidates, and select candidates in accordance with applicable regulations. NBS will adjudicate rating appeals, act on objections to eligibles or passover of veterans with less than 30 percent disability, answer inquiries from applicants for the posted vacancy, and maintain records of all applicants.

When a position is announced under Agency-Based Staffing, all applications from non-status candidates will be received and rated. All applications must be signed and contain information on citizenship, date of birth, removals, and convictions. A rating plan will be established for each case. Selective factors may be used as discussion above. Applicants will be given numerical scores which will be placed in rank order. Ten and five-point veteran preference will be applied. Current procedures for the rule of three will be followed. All non-selected candidates will be notified of the outcome of their application with a statement that the NBS rating is not applicable for other Federal government positions and does not place the applicant on any competitive register. NBS will maintain case records for two years from the date of selection.

Merit Assignment, Reassignment, and Reinstatement

NBS will use its current Merit Assignment Plan (MAP). This plan allows managers to select status candidates for positions with greater known promotion potential than the position the selectee currently holds. This plan will be followed for status applicants requiring MAP competition for promotion, reassignment, or other competitive personnel actions. Appropriate changes will be made to the

plan to convert GS-grades to pay levels. There will be no change in current reassignment and reinstatement procedures, except for the appropriate changes converting GS-grades to pay levels. The reassignment and reinstatement procedures also allow managers to select status candidates for positions which have no promotion potential beyond that which the selectee currently holds (or held) in the Federal Government.

Paid Advertising and Recruiting Services

NBS will continue to recruit at colleges and universities and will make greater use of paid advertisements in journals, professional magazines, and newspapers to expand recruiting sources and attract the best candidates. Advertising will become one of the first steps in recruitment. Procedures will also be developed for using private sector employment services.

Probation Period

The hiring system will include a flexible probation period for all Scientific and Engineering Career Path hires. A formal process will be developed and put in place under which the probation period may be extended up to 3 years for employees on career conditional appointments in this career path. Employees appointed prior to the implementation of the project will not be affected.

The 3-year probation will apply to non-status hires after January 1, 1988. That is, it will apply only to new employees hired after that date who do not come from another Federal Government position or do not have reemployment or reinstatement rights. At designated points in the service of the employee, the responsible manager will be asked to decide whether to:

- (a) End probation (change the employee from probationary to nonprobationary status);
- (b) Continue the employee on probation; or
- (c) Terminate the employee.

These automatic requests for a decision will come at month 9, month 21, and month 33, so that decisions can be made by months 12, 24, and 36, respectively. The manager may, however, decide to terminate an employee at any time during probation, or end probation at any time after month 12. The manager must make a decision to terminate the employee or change the employee from probationary to nonprobationary status before the end of month 36. Other aspects of probation will not change, including the limited notice and appeal rights granted to

probationary employees under law and regulation.

Qualification Standards

The qualifications required for placement within a pay band and within a career path will be based on present qualifications found in *OPM Handbook X-118*, except that testing requirements will not be used. The minimum qualifications for the occupation and for the General Schedule grade corresponding to the lowest grade incorporated in the pay band will apply. In a few cases NBS will update these standards to reflect current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs. Where new occupational series are defined, new minimum qualification standards will be written following the pattern of *OPM Handbook X-118*.

Recruitment and Retention Allowances

Recruitment and Retention Allowances will be established to provide incentives for individuals to enter or remain in Federal service. Allowances may be provided in appropriate circumstances, not to exceed \$10,000. Decisions on allowances will be based on market factors such as salary comparability and salary offer issues; relocation/dislocation issues; programmatic urgency; emerging technologies; turnover rates; special qualifications; and shortage categories or scarcity positions unique to NBS as defined by the PMB.

All professional and hard-to-fill positions are eligible. Based on the determination factors above, Recruitment Allowances will be paid by authority of the appropriate MOU Director, and Retention Allowances will be paid by authority of the PMB.

Receipt of a Recruitment Allowance represents a commitment by the employee to remain in Federal service for a specified time period of from 6 to 36 months, to be determined between the individual and the hiring official or supervisor. The service agreement will outline amount of allowance, time requirements of agreement, payment schedule, and repayment requirements if the individual separates from Federal service before the end of the agreed period, other than having been involuntarily separated from Federal service by reason of reduction-in-force. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with generally applicable standards for termination. A Retention Allowance does not require a continued service agreement.

A Recruitment Allowance may be paid in a lump sum at or soon after entry on duty or may be paid in increments over a period of time determined by the PMB, not to exceed 36 months. A Retention Allowance may not be paid in a lump sum but must be paid in increments over a period of time determined by the MOU Director, not to exceed 36 months.

Recruitment and Retention Allowances will not be considered part of an individual's basic pay.

Travel Expenses

At the discretion of the NBS Director, travel and transportation expenses, reimbursement of expenses, and advancement of funds may be provided to new hires in the same manner as is authorized in sections 5723 and 5724 of title 5, U.S. Code. The selecting official, with approval of the MOU Director or the MOU Director's designee, will make application decisions. Recipients must sign service agreements indicating commitment of at least 12 months continued service. Service agreements will contain provisions for repayment in the event the recipient separates from Federal service before the end of the agreement. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with generally applicable standards for termination.

Affirmative Action/Equal Employment Opportunity

NBS is committed to positive affirmative action/equal employment opportunity goals. Line managers will be accountable for understanding and implementing policies designed to meet these goals.

Promotion

A promotion is a move from one level (pay band) to a higher level within a career path, or a move from a level in one career path to a level with a higher pay range in another career path. Promotions will follow basic Federal merit promotion practices. In the scientific and engineering fields the qualifications for promotions will rest largely upon the qualifications of the individual. Some of this emphasis on individual knowledges, skills, and abilities will be applied to other career paths. Each position will have promotion potential to a specific level within a career path, but not all positions in a career path will have promotion potential to the same level. Movement from one career path to another will depend upon individual knowledges, skills, and abilities and

upon the availability of positions requiring them.

Link Between Promotion and Performance

Non-competitive promotions will be linked to current performance ratings and the locations of current salaries in pay bands. The salary range of each pay band is divided into three intervals (see "Pay for Performance" for a description of the pay band matrix). To be promoted noncompetitively, an employee in the bottom interval must have a performance rating of outstanding, an employee in the middle interval must have a rating of at least commendable, and an employee in the top interval must have a rating of at least fully successful.

Reduction in Force

Introduction

The current NBS process for reduction in force will be essentially maintained. Current reduction-in-force procedures will be adjusted in the context of the career path and pay band classification system. Retention registers will maintain the elements of career status, veteran preference, length of service, and service computation date adjustments based on performance ratings. Position descriptions will become a better tool for reduction in force by focusing on specific knowledges, skills, and abilities required.

Competitive Areas

Each of the four career paths will be a separate competitive area. This will place employees with similar knowledges, skills, abilities and in similar occupations together. It will also eliminate the disruptions caused by scientists or engineers displacing administration or support staff. Displacements, bumps, and retreats will occur only within career paths. Current reduction-in-force regulations will be modified by substituting "same level" for "same grade" and "one level lower" for "three grades lower". Whereas in the current system an employee may bump another employee in a lower retention subgroup and at the same grade or up three grades below the bumping employee, in the demonstration system an employee may bump another employee in a lower retention subgroup and at the same level or up to one level below the bumping employee.

Saved Grade and Pay

Saved grade and pay will follow current regulations, except that career path "level" will substitute for "grade."

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of NBS to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of current pay resources based upon individual performance. The authorizing legislation states that "the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee."

The first decision in the annual pay-setting process is the Director's selection of the percentage comparability increase that must be given to all covered employees rated fully successful or higher (see "Comparability Decision by the Director" above). The minimum and maximum rates of each pay band must also be increased by this percentage.

Pay for Performance

Pay increases will be allocated to employees through organizational pay pools. These pools will have three components: (A) Comparability increases; (B) performance increases; and (C) bonuses and awards. The first component, comparability increases, will consist of the percentages selected by the Director in the comparability process, and will be given as a minimum pay increase to all covered employees rated fully successful or higher. The second component, performance increases, will be made up of money previously available for within-grade increases, quality step increases, merit pay increases, and promotions from one grade to another where both grades will now be in the same pay band. Decisions on these pay increases will take into account all of the following: (1) The employee's performance; (2) the salary range of the employee's pay band; and (3) the employee's current salary in that range. The third and final component will be bonuses and awards, composed of former cash awards.

A matrix will be developed for each pay band of each career path. The vertical component of the matrix will be salary. The salary range of a pay band will be divided into three intervals, from the minimum rate to the maximum rate of the band. Employees will then be placed in an interval according to their salary. The percentage of performance-related salary increase will be highest for those in the bottom interval. Those employees in the middle interval will receive a smaller percentage increase than those in the bottom interval, and

those in the top interval will receive a smaller percentage increase than those in the other two intervals.

The horizontal component of the matrix is organized by performance rating. The performance ratings are Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory. No employees receiving a rating below fully successful will receive a performance-related pay increase. This increase, as a percentage of current base salary, will be higher for each successive rating. The highest percentage increases, therefore, will be given to employees who are in the bottom intervals of their pay ranges and who have outstanding ratings.

Placement in a Lower Pay Band

An employee whose performance rating is less than fully successful will not receive the comparability increase. Because the minimum pay rate for each pay band will be increased each year by at least the amount of the comparability increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that pay band who did not receive the comparability increase. When this happens, the employee will be placed in the next lower pay band. The legislation specifically allows for this and provides that it will not be considered an adverse action.

Supervisory and Managerial Pay Differentials

The legislation provides that "appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided." The differential will not apply to SES and 5 U.S.C. 3104 positions.

The managers and supervisors who qualify for the differential include division chiefs and group leaders in the Scientific and Engineering Career Path, supervisors who formally supervise three or more subordinates doing the substantive work of the unit, and others with supervisory responsibilities as approved case-by-case by the PMB. The amounts of the differentials will be up to 6 percent of base salary (see "Pay Bands" above for a description of the supervisory pay bands and their maximum rates). The total basic pay for an employee receiving a supervisory/managerial differential, including the differential, may not exceed the prevailing basic pay for pay level 3 of the SES.

Upon conversion to the project, all eligible positions will be placed in the supervisory pay bands. The incumbents

of these positions will be converted at their basic pay at the time of conversion, except that division chiefs and group leaders, who are not now compensated for supervision, will begin receiving the added differential upon conversion. New hires into eligible positions after the date of conversion will have their pay set at the supervisor's discretion within the pay range of the applicable pay band.

Pay and Compensation Ceilings

The legislation specifies the following two overall pay ceilings: (1) The basic pay under any pay band may not exceed the basic pay of Executive Level IV. (2) An employee's total monetary compensation for a fiscal year may not exceed the basic pay of Executive Level I. Any amount that cannot be paid to an employee in a given fiscal year because of the ceiling on total monetary compensation shall be paid in the following fiscal year.

In addition, each pay band will have its own pay ceiling, just as do grades in the current system. Pay rates for the various pay levels will be directly keyed to the General Schedule rates with consideration given to the special pay rates. Basic pay will be limited to the maximum rates payable for each pay band. In the case of the special pay bands established for individuals receiving the supervisory/managerial pay differential, the top of the band will not exceed pay level 3 of the Senior Executive Service.

Pay Setting for New Hires

The setting of initial salaries within pay bands for new appointees will be flexible, particularly for hard-to-fill positions in the scientific and engineering career path. Determinations on setting pay will be based on the same factors applicable to granting recruitment and retention allowances (see "Recruitment and Retention Allowances" above).

Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher level will be 6 percent.

Conversion of Employees to the Demonstration System

Current grades will translate directly to the new career-path and pay-band structure. Employees will be converted at their current salaries at the time of conversion, except for the non-SES and non-3104 division chiefs and group leaders in the Scientific and Engineering Career Path who qualify for a supervisory/managerial pay differential upon conversion. No one's salary will be

reduced as a result of the conversion. At the time of conversion each converted employee will be given a lump sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade (step) increase or PMRS merit increase.

The payment for a General Schedule employee will be computed by (1) calculating the ratio of the number of days the employee will have spent in the employee's current step through the day prior to the day of conversion, to the total number of days in the employee's current waiting period for a regular within-grade increase (365, 730, or 1,095 days), and (2) multiplying that ratio by the dollar value of the employee's next within-grade increase, using the GS pay scale effective the first pay period of 1988.

The payment for a PMRS employee will be computed by multiplying (1) the percentage increase of the employee's last merit increase by (2) the employee's basic pay to be effective the first pay period of 1988 by (3) 30 percent (the proportion of a full year to the credit of the employee), or a lesser percentage for an employee who has entered on duty since October 1, 1987.

Performance Evaluation

Introduction

The Performance Appraisal System will link pay and promotions to performance through annual performance evaluations and performance ratings. Individual performance objectives will be tied to organizational goals and objectives. The proposed performance appraisal system will use peer comparison and ranking wherever appropriate.

Process

The current Department of Commerce (DoC) Performance Management Recognition System (PMRS) will be the model for the project performance appraisal system. Performance plans will be developed each year by the employee and supervisor to clarify NBS and DoC goals and objectives and identify individual accountability for their accomplishment. Critical elements for each position will be established and weighted on the basis of importance. Performance standards developed by DoC will be used along with specific supplemental performance standards developed by the supervisor to evaluate levels of accomplishment for each critical element. A mid-year review will determine whether objectives are being met and whether critical elements should be modified to reflect changes in planning, work-load, and resource

allocation. Additional reviews may be held if needed. There are five rating categories: Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory.

After the initial rating is given, an employee's performance will, if appropriate, be reviewed at higher levels and ranked in relation to the employee's peers (all other employees in the same pay band and career path). This peer ranking process may take place at division, center, and MOU level, and will result in assignment of a final rating. Pay adjustments will be based on employee ratings. The performance appraisal cycle for all covered employees will begin October 1 and end September 30 of the following year.

All performance plans and appraisals will be reviewed by at least the next higher level of management. A written performance review at the end of the rating period will be required.

An employee who disagrees with the rating received may comment in writing to the approving official. The approving official makes the final decision and must document any changes in the rating.

Senior Executive Service

Members of the Senior Executive Service will remain under the current DoC/NBS SES performance appraisal system. 5 U.S.C. 3104 employees will be under the structure of the project performance evaluation system, but will not be in the project pay-for-performance pay system.

Awards

Introduction

NBS currently has an extensive awards program consisting of both internal and external awards. Performance recognition bonuses will replace current performance recognition awards (Quality Step Increases, Sustained Superior Performance Awards, and PMRS Performance Awards). The Special Act or Service Awards (SAS), internal NBS awards, and suggestion awards will continue. Department of Commerce Medal Awards and other honorary non-cash awards will also be retained.

Performance Bonuses

Bonuses are cash awards to recognize and encourage special contributions. Bonuses must be supported by a total summary rating of at least Fully Successful. They must be approved at a managerial level at least one level higher than the official who recommended the bonus. Cash bonuses

will not become a party of employee base pay.

Senior Executive Service and 5 U.S.C. 3104 Employees

Members of the Senior Executive Service (SES) will remain under their current awards system and will not participate in the project performance recognition bonus awards program. SES members will continue to be eligible for the SES bonus awards and the Presidential Rank Awards.

5 U.S.C. 3104 employees will be eligible for cash awards.

Employee Development

Introduction

The objective of NBS's Employee Development Program is to develop the competence of employees for maximum achievement of Bureau goals and objectives. The legislation mandates the continuation of an employee development program including, in appropriate circumstances, a sabbatical program. The legislation requires that any sabbatical program be consistent with the terms and conditions of the sabbatical program currently applicable to members of the Senior Executive Service.

Sabbaticals

The proposed NBS Sabbatical Program under the Project will cover all career appointees whose current performance is above the fully successful level. Employees will be eligible after completion of seven years of Federal service. One sabbatical of 3 to 11 months may be granted to an employee in any 10-year period. Each sabbatical should benefit NBS, as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered for purposes of granting a sabbatical, such as advanced academic teaching or research, or on-the-job work experience with public, private, or non-profit organizations.

Final approval authority for all training during the project will be the major organizational unit (MOU) director or designated management level. The personnel offices will provide policy guidance, training design, evaluation, information, scheduling, and administrative processing.

Employee Relations

Introduction

The legislation mandates that employees covered by the project are to be evaluated under a performance evaluation system that affords appeal rights comparable to those provided

currently under chapter 43 of title 5, United States Code., NBS will maintain. under the project, the substantive and procedural appeal rights that employees now have.

Placement in a Lower Pay Band

Employees whose ratings are marginal or unsatisfactory will receive no pay increase and may move to a lower pay band as the minimum rates of basic pay in a pay band increase (as the result of comparability increases). Such placement in a lower pay band, with no decrease in pay, and due to a failure to attain a performance rating of fully successful, will not be considered an adverse action.

Safeguards for Employees

Employees may be removed from their positions or reduced to a lower level for unacceptable performance. These performance-based actions will follow the same procedures and allow the same appeal rights as current performance-related removals and reductions in grade.

Evaluation

Introduction

The Demonstration Project legislation mandates evaluations and reports by organizations external to NBS.

The Office of Personnel Management is to have the Project evaluated annually by a contractor. The contractor must be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation. The contractor is to report the findings to OPM in writing. After reviewing the report, OPM is to transmit the report, along with comments by OPM, the Department of Commerce, and NBS, to Congress.

The Comptroller General must submit a final report to Congress no later than 4 years after the commencement of the project. This report is to include any recommendations for legislation or other action which the Comptroller General considers appropriate.

The Evaluation Plan incorporates both internal and external evaluation efforts. Elements of the plan are outlined below.

Evaluation Methodology

The evaluation effort will be carried out in four phases. The *design phase* is intended to aid in the structuring of the demonstration project and is primarily an internal NBS effort.

Baseline data will be collected prior to implementation of the demonstration scheduled for January 1988. These data

will be made available to the OPM contract evaluator.

Following the implementation of the project, the monitoring of the *implementation phase* begins. An evaluation of this phase is necessary to determine whether the project is implemented as designed and whether the stated processes are stable and operational.

The *formative evaluation phase* begins once it has been determined that the project is stable and operational. This phase will extend over the full 5-year experimental period. Data will be collected annually and periodic reports will be issued. The *summative phase* will assess the overall impact of the project upon conclusion of the experiment.

The evaluation will focus on overall personnel management issues and will be based on before-and-after comparisons of the personnel management data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop appropriate measures. New data collection methods and measures, or modifications to existing instruments, may be required for some criteria. A private research firm will design, conduct, and analyze the results of employee attitude surveys in order to ensure the validity of results and to protect the confidentiality of individual employee responses. In addition to the specific requirements, as mandated by the legislation, the design of the survey will benefit from the experience of the Office of Personnel Management, the Department of Commerce, the National Bureau of Standards, and other organizations. The first survey is scheduled for the fall of 1987.

Evaluation criteria will be derived from the following Demonstration Project goal and objectives:

Goal: Demonstrate improved personnel management by tying pay more closely to the job market, linking pay increases to performance, and introducing efficient personnel structures and processes.

Objectives: Compete more effectively for high-quality staff; motivate staff and retain key employees; increase management responsibility and accountability; remain budget neutral; and create a model that could be adopted by other government agencies.

Project Training

One of the keys to the success or failure of the project will be the training provided to all participants. Training

will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also promote a commitment to the program on the part of all participants.

Training will be structured to meet the specific needs of:

1. Supervisors
2. Administrative Staff: generally personnel specialists, personnel assistants, and administrative officers
3. Employees.

Training will also include orientation and periodic status updates. This training will focus on overviews and in-depth descriptions of all elements of the demonstration project, including:

1. Objectives
2. Implementation plan and timetable
3. Organization for the demonstration project
4. How employees will enter the project
5. Pay adjustment process
6. Position classification/position description preparation
7. Promotion
8. Staffing
9. Performance evaluation
10. Bonuses
11. Link between management accountability and personnel office oversight
12. Automation
13. Internal and external evaluation processes

Supervisors

The focus of the demonstration project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledges and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in classification, position description preparation, and performance evaluation using peer comparison and ranking.

Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will also need training in the procedural and technical aspects of the project. They will undergo at least the same block of training provided to all supervisors.

Employees

NBS will train employees for the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

Costs

Although the project legislation does not require budget neutrality, NBS has set for itself an objective to control total compensation costs associated with the project. NBS programs must have the flexibility to respond to emerging technologies and to industry and other agency demands. Nearly half of NBS resources come from government and private sector customers. The proposed measures will allow NBS to meet these demands and yet control total compensation costs.

NBS intends to maintain total compensation during the project at the level it would have reached under the current Government-wide system. The proposed procedure will permit changes in NBS expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. NBS may offset selected salary increases with savings by reducing turnover, eliminating unnecessary overhead, and cutting other personnel costs. NBS will measure its adherence to cost control by preparing budget estimates which are based on prescribed Federal Budget processes and monitor actual spending under the Demonstration Project against this budget estimate.

Implementation

NBS intends to strike an appropriate balance between supervisors' personnel management authority and accountability and personnel office oversight responsibility. Supervisors will be thoroughly trained for exercising their delegated authorities in accordance with demonstration procedures and safeguards.

Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay (see "Conversion of Employees to the New System" under "Pay Administration" above).

Personnel Administration

All personnel laws, regulations, and guidelines not superseded by Pub. L. 99-574 authorizing the project or waived by

this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. The personnel offices will oversee the personnel management decisions made by supervisors, and will continue to process all personnel and payroll actions.

Automation

NBS will continue using the U.S. Department of Agriculture's National Finance Center automated personnel/payroll processing system. NBS will automate internal personnel processes and systems associated with the demonstration project wherever proper and appropriate, and will design a personal computer system to handle the production of position descriptions.

Conversion Back to the Former System

In the event the project ends and the demonstration system is not made permanent, a conversion back to the former (regular) Federal civil service system will be required for positions equivalent to GS/GM-15 and below (SES and 3104 position classification will not change under the project).

The conversion will be conducted according to the following steps:

1. All employees will be converted at their current base pay at the time of conversion, except where a General Schedule employee's base pay falls between two steps of a grade and must be raised to the higher step.

2. All employees in a pay band corresponding to a single General Schedule (GS) grade will be converted to that grade.

3. Employees in a pay band corresponding to two or more GS grades will be converted to one of those grades according to the following procedures:

- a. A mid-point will be calculated for each GS grade, which will be the dollar figure half-way between the minimum rate and maximum rate of the grade in the current GS pay schedule at the time of conversion.

- b. An employee's basic pay at the time of conversion will be compared to the GS grade mid-points to establish the grade mid-point that is closest, whether higher or lower, to the employee's basic pay.

- c. The employee will be converted to the GS grade whose mid-point is closest to the employee's basic pay, except that an employee converting to a two-grade-interval occupational series will be converted to an appropriate grade for that series whose mid-point is closest to the employee's basic pay. If the employee's basic pay is equally distant from the mid-points of two appropriate

grades, the employee will be converted to the higher grade.

4. Employees will be placed in GS or GM (PMRS) categories according to coverage criteria that exist at the time of conversion.

5. Once these conversions have taken place, evaluations will be conducted to ensure proper classification.

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The Bureau, with DoC and OPM approval, will make minor modifications, such as changes in the occupational series in a career path, without further notice. Major changes, such as a change in the number of career paths, will be published in the **Federal Register**.

Project Management and Oversight

In accordance with the project legislation, the project will be "conducted by the Director of the National Bureau of Standards." The Director will delegate management and oversight of the project to the Personnel

Management Board (PMB) under the chairmanship of the NBS Deputy Director. The directors of the major organizational units will be voting members and the Personnel Officer and EEO Officer will be non-voting members. The PMB will be the NBS body to manage, evaluate, and make policy and procedural changes to project systems when needed. When necessary, the PMB will interpret and clarify project policy. The PMB will establish the management and administrative structure for running and evaluating the project and will oversee the delegations of authorities to managers, supervisors, and management bodies, including the withdrawal of authority when warranted. The PMB will have the authority to make exceptions to normal project procedures on a case-by-case basis when it believes an exception is warranted. The PMB will also have the authority to establish itself as the approving body for any type of project personnel action for which NBS has authority.

Authorities and Waiver of Laws and Regulations Required

Public Law 99-574 gave the National Bureau of Standards the authority to

experiment with several specific personnel system innovations which are otherwise prohibited by law and regulations. In addition to the authorities granted by act, the following waivers of law and regulation are necessary:

Title 5, U.S. Code

Section 5333(a) Minimum rate for new appointments

Title 5, Code of Federal Regulations

Section 315.801 Requirement for one-year probationary period

Section 315.802 Length of probationary period

Section 351.401 Scope of competition in RIF

Section 351.402 Competitive area in RIF

Section 351.403 Competitive level in RIF

Section 351.701 Assignment involving displacement

Section 531.203 Minimum rate for new appointments

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Final Notice

Friday
October 2, 1987

Part VII

**Department of
Health and Human
Services**

Health Care Financing Administration

**Medicare Program; Schedule of Limits for
Skilled Nursing Facility Inpatient Routine
Service Costs; Final Notice**

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**Health Care Financing Administration
(BERC-354-N)**

**Medicare Program; Schedule of Limits
for Skilled Nursing Facility Inpatient
Routine Service Costs**

AGENCY: Health Care Financing
Administration (HCFA), HHS.

ACTION: Final notice of schedule of
limits.

SUMMARY: This notice sets forth a
revised schedule of limits on skilled
nursing facility inpatient routine service
costs that are paid for under Medicare.
This schedule applies to cost reporting
periods beginning on or after October 1,
1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT:
Steve Kirsh, (301) 597-1803.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1) and 1888 of the
Social Security Act (the Act) authorize
the Secretary to set prospective limits
on allowable costs incurred by a
provider of services that will be paid for
under Medicare. These limits are based
on estimates of the costs necessary for
the efficient delivery of needed health
services. Implementing regulations
appear at 42 CFR 413.30. Section 1888 of
the Act directs the Secretary to set
limits on per diem inpatient routine
service costs for hospital-based and
freestanding skilled nursing facilities
(SNFs) by urban or rural area location.

Under the authority of section 1888 of
the Act, we published a final notice on
April 1, 1986 (51 FR 11253) announcing a
schedule of limits for freestanding and
hospital-based SNFs, for cost reporting
periods beginning on or after May 1,
1986.

That final notice contained provisions
relating to: (1) Limits on adjusted SNF
per diem inpatient routine service costs;
(2) a "market basket" index developed
to reflect changes in the price of goods
and services purchased by SNFs; (3)
adjustments to the cost limits by an area
wage index developed from hospital
industry wages; (4) a classification
system based on whether the SNF is
hospital-based or freestanding and
whether it is located in an urban or rural
area; (5) a cost-of-living adjustment for
the nonlabor portion of the limits for
SNFs located in Alaska, Hawaii, Puerto
Rico, and the Virgin Islands; (6)
freestanding SNF cost limits set at 112
percent of the average per diem labor-

related and nonlabor costs; (7) hospital-
based SNF cost limits set at the limit for
freestanding SNFs, plus 50 percent of the
difference between the freestanding
limit and 112 percent of the average per
diem routine service costs of hospital-
based SNFs; and (8) an administrative
and general (A&G) add-on for hospital-
based SNFs.

II. Summary of Provisions

In developing the limits set forth in
this notice, we have retained the same
provisions as in the current limits and
the same methodology. We have,
however, used the most recent SNF cost
data for calculating the limits, as well as
the most recent projections of the rates
of increases in the costs included in the
SNF market basket.

This new schedule of cost limits
applies to all SNFs including those low
Medicare volume SNFs that are eligible
to receive the optional prospective
payment rate for routine services. Under
section 1888(d) of the Act, an SNF's
prospective payment rate excluding
capital-related costs cannot exceed its
routine service cost limits. The
prospective payment system is
described in section 2820 of the
Provider Reimbursement Manual
(HCFA Pub. 15-1).

This schedule of cost limits is
effective with cost reporting periods
beginning on or after October 1, 1987.
We are using the same updated SNF
data base for these cost limits as that
used to develop the inpatient
prospective payment rates for low
Medicare volume SNFs, to be effective
October 1, 1987. The updated data base
reflects, to the best possible extent,
current economic conditions affecting
the operation of an SNF. We believe
that by not publishing updated cost
limits, the current lower cost limits
would create a disincentive for SNFs to
participate in the Medicare program,
thus reducing the availability of SNF
services to Medicare beneficiaries. In
addition, we believe that using a
comparable data base would allow
eligible SNFs to make a more informed
decision regarding the election of
prospective payment.

Due to the length of time involved in
receiving audited cost report data, the
1984 data base, as in prior cost limit
data bases, includes data from
unaudited cost reports. Many of these
unaudited cost reports include
unallowable Medicare costs. Basing the
cost limits on these data causes the
limits to be higher than they would be if
we were to use audited data. This
results in higher reimbursement to those
SNFs that have costs at or above the
cost limits. At this time, we have not

quantified the amount by which the
costs should be reduced to reflect only
allowable Medicare costs. However, we
are in the process of developing a
methodology that will approximate the
amount of allowable Medicare costs in
the data base. When the methodology is
developed, we will incorporate it into
the next revision of the SNF cost limits.

The schedule provides for the
following:

**A. Separate Group Limits for Labor-
Related and Nonlabor Components of
Per Diem Routine Service Costs**

We are retaining separate group limits
for the labor-related and nonlabor
components of per diem routine service
cost. We calculate these separate limits
as follows:

1. Actual SNF per diem inpatient
routine service cost data are obtained
for each SNF.
2. To make the data reflect current
conditions more accurately, the data are
adjusted from the midpoints of the cost
reporting periods represented in the
data collection to the midpoint of the
initial cost reporting period to which the
limits apply.
3. Each SNF's per diem cost is
separated into labor-related and
nonlabor portions. The labor-related
portion is divided by the wage index for
the SNF's location (see Tables II and
III).
4. Finally, separate group means are
computed for the labor-related and
nonlabor components. Each group mean
is multiplied by 112 percent.

**B. Adjustment of SNF Cost Data by
Wage Index**

We are continuing use of the HCFA
survey-based hospital wage index to
account for area wage differences. This
is necessary because industry-specific
data are not available on SNF wages.
Since hospitals and SNFs generally
compete in essentially the same labor
market for employees, we believe an
index based on geographic variations in
hospital wages provides an accurate
measure of geographic variations in
wages paid by SNFs. The wage index is
unchanged from the wage index
effective for cost reporting periods
beginning on or after May 1, 1986. For an
explanation of how we developed the
wage index, see 51 FR 11253.

C. Use of SNF Market Basket

We are continuing to base the cost
limits on reported costs, adjusted for
actual and projected cost increases by
applying the SNF market basket index.
This market basket index is used to
adjust the SNF cost data to reflect cost

increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories we are using are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine services costs attributable to each category (see the Appendix to this notice). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977, conducted by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. (As noted in footnote 1 at the end of the appendix, the 1973/1974 survey obtained 1972 cost data and the 1977 survey obtained 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of the appendix specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1982 through 1988 (Appendix).

The market basket index also provides for adjustments in the limits if our forecasts of economic trends prove erroneous. If the final rate of change in the market basket index for a year differs from the estimated rate of change by at least .3 of one percentage point, we would adjust the limits. We will advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively at final settlement of the SNF's cost report. This approach is the same as that used for the current limits.

D. Application of the Hospital Wage Index to Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the current schedule of limits (published April 1, 1986 (51 FR 11253)), we applied the wage index discussed above to five categories of labor-related costs; wages, employee benefits, health service costs, business service costs, and other miscellaneous

costs. We retained that method in developing this schedule of limits. The proportion of adjusted routine service costs that we adjust by the wage index is 82.150 percent for cost reporting periods beginning on or after October 1, 1987.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health services costs is a category used by the National Nursing Home Survey conducted in 1977, noted above. This category includes the costs of routine services that are purchased under arrangement from outside sources.

Business services costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers.

Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we are continuing to apply the wage index to the total portion of cost (82.150 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses) rather than to the wage portion (61.903 percent for cost reporting periods beginning on or after October 1, 1987) only. We are continuing to use this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

E. Freestanding SNF Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after October 1, 1987, we will continue to maintain the revised limits at 112 percent of the average labor-related and average nonlabor-related costs of each group. We will continue to use the same methodology for freestanding SNFs as described in the April 1, 1986 notice (51 FR 11253) and in September 29, 1982 SNF cost limits notice (47 FR 42894).

F. Hospital Based SNF Limits

For cost reporting periods beginning on or after October 1, 1987, the revised

hospital-based limit will continue to equal the revised freestanding limit plus 50 percent of the difference between the revised freestanding limit and 112 percent of the mean per diem routine service costs of hospital based SNFs. The methodology for hospital-based SNFs will be the same as that used for current hospital-based SNF limits, as described in the April 1, 1986 notice (51 FR 11253). We are continuing to provide an add-on adjustment for A&G costs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A&G cost center for hospital-based SNFs.

G. Cost of Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we are continuing to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor component of the limit that applies to these areas based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index, this cost-of-living adjustment applies only to the nonlabor component.

H. Exception to Cost Limits

A provider may request an exception to the cost limits under the provisions of § 413.30(f). The request must be made to HCFA central office through the appropriate Medicare fiscal intermediary.

I. Classification System

We are retaining the classification system based on whether an SNF is located within a metropolitan statistical area (MSA), as defined by the Office of Management and Budget (OMB).

III. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Published Limits

1. Data

As previously mentioned, we are using actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from Worksheet D-1 of the latest Medicare cost reports available as of June 1984. The data have been adjusted to exclude the inpatient routine nursing salary cost differential.

We adjusted these data using the market basket index discussed above, to inflate costs from the cost reporting

periods in the data base to the midpoint of the first cost reporting period to which the limits apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

1982.....	7.3
1983.....	5.5
1984.....	4.3
1985.....	3.1
1986.....	2.6
1987.....	2.5
1988.....	3.9
1989.....	3.8

¹ Forecasted increase.

An adjustment will be made to the limits if the forecasted market basket rate differs from the actual rate by at least .3 of one percentage point. Following the end of each year that the limits are in effect, we determine the actual rate of increase or decrease in the market basket for that year. The data necessary to make this determination are usually available in the second quarter of the following year. This allows us to make the determination of the actual rate by June 30 of each year.

If the forecasted market basket rate differs from the actual rate by at least .3

of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust each SNF cost limit at the time of final settlement.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 82.150 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index value applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor adjusted routine service costs for each SNF group established in accordance with the SNF's MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor costs by 112 percent to arrive at the freestanding limits (Table I).

We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital based limit (Table I), the 50 percent described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNFS

[Effective 10/1/87]

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non MSA)
Labor.....	\$97.25	\$83.11
Non-Labor.....	23.81	15.72
Total.....	121.06	98.83

CALCULATION OF 50 PERCENT DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Non-Labor
Urban (MSA)		
112 percent of Hospital-Based Mean Cost.....	\$97.25	\$23.81
Freestanding Limit (Table I).....	49.47	11.94
Difference.....	\$47.78	\$11.87
50 percent of Difference.....	\$23.89	\$5.94
Plus Freestanding Limit.....	49.47	11.94
Hospital-Based Limit (MSA).....	\$73.36	\$17.88
Rural (Non-MSA)		
112 percent of Hospital-Based Mean Cost.....	\$83.11	\$15.72
Freestanding Limit (Table I).....	51.50	9.95
Difference.....	\$31.61	\$5.77
50 percent of Difference.....	\$15.81	\$2.89
Plus Freestanding Limit.....	51.50	9.95
Hospital-Based Limit (Non-MSA).....	\$67.31	\$12.84
A & G Difference		
	Urban	Rural
1. Hospital-Based SNF A & G Mean ¹	\$8.09	\$6.49
2. Freestanding SNF A & G Mean ¹	-3.99	-4.03
3. Difference.....	\$4.10	\$2.46
Amount of A & G Included in the 50-percent Difference between 112 percent of the Hospital-Based Mean Costs and the Freestanding Limit:		
4. A & G Difference (line 3).....	\$4.10	\$2.46
5. 112 percent of Hospital-Based Mean Cost (Total).....	\$121.06	\$98.83
6. Average Routine Cost (line 5 Divided by 112percent).....	\$108.09	\$88.24
7. Percent of A & G Difference to Average Routine Cost (line 4 divided by line 6).....	3.79%	2.79%
8. 50 percent of Difference between 112 percent of Hospital-Based SNF Mean Cost and Freestanding SNF Limit.....	\$29.83	\$18.70
9. Amount of A & G Difference Included on line 8 (line 7 times line 8).....	\$1.13	\$0.52
A & G ADD-ON:		
10. A & G Difference from line 3.....	\$4.10	\$2.46
11. Less Amount from line 9.....	\$1.13	\$0.52
12. A & G Add on (line 10 less 11).....	\$2.97	\$1.94
13. Labor-Related Component of A & G Add-on (line 12 times 82.150 percent).....	\$2.44	\$1.59

CALCULATION OF 50 PERCENT DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT—Continued

	Labor	Non-Labor
14. Nonlabor Component of A & G Add-on (line 12 times 17.850 percent).....	\$0.53	\$0.35

¹ Wage Deflated Means.

B. Adjustment of Published Limits

1. Adjustment of Labor-Related Component by Wage Index

a. *Freestanding SNFs.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to an SNF is the sum of the nonlabor component, plus the adjusted labor-related component, unless the SNF qualifies for the cost reporting year adjustment discussed in paragraph 2, below.

EXAMPLE—CALCULATION OF ADJUSTED LIMIT FOR FREESTANDING SNF (A) LOCATED IN DALLAS, TEXAS

Labor-Related Component.....	\$49.47	(Table I)
Nonlabor Component.....	\$11.94	(Table I)
MSA Wage Index Value.....	1.0733	(Table II)

Computation of Adjusted Limit

Labor-related component.....	\$49.47
Wage index value.....	×1.0733
Adjusted Labor component.....	\$53.10
Nonlabor component.....	+11.94
Adjusted limit.....	\$65.04

b. *Hospital-Based SNFs.* To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). We then add the nonlabor component of the limit and the nonlabor component of the A&G add-on. The adjusted limit that applies to a hospital-based SNF is the sum of the adjusted labor component and add-on and the nonlabor component and add on unless the facility qualifies for the cost reporting year adjustment discussed in paragraph 2, below.

EXAMPLE.—CALCULATION OF ADJUSTED LIMIT FOR HOSPITAL-BASED SNF (B) LOCATED IN SCRANTON, PENNSYLVANIA

Labor Related Component:	
Limit.....	\$73.36 (Table I)
Add-on.....	\$2.44 (Table I)
Nonlabor Component:	
Limit.....	\$17.88 (Table I)
Add-on.....	\$0.53 (Table I)
MSA Wage Index Value.....	0.9982 (Table II)

COMPUTATION OF ADJUSTED LIMIT

Labor-related component:	
Limit.....	\$73.36
Add-on.....	+2.44
	\$75.80
Wage index value.....	×.9982
Adjusted Labor Component.....	\$75.66
Nonlabor Component:	
Limit.....	+17.88
Add-on.....	+0.53
Adjusted limit:.....	\$94.07

2. *Adjustment for Cost Reporting Year.* If a facility has a cost reporting period beginning after October 1, 1987 and before October 1, 1988, the intermediary will increase the limit that otherwise would apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that would occur after the date on which the limits are effective.

Example: The following is a computation of a revised hospital-based limit for previously cited SNF (B). Hospital-based SNF (B) has a cost reporting period that begins November 1, 1987. The base adjusted limit for SNF (B) is \$94.07. The revised limit for SNF (B) applicable to the cost reporting period is \$94.38.

Individual SNF adjusted limit.....	\$94.07
Adjustment factor from Table IV.....	×1.00325
Revised Limit.....	\$94.38

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary would obtain this adjustment factor from our central office.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to—

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or
- (3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that the revised limits will result in a loss of savings to the Medicare program of approximately \$20 million in FY 1988 and \$35 million in FY 1989, compared to expenditures under the prior limits. This loss of savings is applicable for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988.

Because the impact does not exceed \$100 million annually, or any other threshold criterion under Executive Order 12291, we have determined that this is not a major rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

For notices such as this, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the notice does not have a significant economic impact on a substantial number of small entities. We consider all SNFs to be small entities under the RFA.

A substantial number of SNFs are affected by this rule. However, it is our practice not to consider an economic impact on small entities to be significant unless the annual total costs or revenues of a substantial number of entities would be increased or decreased by at least three percent. The revised limits will not result in facility total revenues being reduced by three percent or more over the limits that would otherwise apply. Medicare does not account for a high proportion of SNF utilization or revenue. In 1983, for example, Medicare SNF expenditures accounted for only 1.8 percent of total national nursing home expenditures. Therefore, we have determined, and the Secretary certifies, that this notice does not have a significant economic impact on a substantial number of small entities. Thus, we have not prepared a regulatory flexibility analysis.

V. Paperwork Burden

This notice does not impose information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

VI. Waiver of Proposed Rulemaking

Generally, we issue notices of changes in SNF limits in proposed form to provide a period for public comment. Also, we normally publish notices of this kind thirty days before the effective date. However, if adherence to these procedures would be impractical, unnecessary, or contrary to the public interest, we may waive the procedures.

As explained previously, we developed the revised limits set forth below by using the same basic methodology that we used to develop the current SNF cost limits, which were published on April 1, 1986 (51 FR 11253). On November 22, 1985, we published a proposed notice that described in detail our methodology for developing and applying those limits, and provided a 30-day period for public comment (50 FR 48304). In developing the schedule of limits now in effect, we considered all comments received in response to the

November 22, 1985 notice. These comments, and our responses to them, are described in the April 1, 1986 notice.

Because the methodology used for the revised schedule has previously been published for public comment, and because the updating of the cost data and SNF market basket projections are in the nature of routine and minor technical changes, we do not believe it would be either necessary or useful to request comment on that methodology again. Moreover, without publication of this notice, the current limits would remain in effect using adjustment factors based upon earlier and less accurate estimates of the rates of inflation than those contained in this notice. We believe it would be contrary to the public interest to permit this to occur.

In addition, we are updating the limits to be effective for cost reporting periods beginning on or after October 1, 1987 so that the update will occur concurrently with the updates of the SNF inpatient prospective payment rates, established under section 1888(d) of the Act, to be effective on October 1, 1987. Concurrent updating is necessary in order to provide SNFs eligible for prospective payment a comparison as a basis on which to make a decision as to whether to elect prospective payment. If we were to provide a 30-day delay in the effective date of these limits, those SNFs whose next cost reporting periods begin before that effective date (which would be in early October 1987 but, in any case, later than October 1, 1987) would be deprived of a comparison to cost limits that are based on the same data base and adjustment factors for rates of inflation. Thus, a 30-day delay in the effective date would be impractical and contrary to the public interest.

For these reasons, we find good cause to waive publication of a proposed notice and the normal 30-day delay in the effective date, and to publish this notice of updated limits in final form.

VII. Schedule of Limits

Under the authority of sections 1861(v) and 1888 of the Act, the following group per diem limits apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1987. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the wage indexes in Tables II and III, and the cost reporting year adjustment in Table IV, will remain in effect for cost reporting periods beginning on or after October 1, 1987.

TABLE I.—SNF GROUP LIMITS

[Cost Reporting Periods Beginning on or after 10/1/87]

Location	Labor related component	Nonlabor component ¹
Freestanding:		
MSA.....	\$49.47	\$11.94
Non-MSA.....	51.50	9.95
Hospital-Based MSA:		
Limit.....	73.36	17.88
Add-on.....	2.44	0.53
Non-MSA:		
Limit.....	67.31	12.84
Add-on.....	1.59	0.35

¹ The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska.....	1.250
Hawaii:	
Oahu.....	1.225
Kauai.....	1.175
Mauai, Lanai and Molokai.....	1.200
Hawaii (island).....	1.150
Puerto Rico.....	1.100
Virgin Islands.....	1.125

TABLE II.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX.....	.9003
Taylor, TX.....	
Aguadilla, PR.....	1.5581
Aguada, PR.....	
Aguadilla, PR.....	
Isabella, PR.....	
Moca, PR.....	
Akron, OH.....	1.1080
Portage, OH.....	
Summit, OH.....	
Albany, GA.....	.8183
Dougherty, GA.....	
Lee, GA.....	
Albany-Schenectady-Troy, NY.....	.9248
Albany, NY.....	
Greene, NY.....	
Montgomery, NY.....	
Rensselaer, NY.....	
Saratoga, NY.....	
Schenectady, NY.....	
Albuquerque, NM.....	1.1078
Bernalillo, NM.....	
Alexandria, LA.....	.9169
Rapides, LA.....	
Allentown-Bethlehem, PA-NJ.....	1.0454
Warren, NJ.....	
Carbon, PA.....	
Lehigh, PA.....	
Northampton, PA.....	
Altoona, PA.....	1.0022

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Blair, PA	
Amarillo, TX.....	.9595
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA.....	1.2616
Orange, CA	
Anchorage, AK.....	1.5849
Anchorage, AK	
Anderson, IN.....	.9882
Madison, IN	
Anderson, SC.....	.8369
Anderson, SC	
Ann Arbor, MI.....	1.2607
Washtenaw, MI	
Anniston, AL.....	.8519
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI.....	1.0666
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR.....	1.6081
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC.....	.8844
Buncombe, NC	
Athens, GA.....	.8179
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA.....	.9663
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ.....	1.0566
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC.....	.9602
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL.....	1.1015
Kane, IL	
Kendall, IL	
Austin, TX.....	1.1177
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA.....	1.2059

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kern, CA	
Baltimore, MD.....	1.1150
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME.....	.9285
Penobscot, ME	
Baton Rouge, LA.....	.9825
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI.....	1.0302
Calhoun, MI	
Beaumont-Port Arthur, TX.....	1.0082
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA.....	1.0919
Beaver, PA	
Bellingham, WA.....	1.1471
Whatcom, WA	
Benton Harbor, MI.....	.8911
Berrien, MI	
Bergen-Passaic, NJ.....	1.0748
Bergen, NJ	
Passaic, NJ	
Billings, MT.....	1.0226
Yellowstone, MT	
Biloxi-Gulfport, MS.....	.8489
Hancock, MS	
Harrison, MS	
Binghamton, NY.....	.9558
Broome, NY	
Tioga, NY	
Birmingham, AL.....	.9663
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND.....	.9943
Burleigh, ND	
Morton, ND	
Bloomington, IN.....	.9899
Monroe, IN	
Bloomington-Normal, IL.....	.9844
McLean, IL	
Boise City, ID.....	1.0584
Ada, ID	
Boston-Lawrence-Salem-Lowell- Brockton, MA.....	1.1560
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO.....	1.1326
Boulder, CO	
Bradenton, FL.....	.9196
Manatee, FL	
Brazoria, TX.....	.8742
Brazoria, TX	
Bremerton, WA.....	.9813

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kitsap, WA	
Bridgeport-Stamford-Norwalk- Danbury, CT.....	1.1846
Fairfield, CT	
Brownsville-Harlingen, TX.....	.8977
Cameron, TX	
Bryan-College Station, TX.....	.9569
Brazos, TX	
Buffalo, NY.....	1.0687
Erie, NY	
Burlington, NC.....	.7926
Alamance, NC	
Burlington, VT.....	1.0131
Chittenden, VT	
Grand Isle, VT	
Caguas, PR.....	1.6279
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Agua Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH.....	1.0080
Carroll, OH	
Stark, OH	
Casper, WY.....	1.1063
Natrona, WY	
Cedar Rapids, IA.....	1.0174
Linn, IA	
Champaign-Urbana-Rantoul, IL.....	.9965
Champaign, IL	
Charleston, SC.....	.8912
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV.....	1.0482
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC- SC.....	.8991
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA.....	.9345
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA.....	1.0041
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY.....	.9702
Laramie, WY	
Chicago, IL.....	1.2351
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA.....	1.2463
Butte, CA	
Cincinnati, OH KY-IN.....	1.1050

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY.....	.8183
Christian, KY	
Montgomery, TN	
Cleveland, OH.....	1.1565
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO.....	1.0439
El Paso, CO	
Columbia, MO.....	1.1022
Boone, MO	
Columbia, SC.....	.9168
Lexington, SC	
Richland, SC	
Columbus, GA-AL.....	.7929
Russell, AL	
Chattanooga, GA	
Muscogee, GA	
Columbus, OH.....	.9684
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX.....	.9899
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV.....	.8996
Allegeny, MD	
Mineral, WV	
Dallas, TX.....	1.0733
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA.....	.8087
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL.....	1.0660
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH.....	1.0939
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL.....	.9139
Volusia, FL	
Decatur, IL.....	.9592
Macon, IL	
Denver, CO.....	1.2865

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA.....	1.0556
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI.....	1.1725
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL.....	.8457
Dale, AL	
Houston, AL	
Dubuque, IA.....	1.0590
Dubuque, IA	
Duluth, MN-WI.....	.9930
St. Louis, MN	
Douglas, WI	
Eau Claire, WI.....	.9498
Chippewa, WI	
Eau Claire, WI	
El Paso, TX.....	.9437
El Paso, TX	
Elkhart Goshen, IN.....	.9650
Elkhart, IN	
Elmira, NY.....	.9741
Chemung, NY	
Enid, OK.....	.9626
Garfield, OK	
Erie, PA.....	.9991
Erie, PA	
Eugene-Springfield, OR.....	1.1163
Lane, OR	
Evansville, IN-KY.....	1.0217
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN.....	1.0644
Clay, MN	
Cass, ND	
Fayetteville, NC.....	.8330
Cumberland, NC	
Fayetteville Springdale, AR.....	.8078
Washington, AR	
Flint, MI.....	1.2104
Genesee, MI	
Florence, AL.....	.7889
Colbert, AL	
Lauderdale, AL	
Florence, SC.....	.7686
Florence, SC	
Fort Collins-Loveland, CO.....	1.0846
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL.....	1.1249
Broward, FL	
Fort Myers-Cape Coral, FL.....	.9533
Lee, FL	
Fort Pierce, FL.....	1.0215

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK.....	.9243
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL.....	.8751
Okaloosa, FL	
Fort Wayne, IN.....	.9568
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX.....	.9998
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA.....	1.1490
Fresno, CA	
Gadsden, AL.....	.8777
Etowah, AL	
Gainesville, FL.....	.9642
Alachua, FL	
Bradford, FL	
Galveston Texas City, TX.....	1.1412
Galveston, TX	
Gary-Hammond, IN.....	1.0978
Lake, IN	
Porter, IN	
Glens Falls, NY.....	.9607
Warren, NY	
Washington, NY	
Grand Forks, ND.....	.9871
Grand Forks, ND	
Grand Rapids, MI.....	1.0663
Kent, MI	
Ottawa, MI	
Great Falls, MT.....	1.0722
Cascade, MT	
Greeley, CO.....	1.0763
Weld, CO	
Green Bay, WI.....	1.0326
Brown, WI	
Greensboro-Winston-Salem-High Point, NC.....	.9388
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC.....	.9130
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD.....	.9585
Washington, MD	
Hamilton-Middletown, OH.....	1.0214
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA.....	.9868
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT.....	1.1486

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8982
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.2022
Honolulu, HI	
Houma-Thibodaux, LA	.9229
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0668
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9509
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8661
Madison, AL	
Indianapolis, IN	1.0594
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City IA	1.3084
Johnson, IA	
Jackson, MI	1.0206
Jackson, MI	
Jackson, MS	.9354
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7916
Madison, TN	
Jacksonville, FL	.9481
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7966
Onslow, NC	
Janesville-Beloit, WI	.9422
Rock, WI	
Jersey City, NJ	1.1108
Hudson, NJ	
Johnson City-Kingsport Bristol, TN-VA	.8617
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9526

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1253
Grundy, IL	
Will, IL	
Joplin, MO	.9202
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2341
Kalamazoo, MI	
Kankakee, IL	.9510
Kankakee, IL	
Kansas City, KS-MO	1.0660
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0875
Kenosha, WI	
Killeen-Temple, TX	.8849
Bell, TX	
Coryell, TX	
Knoxville, TN	.8996
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9870
Howard, IN	
Tipton, IN	
LaCrosse, WI	1.0167
LaCrosse, WI	
Lafayette, LA	1.0114
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9163
Tippecanoe, IN	
Lake Charles, LA	1.0036
Calcasieu, LA	
Lake County, IL	1.1637
Lake, IL	
Lakeland-Winter Haven, FL	.8851
Polk, FL	
Lancaster, PA	1.0396
Lancaster, PA	
Lansing-East Lansing, MI	1.0769
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8163
Webb, TX	
Las Cruces, NM	.8767
Dona Ana, NM	
Las Vegas, NV	1.1254
Clark, NV	
Lawrence, KS	1.0180
Douglas, KS	
Lawton, OK	.9469

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Comanche, OK	
Lewiston-Auburn, ME	.9426
Androscoggin, ME	
Lexington-Fayette, KY	.9873
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9866
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9710
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1135
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8410
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0280
Lorain, OH	
Los Angeles-Long Beach, CA	1.3290
Los Angeles, CA	
Louisville, KY-IN	1.0081
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0128
Lubbock, TX	
Lynchburg, VA	.9215
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9325
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0902
Dane, WI	
Manchester-Nashua, NH	.9724
Hillsborough, NH	
Mansfield, OH	.9919
Richland, OH	
Mayaguez, PR	.5732
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg Mission, TX	.8105
Hidalgo, TX	
Medford, OR	1.0356
Jackson, OR	
Melbourne-Titusville, FL	.9378
Brevard, FL	
Memphis, TN-AR-MS	1.0494

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2134
Merced, CA	
Miami-Hialeah, FL	1.0703
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0349
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1305
Midland, TX	
Milwaukee, WI	1.1411
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1772
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8927
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2103
Stanislaus, CA	
Monmouth-Ocean, NJ	.9924
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9343
Ouachita, LA	
Montgomery, AL	.8876
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.0065
Delaware, IN	
Muskegon, MI	.9912
Muskegon, MI	
Naples, FL	1.0448
Collier, FL	
Nashville, TN	.9414
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3399
Nassau, NY	
Suffolk, NY	
New Bedford-Fall-River-Attleboro, MA	.9795

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.1276
New Haven, CT	
New London-Norwich, CT	1.1103
New London, CT	
New Orleans, LA	.9344
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammy, LA	
New York, NY	1.3809
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1404
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8963
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9692
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co, VA	
Newport News City, VA	
Norfolk City, VA	
Pogooson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4893
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8735
Marion, FL	
Odessa, TX	.9619
Ector, TX	
Oklahoma City, OK	1.0930
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0787
Thurston, WA	
Omaha, NE-IA	1.0509
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9299
Orange, NY	
Orlando, FL	1.0188

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8243
Daviess, KY	
Oxnard-Ventura, CA	1.2851
Ventura, CA	
Panama City, FL	.8354
Bay, FL	
Parkersburg-Marietta, WV-OH	.9121
Washington, OH	
Wood, WV	
Pascagoula, MS	.9678
Jackson, MS	
Pensacola, FL	.8742
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0584
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1783
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0801
Maricopa, AZ	
Pine Bluff, AR	.8009
Jefferson, AR	
Pittsburge, PA	1.1011
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0246
Berkshire, MA	
Ponce, PR	.6935 ¹
Juana Diaz, PR	
Ponce, PR	
Portland, ME	1.0114
Cumberland, ME	
Portland, OR	1.2074
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth Dover-Rochester, NH	.9373
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0052
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0553
Bristol, RI	
Kent, T	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.9858
Utah, UT	
Pueblo, CO	1.1210
Pueblo, CO	
Racine, WI	1.0002

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Racine, WI	
Raleigh-Durham, NC.....	.9720
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD.....	.9623
Pennington, SD	
Reading, PA.....	1.0248
Berks, PA	
Redding, CA.....	1.2396
Shasta, CA	
Reno, NV.....	1.1839
Washoe, NV	
Richland Kennewick, WA.....	1.0256
Benton, WA	
Franklin, WA	
Richmond Petersburg, VA.....	.9564
Charles City Co, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA.....	1.2517
Riverside, CA	
San Bernardino, CA	
Roanoke, VA.....	.8997
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN.....	1.0284
Olmsted, MN	
Rochester, NY.....	1.0226
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL.....	1.1354
Boone, IL	
Winnebago, IL	
Sacramento, CA.....	1.2969
Eldorado CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City Midland, MI.....	1.1070
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN.....	1.0018
Benton, MN	
Sherburne, MN	
Stearns, MN	
St Joseph, MO.....	.9487
Buchanan, MO	
St. Louis, MO-IL.....	1.0827

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR.....	1.0971
Marion, OR	
Polk, OR	
Salinas-Seaside Monterey, CA.....	1.2571
Monterey, CA	
Salt Lake City-Ogden, UT.....	1.0354
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX.....	.8719
Tom Green, TX	
San Antonio, TX.....	.8943
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego CA.....	1.3104
San Diego, CA	
San Francisco, CA.....	1.6517
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose CA.....	1.4805
Santa Clara, CA	
San Juan, PR.....	.6197 ¹
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta PR	
Vega Baja, PR	
Santa Barbara-Santa Maria	
Lompoc, CA.....	1.1822
Santa Barbara, CA	
Santa Cruz, CA.....	1.2432
Santa Cruz, CA	
Santa Fe, NM.....	.9809
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA.....	1.3112

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Sonoma, CA	
Sarasota, FL.....	.9639
Sarasota, FL	
Savannah, GA.....	.8917
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA.....	.9982
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA.....	1.1579
King, WA	
Snohomish, WA	
Sharon, PA.....	.9757
Mercer, PA	
Sheboygan, WI.....	.9885
Sheboygan, WI	
Sherman-Denison, TX.....	.8619
Grayson, TX	
Shreveport, LA.....	.9613
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE.....	1.0062
Woodbury, IA	
Dakota NE	
Sioux Falls, SD.....	1.0211
Minnehaha SD	
South Bend-Mishawaka, IN.....	1.0087
St Joseph, IN	
Spokane, WA.....	1.1559
Spokane, WA	
Springfield IL.....	1.0664
Menard, IL	
Sangamon, IL	
Springfield, MO.....	.9863
Christian, MO	
Greene, MO	
Springfield, MA.....	1.0060
Hampden, MA	
Hampshire, MA	
State College, PA.....	1.0772
Centre, PA	
Steubenville-Weirton, OH-WV.....	.9655
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA.....	1.2871
San Joaquin, CA	
Syracuse, NY.....	1.0301
Madison, NY	
Onondaga NY	
Oswego, NY	
Tacoma, WA.....	1.1052
Pierce, WA	
Tallahassee, FL.....	.9509
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg Clearwater, FL.....	.9830
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN.....	.8456

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8650
Miller, AR	
Bowie, TX	
Toledo, OH	1.2267
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0632
Shawnee, KS	
Trenton, NJ	1.0317
Mercer, NJ	
Tucson, AZ	1.0090
Pima, AZ	
Tulsa, OK	1.0131
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0172
Tuscaloosa, AL	
Tyler, TX	1.0035
Smith, TX	
Utica-Rome, NY	.8840
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3397
Napa, CA	
Solano, CA	
Vancouver, WA	1.1659
Clark, WA	
Victoria, TX	.8205
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9929
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0643
Tulare, CA	
Waco, TX	.9117
McLennan, TX	
Washington, DC-MD-VA	1.1965
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9993
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9871
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9972
Palm Beach, FL	
Wheeling, WV-OH	.9771

TABLE II.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1589
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8776
Wichita, TX	
Williamsport, PA	.9048
Lycoming, PA	
Wilmington, DE-NJ MD	1.0588
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9591
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0094
Worcester, MA	
Yakima, WA	1.0389
Yakima, WA	
York, PA	.9853
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0480
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0460
Sutter, CA	
Yuba, CA	

¹ Approximate value for area.

TABLE III.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7466
Alaska	1.4989
Arizona	.9323
Arkansas	.7703
California	1.1385
Colorado	.9326
Connecticut	1.0880
Delaware	.8645
Florida	.8815
Georgia	.7779
Hawaii	1.0157
Idaho	.9130
Illinois	.8917
Indiana	.8685
Iowa	.8719
Kansas	.8481
Kentucky	.8036
Louisiana	.8605
Maine	.8701
Maryland	.8773
Massachusetts	1.0548
Michigan	.9589
Minnesota	.8788
Mississippi	.7705
Missouri	.8325
Montana	.9154
Nebraska	.8310

TABLE III.—WAGE INDEX FOR RURAL AREAS—Continued

Non-urban area	Wage index
Nevada	1.0799
New Hampshire	.9234
New Jersey ²	
New Mexico	.9213
New York	.8730
North Carolina	.8130
North Dakota	.9061
Ohio	.9100
Oklahoma	.8462
Oregon	1.0782
Pennsylvania	.9427
Puerto Rico	1.5736
Rhode Island	.9553
South Carolina	.7827
South Dakota	.8263
Tennessee	.7733
Texas	.8180
Utah	.9505
Vermont	.8888
Virginia	.8194
Virgin Islands	11.0000
Washington	1.0273
West Virginia	.8816
Wisconsin	.8995
Wyoming	.9745

¹ Approximate value for area.

² All counties within the State are classified urban.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS¹

If a SNF cost reporting period begins	The Adjustment Factor is—
November 1, 1987	1.00325
December 1, 1987	1.00641
January 1, 1988	1.00969
February 1, 1988	1.01289
March 1, 1988	1.01590
April 1, 1988	1.01912
May 1, 1988	1.02225
June 1, 1988	1.02549
July 1, 1988	1.02864
August 1, 1988	1.03191
September 1, 1988	1.03518

¹ Based on compounded projected market basket inflation rates of 3.9 percent for 1988 and 3.8 percent for 1989. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If, for any reason, we do not publish a new schedule of limits to be effective on October 1, 1988 or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00317 once for each month between September 1, 1988 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if a cost reporting period begins on November 1, 1988, 1.03518 would be multiplied by 1.00317 twice and the resulting factor would equal 1.04175 (1.03518 × 1.00317 × 1.00317 = 1.04175).

APPENDIX—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS COST LIMITS EFFECTIVE OCTOBER 1, 1987

Category of costs	Relative ¹ importance 1988	Forecaster percent changes (1982-1988)	Price variable used
Payroll Expenses.....	61.903	DRI-CFS ²	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Employment and Earnings</i> (monthly), Table C-2.
Employee Benefits.....	8.453	DRI-MM ³	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, <i>Survey of Current Business</i> , Table 1.11. For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Employment and Earnings</i> (monthly), Table B-4.
Food.....	8.184	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 22.
Other business services.....	5.367	DRI-MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.
Fuel and other utilities.....	4.337	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, <i>Survey of Current Business</i> , (monthly), Table 7.11.
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (pipel) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.
Supplies.....	3.366	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.
Drugs.....	1.963	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Producer Prices and Price Indexes</i> , (monthly), Table 6.
Health services.....	1.511	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.
Miscellaneous.....	4.916	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, <i>Monthly Labor Review</i> , Table 23.

¹ The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973—April 1974*, DHEW, NCHS: *National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43*.

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

² DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 871), 1750 K Street, N.W., Washington, D.C. 20006.

³ DRI-MM refers to Data Resources, Inc., Trendlong (0187), 29 Hartwell Avenue, Lexington, Massachusetts 02173.

{Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 17, 1987.

William L. Roper,
Administrator, Health-Care Financing Administration.

Approved: August 7, 1987.

Don M. Newman,
Secretary.

[FR Doc. 87-22853 Filed 9-30-87; 10:09 am]

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**FRIDAY
OCTOBER 2, 1987**

**Friday
October 2, 1987**

Part VIII

**Department of
Housing and Urban
Development**

Office of the Secretary

24 CFR Part 24

**Debarment, Suspension and Limited
Denial of Participation; Contractors and
Participants; Interim Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

24 CFR Part 24

[Docket No. R-87-831; FR-1676]

**Debarment, Suspension and Limited
Denial of Participation; Contractors
and Participants**

AGENCY: Office of the Secretary, HUD.
ACTION: Interim rule.

SUMMARY: This interim rule improves and clarifies the procedural guarantees afforded under existing regulations governing debarment, suspension and ineligibility of HUD contractors and participants (including grantees and loan recipients). It also incorporates provisions contained in the Office of Federal Procurement Policy's (OFPP) Policy Letter 82-1 concerning Government-wide debarment, suspension and ineligibility of contractors, and amends HUD's existing regulations to conform to provisions of the OFPP Policy Letter, the Federal Acquisition Regulation, and to certain provisions contained in the OMB final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) promulgated pursuant to Executive Order 12549.

DATES: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this interim rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

Comments due December 1, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development,

Room 10266, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-7200. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: 24 CFR Part 24 sets forth procedures relating to debarment, suspension and ineligibility of contractors and grantees with respect to participation in programs administered by the Department of Housing and Urban Development. HUD's procedures cover exclusion from both procurement and nonprocurement activities of the Department. A proposed comprehensive revision of Part 24 was published on July 8, 1980 (45 FR 46012). On July 1, 1982, the Office of Federal Procurement Policy of the Office of Management and Budget (OFPP) published Policy Letter 82-1, establishing criteria for suspension and debarment of Government contractors and subcontractors throughout the Executive Branch (47 FR 28854). Based on a review of the public comments received on the proposed rule published in December 1980 and on the OFPP Policy Letter, HUD published a revised proposed rule on October 11, 1983 (48 FR 46072). The revised rule:

1. Replaced the term "contractor or grantee" in the present regulations with the terms "contractor" and "participant" in order to distinguish between procurement contractors and all others with whom the Department does business.

2. Included definitions to specify the level of proof necessary to establish "adequate evidence" and "preponderance of the evidence." Adequate evidence is comparable to the probable cause necessary for an arrest, a search warrant or a preliminary hearing in a criminal matter and is the standard used in suspensions, while the greater burden of preponderance is applied to debarments.

3. Amended the definition of "affiliate" to include individuals and to emphasize the control aspect of the relationship.

4. Combined the sanctions of "Temporary Denial of Participation" and "Conditional Denial of Participation" into a single sanction entitled "Limited Denial of Participation" which includes the causes available under the prior sanctions.

5. Clarified that a debarment includes all divisions or organizational elements of a participant or contractor unless the debarment is, by its terms, limited to specific divisions or elements.

6. Provided that the debarment or suspension of a contractor is effective throughout the Executive Branch of Government unless an agency head makes a written finding of compelling

reasons for doing business with the contractor.

7. Limited the time period in which HUD may impose a debarment or suspension.

8. Provided for Department-wide exclusion of a participant or contractor found to be in violation of section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, in addition to Title VI of the Civil Rights Act of 1954, as currently provided.

9. Authorized HUD to debar a participant or contractor who knowingly does business with a person named on the Consolidated List or the HUD List (but see section B of preamble regarding proposed conforming changes to OMB final Guidelines).

10. Authorized debarment, suspension or limited denials of participation based on a similar action by another Federal agency for any reason sufficient to justify a debarment, suspension, or limited denial of participation under this part.

11. Prescribed the contents of the notice of imposition of sanction.

12. Limited appeal rights to the written record in those cases where the suspension or debarment is based on an indictment, a conviction, or a sanction by another agency.

13. Generally reduced the period of debarment to a term not to exceed three years (including any period of suspension).

HUD received four public comments, along with comments from within the Department, on the proposed revised rule. In addition to changes made in response to these comments, this rule also includes changes based on the "Debarment, Suspension and Ineligibility" procedures of the Federal Acquisition Regulation, 48 CFR Subpart 9.4, the Office of Management and Budget's final Guidelines for Nonprocurement Debarment and Suspension (Guidelines), 52 FR. 20360 (issued May 29, 1987 pursuant to Executive Order 12549), and organizational changes within the Department.

The Department had reviewed this rule in light of the recently published final Guidelines and has identified nonsubstantive as well as substantive differences between these two documents. These differences are discussed in Section B of the preamble. The Department has incorporated the nonsubstantive, technical provisions into this rule and will publish a proposed rule to seek prior public comment on the substantive provisions needed to

conform to the Guidelines. The Department believes that the public has had a fair opportunity to comment on the substance of this rule through HUD's October, 1983 proposed rule on debarment, and OMB's publication of proposed Guidelines in February, 1986 (51 FR 6372) on which 60 public comments were received. The Department believes that it would be contrary to the public interest to further delay the effectiveness of this rule. Given the amount of time since the last proposed rule was published and the issuance of the final Guidelines, however, the Department is publishing this rule for effect as an interim rule that solicits public comment. Comments received on both this interim rule and the proposed rule to be published will be considered in developing the final rule on Part 24.

Public Comments

Three commenters stated that a hearing should be granted before imposition of a suspension or a limited denial of participation. The courts have held, however, that appropriate pre-hearing sanctions do not violate due process (*see Horne Bros., Inc. v. Laird*, 463 F.2d 1268 (D.C. Cir. 1972)). The Existing Part 24 contains these same provisions and the record shows no history of abuse. Furthermore, pre-termination hearings would defeat the purpose of providing immediate public protection.

The regulations provide for a hearing to be scheduled promptly under § 24.13. In the case of a limited denial of participation, § 24.29 gives the sanctioned participant or contractor a right to a prompt conference with the official actually imposing the sanction or his or her designee. This procedure, which is also contained in existing Part 24, has resulted in rapid resolution of most such sanctions at the local level without recourse to the formal hearing process. These provisions protect the public interest by ensuring speedy resolution of the issues. Consequently, this comment was not adopted.

Two commenters stated that the name of a sanctioned person should be kept confidential until the action has been upheld by a hearing officer and a final determination has been made. A debarment, in fact, is not included on the HUD List until a final determination has been issued. However, suspensions and limited denials of participation by their very nature require immediate publication to assure that the person is excluded pending the appeal. This is necessary to protect the Department and the public. Moreover, under the Government-wide system of debarment

of procurement contractors (published by the OFPP), HUD is required to inform other agencies of the suspension or debarment of any contractor. In addition, under 24 CFR Part 26, these hearings are public. Finally, letters of sanctions must be made available under the Freedom of Information Act and are frequently released by HUD under that Act. Thus, confidentiality would be contrary to law.

One commenter was critical of § 24.6(c)(13) which authorizes the imposition of sanctions for "any other cause . . . of so serious or compelling a nature that it affects the present responsibility of a contractor or participant." The commenter found this provision to be too vague. Unfortunately, it is impossible to specify in our regulations every conceivable situation involving nonresponsibility, and an "omnibus" provision is required to protect the public interest. However, this provision is limited specifically to violations which seriously or directly affect the responsibility of a participant on contractor.

Several commenters requested that we change the standard under § 24.11(b), which currently permits the imputation of conduct to a principal, to one requiring actual knowledge of the conduct. This requested change would permit, for example, a corporate officer to avoid responsibility for the conduct of employees merely by claiming that he or she was unaware of the conduct. While this comment has not been adopted, we have modified the provision to apply only where the principal knew or should have known of the conduct or approved or acquiesced in the conduct. In addition, under our regulations the decision to sanction an affiliate is discretionary and is made on an *ad hoc* basis. It should be noted that this imputation may only be made where fraudulent, criminal or other seriously improper conduct is involved. If an entity determined to be irresponsible can exercise control over another entity, the Department may properly act to protect the public interest by excluding the controlled entity (*see* Section B of preamble).

One commenter requested that we abolish "failure to honor contractual obligations" from the causes for sanction under § 24.26(4) because of the availability of contractual remedies. However, the purpose of a limited denial of participation is not to punish or to remedy past wrongs, but to protect the public and HUD from future harm—an area not addressed by contractual remedies. Therefore, we did not adopt this comment.

One commenter requested that the violation of a contract between one participant and another be included as a basis for imposing a limited denial of participation under § 24.26. This comment drew the Department's attention to an oversight in the proposed rule. Under HUD's current rule, violations of both private contracts and public agreements constitute grounds for debarment under § 24.6. This provision was unintentionally limited in the proposed rule to only those violations involving public agreements. In this interim rule, the Department is retaining its practice of imposing debarment for contractual violations that are so serious as to affect the present responsibility of a contractor or participant, or that result in a conviction or civil judgment under circumstances indicating a lack of business integrity or honesty, regardless of whether the violation relates to a private contract or to a public agreement.

A commenter also urged that we include, as a basis for imposing a limited denial of participation under § 24.26, the making of false certifications to another participant. We agree that a false certification made in connection with a HUD program should be a cause for imposing a limited denial of participation, whether the certification is made to HUD or to a participant, and have so provided at § 24.26(a)(7).

Some commenters expressed confusion as to whether the subject of a limited denial of participation is entitled to a formal hearing. We have modified the language of § 24.28(c) to clarify that a limited denial of participation gives rise to the same right to a formal appeal before an impartial hearing officer as in suspension and debarment cases. We have also retained the right to a conference with the original decision maker, as provided under the existing Part 24. In practice, this provision has enabled the Department quickly to resolve causes for local sanction.

Finally, one commenter objected to giving a limited denial of participation program-wide effect under § 24.27 whenever the participant has been indicted, convicted, or suspended or debarred by another agency—regardless of whether the offense was HUD-related. This provision was adopted to enable local HUD officials to take immediate action to exclude those who are already subject to criminal actions or exclusion by another agency. In such cases, due process has already been accorded, and the person's rights have been safeguarded. For example, to require local HUD offices to continue to do business with a person who has been

convicted of submitting false statements in veteran housing programs, merely because the offense was not HUD-related, would insufficiently protect the public interest. Nor would it be reasonable to exclude from one program a person convicted of submitting false statements to HUD, while permitting that person to do business in another program.

Internal Comments and Organizational Changes

The interim rule contains the following changes in response to internal comments and organizational changes within the Department:

(1) The designation "Area Manager" no longer exists within HUD. Therefore, the authority to impose a limited denial of participation sanction has been given to HUD Office Managers and to Directors of Indian Housing Programs.

(2) The renewability provision for limited denials of participation has been removed. Limited denials of participation are now limited to one year under § 24.27.

(3) Imposition of a limited denial of participation by one HUD field office has been added as a cause for imposing a limited denial of participation by other field offices under § 24.26(a)(11), as provided in the existing Part 24.

(4) The Department has added a provision at § 24.26(a)(12) which clarifies that a limited denial of participation may be imposed whenever a contractor or participant has been debarred or suspended by another Federal agency for any cause substantially the same as provided in § 24.6, "causes for debarment".

(5) This interim rule retains the exception under § 24.3 that permits contractors and participants to purchase HUD-owned housing units offered for all-cash sale, even though sanctions under this part have been imposed. However, because of significant abuse of this exception, the Department has determined that a separate rulemaking proceeding is needed to deal with the all-cash sale exception. The forthcoming regulation will supersede relevant language contained in § 24.3 of this interim rule.

Section A: Federal Acquisition Regulation

The model debarment and suspension procedures contained in Appendix A to Policy Letter 82-1 were incorporated into Subpart 9.4, captioned "Debarment, Suspension, and Ineligibility," of the Federal Acquisition Regulation (FAR) published on September 19, 1983 (48 FR 42103). In the proposed rule published in October 1983, HUD generally conformed

its definitions of key terms to those contained in Policy Letter 82-1. In the interim rule published herein, other segments of the rule are revised to conform to provisions of Subpart 9.4 of the FAR (48 CFR 9.400-407.5). These conforming changes generally are nonsubstantive and are intended to promote uniformity in the debarment and suspension procedures of Federal agencies.

However, the Department does intend to solicit public comment in its forthcoming proposed rule on substantive modifications to the government-wide effect of procurement sanctions. These revisions would reflect proposed changes to the FAR that were published on July 31, 1987 (52 FR 28642), including expansion of the government-wide effect of procurement sanctions by extending debarment and suspension ineligibility to subcontracts exceeding \$25,000. Under current practice, government-wide effect of procurement sanctions is limited to contractors and federally approved subcontractors.

Section B: OMB Guidelines for Nonprocurement Debarment and Suspension

The OMB final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) published on May 29, 1987 (52 FR 20360) provide a minimum model rule for the development of a government-wide nonprocurement debarment and suspension system mandated by Executive Order 12549. The Guidelines prescribe government-wide criteria and minimum due process procedures in order to "curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs" (51 FR 6370). Executive agencies and departments are required to conform to these minimum agency requirements, although it is anticipated that agencies may elaborate upon the basic model in order to accommodate differing substantive programs.

The Guidelines anticipate that the government-wide nonprocurement system will be implemented by agencies publishing proposed rules that seek prior public participation. As discussed above, the Department believes that it is in the public interest to make this rule effective. The Department has incorporated in this interim rule several nonsubstantive, technical provisions to conform to the Guidelines, which include:

1. Section 24.4 contains the Guidelines' definitions of "proposal", "subsidiary", "agency", and "notice".

2. Section 24.7(c) requires that the grounds for debarment be specified in the notice of sanction.

3. The notice to a participant or contractor under § 24.19(b) must state that the suspension is for a temporary period pending the completion of an investigation, debarment, or legal proceedings.

4. Section 24.21(b) provides for notification of the Department of Justice of an impending termination of suspension.

5. Sections 24.8(c) and 24.20(c) adopt the Guidelines' standard for continuation of agreements that are in existence at the time a person is suspended, debarred, declared ineligible or voluntarily excluded. In addition, § 24.34(b) incorporates the Guidelines' standard for granting an exception to participants and contractors that are included on the HUD List. Such an exception would permit a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reasons for deviating from the Presidential policy established by Executive Order 12549. These modifications, however, are nonsubstantive since the Guidelines' standards are no more stringent than those previously promulgated by HUD under existing Part 24 or the October 1983 proposed rule.

6. Sections 24.11 and 24.27 adopt the Guidelines' standard on the scope of debarments, suspensions and limited denials of participation, providing that such sanctions may include "any other affiliate of the participant or contractor that is specifically named and given written notice . . . and an opportunity to respond". This interim rule provides further that "[T]he burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is placed on the affiliate or organizational element". The Department considers this language to be appropriately included in this interim rule since it merely makes explicit that which is implicit under the Guidelines. Moreover, the Department included closely analogous language in its October 1983 proposed rule; so that the public has had ample opportunity to comment on this provision.

In addition to these changes, the Department intends to publish a

proposed rule that will invite public comment on the revisions necessary to implement substantive provisions contained in the Guidelines, as well modifications based on proposed changes to the FAR. These include:

1. Implementing the government-wide provisions of the Guidelines. It should be noted that under current practice, Subpart 9.4 of the FAR provides for government-wide effect only as to procurement contractors and federally approved subcontractors (but see item (10) below concerning proposed changes to the FAR), whereas the Guidelines would extend government-wide effect of sanctions to all tiers of nonprocurement participants. HUD intends to carve an exception for agency-specific sanctions (such as § 24.6(c)(6) which provides that the material violation of a limited denial of participation constitutes grounds for imposing a debarment) which would have a purely intra-Departmental effect.

2. Establishing a comprehensive reporting system to the General Services Administration of participants who have been debarred, suspended, declared ineligible, or subjected to limited denials of participation. In addition, any exception granted by the Department under § 24.34 that would allow a sanctioned participant to continue business dealings with HUD shall be reported to GSA. The Department is also considering whether to retain the current HUD List at § 24.32 or to replace it with a more comprehensive Consolidated List of Sanctioned Nonprocurement Participants.

3. Developing a participant certification process that would require certain participants to verify that they (or any person in specified capacities with respect to the participant or the particular covered transaction) have not in the preceding three years been: (a) Debarred, suspended or declared ineligible; (b) formally proposed for debarment, with a final determination still pending; (c) voluntarily excluded from participation; or (d) indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § 24.6(a). Other participants would be required to conform to the FAR standard of checking the Consolidated List to verify that participants with whom they have dealings in covered transactions are not listed.

4. Abolishing the time limitation on the decision to order a debarment or suspension at §§ 24.5(b) and 24.17(b). The Department believes this three-year limitation to be inimical to the mandate of Executive Order 12549 and intends to adopt the Guidelines' approach which

does not include any such time limitation.

5. Expanding the definition of "legal proceedings" at § 24.4(r) to include proceedings by Federal, state, local or quasi-governments. This will increase the instances in which the Department can suspend an individual "pending the completion of . . . legal proceedings" under § 24.21. HUD currently defines this term to include only civil or criminal judicial proceedings in which the Federal government is a party. However, in order to carry out the strict mandate of Executive Order 12549, HUD will adopt the expanded definition.

6. Modifying the language of § 24.6(c)(2) under causes for debarment from "doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known that the person is debarred, suspended or otherwise excluded from participation in such transactions" to "where it is known or reasonably should have been known." This will enable the Department to debar an individual under this subsection who could otherwise merely allege a lack of such knowledge.

7. Abolishing the requirement that a shareholder have a 10% or greater equity interest before his or her seriously improper conduct can be imputed to a participant or contractor under § 24.11(b).

8. Permitting conduct to be imputed to a contractor or participant under § 24.11(b) either when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant OR when the participant or contractor knew, or should have known, or approved or acquiesced in, the conduct. Under this interim rule, conduct may be imputed only when both factors are satisfied, making it more difficult for the Department to curb fraud and waste in HUD programs.

9. Specifying that debarred and suspended individuals are also excluded from participation in covered transactions in various capacities such as: (1) An owner or partner holding a controlling interest; (2) a director or officer of the participant; (3) a principal investigator, project director, or other position involved in the management of covered transactions; (4) a provider of federally-required audit services; or (5) in any other position to the extent that the incumbent is responsible for the administration of Federal funds, or in any other position charged as a direct cost under the covered transaction.

10. Expanding the government-wide effect of procurement sanctions based

on proposed changes to the FAR that were published on July 31, 1987 (52 FR 28642). This would include extending debarment and suspension ineligibility to those subcontracts that exceed \$25,000.

Other Matters. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

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

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it will have applicability only to a very small percentage of the total number of entities which have dealings with the Department.

This rule was listed as Item 888 in the Department's Semi-Annual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14363) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

This rule impacts upon the full range of loan, loan guarantee, grant, insurance, interstate land sales, and manufactured housing programs administered by the Department and that are designated Catalog of Federal Domestic Assistance program numbers 14.103-14.852.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan

programs: housing and community development.

Accordingly, the Department revises 24 CFR Part 24 as follows:

PART 24—DEBARMENT, SUSPENSION AND LIMITED DENIAL OF PARTICIPATION

Subpart A—General

- Sec.
24.1 Policy.
24.2 Scope.
24.3 Applicability.
24.4 Definitions.

Subpart B—Debarment

- Sec.
24.5 General.
24.6 Causes for debarment.
24.7 Debarment procedures.
24.8 Effect of debarment.
24.9 Voluntary exclusion.
24.10 Period of debarment.
24.11 Scope of debarment.
24.12 Appeal procedures.
24.13 Hearing procedures.
24.14 Determination of Hearing Officer; review of determination.
24.15 Requests for reinstatement.
24.16 Settlement.

Subpart C—Suspension

- Sec.
24.17 General.
24.18 Causes for suspension.
24.19 Procedures.
24.20 Effect of suspension.
24.21 Period of suspension.
24.22 Scope of suspension.
24.23 Appeal procedures.
24.24 Settlements.

Subpart D—Limited Denial of Participation

- Sec.
24.25 General.
24.26 Causes for a Limited Denial of Participation.
24.27 Period and scope of a Limited Denial of Participation.
24.28 Notice.
24.29 Conference.
24.30 Appeal.

Subpart E—Lists of Excluded Participants and Contractors

- Sec.
24.31 The Consolidated List of Debarred, Suspended, or Ineligible Contractors.
24.32 Establishment and Maintenance of the HUD List of Debarred, Suspended and Ineligible Participants.
24.33 Classifications for entry on the HUD List.
24.34 Effect of sanctions.
24.35 Retroactivity.

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 24.1 Policy.

It is essential to the accomplishment of the Department's mission that grants,

loans and contracts are awarded or insured by the Department and by those entities with whom it does business, and that participation in HUD financial assistance programs is limited, only to responsible contractors, grantees, and other participants. Accordingly, for the protection of the public interest, including the deterrence of irresponsible conduct in Department programs, and not for punitive purposes, persons, firms, and other entities may be excluded from participation in HUD programs, and from contracts and subcontracts throughout the Executive Branch, in accordance with this part.

§ 24.2 Scope.

- (a) This part—
(1) Prescribes policies and procedures governing the debarment, suspension and limited denial of participation of contractors and participants for the causes given in §§ 24.6, 24.18 and 24.26.
(2) Provides for the listing of debarred and suspended contractors and participants and of contractors and participants declared ineligible; and
(3) Sets forth the consequences of this listing.

(b) Although this part does cover the listing of ineligible contractors (§ 24.31) and the effect of this listing (§ 24.34), it does not prescribe policies and procedures governing declarations of ineligibility.

§ 24.3 Applicability.

- (a) The sanctions set forth in this part apply to participation in Departmental programs as described in paragraphs (a)(1), (2) and (3) of this section.
(1) *Covered program transactions.* Covered transactions (whether involvement is as a contractor or participant or as one receiving HUD funds directly or indirectly from a contractor or participant) include all programs funded or administered by this Department, except as noted in paragraph (a)(3) of this section. These transactions include, but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees, subsidies, insurance, payments for specified use, donation agreements; awards, subawards, contracts, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards that are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section. Persons may be subject to sanctions whether or not they were engaged in a HUD program at the time of the conduct on which the sanction is based, or whether they acted

individually, on behalf of others, or in a private or public capacity. Sanctions against ultimate beneficiaries such as subsidized tenants and subsidized mortgagors may be taken only upon evidence of fraud or serious program abuse.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, or insurance programs of the Department or in the interstate land sales or manufactured housing programs of the Department and those in business relationships with such participants in connection with such programs are also subject to the provisions of this part, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* Sanctions taken under this part shall not preclude: receipt of statutory entitlement or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including but not limited to contracts with, or grants made to, owners or occupants of real property in connection with eminent domain proceedings and relocation payments made to eligible displaced parties; benefits from the sale of the personal residence of an excluded individual; purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales; incidental benefits derived from ordinary governmental operations; and participation in or benefits from other transactions where the application of this part would be prohibited by law.

(b) *Relationship to other Federal administrative sanction procedures—(1) Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation or Executive Order shall take precedence. These alternate procedures include, but are not limited to: Part 200 Previous Participation Review and Clearance procedures, Part 25 Mortgagee Review Board administrative actions, and Part 570 Community Development Block Grant corrective and remedial actions.

§ 24.4 Definitions.

The following terms are used in this part:

(a) "Adequate evidence". Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates". Individuals or business concerns are affiliates if, directly or indirectly: (1) Either one controls or can control the other; or (2) a third individual or concern controls or can control both.

(c) "Agency". Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

(d) "Assistance transactions". Those covered departmental assistance transactions denoted by § 24.3 (a)(1) and (a)(2).

(e) "Benefits." Money or any other thing of value provided by, or realized because of, the Department. "Thing of value" includes insurance or guarantees of any kind.

(f) "Consolidated List of Debarred, Suspended, and Ineligible Contractors." A list compiled, maintained, and distributed by the General Services Administration (GSA) (see § 24.31) containing the names of contractors debarred or suspended by agencies under the procedures of this part as well as contractors declared ineligible under other statutory or regulatory authority.

(g) "Contractor." Any individual or other legal entity that:

(1) Submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or a subcontract under a Government contract; or

(2) Conducts business with the Government as an agent or representative of another contractor.

(h) "Control." The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or by other means. For purposes of actions under this part, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. This presumption may be rebutted by evidence.

(i) "Conviction." A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere*.

(j) "Debarment." An action taken by a Debarring Official in accordance with Subpart B of this part to exclude a Contractor from Government contracts or federally approved subcontracts under contracts, or to exclude a person from directly or indirectly participating in assistance transactions. "Debarment" also includes an action taken by any other Federal agency (as defined in 48 CFR 9.403) in accordance with agency regulations to exclude a Contractor from Government contracts or federally approved subcontracts under contracts for a reasonable, specified period. A Contractor or other person so excluded is "debarred."

(k) "Debarring Official." Any Assistant Secretary of HUD, the General Counsel of HUD or the President of the Government National Mortgage Association.

(1) "Grant." An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(m) "Grantee." The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

(n) "Hearing Officer." An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

(o) "HUD List of Debarred, Suspended or Ineligible Participants." A list compiled, maintained and distributed by the HUD Inspector General in accordance with § 24.32 containing the names of all participants and contractors debarred, suspended or determined to be ineligible in accordance with this part.

(p) "Indictment." Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(q) "Ineligible." Excluded from participation in Departmental programs or Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or

regulatory authority other than the Department's debarment, suspension or limited denial of participation procedures, such as the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, the Buy American Act, and the Environmental Protection Acts and Executive Orders.

(r) "Legal proceedings." Any civil judicial proceedings to which the Government is a party, or any criminal proceeding. The term includes appeals from such proceedings.

(s) "Limited denial of participation." An action taken to exclude immediately from direct or indirect participation, or immediately to impose conditions on the direct or indirect participation, of any person in a program of the Department within a limited geographical area.

(t) "Notice." A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(u) "Participant." Any person who directly or indirectly participates, or who may reasonably be expected to participate in HUD programs. (For example, a participant in housing programs of another Federal agency or State government is a participant.) "Participant" encompasses any recipient of HUD benefits, either directly or indirectly, through non-Federal sources or other recipients, and includes grantees and subgrantees as well as loan recipients. No sanction shall be imposed against a direct recipient of Community Development Block grant funds, however, except as provided by 24 CFR Part 570.

"Participant" includes, but is not limited to, State and local governments, bonding companies, borrowers, builders, HUD contractors, principals in multifamily projects (as defined in 24 CFR Part 200 Subpart G), purchasers at sales of HUD-owned housing units offered with conditions for sale, purchasers of a property with a HUD-insured or Secretary-held mortgage, recipients under assistance agreements, ultimate beneficiaries of HUD programs, mortgagees, fee appraisers and inspectors, real estate agents and brokers, area management brokers, management and marketing agents, or

persons employed by or in a business relationship with participants, such as accountants, consultants, investment bankers, architects, engineers, contractors with participants, and attorneys.

(v) "Person." Any individual, corporation, partnership, association, unit of government or legal entity, however organized, including any subsidiary of any of the foregoing.

(w) "Preponderance of the evidence." Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(x) "Proposal." A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

(y) "Respondent". A person against whom a debarment, suspension, or limited denial of participation action has been initiated.

(z) "Subsidiary". Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

(aa) "Suspending Official". Any Assistant Secretary of HUD, the General Counsel of HUD, or the President of the Government National Mortgage Association.

(bb) "Suspension". An action taken by a Suspending Official in accordance with Subpart C of this part immediately to exclude a Contractor from Government contracts or federally approved subcontracts under contracts, or immediately to exclude a person from directly or indirectly participating in assistance transactions for a temporary period, pending completion of an investigation or administrative or legal proceedings. A person so excluded is suspended.

(cc) "Ultimate beneficiaries". Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under Section 8 Housing Assistance Payments Contracts, Section 236 Rental Assistance, or by Rent Supplement payments. Sanctions may be taken against ultimate beneficiaries only upon evidence of fraud or serious program abuse.

(dd) "Voluntary exclusion". A status of nonparticipation or limited participation in assistance transactions assumed by a person under the terms of a settlement.

Subpart B—Debarment

§ 24.5 General.

(a) *Officials who may initiate debarment.* Any Debarring Official may initiate debarments. No debarment may be initiated against HUD-FHA approved mortgagees, however, without approval of the Mortgagee Review Board. A Debarring Official, acting in the public interest, may debar a participant or contractor for any cause set forth in § 24.6. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to initiate debarment shall be within the discretion of the Debarring Official and in the best interests of the Government.

(b) *Time limitations on decision to debar.* The notice of proposed debarment shall be issued within three years of—

- (i) A criminal conviction;
- (ii) Completion of an investigation or audit which is a basis for the debarment action; or
- (iii) Discovery of the cause on which the debarment action is based, whichever event is later.

§ 24.6 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 24.5 and 24.7 for:

(a) *Conviction.* Conviction of, or civil judgment for, any offense indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant, including but not limited to:

- (1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;
- (2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or
- (3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of a contract or the terms of a public agreement so serious as to affect the present responsibility of a contractor or participant, including but not limited to:

- (1) A willful or material failure to perform under one or more contracts or agreements; or
- (2) A history of substantial noncompliance with the terms of one or more contracts or agreements.

(c) *Other Causes.* Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in § 24.6;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a contractor or participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a contractor or participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment, suspension or limited denial of participation action;

(7) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(8) Violation of Title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975;

(9) Violation of any law, regulation, or agreement relating to conflict of interest;

(10) Violation of any nondiscrimination provisions included in any agreement or contract;

(11) Violation of any law, regulation, or obligation relating to applications for financial assistance, insurance, or guarantees, or to the performance of obligations under an assistance award or conditional or final commitment to insure or guarantee;

(12) Making or causing to be made any false statement for the purpose of influencing in any way an action of the Government; or

(13) Any other cause determined by a Debarring Official to be of so serious or compelling a nature that it affects the present responsibility of a contractor or participant.

§ 24.7 Debarment procedures.

(a) *Decision-making process.* The debarment decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness.

(b) *Notice of proposal to debar.* Debarment shall be initiated by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being proposed;

(2) Of the reasons for the proposed debarment in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.6 for proposing debarment;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a hearing pursuant to § 24.13;

(5) Of the following potential effects of debarment:

(i) For a participant, that the participant will be excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD;

(ii) For a contractor, that in addition to exclusion from direct or indirect participation in HUD programs, the contractor will be excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless the acquiring agency's head or designee determines that there is a compelling reason for such action.

(6) Of HUD's procedures governing debarment decision-making, including a statement that, if no response is made within 30 days, the decision will be made final.

(c) *Notice of Debarring Official's final decision.* If no request for hearing is received within 30 days, the Debarring Official, or designee, shall give the participant or contractor and any affiliates prompt notice of the final decision to debar by certified mail, return receipt requested—

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating that the debarment is effective immediately; and

(4) Stating the period of debarment, including effective dates.

§ 24.8 Effect of debarment.

a. *Contractors.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's debarment from procurement shall be effective throughout the Executive Branch of the

Government, in accordance with 48 CFR 9.406-1(c), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

b. *Participants.* A participant's debarment is limited to direct or indirect participation in HUD programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return.

c. Notwithstanding the debarment, voluntary exclusion, or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, declared ineligible or under a voluntary exclusion, except as provided under § 24.34.

§ 24.9 Voluntary exclusion.

A contractor or participant and an agency may enter into a settlement agreement providing for the exclusion of the contractor or participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§ 24.10 Period of debarment.

Debarment shall be for a period commensurate with the seriousness of the cause(s), generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful or egregious, a longer term of debarment may be imposed, up to an indefinite period.

§ 24.11 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person or affiliate under this part constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of agreements.

(2) The debarment action may include any other affiliate of the participant or contractor that is—

(i) Specifically named; and

(ii) Given written notice of the proposed debarment and an opportunity to respond as set forth in § 24.7(b).

An affiliate may be included in a debarment solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts. The burden of proving that a particular affiliate or organizational element is currently responsible and is not controlled by the primary debarred party (or by an entity that itself is controlled by the primary debarred party) is placed on the affiliate or organizational element.

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to contractor or participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder having a 10 percent or greater interest, partner, employee, or other individual associated in a business context with a contractor or participant may be imputed to the contractor or participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or participant, and the participant or contractor knew, or should have known of, or approved or acquiesced in, the conduct.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a contractor or participant may be imputed to any officer, director, shareholder having a 10 percent or greater interest, partner, employee, or other individual associated in a business context with the contractor or participant who participated in, knew of, or had reason to know of the contractor's or participant's conduct.

(3) *Conduct of one contractor or participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one contractor or participant in a joint venture or similar arrangement may be imputed to other participating parties if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the contractors or participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

§ 24.12 Appeal procedures.

Within 30 days of receipt of a notice of proposed debarment, any participant or contractor including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final.

§ 24.13 Hearing procedures.

(a) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26, except as provided herein.

(b) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(1) Except as provided in paragraphs (b) (2) and (3) of this section, the participant or contractor may request an oral hearing before a Hearing Officer. Where debarment is based on a finding of civil rights noncompliance after a hearing, however, the hearing officer is bound by the finding of noncompliance reached in the prior hearing.

(2) Where the Department of Justice advises, in writing, and a Suspending Official determines that a suspension is based on the same facts as pending or contemplated legal proceedings; and that substantial interests of the Government in those proceedings would be prejudiced by a hearing, there shall be no right to a hearing under this part. However, the participant may submit documentary evidence and written briefs for consideration by the Suspending Official;

(3) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal Government agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a Hearing Officer;

(c) *Standard of proof.* The cause for debarment must be established by a preponderance of the evidence. If the proposed debarment is based upon a conviction, a civil judgment, or debarment by another Federal Government agency, the standard shall be deemed to have been met. The cause for suspension and Limited Denial of Participation must be established by adequate evidence. If the action is based upon an indictment or suspension by another Federal Government agency, the standard shall be deemed to have been met. If the Limited Denial of Participation is based upon a Limited

Denial of Participation by another HUD regional or field office, the standard shall be deemed to have been met.

(d) *Consolidation of hearing.* Where a sanction under this part is accompanied or followed by another sanction under this part, the hearings may be consolidated.

§ 24.14 Determination of Hearing Officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the Hearing Officer shall make a written determination on the evidence presented, including any evidence of mitigating circumstances. The Hearing Officer may issue a determination in accordance with Part 26. If it is proposed that the sanction include an affiliate, the Hearing Officer shall rule specifically whether, and to what extent, the determination applies to the affiliate. The Hearing Officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The Hearing Officer's determination also shall be transmitted promptly to the HUD official who invoked the administrative sanction, and to the Office of the General Counsel.

(c) *Finality and Secretarial Review.* The Hearing Officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary, or designee, decides as a matter of discretion to review the finding of the Hearing Officer. Any party may request such a review in writing within 15 days of receipt of the Hearing Officer's determination.

§ 24.15 Requests for reinstatement.

(a) *Grounds.* Requests for reinstatement shall be made in writing, addressed to the official imposing the sanction, as follows:

(1) Immediately upon proof of:

- (i) Discovery of new and material evidence not previously available;
- (ii) Dismissal of the indictment or reversal of the conviction or judgment, or reversal of the suspension or debarment by another agency upon which HUD's sanction was based; or
- (iii) Bona fide change in ownership or management sufficient to justify a finding of present responsibility.

(2) Not less than six months after the final determination of debarment or imposition or affirmation of the suspension or Limited Denial of Participation, upon proof that the causes for the sanction have been eliminated and upon certification that the requirements of applicable statutes and

administrative rules and regulations are understood by the participant or contractor and will be followed in the future.

(b) *Procedures.* The request for reinstatement shall be forwarded by the official imposing the sanction to a Hearing Officer for a recommendation on reinstatement. The determination whether to reinstate shall be based on the written submission of evidence, without a further hearing. Upon consideration of the written submission and any departmental response, the Hearing Officer shall recommend to the official imposing the sanction whether or not reinstatement is warranted under the standards of paragraph (a) of this section.

§ 24.16 Settlement.

A Debarring Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart C—Suspension**§ 24.17 General**

(a) *Officials who may initiate suspensions.* Any Suspending Official may issue suspensions. No suspension may be issued against a HUD-FHA approved mortgagee, however, without approval of the Mortgage Review Board. A Suspending Official, acting in the public interest, may suspend a participant or contractor for any cause set forth in § 24.18. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to suspend shall be within the discretion of the Suspending Official and in the best interests of the Government.

(b) *Time limitations on decision to suspend.* The notice of suspension shall be issued within three years of—

- (1) A criminal conviction;
- (2) Completion of an investigation or audit which is a basis for suspension; or
- (3) HUD's discovery of the cause on which the suspension is based, whichever event is later.

§ 24.18 Causes for suspension.

(a) *Causes.* Suspension may be imposed in accordance with the provisions of §§ 24.17 and 24.19 upon adequate evidence:

- (1) To suspect the commission of an offense listed in § 24.6(a); or
- (2) That a cause for debarment under § 24.6 may exist.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of suspension actions.

(c) *Suspension.* Suspension by another Federal agency for any cause specified

in paragraph (a) of this section shall constitute adequate evidence for a concurrent suspension.

§ 24.19 Procedures.

(a) *Decision-making process.* The suspension decision-making process shall be as informal as practicable, consistent with principles of fundamental fairness. Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation, administrative proceedings or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the Suspending Official shall consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) *Notice of suspension.* Suspension shall be made effective by advising the participant or contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;
 (2) That suspension is based on an indictment or other adequate evidence that the participant or contractor has committed irregularities: (i) Of a serious nature in business dealings with the Government; or (ii) seriously reflecting on the propriety of further Government dealings with the participant or contractor. Any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.18 for imposing suspension;

(4) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(5) Of the right to request within 30 days, in writing, a hearing pursuant to § 24.13;

(6) Of the following potential effect(s) of suspension:

(i) For a participant, that the participant is excluded from all participation, direct or indirect, in any HUD program, including any program funded, guaranteed or insured by HUD; and

(ii) For a contractor, that in addition to being excluded from direct or indirect participation in HUD programs, the contractor is excluded from receiving any Federal Government contract, and Federal agencies shall not solicit offers from, or award contracts or subcontracts to, the contractor unless

the contracting agency's head or designee determines that there is a compelling reason for such action.

(7) Of HUD's procedures governing suspension decision-making, including the right to request a hearing within 30 days of receipt of the notice of suspension.

§ 24.20 Effect of suspension.

(a) *Contractors.* In addition to exclusion from direct or indirect participation in HUD programs, a contractor's suspension from procurement shall be effective throughout the Executive Branch of the Government in accordance with 48 CFR 9.407-1(d), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(b) *Participants.* A participant's suspension extends to both direct and indirect participation in HUD programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return.

(c) Notwithstanding the suspension, voluntary exclusion, or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

Agencies and participants shall not renew or extend the duration of current agreements with any person who is suspended, declared ineligible or under a voluntary exclusion, except as provided in § 24.34.

§ 24.21 Period of suspension.

(a) All suspensions shall be for a temporary period pending the completion of an investigation or administrative or legal proceedings. A suspension shall become effective immediately upon issuance of the notice specified in § 24.19(b). In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six

months. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

(b) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 24.22 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § 24.11), except that the procedures of § 24.19 shall be used in imposing a suspension.

§ 24.23 Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. If a hearing is requested, it shall be held in accordance with sections §§ 24.12 through 24.14.

§ 24.24 Settlements.

A Suspending Official may settle an administrative action under this part in the interest of the Government at any time.

Subpart D—Limited Denial of Participation

§ 24.25 General.

Officials who may order a Limited Denial of Participation. A Regional Administrator, Office Manager, or Director of an Office of Indian Programs is authorized to order a Limited Denial of Participation affecting any participant or contractor and its affiliates except HUD-FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a Limited Denial of Participation shall be discretionary and in the best interests of the Government.

§ 24.26 Causes for a Limited Denial of Participation.

(a) *Causes.* A Limited Denial of Participation shall be based upon adequate evidence of any of the following causes:

(1) That approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) That requirements of an assistance agreement or contract will not be satisfied upon completion;

(6) Construction deficiencies in ongoing projects;

(7) Making a false certification in connection with any HUD Program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.6(a);

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department.

(11) Imposition of a Limited Denial of Participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.6.

(b) *Indictment.* Indictment shall constitute adequate evidence for the purpose of Limited Denial of Participation actions.

(c) *Limited Denial of Participation.* Imposition of a Limited Denial of Participation by any other HUD regional or field office shall constitute adequate evidence for a concurrent Limited Denial of Participation.

§ 24.27 Period and scope of a Limited Denial of Participation.

(a) *Generally.* A Limited Denial of Participation extends to both direct and indirect participation in the program under which the cause arose, except that where it is based on an indictment, conviction or suspension or debarment by another agency it need not be based on offenses against HUD and it may apply to all programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement

contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return. The sanction may be imposed for a period not to exceed 12 months and is effective only within the geographic jurisdiction of the office imposing it. For the purpose of this subpart, the term "program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(b) *Effectiveness.* This sanction shall be effective immediately upon being signed by the authorized official and shall remain effective up to 12 months. However, if the cause for the Limited Denial of Participation is resolved before the expiration of the 12-month period, the authorized official may terminate the sanction. The imposition of a Limited Denial of Participation shall not affect the right of the Department to suspend or debar any party under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a Limited Denial of Participation solely on the basis of its affiliation and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.28 Notice.

(a) *Generally.* A Limited Denial of Participation shall be initiated by advising a participant or contractor and any specifically named affiliate, by certified mail, return receipt requested—

(1) That the sanction is imposed on the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.26 for imposing the sanction;

(4) Of the right to request in writing within 30 days of receipt of the notice, a conference on the sanction;

(5) Of the Department's procedures governing Limited Denial of Participation; and

(6) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, the official imposing the Limited Denial of Participation shall notify the

Participation and Compliance Officer for Housing Programs if no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The Participation and Compliance Officer will be responsible for notifying all HUD field offices of sanctions imposed.

§ 24.29 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 24.30. Although the formal rules of procedure contained in 24 CFR Part 28 do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official, or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the Limited Denial of Participation. If the decision is to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request in writing, within 30 days of receipt of notice of the decision, a formal hearing. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 24.30 Appeal.

Where the decision is to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. This request shall be filed within 15 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at §§ 24.12 through 24.14.

Subpart E—Lists of Excluded Participants and Contractors

§ 24.31 The Consolidated List of Debarred, Suspended, or Ineligible Contractors.

(a) The Inspector General shall compile and transmit to the General Services Administration (GSA) a list of

all contractors debarred, suspended, or declared ineligible by the Department. The list shall indicate:

- (1) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross references when more than one name is involved in a single action;
- (2) The cause of the action or other statutory or regulatory authority;
- (3) The effect of the action;
- (4) The termination date for each listing;
- (5) The name and telephone number of the point of contact for the action; and
- (6) The DUNS No. for the contractor.

(b) The Inspector General shall:

- (1) Notify GSA of the information required by paragraph (a) of this section within five working days after the action becomes effective;
- (2) Notify GSA within five working days after modifying or rescinding an action; and
- (3) Notify GSA of the names and addresses of offices within HUD that are to receive the Consolidated List and the number of copies to be furnished to each.
- (4) In accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the Department;
- (5) Establish procedures to provide for the effective use of the List, to ensure that the Department does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in § 24.34;
- (6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

§ 24.32 Establishment and Maintenance of the HUD List of Debarred, Suspended and Ineligible Participants.

(a) *Maintenance of HUD Lists.* The HUD Inspector General shall maintain and consolidate lists relating to the debarment, suspension or ineligibility of participants and contractors. All lists shall be kept current. Procedures for issuance of notices of additions and deletions shall be established by the Inspector General. Each Suspending or Debarring Official under this part shall appoint a liaison officer responsible for providing the Office of Inspector General with current information. The Office of Inspector General shall, in cooperation with other offices of HUD, establish procedures for assuring the timely receipt of information relevant to updating the lists.

(b) *Information in the List.* The HUD List shall contain, at a minimum, the following information:

(1) An alphabetical listing of those persons against whom HUD has invoked administrative sanctions of debarment or suspension, and those persons voluntarily excluded, with appropriate cross-references where more than one name is involved in a single action.

(2) The basis of authority for such action;

(3) The extent of the restrictions imposed, including their expiration date;

(4) the name of the office initiating the action; and

(5) designation of whether debarred as a participant or contractor.

(c) *Distribution of the HUD List.* The Inspector General shall arrange for reproduction and distribution of the HUD List. The List shall be distributed among HUD employees and to others outside HUD whose duties require access to the List, as authorized by the Assistant Secretaries, Office Managers, Directors of Indian Housing Programs, and Regional Administrators. Distribution shall also be made upon request. Procedures for submitting requests for information contained in the HUD List and distribution of such information shall be established by the Office of Inspector General. Names of persons on the HUD List shall be available upon request to that office.

§ 24.33 Classifications for entry on the HUD List.

Persons may be listed on the HUD List in accordance with the following classifications:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healy Public Contracts Act (41 U.S.C. 35, *et seq.*), or the Service Contract Act (41 U.S.C. 351, *et seq.*) as found by the Secretary of Labor to have violated any of the agreements or representations required by those Acts.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)), as found by the Comptroller General to have violated that Act.

(c) Those listed by the Comptroller General as found by the Department of Labor to have failed to satisfy obligations arising out of a contract incorporating the nondiscrimination and affirmative action provisions of Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended (12 U.S.C. 793), or the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012), implementing regulations (41 CFR Chapter 60), and orders issued in connection therewith.

(d) Those listed by the Comptroller General in accordance with the provisions of 29 CFR 5.6(b) of the regulations of the Secretary of Labor as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or work hour provisions of the applicable statutes listed in 29 CFR 5.1.

(e) Those listed by the Director of the Office of Federal Contract Compliance on the Contract Ineligibility List because of noncompliance with the equal opportunity clause (41 CFR 60-1.3) or affirmative action clauses (41 CFR 60-250.4 and 60-741.4).

(f) Those persons debarred, suspended or voluntarily excluded by HUD in accordance with this part.

(g) Those determined by an Executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under a contract containing the specific provisions required by section 3(a) and made by the agency for the construction, alteration, or repair of any public building or public work.

§ 24.34 Effect of sanctions.

(a) *Consolidated list*—(1) *Debarred or suspended contractor.* Debarred or suspended contractors who are included on the Consolidated List are excluded from receiving contracts, and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action.

(2) *Contractors listed as ineligible.* Contractors listed on the Consolidated List as ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors except under the conditions and for the duration specified in the statute or regulation.

(b) *HUD List.* The Department may grant an exception permitting a debarred, suspended or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently.

Exceptions shall be reported in accordance with § 24.31.

§ 24.35 Retroactivity.

Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations regardless of the date of the cause giving rise to the sanction.

Authority: Section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: August 21, 1987.

Samuel R. Pierce, Jr.,

Secretary.

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