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WHO: The Office of the Federal Register.

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WASHINGTON, DC

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New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 841 and 843

Federal Employees Retirement System; Annual Pay Computation for Less Than Full-Time Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules to provide a methodology for computing the amount of the basic employee death benefit under the Federal Employees Retirement System (FERS) Act of 1986 for employees whose tour of duty is less than full time. These rules define "final annual rate of pay" as used in computing the basic employee death benefit and require agencies to certify sufficient information to permit OPM to compute the "final annual rate of pay" for employees whose tour of duty is less than full time.

DATE: Interim rules effective May 10, 1988; comments must be received on or before July 11, 1988.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director of Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4682.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for Federal employees. On June 17, 1987, OPM published (52 FR 23013) final rules implementing the death benefits and employee refund provisions of FERS.

Section 8442(b) of title 5, United States Code, provides for payment of a lump-sum benefit to the widow or widower of a deceased employee. The rules refer to this benefit as the basic employee death benefit. The benefit is equal to 50 percent of the employee's final annual rate of basic pay (or of average pay, if higher), plus $15,000, which is increased by cost-of-living adjustments. This amendment clarifies the computation of the final annual rate of basic pay for the purpose in the case of an employee with a less than full-time tour of duty.

For a part-time (regularly scheduled) employee, the final annual rate of pay will be the basic pay, at the rate in effect immediately before the employee's death, that is applicable to the employee's tour of duty (or, if higher, the hours in a basic pay status) in a 52-week work year. For example, a part-time employee who, at the time of his death, was being paid at the annual rate of $30,000, but whose tour of duty was 20 hours a week, would have a final annual pay rate of $15,000 for purposes of the lump-sum survivor benefit. However, if the same employee actually earned basic pay during 1144 hours (averaging 22 hours per week) in the 52-week work year, the final annual rate of basic pay would be $16,500.

To determine the final annual pay rate of an intermittent (not regularly scheduled) employee, the employee's final hourly rate of pay will be multiplied by the number of hours he or she worked at basic pay rates (up to full time) in the 52-week work year immediately preceding the end of the last pay period the employee was in a pay status. Intermittent employees do not have a regularly scheduled tour of duty and normally work fewer hours than full-time employees. However, these employees have a reasonable expectation that they would have received some level of income if they could have continued in Federal service. Therefore, we have arrived at this method of looking back at the preceding 52-week period to equitably calculate the individual's final annual rate of pay for the purposes of lump-sum survivor benefit.

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and to make these amendments effective in less than 30 days. These rules are effective immediately to prevent harm to persons entitled to benefits under this part. Delaying rulemaking would be contrary to the public interest as expressed in FERS because such a delay could require delayed payments to survivors of employees who die while covered by FERS.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 841 and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 841—FEDERAL EMPLOYEES' RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for Part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a.

2. In § 841.504 by adding paragraph (i) to read as follows:

Subpart E—Employee Deductions and Government Contributions

* * * * *

§ 841.504 Agency responsibilities.

* * * * *

(i) Upon the death of an employee whose tour of duty is less than full time, the employing agency must certify to OPM—

(1) The number of hours that the employee was entitled to basic pay (whether in a duty or paid-leave status) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status; and

(2) If the employee's tour of duty was part time (regularly scheduled), the number of hours of work in the employee's tour of duty.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

3. The authority citation for Part 843 continues to read as Follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

4. In § 843.102, by adding a definition of "final annual rate of basic pay" to read as follows:

Subpart A—General Provisions

* * * * *

§ 843.102 Definitions.

* * * * *

"Final annual rate of basic pay" means the basic pay that an employee or Member would receive in a year at the current rate of pay. A pay rate other than an annual salary is converted to an annual rate by multiplying the prescribed rate by the number of pay units in a 52-week work year.

(a) The annual pay of a part-time (regularly scheduled) employee is the product of the employee's final hourly rate of pay and the higher of—

(1) The number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status; or

(2) The number of hours in the employee's regularly scheduled tour of duty in a 52-week work year.

(b) The annual pay of an intermittent (not regularly scheduled) employee is the product of the employee's final hourly rate of pay and the number of hours that the employee was entitled to basic pay whether in a duty or paid leave status (not to exceed 2000 for Postal employees or 2080 for non-Postal employees) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in a pay status.

(c) If the part-time or intermittent employee's current appointment began less than 52 weeks prior to the end of the last pay period in which the employee was in a pay status, the number of hours that the employee was entitled to basic pay is computed by multiplying the number of hours that the employee was paid basic pay by a fraction whose numerator is 52 and whose denominator is the number of weeks between the date of appointment and the end of the last pay period in which the employee was in a pay status.

* * * * *

[FR Doc. 88-10388 Filed 5-9-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-082]

Revocation of Varroa Mite Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the "Domestic Quarantine Notices" by removing the regulations issued in the "Varroa mite" interim rule on April 6, 1988. This action rescinds the federal quarantine of areas in which Varroa mites have been found and the restrictions on interstate movements of various articles (including honeybees, hives, and associated articles and means of conveyance) from those areas. We are taking this action because the Varroa mite quarantine is not effectively preventing interstate spread of Varroa mite and is causing economics dislocations.

DATES: Interim rule effective May 6, 1988. Consideration will be given only to comments postmarked or received on or before July 11, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket No. 88-082. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th Street at Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees in the colonies they infest and reducing their ability to pollinate plants or produce honey. Varroa mites can multiply quickly without attracting a beekeeper's attention until serious damage has been done.

Until September 1987, the Varroa mite had not been found in the United States. Since then, when the first Varroa mite infestation was reported in Wisconsin, Varroa mite infestations have been confirmed in 12 additional states: Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, and Washington.

In an interim rule effective on April 6, 1988, and published in the **Federal Register** on April 11, 1988 (53 FR 11825-11830, Docket No. 87-140), the Animal and Plant Health Inspection Service (APHIS) established "Subpart—Varroa Mite" (§§ 301.92 through 301.92-10, referred to below as the regulations) in 7 CFR Part 301. These regulations quarantine the 13 states in which Varroa mite infestations have been found and restrict the interstate movement of regulated articles from quarantined areas. (Effective April 27, 1988, the quarantined areas in two of these states, Mississippi and Washington, were reduced to include only specified parts of these states rather than the entire states (53 FR 15654-15656, May 3, 1988).)

Regulated articles include, among other things, live honeybees, combs with brood cells, and hives and the hive equipment, storage and shipping containers, and vehicles used in apiaries. With very limited exceptions (§§ 301.92-4 (b) and (c)), a regulated article may be moved interstate from a quarantined area only if a certificate, for a regulated article other than a hive, or a limited permit, for a hive, is issued in accordance with § 301.92-5 by an inspector or a "complier" (a person who has entered into a compliance agreement with Plant Protection and Quarantine in which that person agrees to comply with the regulations) (§ 301.92-4(a)). Under § 301.92-5, an inspector or a complier may only issue a certificate or a limited permit upon determining that the regulated article has been treated in accordance with § 301.92-10, which requires fluvalinate treatments for queen honeybee cages, packaged honeybees, and hives, and the application of steam to the surface areas of other regulated articles.

When we developed the interim rule, we believed that a regulatory program based on issuance of certificates and limited permits for interstate movements of treated regulated articles would be effective in containing the interstate spread of Varroa mites without needlessly preventing honeybees and other regulated articles from being moved out of quarantined areas. However, since that time we have received information from APHIS personnel administering the interim rule, state governments, beekeepers, growers, and researchers that has caused us to conclude that the regulatory program established by the interim rule is not the appropriate mechanism for achieving this goal. Instead we have determined that by rescinding the Varroa mite interim rule and working with state governments and with beekeepers and other affected persons, we are more likely to prevent the serious economic losses in the agricultural sector that could result if adequate honeybee populations are not available on a timely basis. The reasons for this action are discussed below.

State Needs and Nature of Affected Persons

There is great variety in the roles honeybees play in the agricultural economy of various states. Some states have large and relatively stable populations of commercial honeybees maintained year-round for honey production, with little commercial movement of honeybees to and from the state. In some states, large numbers of honeybees are brought in for short periods each year for the purpose of pollinating crops. Some states maintain large numbers of hives that are shipped to other states for pollination purposes during spring. Large numbers of beehives are shipped to several southern states each winter from states where honeybees could not survive the winter.

The role honeybees play in the agriculture of a state, and particularly the type and number of honeybee movements to and from the state, determines the nature and scope of any risk the state faces from Varroa mite infestation and the procedures best suited for controlling potential harm to agricultural production as a result of Varroa mite in that state. The uniform federal regulatory program established by the Varroa mite interim rule is not responsive to these differences between states and can supersede attempts by state governments to tailor regulatory controls to meet their needs. We believe that it is limiting the policymaking discretion of the states to deal with a problem for which uniform federal requirements are proving to be inappropriate.

The beekeeping industry is an unusual sector of the agricultural economy, due in part to the commercial movement patterns of beehives and packaged bees. The movement of beehives presents the greatest risk of spreading Varroa mite, followed by movement of packaged honeybees. (The majority of honeybees moved interstate are in hives and, as indicated in the Varroa mite interim rule (53 FR 11827), research has not confirmed 100 percent effectiveness of treatment of hives. Thousands of honeybees are also moved in packages and, as indicated below, the material required to treat packaged bees is not available.) A beehive may be moved interstate several times a year, with short stays in some states and longer stays in other states, for reasons relating to honey production, pollination, and survival of the bees through the winter season.

Depending on the states involved, the Varroa mite interim rule could require issuance of a limited permit, based on treatment, prior to each of these interstate movements. Treating a beehive takes 21 days, which is longer than most beehives are scheduled to stay in a state where they are moved for pollination purposes. Also, each treatment disrupts normal hive operations, which may reduce honey production and may cause the bees in the hive to swarm and leave the hive.

Survey Data on Presence of Varroa Mites

A regulatory program to prevent the interstate spread of Varroa mites requires that accurate and complete surveys be conducted to identify areas in which Varroa mites are present. When we developed the interim rule, we anticipated that adequate resources to conduct the necessary surveys would be available during the initial implementation period. However, the necessary resources have not been available, in part because APHIS and state personnel must devote a significant portion of their time to carrying out provisions of the interim rule, as explained below. Therefore, accurate and complete surveys have not been conducted in many states, and APHIS does not currently have sufficient information to identify all states or areas in which Varroa mites are present.

Limited APHIS and State Resources

APHIS and state resources are not sufficient to fully administer the requirements of the Varroa mite interim rule. As described above, the commercial movement patterns of beehives are such that they frequently are moved interstate several times a year. The mechanism the Varroa mite interim rule provides for regulation of interstate movement, relying as it does on issuance of certificates and limited permits based on treatment, is more suited to agricultural products that are only moved interstate once or infrequently. In particular, the limited permit procedure has proven to be inappropriate for movements of hives with honeybees from a southern state through multiple northeastern states in succession, with a one- to two-week stay in each state, followed by movement to a second southern state. This is a realistic pattern of movement for many beehives, especially during the spring season. Notwithstanding compliance agreements which allow persons other than inspectors to issue certificates and limited permits, this represents a huge commitment of the services of inspectors, due to the hundreds of thousands of hives and other regulated articles that move interstate. Also, the majority of movements occur during short periods in the spring and fall, rather than evenly throughout the year, and this intensifies the demand for inspector services at these times beyond the limits of APHIS and state resources.

Moreover, we have concluded that the APHIS and state resources which are available can be more effectively expended on other approaches to Varroa mite control. State resources may be better expended on the application of Varroa mite controls that are tailored to the honeybee movement needs and patterns of the particular state, and APHIS resources may be better expended to coordinate state and industry containment activities.

Problems with Treatment for Packaged Honeybees

Another problem that has developed since issuance of the Varroa mite interim rule is the lack of adequate materials for performing certain treatments required by the rule. In particular, the manufacturer of the 2½ percent fluvalinate strips required for treatment of packaged honeybees has not yet placed these strips on the market and apparently will not be able to do so in the near future. Nor is there any alternative source of these strips. Lack of these fluvalinate strips has made it impossible to comply with the requirement for treatment of packaged honeybees prior to interstate movement from quarantined areas. The result is an

incentive to ship honeybees without any controls because beekeepers cannot meet the federal requirements; whereas if the Varroa mite interim rule is revoked, they could be moved under alternative state controls that would provide some protection against spread of Varroa mite. In addition, recent test results have prompted the Agricultural Research Service to question its recommendation of fluvalinate as an effective treatment for certification of packaged honeybees as free of Varroa mite.

Summary

In summary, we have determined that the requirements of the Varroa mite interim rule are counterproductive because it may result in serious losses through reduced crop and honey yields—the very damage that this regulatory program was designed to prevent. We have also determined that in view of the time frames and other agricultural practices involved in the utilization of migratory honeybees, the Varroa mite interm rule is not appropriate or workable. Therefore, we are amending 7 CFR Part 301 by removing "Subpart—Varroa Mite", §§ 301.92 through 301.92–10.

Interim Rule

The Administrator of the Animal and Plant Health Inspection Service determined that an emergency situation existed and, therefore, quarantined 13 states and restricted the interstate movement of regulated articles from quarantined areas, without prior notice and opportunity for public comment, based on the presence of Varroa mites in those states (i.e., infestations) in order to contain the interstate spread of Varroa mite infestation to states which have not been found to be infested. As discussed above, this regulatory program has not proven to be an effective and enforceable approach to addressing the problem that prompted its establishment. Moreover, issuing a proposal to rescind the Varroa mite interim rule of April 6, 1988, would delay final action until well past spring, the period during which interstate movement of hives for crop pollination is greatest, and present a continuing incentive for noncompliance, with attendant harm to agriculture and dislocations in the marketplace and in government programs.

For these reasons and because this rule relieves regulatory restrictions, we find that giving advance notice and public procedure is impracticable, contrary to the public interest, and unnecessary. Therefore, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

An emergency situation has made it impracticable for the Animal and Plant Health Inspection Service to follow the procedures of Executive Order 12291 for this interim rule and also has made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. We need to take immediate action to rescind the Varroa mite interim rule so that APHIS and state resources can be employed in other, more productive efforts to contain the spread of Varroa mite. If we determine that rescinding the Varroa mite interim rule has a significant economic impact on a substantial number of small entities, we will issue a Final Regulatory Impact Analysis pursuant to section 604 of the Act.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Varroa mite.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167, and 2260; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.92—301.92–10 (Subpart) [Removed]

2. Part 301 is amended by removing "Subpart—Varroa Mite", §§ 301.92 through 301.92–10.

Done in Washington, DC, this 6th day of May, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–10405 Filed 5–9–88; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 319

[Docket No. 88–024]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the fruits and vegetables regulations by removing provisions that allowed mangoes to be fumigated with ethylene dibromide as a condition-of-entry treatment before being imported into the United States. Because of action taken by the Environmental Protection Agency, ethylene dibromide may no longer be used to treat mangoes.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. F.E. Cooper, Senior Operations Officer, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8248.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56, entitled "Subpart—Fruits and Vegetables" (and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

In an interim rule published in the **Federal Register** and effective December 14, 1987 (52 FR 47372–47373, Docket Number 87–141), we amended the regulations by removing provisions in §§ 319.56–2h and 319.56–2i that allowed mangoes to be fumigated with ethylene dibromide as a condition-of-entry treatment before being imported into the United States. This was done because the Environmental Protection Agency banned ethylene dibromide as a condition-of-entry treatment for mangoes imported into the United States.

We did not receive any comments, which were required to be postmarked or received on or before February 12,

1988. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This document merely reflects that because of action taken by the Environmental Protection Agency, ethylene dibromide may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States. For this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 319 and that was published at 52 FR 47372–47373 on December 14, 1987.

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 4th day of May 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–10380 Filed 5–9–88; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 24; Doc. No. 5572S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by clarifying the intent of FCIC with respect to not insuring any acreage upon which a second crop is harvested within the same crop year. The intent of this rule is to remove a perceived restriction in some areas of the country in which two different crops are harvested from the same acreage during the same crop year as a normal practice, yet because of the language in the policy, producers infer that a restriction is imposed on insurance for the second crop.

DATES: *Effective date:* May 10, 1988.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than July 11, 1988, to be sure of consideration.

ADDRESS: Written comments should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

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

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

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

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

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

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, providing the regulations for insuring crops under the General Crop Insurance Policy.

Section 2.e.(9) of the General Crop Insurance Policy (7 CFR 401.8.2.e.(9)) provides that FCIC will not insure any acreage * * * "(O)f a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table."

The intent of this section was to disallow insurance on a second crop of the same crop from the same acreage within the same crop year because of lowered yields and other problems inherent in this type of farming, unless that practice was specifically permitted by the endorsement or the actuarial table. This type of double cropping is allowed on a limited number of certain crops.

The language in this section is perceived by some as not permitting (for example) grain sorghum following wheat on the same acreage in the same crop year, when this type of farming is an accepted and successful practice in the country. However, it is an accepted

practice in certain sections of the country for a producer to plant two different crops on the same acreage within the same crop year especially in those areas where fall-planted crops are customary.

In order to clarify this section, FCIC has determined that the word "any" in the first line of this section should be removed and the words "the same" should be substituted therefor. This constitutes the only change necessary.

John Marshall, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without the customary public comment period before publication because crop insurance is presently being sold, and those who perceived this section as precluding insurance coverage on a second and different crop on the same acreage in the same crop year need to be advised that such insurance is permitted and available as quickly as possible.

Written comments are solicited by FCIC for 60 days following publication of this rule in the Federal Register. Written comments, data, and opinions on the rule should be sent to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All comments received pursuant to this notice will be available for public inspection and copying in the Office of the Manager at the above address, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendment made necessary by public comment may be published in the Federal Register as quickly as possible.

List of Subjects in 7 CFR Part 400

Crop insurance, Reinsurance agreement, Standards for approval.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 400), effective for the 1988 and succeeding contract years, in the following instances:

PART 401—GENERAL CROP INSURANCE REGULATIONS

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

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401, General Crop Insurance Regulations, is amended in the policy in § 401.8(d) under "Terms and Conditions" by revising paragraph 2.e.(9) to read as follows:

* * * * *

§ 401.8 The application and policy.

* * * * *

2. Crop acreage, and share insured.

* * * * *

e. We do not insure any acreage:

* * * * *

(9) Of a second crop following the same crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table;

* * * * *

Done in Washington, DC, on May 2, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-10276 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-08-M

Office of Inspector General

7 CFR Part 2620

Availability of Information to the Public

AGENCY: Office of Inspector General, USDA.

ACTION: Final rule.

SUMMARY: The Office of Inspector General amends its regulations relating to the availability of information to the public to reflect revisions in the Department of Agriculture's regulations (7 CFR Part 1) implementing the Freedom of Information Act. Revisions to those regulations are the result of public and other comments and are intended to clarify the guidelines for assisting the public in obtaining access to Department records and for accessing fees. The Department's revised regulations were published in the Federal Register on December 31, 1987, at 52 FR 49383.

EFFECTIVE DATE: May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, Office of Inspector General, U.S. Department of Agriculture, Washington DC 20250 (202-447-6915).

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are unnecessary and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined in Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2620

Freedom of Information.

Accordingly, Part 2620 is revised as follows:

PART 2620—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

Authority: 5 U.S.C. 301 and 552, 5 U.S.C. app.

§ 2620.1 General statement.

This part is issued in accordance with, and subject to, the regulations of the Secretary of Agriculture § 1.1 through § 1.23 (and Appendix A thereto) of this title, implementing the Freedom of Information Act, 5 U.S.C. 552, and governs the availability of records of the Office of Inspector General (OIG) to the public upon request.

§ 2620.2 Public inspection and copying.

5 U.S.C. 522(a)(2) requires that certain materials be made available for public inspection and copying, and that a current index of these materials be published quarterly or otherwise made available. OIG does not maintain any materials within the scope of these requirements.

§ 2620.3 Requests.

(a) Requests for OIG records should be in writing in accordance with § 1.6(a) of this title and addressed to the Assistant Inspector General for Administration (AIG/AD), Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250. The above official is hereby delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

(b) Requests should be reasonably specific in identifying the record requested and should include the name, address, and telephone number of the requester.

(c) Available records may be inspected and copied in the office of the AIG/AD, from 8:00 a.m. to 4:30 p.m., local time on regular working days or may be obtained by mail. Copies will be provided upon payment of applicable fees, unless waived or reduced, in accordance with the Department's fee schedule as set forth in Appendix A to Part 1 of this title.

§ 2620.4 Denials.

If the AIG/AD determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the AIG/AD shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 2620.5 Appeals.

The denial of a requested record may be appealed in accordance with § 1.6(e) of this title. Appeals shall be addressed to the Inspector General, U.S. Department of Agriculture, Washington, DC 20250. The Inspector General will give prompt notice of the determination concerning an appeal in accordance with § 1.8(d) of this title.

Robert W. Beuley,

Inspector General.

Date: April 29, 1988.

[FR Doc. 88-10302 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-23-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of May, June, and July, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357-8500.

Order of the Director, OPPR

Issued April 26, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the begining of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of May, June, and July, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February, 1988 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by inserting the maximum lawful prices for May, June, and July, 1988, in Tables I and II as follows:

TABLE I.—NATURAL GAS CEILING PRICES

[Other Than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in— May 1988	June 1988	July 1988
B	102	New natural gas, certain OCS Gas [1]	$4.872	$4.898	$4.924
C	103(b)(1)	New onshore production wells[2]	3.283	3.290	3.297
E	105(b)(3)	Intrastate existing contracts	4.722	4.743	4.765
F	106(b), 1(B)	Alternative maximum lawful price for certain intrastate rollover gas[3]	1.877	1.881	1.885
G	107(c)(5)	Gas produced from tight formations stripper gas	6.566	6.580	6.594
H	108	Stripper gas	5.217	5.245	5.273
I	109	Not otherwise covered [4]	2.719	2.725	2.731

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas in the lesser of the negotiated contract price of 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in— May 1988	June 1988	July 1988
Post-1974 gas	All producers	$2.719	$2.725	$2.731
1973–1974 Biennium gas	Small producer	2.296	2.301	2.306
	Large producer	1.757	1.761	1.765
Interstate Rollover gas	All producers	1.008	1.010	1.012
Replacement contract gas or recompletion gas	Small producer	1.299	1.292	1.295
	Large producer	.989	.991	.993
Flowing gas	Small producer	.654	.655	.656
	Large producer	.551	.552	.553
Certain Permian Basin gas	Small producer	.768	.770	.772
	Large producer	.680	.681	.682
Certain Rocky Mountain gas	Small producer	.768	.770	.772
	Large producer	.654	.655	.656
Certain Appalachian Basin gas	North subarea contracts dated after 10–7–69.	.620	.621	.622
	Other contracts	.575	.576	.577
Minimum rate gas [1]	All producers	.341	.342	.343

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBTu.

3. Section 271.102(c) is amended by inserting the inflation adjustment for the months of May, June, and July, 1988, in Table III as follows:

§ 271.102 [Amended]

* * * * *

(c) * * *

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1988	Factor by which price in preceding month is multiplied
May	1.00214
June	1.00214
July	1.00214

[FR Doc. 88–10162 Filed 5–9–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Adjustment of Recovery—Excess Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these regulations, we are implementing section 2613 of Pub. L. 98–369, the Deficit Reduction Act of 1984, which amended section 1631(b) of the Social Security Act (the Act) by providing that if any overpayment to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable resource limits specified in section 1611(a) of the Act by $50.00 or less, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment and no adjustment or recovery shall be made, unless such individual (and spouse if any) knowingly and willfully failed to report the value of the resources accurately and timely. Section 2613 was effective October 1, 1984.

EFFECTIVE DATE: These rules are effective May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 594–7459.

SUPPLEMENTARY INFORMATION: Section 1631(b)(1) of the Act specifies that when more than the correct amount of supplemental security income (SSI) benefits has been paid with respect to any individual, proper adjustment or recovery shall be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his or her eligible spouse (or by recovery from the estate of either). This section also mandates that the Secretary shall make such provision as is appropriate for waiver of overpayments.

Present regulations implementing section 1631(b)(1) permit waiver of recovery of an overpayment, but only if the requirements of § 416.550 (Waiver of adjustment or recovery—when applicable) are met. Section 416.550 requires a determination that:

(a) The overpaid individual was without fault in connection with an overpayment, and

(b) Adjustment or recovery of such overpayment would either:

(1) Defeat the purpose of title XVI, or

(2) Be against equity or good conscience, or

(3) Impede efficient or effective administration of title XVI due to the small amount involved.

Section 2613 of Pub. L. 98–369, enacted July 18, 1984 and effective October 1, 1984, amends section 1631(b) of the Act by providing that if any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by the individual (and spouse if any), of resources having a value which exceeds the applicable dollar figure specified in section 1611(a) of the Act by $50.00 or less, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made, unless the Secretary determines that the failure of such individual (and spouse if any) to report the value of his/her resources accurately and timely was knowing and willful.

For purposes of this final rule "ownership or possession of resources" would include any resources deemed to the individual in accordance with 20 CFR 416.1202. The purpose of this statutory provision is to waive recovery

of overpayments resulting from small, inadvertent excesses in resources. It is consistent with the legislative purpose to apply the provision to resources deemed to the claimant. When resources are "deemed", the claimant is in effect, considered to possess them for eligibility purposes, and suffers the same adverse consequences if they rise slightly over the limit.

We will consider the failure to report to be knowing and willful and the overpaid recipient therefore to be at fault if the evidence clearly shows that the overpaid recipient was fully aware of the requirements of the law and of the excess resources and chose to conceal them. A finding of fault will preclude application of the waiver. Generally, we will consider the recipient to be at fault if he/she is overpaid because of excess resources of $50 or less more than once.

This final rule adds a new § 416.556 to incorporate the statutory requirements of section 2613 of Pub. L. 98–369.

This final rule also revises §§ 416.550(b)(2) and 416.554 to reflect a technical correction in the statutory language made by section 2663(g)(11)(A) of Pub. L. 98–369. This technical correction revised the phrase in section 1631(b)(1) of the Act—"equity or good conscience" to "equity and good conscience." This technical change does not change the way we apply this waiver rule.

Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 51 FR 26026 on July 18, 1986. We received a total of 11 comments. Two comments endorsed the proposed rules but took issue with a matter not pertinent to the NPRM. The other nine comments objected to the definition of "willful and knowing" in the proposed § 416.556(b) (1) and (2). Several comments also noted exception to the proposed rule in § 416.556(b)(3) that an individual will be found to be at fault if the individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the overpayment.

After careful consideration, we have revised the definition of "willful and knowing" in § 416.556(b) and have removed the phrase "should have known." We have also revised the rule formerly proposed for § 416.556(b)(3) which now provides that an individual will generally be found to be at fault when the evidence shows the individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment. Such a situation would occur when adjustment or recovery was waived under the section 2613 provision and the individual subsequently incurred another overpayment due to resources that exceed the limit by $50 or less. The legislative history of section 2613 of Pub. L. 98–369, H. Rep. No. 98–861, 98th Cong., 2d Sess. 1389, 1390 (1984), could be interpreted to indicate that an individual should not benefit from section 2613 in more than one instance. However, the statute does not automatically limit its applicability to the first overpayment. Therefore, while we expect that in most cases the application of the waiver to subsequent overpayments will be limited because we will clearly explain the individual's reporting responsibility and consequences of not reporting at the time of the first overpayment, this regulation does allow for some situations where a waiver could be granted more than once. In determining whether we will waive adjustment of recovery under this provision for subsequent overpayments, we will consider all aspects of the case. We have modified the rule in response to the comments to make this clear.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. The cost of implementing these regulations will be negligible. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: March 9, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 4, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart E of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g); sec. 12113(b) of Pub. L. 99–272, 100 Stat. 288.

2. In Part 416, Subpart E. § 416.550(b)(2) is revised to read as follows:

§ 416.550 Waiver of adjustment or recovery—when applicable.

* * * * *

(b) * * *

(2) Be against equity and good conscience, or

* * * * *

3. In Part 416, subpart E, § 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

Waiver of adjustment or recovery of an overpayment is proper when the person on whose behalf waiver is being considered is without fault, as defined in § 416.552, and adjustment or recovery would be against equity and good conscience. Adjustment or recovery is considered to be inequitable and contrary to good conscience when such person, in reliance on such payments or no notice that such payment would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's financial circumstances are not considered.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case recovery would be considered against equity and good conscience.

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid.

Recovery would be considered against equity and good conscience.

4. In Part 416, Subpart E, a new § 416.556 is added to read as follows:

§ 416.556 Waiver of adjustment or recovery—countable resources in excess of the limits prescribed in § 416.1205 by $50 or less.

(a) If any overpayment with respect to an individual (or an individual and his or her spouse if any) is attributable solely to the ownership or possession by the individual (and spouse if any) of countable resources having a value which exceeds the applicable dollar figure specified in § 416.1205 by an amount of $50.00 or less, including those resources deemed to an individual in accordance with § 416.1202, such individual (and spouse if any) shall be deemed to have been without fault in connection with the overpayment, and waiver of adjustment or recovery will be made, unless the failure to report the value of the excess resources correctly and in a timely manner was willful and knowing.

(b) Failure to report the excess resources correctly and in a timely manner will be considered to be willful and knowing and the individual will be found to be at fault when the evidence clearly shows the individual (and spouse if any) was fully aware of the requirements of the law and of the excess resources and chose to conceal these resources. When an individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment, we will generally find the individual to be at fault. However, in determining whether the individual is at fault, we will consider all aspects of the current and prior overpayment situations, and where we determine the individual is not at fault, we will waive adjustment or recovery of the subsequent overpayment.

[FR Doc. 88-10353 Filed 5-9-88; 8:45 am]
BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N-0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to recognize that a substance that was used in food prior to 1958 can be shown to be generally recognized as safe (GRAS) through experience based on its common use in food outside, as well as in, the United States. This action responds to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for general recognition of safety to experience in the United States. This action also delineates the proof needed to establish that a substance is GRAS on the basis of its foreign use.

DATE: Effective June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, 1985 (50 FR 27294), FDA published a proposal to revise its procedural regulations to establish that a substance in use before 1958 may be eligible for GRAS status based upon its history of use in food outside of the United States. The agency proposed to revise the definitions of "common use in food" in § 170.3(f)) (21 CFR 170.3(f)) so that it would no longer stipulate that the history of consumption of the substance must have occurred only in the United States. The agency also proposed to add a new paragraph (c)(2) to § 170.30 that specifies the information that would be required to establish that a substance is GRAS based upon a history of common use in food when that use has occurred outside of the United States. Proposed § 170.30(c)(2) would require verification of the history of common use in food and sufficient information about the use to determine the context in which the use occurred and to establish that use of the substance is safe within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act). The proposed regulation also suggested that persons claiming GRAS status for a substance on the basis of its common use in food outside the United States obtain FDA concurrence that the substance is GRAS.

FDA also proposed to revise the procedures for GRAS affirmation petitions in § 170.35 to make clear that a request for GRAS affirmation may be based upon either scientific procedures or a history of common use in food. The regulation currently stipulates that the petition be based upon scientific procedures.

The proposal responded to a court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for a general recognition of safety to experience in the United States.

In § 170.3(f), the agency had defined "common use in food" to mean "a substantial history of consumption of a substance by a significant number of consumers in the United States." On September 15, 1983, however, the United States Court of Appeals for the Ninth Circuit declared § 170.3(f) to be invalid. *Fmali Herb, Inc.* v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983). The court ruled that by restricting "common use in food" to mean use only in the United States, FDA had imposed a restriction that did not comport with either the literal terms of the act or with the purpose of the common use in food exception, as articulated by the legislators (715 F.2d at 1390).

The agency initially provided 60 days for interested persons to submit written comments on the proposal, but in response to a request from a trade association, the agency extended the period for comment on the proposal for an additional 60 days to November 4, 1985 (50 FR 35571; September 3, 1985).

The agency received 16 comments in response to the proposed regulation. Three comments urged FDA to promulgate the regulation without modification. Two comments noted that the date "January 1, 1985," that appeared in the second colum of the **Federal Register** of July 2, 1985 (50 FR 27297) of the proposed rule should be changed to "January 1, 1958." The agency has already corrected this error in the **Federal Register** of July 18, 1985 (50 FR 29235). The remaining comments raised the issues that are discussed below.

II. Response to Comments

1. Seven comments objected to the word "solely" in the proposed wording of § 170.3(f), which read: "Common use in food means a substantial history of consumption of a substance solely for food use by a significant number of consumers." These comments stated that the word "solely" in the definition could be interpreted as not allowing GRAS status for food substances that have uses in addition to food uses. One comment stated that FDA is imposing a limitation that is not relevant. The comment stated that the only rationale FDA provided for this limitation is the statement in the preamble that "the information must demonstrate that the substance has in fact been used as a food ingredient and not as a drug, tonic, or folk remedy." Another comment added that in many parts of the world

there is no sharp distinction between the use of substance as a food and as a "folk remedy." It suggested that the definition should be: "Common use in food means a substantial history of concumption of a substance for food or other use by a significant number of consumers." Another comment agreed with this view and stated that "since FDA's concern is whether substances are safe, all safety data from whatever source should be examined."

The agency has reviewed these comments and believes that the respondents misinterpreted the agency's intent in including the work "solely" in the proposed definition of "common use in food." The agency does not intend to exclude from GRAS eligibility food substances that also have nonfood uses. However, GRAS determination based upon common use in food depends, by definition, upon food use. The agency used the words "solely for food use" to emphasize this important point. Sufficient data must exist that document the safe use of the substance in food. Data on the use of a substance as a drug, for example, cannot substitute for data on food use.

However, the agency recognizes that inclusion of the word "solely" in § 170.3(f) may cause confusion. Therefore, the agency has removed that word from § 170.3(f).

The agency still considers it necessary to emphasize the concept that eligibility for GRAS status through experience based on common use in food prior to January 1, 1958, must be based solely on use of the substance in food. Consequently, the agency has included language to this effect in new § 170.30(c)(1). Because this revision merely clarifies the agency's intent expressed in the proposal, further opportunity for comment is not necessary.

2. One comment requested modifications in the safety standards for food and food ingredients.

The agency advises that this issue is outside the scope of this rulemaking. The agency further advises that it has no authority to modify the safety standards that are prescribed by the act.

3. Six comments objected to the last sentence of proposed § 170.30(c)(2), which reads: "Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS." Five comments asserted that the requirement for FDA concurrence imposes more stringent requirements upon foods that are GRAS based upon foreign experience than upon those claimed to be GRAS based upon U.S. experience. Specifically, the comments asserted that: (a) Such stringent restrictions are not required by statute and exceed FDA authority; (b) products that are not food additives within the meaning of the act are exempt from premarket approval; (c) the requirement is not in agreement with the act or with the ruling of the court in Fmali Hert, Inc. v. *Heckler*, 715 F.2d 1385 (9th Cir. 1983); and (d) FDA should reconsider its reasons for justifying the need for concurrence.

FDA has considered these comments and acknowledges that persons have the right to make independent GRAS determinations on food substances. Indeed, the preamble to the proposal stated that "persons normally are free to make their own determination about whether a substance is GRAS."

However, FDA is charged with the responsibility of protecting interstate commerce from adulterated foods. When a food substance is offered for import, FDA must judge whether that substance is adulterated on the basis of the information known about it. If, in advance of offering the substance for import, the importer has petitioned FDA and obtained agency concurrence that the substance is GRAS, the substance will enter the United States with little or no problem.

On the other hand, if the importer has failed to seek FDA concurrence that the use of the substance is GRAS, and if the substance has no history of use in the United States, the agency cannot simply assume that the substance is GRAS. Therefore, it has little choice but to find that the substance appears to be adulterated. Under section 801(a) of the act (21 U.S.C. 381(a)), FDA is authorized to detain articles that appear to be adulterated and to refuse admission to those articles.

A person whose product has been detained has a right to request a hearing to review the initial determination that the substance appears to be adulterated, and FDA will listen to relevant evidence presented at such a hearing. While the agency will consider the evidence on this question at the hearing, determinations on GRAS status are not usually the type of simple and straightforward decisions that are appropriately made in the context of a detention hearing. Therefore, it seems likely that such hearings will rarely result in a finding that a substance is GRAS.

Furthermore, detention hearings are high pressure situations in which a decision must be made as quickly as possible because the goods are either waiting on the docks or being held under bond. Thus, detention hearings are ill-suited to consideration of whether the use of a food ingredient is GRAS based on its history of use outside the United States.

Evidence on the effects of the use of a substance usually must be evaluated by FDA scientists trained in such disciplines as toxicology, chemistry, and epidemiology before the agency can make a determination as to whether the history of use of the substance provides an assurance of safety. Thus, except in rare cases in which the evidence of pre-1958 use of a substance provides overwhelming evidence of its safety (e.g., when there was specific approval granted for its use before 1958 by a foreign government), questions about whether use of the substance is GRAS are likely to remain unresolved at the detention hearing. If such questions persist, the hearing officer will likely affirm the finding that the substance appears to be an unapproved, and therefore unsafe, food additive.

For these reasons, prudence suggests that an importer who has made an independent determination that a substance is GRAS on the basis of its history of use outside the United States seek FDA concurrence in that judgment, by means of a GRAS affirmation petition, before seeking to bring the product into this country. The last sentence in § 170.30(c)(2) incorporates this suggestion into FDA's regulations. It does not require that such concurrence be obtained, establish a premarket approval requirement, or establish more stringent requirements for foods that allegedly are GRAS based on foreign experience than for those that allegedly are GRAS based on experience in the United States. It merely reflects the fact that, to protect the safety of the food supply, section 801(a) of the act requires that FDA deny entry into this country to foods that even appear to be adulterated, and that it is to the advantage of the importer to have questions about possible adulteration resolved before the food is offered for entry.

Finally, the last sentence in § 170.30(c)(2) is fully consistent with *Fmali Herb, Inc.* v. *Heckler*. That decision states that FDA cannot refuse to consider evidence of safety based on use of a substance outside the United States before 1958. The last sentence in § 170.30(c)(2) does not purport to do so. The agency is fully prepared to consider such evidence. The sentence in question makes clear, however, that the agency prefers to be given such evidence before a product is offered for import and in a context other than a detention hearing.

For the foregoing reasons, FDA has not made any changes in the last sentence in § 170.30(c)(2) in response to the comments.

4. One comment contended that FDA should not deny an exemption from premarket approval simply because information supporting the safety of a substance is not readily available in this country, and that FDA's ability to obtain data is no reflection upon the validity of data.

Given its long history of regulating the food supply in the United States, FDA generally has some information relating to the safety of substances used in food in the United States. The same is not necessarily true for substances used in foreign countries. FDA's ability to obtain comparable information on the use of substances in foreign countries may be no reflection on the validity of the information, but it does affect the agency's ability, and the ability of qualified experts in this country, to assess the safety of the food substance.

5. One comment noted that in deciding whether to allow imports into the United States the agency is not entitled to create legal requirements (i.e., the imports are on an FDA approved substances list) because it is convenient to have a list of approved substances.

It is to the advantage of an importer to have the substances of its product on an FDA-approved list, which would occur if FDA concurred in the GRAS determination. This listing would eliminate delays and uncertainties regarding the food product's entry into the United States. However, FDA has not created any legal requirements to this effect.

6. Three comments stated that a requirement for FDA concurrence would have a catastrophic economic impact upon importers.

The agency does not agree with the assertion that a requirement for FDA concurrence in a foreign determination of GRAS would have a catastrophic economic impact upon importers. This rule serves to open U.S. markets to products not previously sold in this country. Any expense associated with the submission of a petition seeking FDA concurrence should be minimal because an individual or firm making an independent GRAS determination should already have the information needed to support a general recongnition of safety.

Due to these considerations, the agency has not modified its regulation in response to these comments.

7. One comment was concerned that FDA might exclude data on foreign usage after January 1, 1958, in making GRAS determinations.

The agency emphasizes that it regulates substances used outside of the United States after 1958 in the same manner as those used in the United States after 1958. The act allows substances that were used in food prior to January 1, 1958, to be GRAS either through experience based on common use in food or through scientific procedures (21 U.S.C. 321(s) and 21 CFR 170.30(a)). All substances first used in food after this date can be GRAS only on the basis of scientific procedures (21 CFR 170.30(b)).

8. Two comments recommended that the GRAS provisions on animal food substances also be revised to be consistent with the *Fmali* court decision.

The agency agrees that the court decision affects the GRAS provisions on animal food substances and has decided to initiate a rulemaking for the GRAS provisions on animal food substances. A notice of proposed rulemaking will be published in a future issue of the **Federal Register**.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (July 2, 1985; 50 FR 27294 at 27296). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency previously considered the potential economic effects of this rule including its potential effect on small entities, including small businesses. In accordance with Executive Order 12291 and section 605(b) of the Regulatory Flexibility Act, the agency has determined that this rule would not be a major rule, and that no significant impact on a substantial number of small entities would derive from this action. As previously mentioned, the agency received three comments that claimed that this rule would have adverse economic effects on businesses. However, the agency did not receive any new information upon which to base a reconsideration of its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment that was prepared in conjunction with the notice of proposed rulemaking and which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

V. Paperwork Reduction Requirements

Section 170.35(c)(i) of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0132.

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 170 is amended as follows:

PART 170—FOOD ADDITIVES

1. The authority citation for 21 CFR Part 170 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a) (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.10.

2. Section 170.3 is amended by revising paragraph (f) to read as follows:

§ 170.3 Definitions.

* * * * *

(f) "Common use in food" means a substantial history of consumption of a substance for food use by a significant number of consumers.

* * * * *

3. Section 170.30 is amended by redesignating paragraph (c) as paragraph (c)(1), by revising the second sentence in paragraph (c)(1), and by adding a new paragraph (c)(2) to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c)(1) * * * General recognition of safety through experience based on common use in food prior to January 1, 1958, shall be based solely on food use of the substance prior to January 1, 1958, and shall ordinarily be based upon generally available data and information. * * *

(2) A substance used in food prior to January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the use of the substance

is safe within the meaning of the act (see § 170.3(i)). Common use in food prior to January 1, 1958, that occurred outside of the United States shall be documented by published or other information and shall be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in this country. Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS.

* * * * *

4. Section 170.35 is amended by revising the introductory text of paragraph (c)(1), and by adding a parenthetical phrase at the end of the section to read as follows:

§ 170.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided in § 170.30(e), except those subject to the NAS/NRC GRAS list survey (36 FR 20546; October 23, 1971), shall submit a petition for GRAS affirmation pursuant to Part 10 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 170.30 (b) or (c) have been met, in the following form:

* * * * *

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0132.)

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10314 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-87-063]

Drawbridge Operation Regulations; Pocomoke River, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the requests of the Maryland Department of Transportation and Conrail, the Coast Guard is changing the regulations governing the operation of the Route 675 highway drawbridge across the Pocomoke River, mile 15.6, and adding new regulations for the railroad swing bridge across the Pocomoke River, mile 15.2, at Pocomoke City, Maryland. This action will require five hours advance notice for bridge openings from November 1 to March 31.

EFFECTIVE DATE: These regulations become effective on June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On August 16, 1987, the Coast Guard issued a notice of proposed rulemaking concerning this amendment, which was published in the **Federal Register** on September 4, 1987 (52 FR 34686). Interested persons were given until October 29, 1987, to submit comments on the proposed rule.

The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on November 9, 1987, which gave interested persons until December 18, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and CDR Robert J. Reining, Project Attorney.

Discussion of Rule and Comments

The notice of proposed rulemaking would have required vessels to give five hours advance notice for openings between October 1 to March 31 for openings of the railroad swing bridge at mile 15.2 and the Route 675 drawbridge at mile 15.6 across the Pocomoke River. The proposal was intended to eliminate the need to have individuals constantly available to open the draws during a time of year when few vessels transit the river. After the notice of proposed rulemaking was issued, a letter was received from the Mayor of Pocomoke City, dated August 31, 1987. The mayor requested that the proposal be changed to require the Conrail bridge to open on signal from March 1 through October 31. The mayor also stated a general preference for having the bridge open on signal throughout the year.

In addition, in September, 1987, a member of the Fifth Coast Guard District bridge staff was contacted by the DELMARVA Water Transport Committee (DWTC), who stated that they had discussed the issue of manning the bridge during March and October with Conrail. They reported that Conrail did not believe it was feasible to keep the bridge manned during March, but that Conrail had agreed to leave the railroad bridge manned through the month of October. DWTC, therefore, requested that the proposal be changed to require the bridge to open on signal during a seven month period (April 1 through October 31), rather than the six month period published in the notice of proposed rulemaking (April 1 through September 30).

A member of the Fifth Coast Guard District bridge staff then contacted both Conrail and the Maryland State Highway Administration to obtain their views on the subject. Conrail stated that they had no objections to manning the bridges during the month of October, but they insisted that there was insufficient traffic to keep the bridge manned during the month of March. They requested that they be permitted to only open the draw on five hours notice during March.

On March 18, 1988, the Maryland Department of Transportation stated that they had no objections to the changes proposed by the City for the Route 675 bridge at mile 15.6. No comments were received in response to the notice of proposed rulemaking published in the **Federal Register**. Only two comments were received as a result of the public notice. One, from a private citizen, favored the proposed regulations. The other, from the U.S. Environmental Protection Agency, Philadelphia, Pennsylvania, stated they had no comments regarding the proposed regulation.

Based on the discussions with Conrail, DWTC, and the Maryland State Highway Administration, we have determined that there is a need to maintain the unrestricted openings of the draws from April 1 through October 31, in order to provide for the reasonable needs of navigation. Therefore, the rule that was originally proposed has been amended to extend the open period from September 30 to October 31.

Good cause exists to issue this final rule without an additional notice of proposed rulemaking, since all the affected interests have been afforded an opportunity to comment on the proposed change and have made their positions known to the Coast Guard. Publication of an additional notice of proposed rulemaking or other public procedures are unnecessary.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and

procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation, or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authorty citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.569 is revised to read as follows:

§ 117.569 Pocomoke River.

(a) The Conrail railroad bridge, mile 15.2, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(b) The draw of the Route 675 bridge, mile 15.6, at Pocomoke City, shall open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

(c) The draw of the S12 bridge, mile 29.9, at Snow Hill, shall open on signal if at least five hours advance notice is given.

Dated: April 27, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 88–10286 Filed 5–9–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

Land Uses and Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule would revise the existing regulations governing special uses of National Forest System lands and resources to remove ambiguities regarding First Amendment rights of assembly and free speech within the National Forest System.

DATE: This rule effective May 10, 1988. Comments must be received in writing by July 11, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim rule in the Office of the Director, Recreation Management Staff, Room 4225, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: W.T. Svensen Recreation Staff, (202) 382–9407.

SUPPLEMENTARY INFORMATION: The rules at 36 CFR Part 251, Subpart B, govern the authorization of all uses of National Forest System lands, improvements, and resources, except the disposal of timber (Part 223) and minerals (Part 228) and the grazing of livestock (Part 222).

The existing rule establishes two types of group events, differentiating between recreation events and special events, both of which involve groups of 10 or more participants and/or spectators. The existing rule also contains different standards for the denial of special use authorizations for each type of group event. A Federal District Court recently held that it is unconstitutional to require a group to obtain a special use authorization simply because they gather to exercise their constitutional right of free speech. The Court explained that the Forest Service has every right to regulate large group use of government land, but only if the regulation is content-neutral and applies to all large groups. *United States v. Israel*, No. CR–86–027–TUC–RMB (May 10, 1988).

In response, the Department is revising 36 CFR 251.50 through .54 to refine the definitions of special uses, eliminate the terms "recreation event" and "special event", to add a new term "group event", and to add proper safeguards for protecting all First Amendment activities.

Paragraph (c) of § 251.50 is being revised to more clearly articulate that a special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for most recreational activities, unless authorization of such use is required by an order issued pursuant to 36 CFR 261.50, or required by a regulation issued pursuant to 36 CFR 261.70, or unless the use is for a group event. The major change in this paragraph is that special use authorizations are required for all organized or publicized events involving groups of 25 or more persons. The interim rule classifies every organized or publicized group of 25 or more persons as a "group event" irrespective of the purpose of the gathering.

Section 251.51 of the existing rule contains definitions used in Part 251, Subpart B. The interim rule removes the terms and definitions for "recreation event" and "special event", which will no longer be used in this Subpart, and adds new terms and definitions for "group event", "distributing noncommercial printed material", and "noncommercial printed material". The term "group event" covers all organized or publicized gatherings of 25 or more people, and thus includes groups currently included in the "special events" or "recreation events" categories, as well as groups currently not subject to the special use authorization requirement. "Distributing noncommercial printed material" and "noncommercial printed material" are new terms which are defined in the interim rule. These terms and definitions are added to clarify that special use authorization for this First Amendment activity will be granted unless certain conditions specified in § 251.54 are not met.

Section 251.53 of the existing rule contains the authorities under which special use authorizations may be issued. In this interim rule, paragraph (a) is changed to reflect new terms which are now used in this subpart.

Existing § 251.54 prescribes procedures and requirements of special use applications. Paragraphs (h) and (i) of this section describe reasons that an authorized officer may deny special use applications. In the interim rule, existing paragraph (i) is redesignated as paragraph (h) and revised to provide that applications for a special use authorization for the distribution of noncommercial printed material or for a group event for the purpose of public expression of views shall be granted, unless the authorized officer determines that the planned event or use would conflict with another use which has been previously authorized, the planned event or use would present a clear and present danger to public health or safety, or the planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place

and time applied for considering such things as damage to resources or facilities, interference with ongoing resource program activities, or impairment of other public uses authorized for the area, or the application proposes activities that are prohibited by the rules at Part 261 of this chapter or that violate the provisions of Federal or State criminal law.

Existing paragraph (h) is redesignated as paragraph (i) and changes the introductory text to read that an authorized officer may deny issuance of an authorization for various reasons. These reasons are the same as those listed in the current rule in paragraph (h), with one exception. An authorized officer may now deny an authorization if there is no person or entity authorized to sign a special use authorization on behalf of the group, or if there is no person or entity willing to accept responsibility for the group's compliance with the terms and conditions of the authorization. This condition of denial will also apply to applications for all other special use authorizations. This requirement has been in the Forest Service Manual for some time, but inadvertently has not been incorporated in the rules. These changes are made to more clearly articulate that applications for authorization for the distribution of noncommercial printed material or for a group event for the public expression of views may only be denied for very limited and nondiscretionary reasons. It should be noted that applications for, and processing of, special use authorizations for all other types of group events are subject to the same rules applicable to all other special uses.

Existing § 251.62 defines acceptance of a special use authorization. In the interim rule, particular reference to term permits is removed, as a term permit is only one type of permit used to authorize special uses. The Forest Service also issues other permits, and these permits should also be subject to the rules of acceptance. In the interim rule, this section is also changed to show that refusal of an applicant to sign and accept a lease or a permit within the time allowed, and before its final approval and signature by an authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

In addition to the changes at 36 CFR Part 251, the interim rule makes corollary amendments to the rules at 36 CFR Part 261, Subpart A, which contain general prohibitions in effect on the National Forest System. The interim rule revises the authority citation for Part 261 to delete obsolete references and amends paragraph (g) of § 261.10 to make this paragraph consistent with the definition of "noncommercial printed material" as defined in 36 CFR 251.51.

With the changes in definitions and establishment of very limited circumstances under which an authorized officer can deny a special use authorization for the public expression of views, the Department believes it preserves the fundamental constitutional rights of speech and assembly while providing reasonable administrative mechanisms to control or prevent impacts on resources and public health and safety.

In accordance with exceptions to rulemaking procedures in 5 U.S.C. 533 and Department of Agriculture policy (36 FR 13804), it has been found and determined that advance notice and request for comments would be impracticable and contrary to the public interest. Because of the decision in *United States v. Israel*, the current rule pertaining to special use authorizations for large group gatherings on the National Forest System is unenforceable. The summer field season is close at hand, and large groups will soon be gathering on the National Forests. It is, therefore, imperative that an enforceable rule be in place so that forest officers have a mechanism, where necessary, to control the impacts of these groups and prevent unnecessary damage or risk to National Forest resources and facilities, and public health and safety. Written comments are invited on the interim rule and will be considered in promulgation of a final rule.

This interim rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this rule, since this action consists primarily of technical and administrative changes to the rule.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities because it imposes no record keeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and, it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects

36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, Title 36 Chapter II, of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

1. The authority citation for Subpart B continues to read:

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

Subpart B—Special Uses

2. In § 251.50, revise paragraph (c) to read as follows:

§ 251.50 Special uses.

* * * * *

(c) A special use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picnicking, hiking, fishing, hunting, horse riding, boating, or similar recreational activity, unless one or more of the following circumstances exists:

(1) Authorization of such use is required by an order issued pursuant to 36 CFR 261.50;

(2) Authorization of such use is required by a regulation issued pursuant to 36 CFR 261.70;

(3) The use is for a group event as defined in § 251.51 of this subpart.

* * * * *

3. At 36 CFR 251.51, remove the paragraph designations for each definition (a)–(n), remove the terms and

definitions for "recreation event" and "special event", and add the following new terms and definitions in the appropriate alphabetical sequence:

§ 251.51 Definitions.

* * * * *

"Distributing noncommercial printed material"—disseminating, posting, placing, or erecting any notice, sign, handbill, petition, or other written and/or graphic material for noncommercial purposes.

* * * * *

"Group event"—an organized or publicized activity involving, or expected to attract, 25 or more persons and the use of National Forest System lands, resources, or facilities.

* * * * *

"Noncommercial printed material"—written and/or graphic material that does not advertise, offer, or otherwise attempt to buy, sell, or exchange a commodity, product, or service.

* * * * *

4. At § 251.53, revise paragraph (a) to read as follows:

§ 251.53 Authorities.

* * * * *

(a) Permits governing occupancy and use, including group events and distribution of noncommercial printed materials, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

* * * * *

5. In § 251.54, redesignate paragraphs (h) and (i) as (i) and (h) respectively, revise new paragraphs (h) and (i) introductory text, and add a new paragraph (i)(6) to read as follows:

§ 251.54 Special use applications.

* * * * *

(h) *Response to applications for the distribution of noncommercial printed material or for a group event for the public expression of views.* An authorized officer shall grant an application for authorization of distribution of noncommercial printed material or for a group event for the purposes of public expression of views, unless the officer determines that:

(1) The planned event or use would conflict with another use which has been previously approved by special use authorization, contract, or approved operating plan, under this part or Parts 222, 223, or 228 of this chapter; or

(2) The planned event or use would present a clear and present danger to public health or safety; or,

(3) The planned event or use would be of such nature and duration that it could not reasonably be accommodated in the particular place and time applied for, considering such factors as damage to resources or facilities, interference with ongoing resource program activities, or impairment of other public uses authorized for the area; or

(4) The application proposes activities that are prohibited by the rules at Part 261 of this chapter or that violate the provisions of Federal or State criminal law.

(5) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is not person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

(i) *Response to applications for all other special uses.* An authorized officer may deny issuance of an authorization for all other special uses, including group events not subject to paragraph (h) of this section, if that officer determines that:

* * * * *

(6) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the permit.

6. Revise § 251.62 to read as follows:

§ 251.62 Acceptance.

Except for an easement, a special use authorization shall become effective when signed by both the applicant and the authorized officer. The authorization must be signed by the applicant and returned to the authorized officer within 60 days of its receipt by the applicant, unless extended by the authorized officer. Refusal of an applicant to sign and accept a special use authorization within the time allowed, and before its final approval and signature by an authorized officer, shall terminate an application and constitute denial of the requested use and occupancy.

PART 261—PROHIBITIONS

7. Revise the authority citation for Part 261 to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1)).

Subpart A—General Prohibitions

8. In § 261.10, revise paragraph (g) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic matter without a special use authorization.

* * * * *

Date: April 19, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-10316 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC-97-N]

Medicaid Program; Treatment of Social Security Cost of Living Increases for Individuals Who Lose SSI Eligibility

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

ACTION: Final notification.

SUMMARY: This document provides public notice that we did not seek further review of the court decision which ordered us to require States to deduct certain cost of living increases (COLAs) in Title II (Social Security) benefits in determining an individual's eligibility for coverage under what is commonly known as the Pickle Amendment. (Section 503 of Pub. L. 94-566, 42 U.S.C. 1396a (note).) These COLAs include the increases received by the individual or his or her financially responsible spouse or other family member (e.g., a parent) as specified in current regulation.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (301) 966-4457.

SUPPLEMENTARY INFORMATION: On April 10, 1986 we published in the **Federal Register** (51 FR 12325) a final rule that revised regulations to conform with a decision in *Lynch v. Rank*, 604 F. Supp. 30 (N.D. Cal. 1984), involving the Pickle amendment. That amendment provides that certain aged, blind, or disabled individuals who lost Supplemental Security Income (SSI) eligibility will be considered to be receiving SSI for purposes of Medicaid eligibility, if they would be eligible for SSI except for certain Title II COLAs which they have received. That regulation was published after notice and public comment. However, it included a change to paragraph (b) of 42 CFR 435.135, "Individuals who become ineligible for cash assistance as a result of OASDI cost-of-living increases received after April 1977". This change was dictated

by the *Lynch* decision, which was on appeal at the time the regulation was published. The issue on appeal was the requirement that States deduct COLAs received by an ineligible spouse or other financially responsible relatives of the individual from the income attributed to the individual in determining the individual's eligibility for protection under the Pickle amendment. We disagreed with the District Court's order, and in the preamble to the rule advised the public that we would change the rule if we prevailed on appeal.

In *Lynch v. Dawson*, 830 F.2d 1014 (9th Cir. 1987), the Court of Appeals subsequently affirmed the District Court's order. We did not appeal this decision and therefore will not change the rule as adopted.

The regulation also contained two other changes which were not in the original rule and with respect to which we solicited comments. Although we received two comments in response to the final rule, neither of them dealt with the revised provisions to the regulation, and accordingly we are not responding to them.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: April 5, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-10241 Filed 5-9-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-501; RM-6051]

Radio Broadcasting Services; Old Forge, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of George W. Kimble, allocates Channel 259A to Old Forge, New York, as the community's first local FM service. Channel 259A can be allocated to Old Forge in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) southwest to avoid a short-spacing to the construction permit of Station WGFB, Channel 260C, Plattsburgh, New York. The coordinates for this allotment are North Latitude 43-39-35 and West Longitude 75-03-29. Canadian concurrence has been received since Old Forge is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective June 13, 1988. The window period for filing applications will open on June 14, 1988, and close on July 14, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-501, adopted April 7, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 3

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New York, is amended by adding Old Forge, Channel 259A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-10307 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-206; RM-5702]

Radio Broadcasting Services; Etowah and Jamestown, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C2 for Channel 276A at Etowah, Tennessee, and modifies the license of Station WVKS(FM) to specify operation on the higher class co-channel, at the request of Bvack Broadcasting, Inc., as that community's first wide coverage area FM service. This action also substitutes Channel 286A for Channel 276A at Jamestown, Tennessee and modifies the license of Station WCLC-FM at Jamestown, Tennessee. Channel 276C2 at Etowah requires a site restriction of 13.5 kilometers (8.4 miles) north of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-206, adopted April 6, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee by deleting Channel 276A and adding Channel 276C2 for Etowah; and deleting Channel 276A and adding Channel 286A for Jamestown.

Steve Kaminer,

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

[FR Doc. 88-10311 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-442; RM-4999 et al.]

Radio Broadcasting Services; Brenham, Round Rock, Austin, Caldwell, Belton, Killeen, Brownwood, West Lake Hills and Temple, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C2 to Round Rock, Texas, as that community's first local FM service, at the request of Round Rock Radio Group. Additionally, this action substitutes Channel 291C2 for Channel 292A at

Brenham, Texas, and Channel 282C2 for Channel 285A at Temple, Texas, at the request of Tom S. Whitehead, Inc. and KTEM Radio, Inc., respectively. The licenses of Stations KWHI(FM) at Brenham and KPLE(FM) at Temple are modified to reflect the higher class frequencies, providing both communities with a first wide coverage area FM station. Channel 290C2 at Round Rock requires a site restriction of 17.9 kilometers (11.1 miles) west of the city (30–24–05 and 97–51–09). Mexican concurrence has been obtained for the Round Rock allotment. A site restriction of 17.4 kilometers (10.8 miles) west of the community is required for Channel 291C2 at Brenham (30–11–24 and 96–34–19). The site for Channel 282C2 at Temple is restricted to 20.4 kilometers (12.7 miles) southwest of the city (30–56–56 and 97–28–17). This action further dismisses petitions of James Duff McClish, Sr. (RM–5069) for Round Rock, Texas; Call FM Radio (RM–5397) for Caldwell, Texas; and Alvin O. Kriegel, Jr., (RM–5420) for West Lake Hills, Texas; and denies the petitions of Grass Roots Radio (RM–5199) for Austin, Texas, and Heart of Texas Communications, Ltd. (RM–5497) for Belton, Texas. With this action, this proceeding is terminated.

DATES: Effective June 13, 1988. The window period for filing applications for Channel 290C2 at Round Rock, Texas, will open on June 14, 1988, and close on July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–442, RM–4999, –5069, –5199, –5397, –5497, –5498, –5420, and –5722, adopted March 30, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas by adding Channel 290C2 at Round Rock; by deleting Channel 292A and adding Channel 291C2 at Brenham; and deleting Channel 285A and adding Channel 282C2 at Temple.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–10306 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 68)]

Revised Procedures for Obtaining Copies of Motor Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule, correction.

SUMMARY: This final rule was published on April 29, 1988 at 53 FR 15399. The name of the Commission-designated contractor should have been omitted from the rule. The purpose of this notice is to make that correction.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275–7292 or Richard B. Felder, (202) 275–7691. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Under the reivsed rule set forth below, a Commission-designated contracting agent—presently, Dynamic Concepts, Inc.—will process all requests for copies of applications in motor carrier, water carrier, property broker, and household goods freight forwarder licensing proceedings.

List of Subjects in 49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for 49 CFR Part 1160 continues to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

2. Part 1160 is amended by correctly revising § 1160.13 to read as follows:

§ 1160.13 Furnishing a copy of the application package to interested persons.

After publication, interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and must be accompanied by a check or money order for $10 made payable to such contract agent; or by contacting the contract agent at (202) 289–4357 [TDD for hearing impaired: (202) 275–1721] and arranging billing as acceptable to the agent.

[FR Doc. 88–10334 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing domestic fisheries to proceed without interruption.

DATES: May 5, 1988. Comments will be accepted through May 20, 1988.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catch (TAC) for various groundfish species are apportioned initially among DAH, reserves, and the total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(c) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of domestic annual processing (DAP) for 1988 were based on the projected needs of the U.S. processing industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in October 1987. After fifteen percent of the Bering Sea and Aleutian Islands (BSA) total allowable catch (TAC) for each target species was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements and the reserve equaled the optimum yield.

On January 14, JVP was supplemented by 804 mt of the non-specific reserve to provide necessary bycatch of Greenland turbot, Pacific ocean perch, rockfish, sablefish, and squid. On April 19, (53 FR 12772), JVP was supplemented by 24,000 mt of the nonspecific reserve to provide additional amounts of yellowfin sole, "other flatfish" and Pacific cod in order to allow joint venture operations to continue without interruption.

Reapportionment (Table 1)

The following actions are taken by this notice to reapportion groundfish from the non-specific reserve to BSA fisheries.

To the BSA JVP

In the Bering Sea, about sixty U.S. catcher boats delivering fish to about thirty foreign processors are conducting directed fisheries on pollock; another 40 U.S. catcher boats delivering fish to about 40 foreign processors are continuing directed fisheries on yellowfin sole and "other flatfish". At its April meeting, the Council voted to recommend to the Regional Director that 100,000 mt of the nonspecific reserve be transferred to the Bering Sea subarea JVP quota for pollock in order to facilitate planning of JVP operations and to allow them to continue without interruption.

The Regional Director has found, based on catch-to-date, and preliminary returns from the second, April 1988, DAP survey, that the DAP for Bering Sea subarea pollock will not require supplementation by 100,000 mt of pollock in 1988; therefore, that amount is transferred to JVP.

In order to provide necessary bycatch, the following amounts are transferred from the nonspecific reserve to JVP: 30 mt of Greenland turbot; 18,000 mt of "other flatfish"; 12,000 mt of Pacific cod; and 5,000 mt of "other species".

These apportionments do not result in overfishing of the Bering Sea pollock, Greenland turbot, Pacific cod or "other species" stocks, as in each case the resulting species TAC is less than its Acceptable Biological Catch (ABC).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or delay the effective date of this action. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 5, 1988.

Richard H. Schaefer,

Director, Office of Fishery Conservation and Management.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons.]

		Current	This action	Revised
Pollock (Bering Sea)	DAP	614,162		614,162
TAC = 1,300,000; ABC=1,500,000	JVP	490,838	+100,000	590,838
Greenland Turbot	DAP	9,520		9,520
TAC = 11,200; ABC=14,000	JVP	31	+30	61
Other Flatfish	DAP	26,403		26,403
TAC = 131,369; ABC=331,900	JVP	95,261	+18,000	113,261
Pacific cod	DAP	87,416		87,416
TAC=200,000; ABC=385,300	JVP	88,584	+12,000	100,584
Other Species	DAP	2,000		2,000
TAC=10,000; ABC=54,000	JVP	6,500	+5,000	11,500
TOTAL (TAC = 2,000,000)	DAP	792,520		792,520
	JVP	932,284	+135,030	1,067,314
Reserves		275,196	−135,030	140,166

[FR Doc. 88–10349 Filed 5–5–88; 4:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management proposes to amend its regulations concerning the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave. These regulations are being proposed as part of a continuing effort to simplify and deregulate the Federal personnel system.

DATES: Comments must be received on or before July 11, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James E. Matteson, (202) 632–5056.

SUPPLEMENTARY INFORMATION: The Federal Personnel Director's Productivity Task Force was charged with identifying regulations that inhibit effective human resources management and recommending appropriate remedies. One regulation identified by the Task Force is 5 CFR 630.305, which regulates the administrative level at which exigencies of the public business may be declared for purposes of restoring forfeited annual leave under 5 U.S.C. 6304. The proposed rule would remove this regulatory restriction and permit the head of an agency to designate the administrative level at which exigencies of the public business may be declared for this purpose.

The Office of Personnel Management (OPM) agrees that the existing limits on the delegation of approval authority require unnecessary levels of review. In proposing delegation of approval authority below the levels permitted by the current regulation (no more than two organizational levels below the head of the agency at its central headquarters level, or more than one organizational level below the head of a major field headquarters or major field installation), OPM does not intend any change in policy. Before approval at any level, all requests must continue to be reviewed carefully to ensure that the exigency cited is of major importance and that annual leave could not be used by the employee to avoid forfeiture.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees, Employee benefit plan.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is proposing to amend Part 630 of Title 5, Code of Federal Regulations, as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under of E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. L. 100–102.

2. Section 630.305 is revised to read as follows:

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[FR Doc. 88–10389 Filed 5–9–88; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 22; Doc. No. 4941S]

General Crop Insurance Regulations; Certified Seed Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.131, to be known as the Certified Seed Potato Option. The intended effect of this rule is to provide the regulations containing the provisions of the certified seed crop insurance protection on potatoes as an option to the proposed Northern Potato Endorsement (7 CFR 401.128).

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 9, 1988, to be sure of consideration.

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

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations is as April 1, 1993.

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

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

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

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

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

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.131, the Certified Seed Potato Option, effective for the 1989 and succeeding crop years, to provide the provisions for insuring certified seed.

Upon publication of 7 CFR 401.131 as a final rule, the provisions for insuring certified seed potatoes contained therein will be applicable to the Northern Potato Endorsement proposed to be issued as a separate document amending the General Crop Insurance provisions as 7 CFR 401.128. The provisions of the Certified Seed Potato Option contained herein do not supersede those provisions contained in 7 CFR Part 422, the Potato Crop Insurance Regulations, as they relate to potato crop insurance coverage in all other states.

The present Certified Seed Option contained in 7 CFR Part 422 will be maintained for all other states and counties wherein potato crop insurance is authorized to be offered.

Minor editorial changes have been made to improve compatibility with the proposed potato crop insurance endorsement. These changes do not affect meaning or intent of the provisions.

One additional change is proposed to the Certified Seed Potato Option; the rate paid for potatoes which, because of insurable causes fail to qualify as certified seed potatoes, is established as one dollar and fifty cents ($1.50) per cwt.

This increase in the dollar rate reflects changes in the market where the demand for table grades has dropped and demand for certified seed potatoes has risen, That dictates a wider spread between the basic return for table grades and that of certified seed potatoes.

Under the certified seed option, a grower producing certified seed may lose a portion of the crop because the seed potatoes fail to meet specifications. In that event, the insured producer now is paid $1.00 per cwt. for such failed seed potatoes, which are then sold at a lower price as table stock. The increase from $1.00 to $1.50 per cwt. represents a recognition of the loss suffered by the insured certified seed producer.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Certified Seed Potato Option.

Proposed Rule

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

PART 401—[AMENDED]

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

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR § 401.131 Certified Seed Potato Option, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.131 Certified Seed Potato Option.

The provisions of the Certified Seed Potato Option for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Certified Seed Potato Option

Insured's Name _____
Address _____
_____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

When you submit this Option each crop year on or before the final date for accepting applications and we approve the Option, your insurable acreage of potatoes grown for certified seed will be insured, if:

1. You are currently insured under the Northern potato insurance program;

2. All potatoes which are grown for certified seed on insurable acreage are insured;

3. You are a person whose potatoes have qualified for entry into the Certified Seed program for the previous 3 years, (After initial approval, you will be exempt from this requirement provided you have discontinued participation in the program for not more than one crop year out of any three consecutive crop years);

4. You provide acceptable records of your certified seed potato acreage and production for at least the previous 3 years;

5. Potatoes for seed are not grown on the same land on which potatoes of the same variety as the seed potatoes have been grown more than 2 years out of the preceeding 4 years;

6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and

7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatoes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you one dollar and fifty cents ($1.50) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit.

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

All provisions of the potato endorsement not in conflict with this amendment are applicable.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the ——— crop year will be ———.

Insured's Signature ———
Date ———

Corporation Representative's Signature and Code Number ———
Date ———

Field Actuarial Office Approval ———
Date ———

Done in Washington, DC on April 8, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-10275 Filed 5-9-88; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and To Order; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The decision on proposed amendments to the Upper Midwest milk marketing order, published in the Federal Register on Tuesday, May 3, 1988 (53 FR 15690) omitted certain material pertaining to the proposed amendatory language for 7 CFR Part 1068. The missing material, as indicated below, should have followed immediately after the signature of the Deputy Assistant Secretary for Marketing and Inspection Services, on page 15700 of the described Federal Register.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The following material was omitted from the decision on proposed amendments to the Upper Midwest milk order that was issued on April 27, 1988, and published in the Federal Register on May 3, 1988 (53 FR 15690). This missing material, as follows, should have appeared immediately after the signature of the Deputy Assistant Secretary for Marketing and Inspection Services, on page 15700.

Order Amending the Order Regulating the Handling of Milk In the Upper Midwest Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the 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.* 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. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at 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, ensure 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.

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 order, as amended, and as hereby 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, amend paragraph (d) by revising (d)(3), revising and redesignating (d)(4) as (d)(5) and adding a new (d)(4), revising and redesignating (d)(5) as (d)(7) and replacing (d)(6), as follows:

§ 1068.7 Pool plant.

* * * * *

(d) * * *

(3) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than July 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for August and continue through the following July unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants during each of the months of August and December is 5 percent or more and during each of the months of September, October, and November is 8 percent or more of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant), subject to the following conditions:

(i) These shipping percentages may be decreased by up to five percentage points during the months of August and December, and by up to eight percentage points during the months of September, October and November, by the Director of the Dairy Division if he finds that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either on his own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, he shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(ii) A cooperative association that operates a reserve supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(5) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(A) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1068.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipments to another order plant may not be classified pursuant to § 1068.42(b)(3); and

(iii) Failure of a handler to compy with any announced shipping requirement pursuant to § 1068.7(d)(5), including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to § 1068.7(d). A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to § 1068.7(d) until the following August;

(6) In order to meet the requriements of paragraphs (d)(4) and (d)(5) of this section, two or more reserve supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which the plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of § 1068.7(d) (4) and (5). Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating reserve supply plant(s) for which the shipping percentages in § 1068.7(d)(4) are met as part of a unit described in § 1068.7(d)(6) must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler's plant(s) from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plants in one of the months of August through December in order for the handler's plant(s) to be a reserve supply plant(s) for the month of December.

(7) A plant must have been a pool plant under this order pursuant to § 1068.7 (a), (b), or (d) during each of the preceding months of August through December to be a pool reserve supply plant during the following months of January through July:

United States Department of Agriculture,
Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1068.1 to 1068.86, all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area 7 CFR Part 1068 which is annexed hereto; and

II. The following provisions:

§ 1068.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of January 1988, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1068.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By _____

(Name)

(Title)

(Address)

Attest _____

Date _____

Signed at Washington, DC, on: May 5, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88-10383 Filed 5-9-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0202]

Indirect Food Additives; Adjuvants, Production Aids and Sanitizers; Antioxidants and Stabilizers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: FDA is issuing this proposed rule to correct an error in nomenclature that appeared in a final rule that FDA issued in the Federal Register of August 18, 1986 (51 FR 29460). This final rule responded to a food additive petition from American Enka Co. The correction removes the chemical name "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" from the list of stabilizers for use in polyethylene phthalate polymers set forth in the table in 21 CFR 178.2010(b) and replaces it with "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)". The new nomenclature more accurately represents the chemical identity of the additive. The American Enka Co. agrees with this correction.

DATE: Comments by June 9, 1988.

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

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of August 18, 1986 (51 FR 29460) FDA published a regulation listing tris(triethylene glycol)-phosphate in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) as a stabilizer in polyethylene phthalate polymers (also referred to as "ethylene terephthalate polymers") intended for use in contact with food. The regulation responded to a petition filed by American Enka Co.

In recent review, however, the agency discovered that it has assigned the additive an inappropriate chemical name and CAS Reg. No. The agency has determined that the correct structural formula for the petitioned additive is:

$$[HO(CH_2CH_2O)_x]_yP(OH)_{3-y}$$

where y=3 and x=3, on an average.

This general formula reveals that this additive is a mixture of ethylene glycol phosphates and is not a single chemical compound as identified in the August 18, 1986, final rule. The agency, therefore, tentatively concludes that "tris(triethylene glycol)phosphate" is the name of only one of the numerous compounds represented by this chemical formula, and that the chemical identity of the additive is more accurately represented by the nomenclature "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)".

FDA consequently is proposing to remove the entry "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" from the table in 21 CFR 178.2010(b) and to alphabetically insert "phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2)" in the table in 21 CFR 178.2010(b) in its place. The petitioner, American Enka Co., has not objected to this correction.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposal would have on small entities including small businesses. The agency has determined that the substitution of the correct name and CAS Reg. No. for the regulated additive will have no effect on small entities. The agency certifies that the publication of this proposal will not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before, June 9, 1988 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 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Foods and Drugs and redelegated to the Director, Center for Food and Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

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

2. Section 178.2010 is amended in the table in paragraph (b) by removing the entry for "tris(triethylene glycol)phosphate (CAS Reg. No. 9056-42-2)" and alphabetically inserting a new entry in the table to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Phosphoric acid triesters with triethylene glycol (CAS Reg. No. 64502-13-2).	At levels not to exceed 0.1 percent by weight of polyethylene phthalate polymers complying with § 177.1630 of this chapter, such that the polymers contact foods only of Type VI-B described in Table 1 of § 176.170(c) of this chapter.
* * * * *	

Dated: April 29, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-10167 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 206

Testimony by Employees and the Production of Documents in Proceedings Where A.I.D. Is Not Party

AGENCY: Agency for International Development IDCA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new Part 206 to Title 22 of the Code of Federal Regulations. It generally provides that A.I.D. employees may not give testimony or provide documents as part of their official duties without the approval of A.I.D.'s General Counsel or his designee in litigation where A.I.D. is not a party. The purpose of this regulation is to maintain the A.I.D. policy of strict impartiality with respect to private litigants and to minimize the disruption of official duties.

DATES: Public comments on the proposed rule should be submitted no later than June 9, 1988. But late comments will be considered to the extent practicable. The rule is proposed to become effective 30 days after it is published in final form in the **Federal Register.**

ADDRESS: Comments should be submitted to the Office of the General Counsel, Agency for International Development, Washington, DC 20523. Received comments may be seen in the Office of the General Counsel, during normal working hours, in room 6895, 320 21st Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary M. Winter, Assistant General Counsel for Litigation and Enforcement, Agency for International Development, Washington, DC 20523, (202) 647–8874.

SUPPLEMENTARY INFORMATION: From time to time, A.I.D. employees are requested or subpoenaed to give testimony or provide documents in litigation in which A.I.D. is not a party. This regulation is intended to address this problem by prohibiting both voluntary appearances and compliance by employees with subpoenas for testimony or for the production of documents as part of their official duties except where the General Counsel determines that compliance would promote the objectives of A.I.D.

Subpoenas to testify concerning information which employees have acquired in the course of performing their official duties, or to produce documents, are essentially legal actions against the United States as to which there has been no statutory waiver of sovereign immunity. The courts have recognized the authority of federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951); *Swett v. Schenk,* 792 F. 2d 1447 (9th Cir. 1986); *Giza v. Secretary of HEW,* 628 F. 2d 748 (1st Cir. 1980); *Reynolds Metals Co. v. Crowther,* 572 F. Supp. 288 (D. Mass. 1982).

Accordingly, this regulation prohibits A.I.D. employees from complying with requests or subpoenas for testimony in private litigation or other proceedings without the approval of the General Counsel.

This regulation does not apply to situations where an employee makes an appearance in a legal or administrative proceeding (such as cases arising out of traffic accidents, domestic relations, etc.) that does not relate to A.I.D. Also, this regulation is not applicable to Congressional subpoenas or requests for information.

List of Subjects in 22 CFR Part 206

Administrative practice and procedure, Courts, Government employees.

Accordingly, A.I.D. proposes to amend Title 22 of the Code of Federal Regulations by adding a new Part 206 as follows:

PART 206—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN PROCEEDINGS WHERE A.I.D. IS NOT A PARTY

Sec.

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 424 (22 U.S.C. 2381).

§ 206.1 Purpose and scope.

(a) This part sets forth the procedures to be followed in proceedings in which the U.S. Agency for International Development (the "Agency") is not a party, whenever a subpoena, order or other demand (collectively referred to as a "demand") of a court or other authority set forth in § 206.1(d) of this part is issued for the production or disclosure of:

(1) Any material contained in the files of the Agency,

(2) Any information relating to material contained in the files of the Agency, or

(3) Any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status.

(b) For purposes of this part, the term "employee of the Agency" includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the Administrator of the Agency, including personal services contractors.

(c) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(d) This part applies to:

(1) State and local court, administrative and legislative proceedings.

(2) Federal court and administrative proceedings.

(e) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or documents.

(2) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.). Any question whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the General Counsel or his designee

(f) Nothing in this part affects disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C 552a, the Sunshine Act, 5 U.S.C. 552b, or the Agency's implementing regulations. Nothing in this part otherwise permits disclosure of information by the Agency except as is provide by statute or other applicable law.

§ 206.2 Production or disclosure prohibited unless approved by the General Counsel.

No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in § 206.1(d), produce any material or disclose any information described in § 206.1 without the approval of the General Counsel or his designee.

§ 206.3 Procedure in the event of a demand for production or disclosure.

(a) Whenever an employee or former employee of the Agency receives a demand for the production of material or the disclosure of information described in § 206.1(a), he shall immediately notify and provide a copy of the demand to the General Counsel or his designee. The General Counsel, or his designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served and why the information sought is unavailable by any other means or from any other sources.

(b) The General Counsel, or his designee, in consultation with appropriate Agency officials, and in light of the considerations listed in § 206.6, will determine whether the person on whom the demand was served should respond to the demand.

(c) To the extent he deems it necessary or appropriate, the General Counsel, or his designee, may also require from the party causing such demand to be issued or served a plan of all reasonably foreseeable demands, including but not limited to names of all employees and former employees from whom discovery will be sought, areas of inquiry, length of time of proceedings requiring oral testimony and identification of documents to be used or whose production is sought.

§ 206.4 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If the response to the demand is required before the instructions from the General Counsel, or his designee, are received, an attorney designated by the Department of Justice for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the General Counsel and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

§ 206.5 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 206.4 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the informations sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this part and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

§ 206.6 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosure pursuant to a demand, the General Counsel, or his designee, may consider, among things:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to whch disclosure will not be made are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a stature or a rule or procedure,

(2) Disclosure would violate a specific regulation,

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal trade secrets or proprietary information without the owner's consent,

(5) Disclosure would otherwise adversely affect the foreign policy interests of the United States or impair the foreign assistance program of the United States, or

(6) Disclosure would impair an ongoing Inspector General or Department of Justice investigation.

Dated: April 14, 1988.

Alan Woods,

Administrator.

[FR Doc. 88-10134 Filed 5-9-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern 1988 legislative changes to the Indiana Surface Mining Law which address: filing of conflict of interest statements, and providing for the seeking of injunctions against all violators of the Surface Mining Law; archaeological and historic preservation; and self bonding and establishment of a bond pool.

This notice sets forth the times and locations that the Indiana 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 June 9, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 6, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 25, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. Copies of the Indiana program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 269-2609

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

Indiana Department of Natural Resources, Division of Reclamation, 309 West Washington Street, Indianapolis, Indiana 46204, Telephone: (317) 232-1555

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Information regarding general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions taken with regard to the Indiana program and program amendments can be found in 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

The proposed amendments are the result of several Senate Bills passed by the 1988 General Assembly of the State of Indiana. The amendments are summarized below:

1. Senate Enrolled Act 45

This Act is the result of a State initiated bill. The Act requires filing of conflict of interest statements by members of the Natural Resources Commission, provides for the seeking of injunctions against all violators of IC 13–4.1 (the Indiana Surface Mining Law) not just permittees, and repeals a section of the law rendered redundant by enactments of the 1987 General Assembly.

2. Senate Enrolled Act 121

This Act is the result of an industry sponsored bill intended to provide the Indiana program with the authority to promulgate needed archaeology and historic preservation regulations. The Act addresses the impact of archaeology and historic preservation on surface coal mines, adds new definitions, requires that petitions for rule changes be specific, makes major changes in the restrictions on surface mining in or near archaeological and historic sites, and places restrictions on the filing of objections. The amendment includes:

(1) Under Section IC 13–4.1–1–3 the addition of two definitions to the Indiana law;

(2) Under Section IC 13.–4.1–2–4 the addition of limitations to filing petitions for adoption, amendment, or repeal of a rule and inclusion of an option to not hold a public hearing if the petition is incomplete;

(3) Under Section IC 13–4.1–3–3(a)(13) the addition of the clarification that MAPS submitted with a permit application shall include historic and archaeological data is that known by the Division of Historic Preservation and Department of Natural Resources to exist on the date of application;

(4) Addition of a new section, IC 13–4.1–3–3.1, which allows optional requirement of additional archaeological and historic site descriptive data for sites within 1000 feet of the permit area. This section also allows the option for the State Director to require various investigative procedures to identify and evaluate sites. Also included is a requirement that future State rules be consistent with principles set forth in the proposed amendment at IC 13–4.1–4–3.1(c);

(5) Additions to Section IC 13–4.1–4–2 that require any person requesting an informal conference to specifically state their objections, and to state the interest of the person who is or may be affected by the proposed operation if the requester is not the head of a Federal, State or local governmental agency or authority. Also added are conditions under which the commission may not hold a conference;

(6) A new Section IC 13–4.1–4–3.1 is added that establishes limitations on the development of future State rules; and

(7) Section IC 13–4.1–4–5(c) is amended by requiring any person requesting a hearing to identify the person's interest that is or may be affected.

3. Senate Enrolled Act 231

This Act is the result of an industry sponsored bill which adds self-bonding provisions and creates a bond pool funded by mine operators and administered by the Indiana Department of Natural Resources and an independent committee controlled by operators.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Indiana satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issue 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 that the Indianapolis 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 4:00 p.m. on May 25, 1988. If two or more people do not request 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 statments 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.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** 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 at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

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. 88–10378 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

Big Cypress National Preserve, Florida; Indian Use and Occupancy Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulations set forth below are necessary to define adequately the statutory rights of the

members of the Miccosukee Tribe of Indians of Florida and the members of the Seminole Tribe of Indians of Florida granted in the Big Cypress Act of 1974 which established the Preserve. This Act provides that the Indians shall be allowed to continue their usual and customary use and occupancy of Federal lands and waters within the Preserve, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials; and provides for maximum Indian participation in any authorized future revenue-producing visitor services within the Preserve.

DATES: Written comments, suggestions, or objections will be accepted until July 11, 1988.

ADDRESS: Comments should be directed to: Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943.

FOR FURTHER INFORMATION CONTACT: Fred J. Fagergren, Superintendent, Big Cypress National Preserve, Telephone: (813) 695–2000.

SUPPLEMENTARY INFORMATION:

Background

These regulations are being proposed by the National Park Service (Service) to define the statutory rights granted to the members of the Miccosukee and Seminole Tribe of Indians of Florida in Pub. L. 93–440, (88 Stat. 1258; 16 U.S.C. 687f *et seq.*).

On October 11, 1974, the Congress established Big Cypress National Preserve "to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof * * *."

In Section 5 of Pub. L. 93–440 the Congress provided that:

"Notwithstanding this section or any other provision of this act, members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida shall be permitted, *subject to reasonable regulations established by the Secretary* (emphasis added) to continue their usual and customary use and occupancy of Federal or Federally acquired lands and waters within the Preserve, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials." Section 6 provides for maximum Indian participation in authorized revenue-producing visitor services within the Preserve.

A Draft Environmental Impact Statement for the proposed Big Cypress National Preserve was made available for public comment on February 5, 1972, with a Final Environmental Impact Statement (FES 75–39) completed and approved on April 11, 1975. This FES dealt with the impacts of the Federal legislation establishing Big Cypress, including the continuation of customary use and occupancy of the Preserve by the Seminoles and Miccosukees, and their preferential rights to future revenue-producing services. Copies of this document are available at the address noted above.

Since the Indians' statutory right to remain within the Big Cypress National Preserve is "subject to reasonable regulations established by the Secretary," it is contingent upon the Service to interpret and define that statutory right through the promulgation of regulations which are consistent with Congressional intent in establishing the Preserve and which meet the needs of the Indians and the Service.

A formal opinion was requested from the Office of the Solicitor, Washington, DC to define the legal parameters of the Seminole and Miccosukee right of usual and customary use and occupancy of the Preserve as granted in Pub. L. 93–440. The Solicitor's opinion of April 25, 1979 has provided a basis for subsequent development of regulations consistent with Congressional intent and existing case law. Copies of that opinion are available at the address noted above.

Several preliminary meetings were held with individual Indians, Tribal representatives and the Tribal legal counsels. These meetings assisted the Service in identifying what constitutes "usual and customary use and occupancy" and "traditional," and to insure that Indian needs are reflected in the proposed regulations to the maximum extent possible.

On November 12, 1981 (46 FR 55709) the Service published proposed regulations in the **Federal Register**. Input received during the official review period for those proposed regulations, comments received thereafter, continued government review of these issues, and the revision of the general regulations for the Service all prompted changes in the original proposal. These changes resulted in this proposed rule.

Existing Conditions

Residential Use

There are an estimated 100 to 150 Miccosukee and Seminole Indians residing within the Preserve. Some of these Indians are carried on the tribal rolls of their respective tribes and others are eligible for tribal membership but are unaffiliated by personal choice. They reside in 11 camps, villages, or individual homes within the Preserve. The majority of these camps are on Federaly acquired lands.

Historically (pre–1900), Indians in the Preseve relocated frequently in search of better hunting and agricultural lands. In the 1930's and 1940's, after the construction of U.S. Highway 41, the Indian lifestyle changed gradually. Camps were located more and more frequently beside the highway and the Indians came to rely heavily on income from the tourist trade or from jobs in local commnities and thus, became less dependent on a subsistence lifestyle. In recent years, these camps have been relatively stable in population and location. Expansion of existing camps or establishment of new camps has been due primarily to marriage and family growth, with some in and out migration from other areas.

Camps are generaly one acre or less in size and consist of six to ten structures, most of which are traditional chickees—a roofed, opensided shelter constructed of cypress poles and thatched with a palm frond roof. Cleared and filled ground generally does not extend much beyond the actual living area.

Subsistence Use

Subsistence use within the Preserve by Indians has declined substantially in recent years. Only a few camps within the Preserve have lands that are cleared specifically for agriculture. Several camps do contain small orchards of fruit-bearing trees. Some corn is grown by Indians on hammocks within the Preserve. Gathering of native plants for food, medicine, and ceremonial purposes also continues on a limited scale. Back-country use by Indians for hunting and gathering activities is limited. This is evidence by the general lack of off-road vehicle trails near Indian camps. The low level of use is perhaps due in part to low population levels of game species. The primary species taken by Indians are garfish, mudfish, deer, hog and turtles.

Commercial Use

The number of camps open for commercial tourist trade is variable. At present, four camps within the Preserve are known to be open to tourists, but at least three other camps have been open in the past. Commercial activity at these camps usually consists of a small curio shop where various handmade articles can be purchased. A self-guided walking tour of the village is sometimes available, allowing observation of Indian lifestyles.

Commercial guiding of hunting parties by Indians is at present infrequent. However, there is a potential for expansion of this activity.

The most significant Indian commercial activity within the Preserve is the collection of native materials for curio and for chickee construction. The natural resource most actively sought is cypress. Small diameter cypress poles are carved into toy canoes, knives and tomahawks, Cypress knees and slabs from larger cypress trunks are also harvested for sale as souvenirs. Most cypress taken, however, are for use as building materials in the construction of chickees, both at a subsistence and commercial level.

Since chickees have become popular as decorative shelters in nearby urban areas, their construction has become a commercial enterprise. During previous discussions with the tribes, the Service was informed that no more than seven Indian families within the Preserve had indicated an interest in taking Preserve cypress for commercial chickee construction. Local staff believes as many as nine families are now engaged in commercial chickee construction. Since south Florida has one of the highest rates of urban growth in the nation and chickee construction provides a unique opportunity of commercial gain through the use of a traditional skill, the number of families or individuals engaged in commercial chickee construction will no doubt increase.

Depending upon its size, a chickee requires 25–40 poles (trees) of various sizes down to two inches in diameter. Since only straight trees of certain diameters are desirable, cypress stands are generally selectively cut rather than clear cut. Due to access and transportation problems, suitable cypress stands near existing camps and roads are most favored for pole-cutting, thus visually impacting the natural scene of the scenic corridors (one-half mile) along highways within the Preserve.

Cabbage palm fronds for thatching of chickee roofs are also commercially collected from the Preserve. Since there are relatively few conveniently located large stands of palms, this activity may be minimal.

The quantity of cypress harvesting for chickee construction, whether subsistence of commercial, is extensive. Since the number of villages is known an the rate of population growth can be projected, the impact of cypress harvest for subsistence use can be managed. The Preserve may be able to sustain such use, if monitored and controlled. This activity, at this level, is consistent with Pub. L. 93–440 and Service general regulations.

However, the authorization of commercial harvesting of cypress is not an activity directly and specifically provided by Congress. Economic uses of timber were therefore not granted to the Indians unless any such use was "usual and custmary" in 1974. While commercial harvest could have occurred within the Preserve at an infrequent or sporadic level, only limited anecdotal information is available on any level of occurrence of this activity. Notwithstanding the question of the level of this activity in 1974, the authorization of commercial harvesting of cypress would result in the derogation of the values and purposes for which the Preserve was established.

The legislative history of the Preserve is clear; the commercial use of resources was not within the intent of Congress. Quoting House Report 93–502 and Senate Report 93–1128; pages 6 and 5, respectively:

> The committee chose to call the area a preserve rather than a reserve, feeling that such a distinction may be important. Reserve refers to stock—a commodity held for future use. Preserve refers more definitely to the keeping or safeguarding of something basically protected and perpetuated for an intended or stated purpose, as with the specific objectives for Big Cypress provided by this legislation.

Service statutes and general regulations also clearly prohibit the use of natural resources for commercial activities unless in support of visitor activities or specifically mandated by legislation. Neither of these two situations exist with cypress harvesting or palm frond removal for commercial chickee construction.

In addition, the commercial harvesting of cypress poles interferes with the Service's ability to preserve the resources for which the area was established; i.e. it creates incompatible impacts upon the natural resources.

Title 16 of the United States Code (Section 1a–1) places affirmative obligations on the Service to exercise its authority in a manner which will protect against derogation of park values. The following brief analysis supports the Service's determination that authorizing commercial harvest of cypress would result in derogation of park values:

A 1986 vegetation map of the Preserve documents, that of the fourteen (14) vegetation types, harvestable cypress would come from only two vegetation types, cypress strands and domes. These constitute approximately 10% of the Preserve or 58,000 acres. This available acreage would be further reduced since the Service wants to protect a one-half mile scenic corridor along all established roads. In addition, Indian use of off-road vehicles is limited and therefore harvest would be concentrated within perhaps a one-mile strip, one-half mile off the established roads; approximately 22,000 acres of cypress strands and domes occur within that strip. While 300–750 cypress trees may occur per acre, a much smaller number would meet size and straightness requirements.

A family can construct up to 26 chickees per year and in the process require 25–40 poles (trees) per chickee. If current estimates of seven to nine families are correct, the Preserve would lose 5,000–10,000 trees per year. Growth rates in this area would provide two inch trees in perhaps 50 years and four inch trees in 100 years. The Service notes that the loss of cypress at the current estimate (5,000–10,000 per year) would result in the removal of 250,000–500,000 trees before the first tree harvested was replaced (5,000 or 10,000 X 50 years).

Notwithstanding the current estimate of the number of families involved, the Service would expect that number to increase if commercial harvesting were authorized. Given the high rate of urban growth in south Florida, the number of families involved in harvesting would be expected to increase steadily; in a 50 year period, the number could reach 25 families or more. The annual impact to the Preserve at that level is estimated to be a loss of 26,000 trees per year.

Religious Use

The Miccosukee Indians currently utilize two sites which are in Federal ownership for their major religious ceremony, the Green Corn Dance, a celebration of tribal purification and renewal. The ceremony is normally held in June or July, and runs several days.

Ceremonial sites are usually located in hardwood hammocks. The development associated with the ceremonial site is normally limited to some clearing of vegetation and construction of ceremonial chickees and the overall impact should be minimal. The Indians normally utilize a site for several years. As Federal acquisition of land proceeds, other ceremonial sites will become potentially available to the Indians.

The extent of Miccosukee and Seminole use of native plant and animal life for religious purposes is not well known. Egret, turkey, and anhinga feathers and box turtle shells are reported to be used. Statements by the Chairman of the Miccosukee Tribal Council (Mr. Buffalo Tiger) call for the

opportunity for Indians to collect, maintain, and use all plant and animal species traditionally employed in Indian medicine, religious, or cultural practices, unless protected by State or Federal law as threatened or endangered species.

Discussion of Major Issues

Paragraph (d)(2) Indian Residential Use

Subparagraph (i) clarifies that Indian owners of lands and improved properties are subject to the same acquisition authorities, rights of retention, and use and occupancy as applied under the Act of any other landowner. It also ensures that acquisition of private property from Indian owners, with or without a retention of use and occupancy would not affect the statutory rights granted to Indians as members of the Seminole or Miccosukee Tribes of Florida.

Subparagraph (ii) provides that Indians would be able to continue their usual and customary occupancy of camps existing at the time of Preserve establishment and not more than four abandoned residential sites which are located on Federally acquired lands. The Service arrived at the quantity of four abandoned sites for reoccupation after discussions with Indian leaders.

Subparagraphs (ii)(A) and (ii)(B) provide for the maintenance of existing structures and construction of new structures in existing camps. They also provide for Service review and permitting of any new development to ensure that these activities meet appropriate zoning requirements and construction codes, and that any new developments would be environmentally compatible.

Subparagraph (ii)(C) would provide for limited expansion of existing camps and limited resettlement of abandoned camps as consistent with recent Indian living patterns.

Subparagraph (ii)(D) would provide for continuance of subsistence, non-mechanized agriculture adjacent to existing camps. Since this activity will be restricted in location and scope to existing disturbed sites, it has little effect on the Preserve environment. The superintendent, through written notice, would have the opportunity to analyze agricultural activities and their potential impacts.

Subparagraph (ii)(E) would provide for continuance or establishment of subsistence, non-mechanized agricultural plots elsewhere within the preserve. Through the permitting process, opportunity would be provided the superintendent to analyze expansion of agricultural activities, to regulate location, to minimize environmental impacts and environmental compatibility. Compatibility will consider but not be limited to concerns such as threatened or endangered plants or animals, impacts to water quality or quantity or to soils or archeological sites.

Subparagraph (iii) would prohibit refuse disposal within the Preserve. Open garbage dumps, refuse pits, and open burning are common practices at some camps within the Preserve. Open dumps and ptis are not in keeping with Preserve purposes to protect the watershed and other resource values and should be terminated. Open burning without a permit is in violation of both existing State law and Federal regulations. This regulation would require some camp residents to seek new means for waste disposal.

Paragraph (d)(3) Indian Subsistence Activities and Access

Subparagraph (i) states that Indians would be able to continue their subsistence activities on a year-round basis. Year-round subsistence activities are already permitted under Florida Statute 380.055 and by the Act. Regulation of these activities is a joint State/Federal responsibility.

Subparagraph (i)(A) requires that Tribal members carry their tribal identification card while engaged in subsistence activities. This card is issued by the Tribes for purpose of Tribal member identification. Since some "traditional Seminoles" do not belong to either tribe, the following procedure will apply when the superintendent has reason to believe that a person claiming to be a "traditional Seminole" may not be an Indian within the meaning of these regulations. The superintendent or his representative shall contact a representative of the traditional Seminoles to verify the status of such person. The traditional Seminoles shall furnish the superintendent with the names of three persons authorized to be contacted for this purpose. This would preclude non-eligibles from claiming they are Indians hunting on a subsistence basis.

Subparagraph (i) (B) requires Indians to obtain any licenses or other permits as may be required by the State of Florida.

Subparagraph (i) (C) requires Indians accompanying hunting parties to observe regular season, possession, and bag limits, eliminating the possible claim that animals were taken under subsistence hunting rights.

Subparagraph (ii) provides for the taking of renewable and non-renewable resources for religious purposes yet provides that all species protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or protected from taking by Florida State law are protected from taking under subsistence rights. Congressional intent is clear on the protection of endangered and rare species within the Preserve; therefore, establishment of reasonable regulations to preclude their taking on a subsistence basis is appropriate. Statements from the Miccosukee Tribal Chairman indicate Indian support of this concept. The statutory authority for Indian taking of resources necessary for religious purposes has been granted by section 5 of the Act which provides for usual and customary Indian uses. This regulation recognizes this statute and provides for continuation of existing conditions but does not include species protected under State or Federal statutes as threatened or endangered. Known Indian ceremonial use of resources is restricted to common species in the Preserve.

Subparagraph (iii) provides that Indians would be subject to public-wide closures of Preserve areas to hunting, fishing, trapping, and entry. This regulation ensures inclusion of the Indians wherever or whenever the superintendent identifies the need to close portions of the Preserve for resource protection or emergency conditions.

Subparagraph (iv) provides for the harvest of cypress or palm fronds for chickee construction at the subsistence level. Through the permitting process, the superintendent can regulate location and minimize environmental impacts.

Subparagraph (iv)(A) limits subsistence level harvest of cypress or palm fronds to Indians residing within the Preserve or within that portion of the Miccosukee Reservation within Everglades National Park. The intent of Congress, reflected in the legislative history, emphasizes protection of the rights of Indians living within the Preserve or Park. Harvest of natural resources for use by persons other than these groups would not be in keeping with the legislative history and would open this removal of natural products beyond that reasonable for protection of Preserve resources.

Subparagraph (iv)(B) assures that individual trees, from which fronds are harvested, are left with sufficient fronds to survive.

Subparagraph (iv)(C) allows the superintendent to rotate areas for pole cutting, thus allowing selection of areas based upon other resource concerns and assuring areas are not overharvested or clearcut.

Paragraph (d)(4) Commercial Activities

Subparagraph (i) prohibits the taking of natural resource products for the commercial construction of chickees and other structures. Previous discussions with the tribes revealed that perhaps seven Indian families within the Preserve had an interest in this activity. The extent of cypress harvesting for chickee construction, whether subsistence or commercial, is substantial. Preserve staff have documented past incidents of in excess of 200 cypress trees being taken at one time and in one location. Since the number of villages is known and the rate of population growth can be projected, the impact of harvesting for subsistence use can be managed. The Preserve may be able to sustain that level if monitored and controlled. However, the authorization of commercial harvesting of cypress would result in derogation of park values and is not an activity directly and specifically authorized by Congress. Significant harvesting of cypress by Indians now occurs outside the Preserve on other public or private lands. This regulation would impact Indians now commercially harvesting cypress within the Preserve and require them to seek other locations.

Subparagraph (ii) provides for the continuance of curio sales outlets at existing camps. The Preserve's legislative history documents Congressional intent that there be a continuance of these small outlets. Currently, there are four to seven Indian camps within the Preserve which have curio sales outlets.

Subparagraph (iii) limits the commercial taking of natural resource products by Indians to that needed for small curio and handicraft items which will be sold at curio outlets within the Preserve. It prohibits the taking of cypress knees and trees larger than six (6) inches in diameter for sale as souvenirs. It provides authority to the superintendent to issue permits for this commercial taking to protect resources where harvest is creating adverse impacts. The legislative history emphasizes protection of the curio outlets within the Preserve. Commercial use beyond this level would conflict with resource protection, the legislative history of Pub. L. 93–440, and the general regulations for the Service. This regulation will provide the availability of natural resource materials for small handicraft items but will assure protection of Preserve resources at locations or times when the taking endangers park values.

Subparagraph (iv) allows the Service to enforce Federal and Florida statutes on signing. This regulation would limit certain Indian advertising practices, but the visual quality along highway corridors would be improved following the elimination of non-conforming signs.

Paragraph (d)(5) Indian Religious Use

Subparagraph (i) provides protection to the two Green Corn Dance sites currently used by precluding general public use and access during those times that the areas are used for a religious ceremony. The regulation would require Indians to inform the superintendent at least 48 hours in advance if they desire privacy. The regulation could intermittently close two areas comprising a total of 320 acres (about .06 percent of the Preserve) to public access. It would provide Indians the opportunity to conduct their religious ceremonies with customary privacy.

Subpargraph (ii) would allow access to ceremonial sites but clarify that Indians, even for religious purposes, are subject to the same vehicular (street or off-road) regulations applicable to any Preserve user. Both ceremonial sites now in use have lime-rock graded roads and are accessible along those corridors in street-legal vehicles.

Subparagraph (iii) provides for construction and maintenance of traditional facilities used by Indians to exercise their religious beliefs. Other activities would require a permit from the superintendent. Issuance of the permit would consider the environmental constraints and criteria utilized before approval of similar non-Indian activities.

Subparagraph (iv) provides for review by the superintendent during new site selection. Knowledge of needed ceremonial site location changes would ensure the Service could better aid the Indians in pursuit of their religious rights by providing needed closures of areas on a temporary basis. The superintendent would also be able to ensure that sensitive natural or cultural resources are not disturbed during selection of new ceremonial sites.

Paragraph (g)(1) provides that failure to obtain a permit required pursuant to this section or failure to comply with the terms of a permit issued pursuant to this section are prohibited acts and therefore subject to the pena'ties set forth in 36 CFR. The Service has determined that the imposition of criminal sanctions for permit violations is fair and equitable and allows the Service to take a less severe form of corrective action for certain activities conducted outside the scope of the permit or in violation of the permit terms and conditions. In some instances the total loss of the privilege, through permit revocation, is a more severe penalty than the imposition of Section 1.3 penalties. Paragraph (g)(2) provides the superintendent with general authority to revoke or suspend a permit for violation of its terms or conditions.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of the rulemaking.

Drafting Information

The principal author of this proposed rulemaking is Fred J. Fagergren, Big Cypress National Preserve, Ochopee, Florida guided by past counsel from former staff of the Office of the Solicitor, Atlanta, Georgia.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance With Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332) the Service prepared a draft Environmental Impact Statement for the proposed Big Cypress National Preserve and circulated it for public comment on February 5, 1972, with a final EIS (FES 75–39) completed and approved April 11, 1975. This FES dealt with the impacts of the Federal legislation establishing Big Cypress, including the continuation of customary use and occupancy of the preserve by the Miccosukee and Seminole Indians, and their preferential right to future revenue producing services.

Further, the Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety, because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 [(46 FR 13193); February 19, 1981]. The planned rulemaking would serve no more than to continue the "usual and customary use and occupancy" of Federal lands. A small number of Indians would be required to expend funds for solid waste disposal. Also a small number of Indians may have to harvest cypress, and other natural resources, for commercial construction, from outside the Preserve. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. Indian tribal members would generally benefit and their rights would be more clearly defined.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.86, by adding new paragraph (d), (g) and (h) to read as follows:

§ 7.86 Big Cypress National Preserve.

* * * * *

(d) *Indian Use and Occupancy*—(1) *Definitions*: As used in this section,

(i) The term "Act" means Pub. L. 93–440 (88 Stat. 1258i; 16 U.S.C. 698f *et seq.*).

(ii) The term "Commission" means the State agency having jurisdiction over hunting, fishing and trapping activities.

(iii) The term "existing camp" means any of those residential and/or commercial structures occupied by Indians on October 11, 1974, and not more than four (4) designated abandoned residential sites previously occupied by Indians on Federal or Federally-acquired lands; all of which are shown on a map available for public inspection in the office of the superintendent.

(iv) The term "Indian" or "Indians" means those persons who are members of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida or those persons who are Miccosukee or Seminole Indians who are known as the "traditional Seminoles," as determined by the authorized representatives of the traditional Seminoles.

(v) The term "subsistence" means customary and traditional use by Indians of fish, wildlife, and plants for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, and for the making of small handicraft articles out of the non-edible byproducts of plant, fish, and wildlife resources taken for personal or family consumption.

(vi) The term "tribe" or "tribes" means the Seminole Tribe of Florida and/or the Miccosukee Tribe of Indians of Florida.

(2) *Indian residential use.* (i) Indians who own lands and improved property within the exterior boundaries of the Preserve are subject to the same acquisition authorities, retention rights and use and occupancy as set out in the Act. The acquisition of private property from Indian owners, with or without a retention of use and occupancy pursuant to section 1(c) of the Act, does not deny or restrict Indian owners or former owners within the Preserve from enjoying the rights of usual and customary use and occupancy of Federal lands within the Preserve as members of the Seminole or Miccosukee Tribes of Florida under section 5 of the Act and as defined in this section.

(ii) Indian residential use at existing camps may continue at the October 11, 1974, levels of use, occupancy and size under the following conditions:

(A) Existing camps may be maintained, repaired and replaced only with like type of construction and materials.

(B) Any new development or new structure other than the traditional Indian chickee, any dredge or fill activity, or sewage or water system may occur only pursuant to the terms of a permit issued by the superintendent authorizing such development. Issuance of a permit is conditioned upon a written determination that such development will comply with all State and county. zoning requirements, construction codes, State and Federal dredge or fill regulations, and sanitation, health, and safety standards and be compatible with protection of Preserve resources.

(C) Expansion of an existing camp, or the resettlement of a designated abandoned residential site due to marriage and family growth may occur only pursuant to the terms of a permit issued by the superintendent. Issuance of a permit is conditioned upon receipt of an application stating the proposed location, the reason for the camp expansion, the type and number of chickees and other structures to be built, and describing the provisions to be made for sewage disposal.

(D) Indians may continue or re-establish a subsistence, non-mechanized agricultural plot adjacent to an existing camp by providing written notice to the superintendent stating the location, size of plot, type of crops being grown and expected periods of use. Such plots will be restricted to existing disturbed areas and will not require the removal of trees.

(E) Indians may continue or establish a subsistence non-mechanized agricultural plot that is not adjacent to an existing camp only pursuant to the terms of a permit issued by the superintendent. Issuance of a permit is conditioned upon a written determination that existence of the plot would be compatible with protection of Preserve resources.

(iii) The following are prohibited:

(A) Burning refuse;

(B) Using or maintaining a refuse dump; or

(C) Using or maintaining an open garbage pit.

(3) *Indian subsistence activities and access.* (i) Indians have year-around subsistence hunting, fishing, trapping and gathering privileges. In order to exercise such privileges, and Indian shall:

(A) If a tribal member, carry a tribal identification card. However, when the superintendent has reason to believe that a person claiming to be a "traditional Seminole" may not be an Indian as defined in this section, the superintendent shall contact a representative of the traditional Seminoles for the purpose of verifying the status of the person in question. The traditional Seminoles shall furnish the superintendent with the names of three persons authorized to be contacted as a Seminole representative.

(B) Possess all licenses, permits, tags, and stamps required by the Commission; and

(C) If accompanying a non-Indian hunting party, observe the hunting seasons, possession rules, and bag limits

established by the Commission for the Preserve.

(ii) Except for an animal or plant that is identified by the U.S. Fish and Wildlife Service as an endangered or threatened species or whose taking or possession is prohibited by the State of Florida, the taking or possession of plants, animals or minerals for use in Indian religious ceremonials is allowed.

(iii) Unless specifically exempted elsewhere in this section, Indians are subject to all closures related to hunting, fishing, trapping, or entry, established for reasons of public safety, floral and faunal protection, or administrative activities of the Preserve.

(iv) The taking of cypress or palm fronds for chickee construction for subsistence use is permitted pursuant to the terms of a permit issued by the superintendent and subject to the following conditions:

(A) Subsistence taking within the Preserve is limited to Indians residing within the Preserve or within that portion of the Miccosukee Reservation within Everglades National Park;

(B) The taking of palm fronds for thatching may result in the removal of no more than half the palm fronds from any one tree; and

(C) The superintendent may rotate areas for pole cutting every two years, with the areas allocated for pole cutting described in the permit for each permittee.

(4) *Commercial activities.* (i) The taking of natural resource products by Indians for commercial construction of chickees or other structures for use inside or outside the Perserve is prohibited.

(ii) Indians residing in an existing camp have the right of continuing or establishing the sale of small Indian curio and handicraft items from present structures of existing camps or at resettled camp locations in chickee-type structures as approved by the superintendent.

(iii) The commercial taking of natural resource products by Indians is limited to those used in the making of small curio and handicraft items for sale at existing camps within the Preserve. Provided, however, the superintendent may require a permit, designate harvest sites or areas and establish conditions for taking of natural resources for small curio and handicraft items. The taking of cypress knees or trees larger than six (6) inches in diameter for sale as souvenirs is prohibited.

(iv) The erection and maintenance of roadside advertising signs by Indians shall be conducted in accordance with Federal and Florida State laws regarding roadside signs.

(v) The superintendent shall consult with the tribes in a timely manner on matters pertaining to plans for the development of the Preserve. Tribes are provided the right of first refusal to provide or develop any new revenue-producing visitor services within the Preserve but may exercise that right only within 90 days after notification by the superintendent.

(5) *Indian Religious Activities* (i) The two Corn Dance sites currently used by Indians may be reserved exclusively for Indian use and be closed to non-Indian public use and access. Indians shall inform the superintendent at least 48 hours in advance if they desire privacy at these locations. These sites are identified on a map available for public inspection in the superintendent's office and, when closed, are posted with signs indicating the closure.

(ii) Indians are allowed motorized access to ceremonial sites subject to the provisions of this section pertaining to off-road travel and except where sites are within areas closed to motorized access. Maintenance or improvement of access to the two current sites may occur only with appropriate State and Federal permits and after review and approval by the superintendent.

(iii) Indians are allowed to construct and maintain chickees or other traditional structures needed for the exercise of their religious beliefs on the ceremonial sites. However, other maintenance, improvement, or dredge or fill activities may occur only after review and approval by permit from the superintendent. Approval would be based upon the same environmental constraints and criteria utilized before approval of similar non-Indian activities.

(iv) A ceremonial site may be abandoned, relocated or reestablished pursuant to the terms of a permit issued by the superintendent who may effect a temporary closure as required at the new site and release the former ceremonial site from closure.

* * * * *

(g) *Permits.* (1) The following are prohibited:

(i) Failure to obtain a permit required pursuant to this section.

(ii) Failure to comply with the terms or conditions of a permit issued pursuant to this section.

(2) The superintendent may suspend or revoke a permit for violation of any of its terms or conditions.

(h) *Information collection.* (1) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the superintendent to issue permits. The information will be used to grant administrative and statutory benefits. Response is required to obtain a benefit.

Date: April 6, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–10377 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–70–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88–2]

Assessment of Interest on Underpaid Cable Royalties; Notice of Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to inform the public that it is considering assessing interest on underpaid cable royalties in the wake of the decision of the United States Court of Appeals for the District of Columbia in *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir. 1988). In that case, the Court of Appeals upheld the Copyright Office's interpretation of "gross receipts" found in 37 CFR 201.17(b)(1) for purposes of the cable compulsory license. The Copyright Office is aware that a number of cable systems applied interpretations of "gross receipts" different than that of the Copyright Office, for accounting periods prior to the decision of the Court of Appeals, resulting in an underpayment of royalties. The Copyright Office seeks public comment as to whether it should assess interest charges on those overdue royalties which now must be paid by cable systems pursuant to the cable compulsory license.

DATES: Comments should be received on or before June 9, 1988.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC 20559, Telephone: (202) 287–8380.

SUPPLEMENTARY INFORMATION:

1. Background.

Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, creates a compulsory licensing system by which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems comply with provisions regarding the filing of Statements of Account and the deposit of statutory royalty fees pursuant to section 111(d) of the Act.

In order to implement and administer the compulsory licensing system, the Copyright Office issued a definition of "gross receipts for the 'basic service of providing secondary transmission of primary broadcast transmitters.' " [37 CFR 201.17(b)(1)]. The definition confirmed the Copyright Office's interpretation that the Copyright Act does not allow cable systems to allocate gross receipts or the distant signal equivalent value where any secondary transmission service is combined with nonbroadcast service and is offered to cable subscribers for a single fee. Cablevision Company and the National Cable Television Association challenged that interpretation in the United States District Court for the District of Columbia and, on July 31, 1986, that court held the Copyright Office's regulations defining "gross receipts" invalid. *Cablevision Company v. Motion Picture Association of America, Inc.*, 641 F. Supp. 1154 (D.D.C. 1986). However, on January 5, 1988, the United States Court of Appeals for the District of Columbia reversed, holding that the Copyright Office's regulation interpreting the statutory language of section 111 of the Copyright Act was reasonable, and that the district court erred in declining to defer to the Copyright Office's regulation as to what revenues make up gross receipts. *Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir. 1988).

The Copyright Office has already notified cable systems that it will require corrected filings for accounting periods in which the proper interpretation of gross receipts was not followed. [53 FR 2493]. Now the Copyright Office has before it a request for rulemaking, filed by the Motion Picture Association of America, ("MPAA") asking that interest be assessed on those overdue sums, accuring from the dates on which they should have been paid. The MPAA petition is supported by Major League Baseball, the National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association ("Joint Sports Claimants"), and by three performing rights societies, the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc.

2. Assessment of Interest.

The Copyright Office has not publicly addressed the question of interest in the administration of the cable compulsory license, and the issue is therefore one of first impression. In its Petition for Rulemaking, the MPAA argues that interest should be assessed on underpaid royalty sums essentially because (1) the Copyright Office has authority to assess interest, and (2) if interest is not required on the overdue sums, cable systems will be unjustly enriched and copyright owners will be deprived of the full compensation envisioned by section 111 of the Copyright Act.

Numerous judicial decisions have approved an agency's imposition of interest on overdue sums of money even where the statute creating the monetary obligation is silent as to interest. *See, e.g., City of Chicago v. Department of Labor*, 753 F.2d 606 (7th Cir. 1985); *EEOC v. County of Erie*, 751 F.2d (2d Cir. 1984); *Myron v. Chicoine*, 678 F.2d 727 (7th Cir. 1982); *United States v. Philmac Mfg. Co.*, 192 F.2d 517 (3d Cir. 1951). In *United States v. United Drill and Tool Corp.*, 183 F.2d 998, 999 (D.C. Cir. 1950), the court held that "statutory obligation[s] in the nature of debt bear interest even though the statute creating the obligation fails to provide for it." It also does not appear to matter whether the monetary obligation is due the United States or is only collected by the Government for later disbursal to third parties. *Compare, United States v. Goodman*, 572 F. Supp. 1284 (Ct. of Int'l Trade 1983) (customs duty due the United States) *with, Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962), *rev'd on other grounds sub. nom. NLRB v. Isis Plumbing and Heating Co.*, 322 F.2d 913 (9th Cir. 1963) (employers having obligations to compensate former employees remit monies to the Government for later disbursal to the employees).

The Copyright Office is inclined to find it has authority under sections 702 and 111(d) of the Copyright Act to issue a regulation assessing interest upon underpaid cable royalty sums for future accounting periods. However, the Office seeks public comment regarding its authority to impose interest upon sums due and owning from prior accounting periods. Moreover, the Office is aware that the Copyright Royalty Tribunal (CRT) has declined to find it has authority to assess interest on payments withheld pending judicial review of new royalty rates, [47 FR 4478 (1982)]. Comment is requested therefore on the general and specific rulemaking authority of the Copyright Office in contrast to the *rulemaking* authority granted to the CRT.

The MPAA argues for application of an interest charge to prior accounting periods, announcing that the "relative equities" of the situation weigh heavily in favor of the copyright owners. They state that if interest is not now imposed upon overdue payments from prior accounting periods, copyright owners will be deprived of the full compensation for use of their works envisioned by section 111 of the Copyright Act. Under the "time value of money" theory, cable systems will garner the value of the interest accumulated on the underpaid royalties. Had the correct sums been paid on time, it would have been the copyright owners who would have benefitted from the interest accruing upon those sums. Thus, a denial of interest on underpaid royalties is tantamount to forcing copyright owners to make an interest free loan to cable systems. Furthermore, it is argued that denial of interest will encourage cable systems to withhold royalty sums in the future, thereby obtaining the benefit of the accruing interest. To make the copyright owners whole and put them in the same position they would have been had the proper account of royalties been paid on time, interest must now be assessed on the overdue sums.

The Copyright Office requests public comment on the propriety of adopting a regulation requiring that interest be paid upon overdue royalty sums from prior accounting periods, as well as future accounting periods. In particular, we seek comment on the following questions:

Questions

1. Is a rule retroactively assessing interest charges on overdue royalty sums from prior accounting periods legally permissible?

2. If the Copyright Office does adopt a rule requiring interest for past and/or future accounting periods, how should the interest rate be determined?

3. If the Copyright Office charges interest on overdue royalty sums, the

Office is initially inclined to find that it must, within certain limitations, also pay interest to cable systems on any over-payments they may make pursuant to the cable compulsory license, or are there countervailing considerations that would render interest on refunds unnecessary?

4. If interest is assessed on overdue royalty sums from past and/or future accounting periods, should the interest begin to accrue from the last filing day of the relevant accounting period in which the underpayment occurs, or some other date?

Dated: April 15, 1988.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 88-10348 Filed 5-9-88; 8:45 am]

BILLING CODE 1410-08-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-175, RM-6248]

Radio Broadcasting Services; Lawrenceburg, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roger W. Wright proposing the allocation of Channel 248A to Lawrenceburg, Tennessee, as that community's second local FM service. A site restriction of 5.4 kilometers (3.4 miles) southwest of the community is required. The coordinates for the proposed site are 35-12-30 and 87-22-30.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Law Office of Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, MD 21701 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-175, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-10309 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-173, RM-6249]

Radio Broadcasting Services; Brandon, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James G. Kirkpatrick proposing the allocation of Channel 270A to Brandon, Vermont, as that community's first local FM service. The proposal requires concurrence by the Canadian government. The coordinates are 43-47-54 and 73-05-30.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard A. Topel, Esquire, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-173, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased form the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Propose Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-10310 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-174, RB-6283]

Radio Broadcasting Services; Waunakee, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WIBU, Inc., proposing the allocation of Channel 286A to Waunakee, Wisconsin, as that community's first local FM service. A site restriction of 5.7 kilometers (3.5 miles) northeast of the community is required. The coordinates for the proposal are 43-12-34 and 89-23-28.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James L. Oyster, Esquire, Law Offices of James L. Oyster, 8215 Tobin Road, Annandale, VA 22003–1101 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–174, adopted April 4, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–10308 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–176; RM–6218]

Radio Broadcasting Services; Albin, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alton Lewis proposing the allocation of Channel 296C2 to Albin, Wyoming, as that community's first local FM service. A site restriction of 28.5 kilometers (17.7 miles) north of the community is required. The coordinates for the proposed site are 41–40–00 and 104–11–38.

DATES: Comments must be filed on or before June 20, 1988, and reply comments on or before July 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Daniel F. Van Horn, Esquire, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036–5339 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–176, adopted March 30, 1988, and released May 2, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–10305 Filed 5–9–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

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

Forest Service

Availability of the Record of Decision and Final Environmental Impact Statement for Oil and Gas Leasing in the Escalante Known Geological Structure (KGS)

AGENCY: Forest Service, USDA.

ACTION: Notice is hereby given of the availability of the record of Decision and Final Environmental Impact Statement (FEIS) for Oil and Gas Leasing Within the Escalante Known Geological Structure (KGS), Garfield County, Utah.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service (FS) has prepared a FEIS for oil and gas and carbon dioxide (C02) leasing in the Escalante Known Geological Structure (KGS). The bureau of Land Management (BLM) was a cooperating agency. The 80,000-acre KGS is located in Garfield County, southcentral Utah, near the town of Escalante. The Box-Death Hollow Wilderness and Phipps Death Hollow Instant Study Area (ISA) are located within the KGS. Approximately 12,355 acres are under Oil and gas lease within the KGS. Lands within the KGS, exclusive of the Wilderness and ISA, were designated as available for oil and gas leasing in existing planning documents; the Land and Resource Management Plan for the Dixie National Forest (FS) and the Escalante Management Framework Plan (BLM).

The FEIS analyzes six alternatives related to offering lands within the Escalante KGS for oil and gas lease. In so doing, it reexamines current planning decisions made in FS and BLM planning documents regarding where to offer leases and under what conditions. Lands within the Wilderness and ISA were not considered for leasing and development except for existing leases that constitute valid existing rights. The six alternatives are:

I. Offer No New Leases but Recognize the Potential Development of Existing Oil and Gas Leases in the KGS. (No Action Alternative)

II. Offer New Leases for CO2 Only Within Antone Bench and Areas 2, 3, 4, and 5 and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

III. Offer New Leases for Oil and Gas and C02 Within the Area of Greatest Potential for Development and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

IV. Offer New Leases for Oil and Gas Within those Areas Available for Oil and Gas Leasing and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS.

V. Offer New Leases for Oil and Gas and CO2 for All Lands Available for Leasing and Recognize the Potential Development of Existing Oil and Gas Leases in the KGS. (Selected Alternative)

VI. Offer No New Leases and Seek Congressional Authority to Acquire All Existing Oil and Gas Leases in the KGS. (Environmentally Preferred Alternative)

The Decision is to select and implement Alternative V. The Selected Alternative allows the offering for oil and gas or CO2 leases on all lands available for leasing within the KGS. Antone Bench and Areas 2, 3, 4, and 5, also within the KGS, were withdrawn from oil and gas leasing by the Utah Wilderness Act of 1984, but are available for CO2 leasing until September 28, 1989.

The Decision does not require a planning amendment to the BLM's Management Framework Plan. The FS Land and Resource Management Plan for the Dixie National Forest will be amended to incorporate additional special stipulations identified in the FEIS.

The Decisions is subject to appeal under Secretary of Agriculture Appeal Regulations, 36 CFR 211.18. The Notice of Appeal, a statement of reasons to support the appeal, and any request for oral presentation must be writing and must be filed with the Deciding Official: J.S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, 324 25th Street, Ogden, UT 84401, within 45 days of the date of the Decision. The appeal period cannot expire prior to 30 days after publication by the Environmental Protection Agency of the Notice of Availability of the Fial EIS in the **Federal Register.** The Record of Decision constitutes the Proposed Decision of the BLM. Proposed Decisions pertaining to lands within the KGS administered by the BLM are subject to protest by any adversely affected party who participated in the review and comment process.

Protests must be made in accordance with provisions of 43 CFR 1610.5–2 and submitted to: Director, Bureau of Land Management, 18th and C Streets NW, Washington DC 20240. Protests must be received by the Director, Bureau of Land Management, within 30 days after the date of publication of the Notice of Availability of the Final EIS in the **Federal Register** by the Environmental Protection Agency. the protest must contain the name and address of the protestor, his/her interests in the action being protested, a statement of issues being protested, an indication of which part of the FEIS is being protested, a copy of the document addressing the issues submitted during the Draft EIS review period, and a concise statement explaining why the Acting State Director's Decision is believed to be wrong.

ADDRESSES: The Record of Decision and FEIS are available for review at the FS Regional Office, 324 25th Street, Ogden, Utah; Dixie National Forest Supervisor's Office, 82 North 100 East, Cedar City, Utah; Escalante Ranger District Office, Escalante, Utah. It is also available at the BLM Utah Office, 324 South State Street, Salt Lake City, Utah; and at the Cedar City District Office, 1579 North Main, Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: Calvin Bird, Planner, Dixie National Forest, P.O. Box 580, Cedar City, UT 84720; (801) 586–2421.

Date: May 4, 1988.

J. S. Tixier,

Regional Forester.

[FR Doc. 88–10320 Filed 5–9–88; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. on May 23, 1988, at the Burbank Hilton Hotel, 2500 Hollywood Way, Burbank, California 91505. The purpose of the meeting is program planning and discussion of projects submitted to the Chair.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–10303 Filed 5–9–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB); Bureau of the Census

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

Agency: Bureau of the Census; Commerce.

Title: Survey of Manufacturing Technology.

Form Number: Agency—SMT–1; OMB–NA.

Type of Request: New collection.

Burden: 12,000 respondents; 4,000 reporting hours.

Needs and uses: This supplement to the 1987 Economic Censuses will collect information to measure the prevalence of selected manufacturing technologies. ITA and NBS within the Department, logistical offices within DOD, and BLS have requested this information to be used in determining the international competitiveness of the U.S. manufacturing sector. This survey will be the only comprehensive measure of advanced technology used in manufacturing.

Frequency: Quinquennially.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: May 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10346 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–07–M

Agency Information Collections Under Review by the Office of Management and Budget (OMB); National Oceanic and Atmospheric Administration

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

Agency: National Oceanic and Atmospheric Administration.

Title: Cooperative Agreements Under Fish and Seafood Promotion Act of 1986.

Form Number: Agency–N/A; OMB–N/A.

Type of Request: New Collection.

Burden: 20 respondents; 280 reporting hours

Needs and uses: The Fish and Seafood Promotion Act of 1986 established a National Fish and Seafood Promotion Council. The mission of the Council is to promote fish and fish products, improve marketing and utilization of fish, and provide consumer education on the value of fish products. The tasks of the Council will be accomplished primarily through cooperative agreements with experts in these areas. Applications for cooperative agreements will be solicited. The information provided will be used to evaluate applications and make the awards.

Affected Public: Individuals; states or local governments; businesses or other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB desk Officer: John Griffen, 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Fishing Vessel Capital Construction Fund Preliminary Deposit/Withdrawal Report.

Form Number: Agency–N/A; OMB–N/A.

Type of Request: New Collection.

Burden: 2,000 respondents; 166 reporting hours

Needs and uses: The Fishing Vessel Capital Construction Fund program defers Federal tax on fishing vessel income deposited into a fund for the purpose of constructing, acquiring, or reconstructing a fishing vessel. The Tax Reform Act of 1986 requires the Secretary of Commerce to provide the Secretary of Treasury with a written report on participants withdrawals and deposits from the fund during the previous tax year. This report will collect this information.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

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

Dated: April 29, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–10347 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–201–003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty, Administrative Review: Correction

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review, correction.

In **Federal Register** document 88–9269 beginning on page 15090 in the issue of Wednesday, April 27, 1988, the company-specific assessment and cash deposit rates for Ceramica y Pisos Industriales de Culiacan ("Culiacan") were incorrectly stated. Please make the following corrections:

1. On page 15090 in the second column, first paragraph, fourteenth line, 18.98 is corrected to read 18.20.

2. On page 15092 in the second column, third paragraph, ninth line, 18.98 is corrected to read 18.20.

3. On page 15092 in the third column, third paragraph, eighth line, 18.98 is corrected to read 18.20.

All other assessment and cash deposit rates cited remain unchanged.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 4, 1988.

[FR Doc. 88–10359 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DS–M

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Import Adminsitration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Article 10 of the Arrangement Between the Coordiantion Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than May 20, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Administration, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3878, Washington, DC, 20230, (202) 377–3984.

SUPPLEMENTARY INFORMATION: Paragraph 10 of the Arrangement Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses for the importation of machine tools covered by the Arrangement. Such licenses may be issued when it is determined "that the attainment of the objectives of this Arrangement requires the importation * * * of arrangement products in excess of the applicable export limit." Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 60 turning centers from Taiwan over the next year. The turning centers meet the following specifications:

Capacity: maximum turning length 23.62", distance between center and spindle nose 36.22", maximum swing over bed 24.41", maximum turning diameter 14.57";

Headstock: spindle taper A2–8/MT #7, spindle hole 3.03", chuck diameter 12", bar capacity 2.56", spindle speed 0–2200 rpm, spindle motor 25/30 hp;

Turret: number of stations 12, tool select, bidirectional

x-axis: travel 9.65", traverse 177" per minute;

z–axis: travel 24.80", traverse 354" per minute;

Tailstock: quill diameter 4.33", quill travel 3.94", quill taper MT #4.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than May 20, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address, (202) 377–1248.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88–10360 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Receipt of Petition for Rulemaking; Radio-Television News Directors Association et. al.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt.

NOAA announces receipt of a Petition for Rulemaking to amend its regulations for the licensing of private remote sensing space systems, 15 CFR Part 960, issued under title IV of the Land Remote-Sensing Commercialization Act of 1984, 15 CFR Parts 4241–4246.

The Radio-Television News Directors Association, American Society of Newspaper Editors, Media Institute, National Association of Broadcasters, National Broadcasting Company, Inc., Reporters Committee for Freedom of the Press, and Turner Broadcasting System, Inc. have petitioned NOAA to amend its regulations to incorporate proposed standards by which the Government will determine whether restrictions must be placed on the license of an operator of a remote sensing space system to protect national security and international obligations.

Similar standards were proposed during the rulemaking which was completed on July 10, 1987 by the adoption of 15 CFR Part 960. Petitioners request further review of the issue at this time in light of the President's National Security Decision Directive of January 5, 1988 which was intended to "encourage the development of commercial systems which image the Earth from space competitive with or superior to foreign-operated civil or commercial systems." *See* Fact sheet released by the Press Secretary of the White House, at 3 (Feb. 11, 1988).

The essence of the Petition is stated on page 4.

> * * * the continuing uncertainty over the nature of the restrictions that in the future might be imposed on remote-sensing licensees in the name of "national security" and "international obligations" is itself a significant impediment to the development of a competitive remote-sensing capability by the private sector. It is not enough for NOAA merely to state that such restrictions will be imposed, if at all, only on a case-by-case basis after applications have been filed. The press must be able to know with a reasonable degree of certainty at the present time—before applications have been filed—whether, when and how content-based restrictions will be imposed.

NOAA's current rules do not remove or even mitigate the specter that the government might seek to impose restrictions on licensees that undermine the economic viability of a remote-sensing system dedicated to news gathering. Consequently, NOAA's rules will inevitably "chill" the willingness of mass media organizations and other parties to invest substantial sums in developing such systems and applying for a license to operate them. By simply

specifying the standards it will use when determining whether to impose restrictions, NOAA will transform the business environment from one where only a few companies are even exploring the concept of high-resolution civilian remote sensing, to one where a number of parties will seriously consider establishing a competitive remote-sensing marketplace in outer space without the need for government subsidies.

Copies of the Petition may be obtained by contacting Peggy Harwood, National Environmental Satellite, Data, and Information Service, FB–4, Room 2051, Washington, DC 20233; (301) 763–4522. Comments on the need for proposed amendments, alternative approaches as well as other comments will be accepted for 60 days and will be considered by NOAA in determining whether to undertake rulemaking. Comments should be sent to Peggy Harwood at the above adress.

Dated: April 26, 1988.

Thomas N. Pyke, Jr.,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 88–10297 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–12–M

[Docket No. 80485–8085]

Information Relating to Bowhead Whales

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

ACTION: Notice of availability of documents and request for public comment.

SUMMARY: Information is published by NOAA that is used in the development of the U.S. position to be presented before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice NOAA is advising the public of the availability of and soliciting public comment on the Administrator's initial discretionary views on the U.S. request for aboriginal harvest of bowhead whales for 1989–1991. This position includes: (1) The current population level and annual net recruitment rate of the bowhead whale, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, and (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme. Also available upon request is the list of documents reviewed and used in formulating these initial views.

DATE: Written comments on the Administrator's initial views must be submitted by May 11, 1988.

ADDRESS: The Administrator's initial views and the list of documents reviewed and used in formulating these initial views are available from Becky Rootes, Office of International Fisheries, National Marine Fisheries Service, Room 919, Universal South Building, 1825 Connecticut Avenue, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, (202) 673–5281.

SUPPLEMENTARY INFORMATION:

(16 U.S.C. 1361–1407, 1531–1543, 916).

Dated: May 5, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88–10350 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Intent to Grant Exclusive Patent License; Stanford University

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Stanford University, joint owner of the invention, having a place of business at Palo Alto, California, an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products embodying the invention entitled "External Laser Frequency Stabilizer," U.S. Patent No. 4,700,150, Application S.N. 6–745,309. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Stanford University.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10301 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Officials Authorized To Issue Export Visas for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From the Arab Republic of Egypt

May 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUMMARY: The Government of the Arab Republic of Egypt has notified the United States Government that Messrs. Adel Orabi, Abed Shoukry, Essam Mahmoud and Tawfik Messiha of the Cotton Textile Consolidation Fund have been authorized to issue export visas for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products exported from Egypt.

SUPPLEMENTARY INFORMATION: See 52 FR 48857 published in the Federal Register on December 28, 1987.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–10344 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 11, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the current limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limits for categories 313, 314, 350 and 613/614/615 are being increased for carryover from the period which began on July 1, 1987 and extended through December 31, 1987. The limits for the July 1, 1987 through December 31, 1987 period for Categories 313, 320–P, 350 and 613 are being reduced for carryover applied to the foregoing limits.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 51 FR 49465 and 52 FR 49468, published on December 31, 1987.

The letter to the Commissioner of Customs 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.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 5, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began, in the case of Categories 313, 320–P, 350 and 613, on July 1, 1987 and extended through December 31, 1987; and, in the case of Categories 313, 314, 350 and 613/614/615, on January 1, 1988 and extends through June 30, 1988.

Effective on May 11, 1988, the directives of December 28, 1987 are hereby amended to adjust the limits for the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

Category	Adjusted 6-mo. limit [1] (July 1, 1987–Dec. 31, 1987)
313	7,262,022 square yards.
320–P [2]	4,348,832 square yards.
350	9,352 dozen.
613	7,043,150 square yards.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1987.
[2] In Category 320–P, only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

Category	Adjusted 6-mo. limit [1] (Jan. 1, 1988–June 30, 1988)
313	6,937,412 square yards.
314	19,856,657 square yards.
350	55,202 dozen.
613/614/615	8,569,249 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

Goods exported in excess of the adjusted limits for the July 1, 1987 through December 31, 1987 period shall be charged to the corresponding limits for the January 1, 1988 through June 30, 1988 period.

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,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–10345 Filed 5–9–88; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Altered System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of an altered system of records.

SUMMARY: The Army is publishing a notice for public comment on an altered system of records included in its existing inventory of system of records subject to the Privacy Act of 1974.

DATE: This proposed action will be effective without further notice June 9, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Commander, U.S. Army Information Systems Command, ATTN: AS–OPS–MR (Mr. Cliff Jones), Fort Huachuca, Arizona 85613–5000. Telephone (602) 538–6568, AUTOVON: 879–6568.

SUPPLEMENTARY INFORMATION: The Army's system of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12972) April 20, 1988

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on May 2, 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. System name has been changed from Medical Research Volunteer Register to Research Volunteer Register. Changes have been made to the following captions of the attached system notice: System location—Primary, Categories of individuals covered by the system, Categories of records in the system, Purpose(s), Routine uses of records maintained in the system, including categories of users and the purpose of such uses, Storage, Safeguards, and Notification procedure. The system was previously published at 51 FR 40479, November 7, 1986.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 5, 1988.

A1304.22aDASG

SYSTEM NAME:

Research Volunteer Registry.

SYSTEM LOCATION:

Primary

U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, MD 21701–5012 and U.S. Army Chemical Research, Development and Engineering Center (CRDEC), Aberdeen Proving Ground, MD 21010–5423.

Alternates

Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800
Walter Reed Army Institute of Research, Washington, DC 20307–5100
U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000
U.S. Army Institute of Dental Research, Washington, DC 20307–5300
U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200
U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010
U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425
U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011
U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of military members, civilian employees, and non-DOD civilian volunteers participating in current and future research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Development and Engineering Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, and other such information as necessary to locate the individual. Individual consent agreements, test protocols, challenge materials, inspection/afteraction reports, standard operating procedures, medical support plans, and summaries of pre-test and post-test physical examination parameters measured before and after testing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., sections 1071–1090 and section 3012; 44 U.S.C, section 3101; E.O. 9397.

PURPOSE(S):

To assure that the U.S. Army Medical Research and Development Command (USAMRDC) and the U.S. Army Chemical Research, Development and Engineering Center (CRDEC) can contact individuals who participated in research conducted/sponsored by the Command and Center in order to provide them with newly acquired information, which may have an impact on their health. To answer inquiries concerning an individual's participation in research sponsored/conducted by USAMRDC and CRDEC. To facilitate retrospective medical and/or scientific evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information may be disclosed to:

1. HQDA: To contact volunteer human subjects later should it be in their best interests; to document and assist in determining the need for medical treatment at any future time for a condition proximately resulting from participation in a test; to adjudicate claims and determine benefits; to report medical conditions required by law to other Federal, State, and local agencies; for retrospective medical/scientific evaluation; and for future scientific and legal significance.

2. Veterans Administration: To assist in making determinations relative to claims for service-connected disabilities; and other such benefits.

3. See also the "Blanket Routine Uses" set forth at the beginning of the Army's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

a. Paper records in file folders; computer magnetic tapes, disks, and printouts.

b. Laboratory-conducted research. Computer tapes are filed in the laboratory.

c. Contractor-conducted research. Upon completion of research, files are turned over to the U.S. Army Medical Research and Development Command. Computer tapes are filed at the U.S. Army Medical Research and Development Command.

RETRIEVABILITY:

By name, SSN.

Safeguards:

a. USAMRDC: Computerized records are accessed by the custodian of the records system, and by persons responsible for servicing the record system in the performance of their duties. Computer equipment and files are located in separate, secured area.

b. CRDEC: Paper records and data disks are kept in locked compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site identification number assigned to an individual terminal and by valid site identification number assigned to an individual terminal and by a valid user identification and password code assigned to an authorized user, changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to personnel assigned to work on the data base. Data base output is available only to designated computer operators. Computer facility has double barrier physical protection. The remote is in a room which is locked when vacated and the building is secured when unoccupied.

RETENTION AND DISPOSAL:

Records are destroyed after 65 years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RDZ (SGRD–HR), 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should submit a written request to Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RDZ (SGRD–HR), 5109 Leesburg Pike, Falls Church, VA 22041–3258 or to Commander, U.S. Army Chemical Research, Development and Engineering Center, ATTN: SMCCR–HV, Aberdeen Proving Ground, MD 21010–5423. Written requests should include full name, social security number, current address, and telephone number of the requester. For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, building pass, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure", and furnish information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, medical authorities, Test Director reports, documents prepared by staff supporting the test/research, and records/documents from records custodians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88–10355 Filed 5–9–88; 8:45 am]
BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Notice of a Proposed New Ongoing Computer Matching Program Between the Department of Defense and Financial Institutions To Preclude Escheatment of Individual Accounts Under State Laws

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Public notice of a proposed new ongoing computer matching program between the DoD and financial institutions for any public comment.

SUMMARY: The Department of Defense is offering to assist financial institutions in locating individuals connected with the Department of Defense who are in peril of losing dormant, abandoned or unclaimed accounts under State laws by locating affected personnel and precluding financial institutions from turning over any such monies or funds in individual accounts to the State in which the banking or financial organization or business association has its principal place of business. States, under their own laws, may automatically claim and take custody of such abandoned or unclaimed accounts by escheatment after a certain number of years of account inactivity by operation of law. States and financial institutions make earnest efforts by limited due process of public notice in newspapers and writing to the account owner's address of record, but if an individual has moved or been reassigned from the physical area, the chances of contact are reduced considerably. By offering to assist financial institutions to confer a benefit to the lost record account owner, the Department of Defense is serving a public policy and interest.

DATE: The matching program will be effective and begin without further notice on June 9, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments or inquiries to: Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, 550 Camino El Estero, Suite 200, Monterey, CA 93940-3231, Commercial phone number: (408) 646-2951; Autovon: 878-2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2803. Telephone: (202) 694-3027; Autovon: 224-3027.

SUPPLEMENTARY INFORMATION: The Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD, is willing under written agreement to assist individual financial institutions, to be a matching agency for the purpose of providing up-to-date home or work addresses of persons of record of abandoned money or other personal property subject to escheatment laws. The computer matching will be performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using records supplied on computer tape by the financial institutions and the DoD employment records of both military and civilian personnel, active and retired. The match will be accomplished using the social security number. Matching records will be returned to the financial institution, the activity responsible for reviewing the matching data and for assuring that the account owner receives proper notification and due process before any adverse action is taken on the abandoned property.

Set forth below is the information required by paragraph 5.f. (1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget (OMB) dated May 11, 1982 (47 FR 21656, May 19, 1982). A copy of this proposed notice has been provided to the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on May 2, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 5, 1988.

REPORT OF A NEW ONGOING COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF DEFENSE AND DESIGNATED FINANCIAL INSTITUTIONS TO PRECLUDE ESCHEATMENT OF INDIVIDUAL ACCOUNTS UNDER STATE LAWS

a. *Authority.* The legal authority under which this computer matching program is conducted is 5 U.S.C. 552, Freedom of Information Act; 5 U.S.C. 552a, Privacy Act of 1974; 10 U.S.C. 136, Assistant Secretaries of Defense; appointment; powers and duties; precedence; 12 U.S.C. 484(B), Limitation on visitorial powers; 12 U.S.C. 2053, State entitlement to escheat or custody; Uniform Disposition of Abandoned or Unclaimed Property Act of the various States; Section 106 of the Federal Credit Union Act (12 U.S.C. 1756); National Credit Union Administration (NCUA) Final Interpretive and and Policy Statement (IRPS) 82-4 (47 FR 53325, November 26, 1982); E.O. 9397, Numbering System for Federal Accounts; 32 CFR Part 231—Financial Institutions on DoD Installations; Office of Management and Budget Memorandum M-82-5, dated May 11, 1982 entitled: Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982); Defense Privacy Board Advisory Opinions Memorandum 86-2, dated October 15, 1986, Opinion Nr. 28, "Requests for home addresses of Department of Defense personnel who stand to benefit from the disclosure."

b. *Program Description.* On a case by case basis under written agreement, individual financial institutions may voluntary participate as a source agency in a computer matching program with the Department of Defense (DoD) to locate individuals with dormant accounts with the financial institution that are indanger of escheating to various states under existing state laws. The computer matching programw will identify DoD active, retired or separated Federal employees and members whose accounts are about to escheat to a state government due to account inactivity. The purpose of the match is to provide up-to-date home or work addresses at which the financial institution can contact the account holder to withdraw funds or activate accounts which have been inactive for several years. If account activity is not instituted, the balance escheats to the state having jurisdiction over the financial institution.

Upon receipt of a computer file of inactive accounts, the Defense Manpower Data Center (DMDC) of the Defense Logistics Agency (DLA), of the Defense Department will perform, as a matching agency, a computer match using all nine digits of the social security numbers furnished. Upon completion of the computer match, DMDC will send the financial institution a record of the matched records (hits) containing the DoD employee or member's name, service, or agency, category of employee, and current work or home address.

The financial institution is responsible for reviewing the matched records to assure that the individual identified in the match is the account holder. The DoD record will not be used for any purpose by the financial institution other than to confer a benefit to the account holder to prevent escheatment and the written agreement between the financial institution and DMDC must attest to this fact as public interest dictates in those cases where disclosure of an individual's last known home address is released in order to confer a benefit.

DMDC will make resonable efforts, pursuant to subsection (e)(6) of the Privacy Act (5 U.S.C. 552a), to assure that records are accurate, complete, timely, and relevant for agency purposes prior to disclosure. Further, it will insure that an accounting of disclosures pursuant to subsection (c) of the Privacy Act is maintained.

c. *Records to be Matched.* The DMDC system of records contains a routine use permitting disclosures for this match.

Financial Institutions (Source Agencies)

(1) Individual account records subject to escheatment. (Not a Federal system of records)

Department of Defense (Matching Agency)

(1) DoD component: Defense Logistics Agency (DLA) System identification: S322.10 DLA–LZ System name: Defense Manpower Data Center Data Base **Federal Register** citation: 53 FR 4442, February 16, 1988

d. *Period of the Match.* Matching may begin as soon as possible after publication of this notice in the **Federal Register** and will continue on a case by case basis at the request of financial institutions.

e. *Security Safeguards.* Automated records are accessible only by password and access to the DMDC computer center is by key or picture identification. Hard copy records are maintained in Federal Office Buildings in lockable file cabinets and are accessed only by authorized Federal employees or are maintained at financial institutions or their contractors.

Disposition of Records. Tapes received by DMDC will be returned to the financial institution upon successful completion of the match. Hard copy match records will be funished to the financial institution and used to contact the account holder if necessary. Non-hit records will not be used for any purpose by DMDC.

[FR Doc 88–10354 Filed 5–9–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117R]

Notice Inviting Applications for New Awards Under the Research and Development Centers Program for Fiscal Year 1989

Purpose: To fund a research and development center to conduct research and related activities for the study of effective schooling of disadvantaged students.

Deadline for Transmittal of Applications: September 16, 1988.

Applications Available: May 13, 1988.

Available Funds: The Department estimates that $1,620,000 will be available for this competition in fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated Size of Award: $1,620,000.

Number of Awards: 1.

Project Period: Up to 5 years.

Applicable Regulations: (a) The regulations for the Regional Educational Laboratories and Research and Development Centers Programs as proposed to be codified in 34 CFR Parts 706 and 708. Applications will be accepted based on the notice of proposed rulemaking published in the **Federal Register** on March 22, 1988 (53 FR 9408). If any substantive changes are made in the final regulations for these programs, applicants will be given an opportunity to revise or resumbit their applications. (b) The Notice of Proposed Biennial Research Priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625). Applications will be accepted based on the Notice of Proposed Biennial Research Priorities. If any substantive changes affecting the priority chosen for this competition are made in the final biennial research priorities, applicants will be given an opportunity to revise or resumbit their applications. (c) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Priorities: The Secretary has chosen from the notice of proposed biennial research priorities published in the **Federal Register** on November 20, 1987 (52 FR 44625) the following as an absolute priority: improvement of educational outcomes for students-at-risk, including identifying what makes some schools and certain educational strategies successful in lowering dropout rates and raising achievement levels of those students having the greatest difficulty in terms of learning and motivation.

Within this absolute priority, the Secretary particularly invites applications emphasizing the study of effective schooling of disadvantaged students in public and private schools. However, applications that meet this invitational priority will not receive an absolute or competitive advantage over applications within the absolute priority that do not meet this invitational priority.

Weighting for Selection Criteria: The proposed program regulations at 34 CFR 706.20(e) authorize the Secretary to distribute an additional 10 points among the criteria described in the regulations at 34 CFR 708.11 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 10 points as follows: 5 additional points to the criterion at § 708.11(a) (Mission and strategy), bringing the total for this criterion to 20 points; and 5 additional points to the criterion at § 708.11(d) (Technical soundness), bringing the total for this criterion to 25 points.

For Applications or Information Contact: Dr. John Ralph, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, Room 617, 555 New Jersey Avenue, N.W., Washington, DC 20208–1606. Telephone Number (202) 357–6223. There will be a briefing for prospective applicants on June 13, 1988 from 1:00 p.m. to 4:30 p.m. in Room 326, 555 New Jersey Avenue, NW., Washington, DC 20208.

Program Authority: 20 U.S.C. 1221e.

Dated: May 5, 1988.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 88–10426 Filed 5–9–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain/Wetland Statement of Findings; University of South Carolina John E. Swearingen Center for Engineering Phase II Project

ACTION: Floodplain/Wetland Statement of Findings.

SUMMARY: The U.S. Department of Energy (DOE), has prepared a floodplain/wetland assessment for the proposed University of South Carolina John E. Swearingen Center for Engineering Phase II Project pursuant to 10 CFR 1022.18. A portion of the proposed action will take place within the Rocky Branch River 100 year floodplain. Following publication of a notice of floodplain involvement (53 FR 13437), DOE completed a floodplain/wetland assessment. The proposed action was identified, environmental impacts examined, and mitigative measures identified. DOE has determined that there are no practicable alternatives to the proposed action and that it has been designed to minimize potential harm to and within the floodplain.

SUPPLEMENTARY INFORMATION: A portion of the proposed site is affected by the Rocky Branch River 100 year floodplain. According to Executive Order 11988 (Floodplain Management, May 24, 1977), Federal agencies "shall consider alternatives to avoid adverse effects and incompatible development in

the floodplain." If there is no "practicable alternative" to locating a project in a floodplain, an agency is to "design or modify its action in order to minimize potential harm to or within the floodplain." Natural and beneficial floodplain values to be protected include natural moderation of floods, water quality maintenance, groundwater recharge, support of living resources (marshes, fish, and wildlife), cultural richness (archaeological, historical, recreational, scientific), and agricultural, aquacultural, and forestry production.

The construction effects of this project on the 100 year floodplain will be minor and short-term. First of all, the construction site consists of a previously disturbed, urban landscape. No threatened or endangered species, critical habitats, or cultural resources exist on or near the affected area. During the construction, silt control practices will minimize erosion of soil and control of soil runoff into city streets, storm sewers, and the Rocky Branch River. Secondly, the footprint of the proposed construction would follow the footprint of the existing structure allowing the floodplain to be unaffected. Therefore, the project will not negatively affect the natural and beneficial floodplain values listed above.

Mitigation

Mitigative measures to reduce the risks of adverse consequences during construction and future adverse environmental consequences will be those recommended in the FEMA Document *National Flood Insurance Program and Related Regulations* 44 CFR Ch. 1 (10–1–85 Edition), Paragraph 60.32(d). The affected portions of the complex will utilize certified "floodproof" construction to a minimum elevation of one foot above the 100 year flood elevation (as outlined in the Flood Insurance Rate Map). Construction will utilize floodproofing techniques as outlined in *Floodproofing Non-residential Structures*, FEMA 102, May 1986. Construction configuration will not result in any increase in flood levels within the community during the occurrence of the base flood discharge (44 CFR Ch. 1 (10–1–85 edition)).

Alternatives: Since the purpose of the project is to replace an existing wing of a building, there are no alternative locations for the proposed project. Therefore, the only alternative would be the no action alternative. The no action alternative is unacceptable in this case because the existing buildings, in their present state, are unsafe, congested, and unsuitable for state-of-the-art mechanical and civil engineering research and instructional activities.

Benefits derived from the proposed action have been determined to outweigh the potential environmental impacts. As a result of its review of the environmental impacts, DOE has determined there is no practicable alternative to the proposed action in the floodplain and that the proposed action has been designed to minimize harm to and within the floodplain.

A copy of the floodplain assessment is available from Linda Freeman, Environment, Safety, and Health Division, U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Illinois 60439, (312) 972–2240.

Hilary J. Rauch,
Manager.

[FR Doc. 88–10322 Filed 5–9–88; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. EL88–20–000, et al.]

Kentucky Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. EL88–20–000]

Take notice that on May 2, 1988, Kentucky Utilities Company (Company) tendered for filing a request for a declaratory order or for waiver from the fuel clause regulations allowing it to recover, over time, $14.5 million in payment of release from a coal supply agreement. The $14.5 million on a jurisdictional basis is represented by $2.25 million being FERC wholesale jurisdiction and $12.25 million Kentucky retail jurisdiction. Company states that purchase of coal from the open market is now less expensive and a coal cost net savings determined to be approximately $12.9 million will result to the customers. A request for waiver of prior notice with the effective date of the accounting month of May, 1988 was included.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Snow Mountain Pine Company

[Docket No. EL88–23–000]

Take notice that on May 2, 1988, Snow Mountain Pine Company (Snow Mountain) tendered for filing, pursuant to Section 210(h) of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. 824a–3(h), a petition to the Commission to enforce the requirements of section 210(f) of PURPA, 16 U.S.C. 824a.–3(f) and 18 CFR Part 292 against the Oregon Public Utility Commission.

Snow Mountain alleges that the Oregon Public Utility Commission (OPUC) is not implementing and has not implemented the requirements of section 210 of PURPA and 18 CFR Part 292. Snow Mountain states that on February 8, 1988, by Order No. 88–153 the OPUC failed to implement the aforesaid satute and rules in that the OPUC ordered that avoided cost data, which was filed in accordance with federal law, *not be used* to establish avoided costs to be paid for purchases from a qualifying facility when such utility purchases are involuntary.

Comment date: June 1, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Edison Sault Electric Company

[Docket No. EC88–18–000]

Take notice that on April 29, 1988, Edison Sault Electric Company (Edison Sault) tendered for filing an application for an order granting any authorization needed to permit a planned corporate reorganization.

Edison Sault conducts an electric generation, transmission and distribution business in the State of Michigan. Under the proposed corporate reorganization, Edison Sault would become a wholly owned subsidiary of a new company which was recently formed for the purpose of becoming the parent of Edison Sault.

Edison Sault states that the proposed corporate reorganization is consistent with the public interest.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Edison Sault Electric Company

[Docket No. ES88–36–000]

Take notice that on April 28, 1988, Edison Sault Electric Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $10,000,000 principal amount of short-term debt on or before December 31, 1989, with final maturity no later than December 31, 1990.

Comment date: May 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER88-172-001]

Take notice that on April 27, 1988, Pennsylvania Power & Light Company tendered for filing a compliance report.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc. d/b/a, Missouri Public Service

[Docket No. ER88-371-000]

Take notice that on April 28, 1988, UtiliCorp United Inc. d/b/a Missouri Public Service tendered for filing a proposed change in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace the contract rate schedule presently in effect and on file with the Commission which relates to the City of Liberal located in the State of Missouri. The proposed contract would supersede and replace Supplement No. 2 to FPC Rate Schedule Number 36. The proposed contract reflects a change in contract capacity and a change in the expiration date of the contract. The new contract does not change anticipated annual revenues.

The proposed contract capacity change is in compliance with a request received from the City of Liberal. The extension in the term of the contract is to assure a long-term source of power to the City of Liberal and to justify recent and any additional expenditures required by the Company to maintain and improve the capacity of facilities used to serve the City of Liberal.

Copies of the filing were served upon the City of Liberal whose contract would be affected thereby, and upon the Public Service Commission of Missouri. The rates and charges would not be affected.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ES88-370-000]

Take notice that on April 28, 1988, The Montana Power Company (Montana Power) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC-88, applicable for sales of electricity by MPC for resale to Central Montana Generation and Transmission Cooperative, Inc., (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc., (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC-88 will provide it with an increase in revenues from sales to these customers of $2,678,065 (18%) during the year ending June 30, 1989, and implements the third annual rate increase pursuant to a Settlement Agreement approved in Docket No. ER84-359-000, 31 FERC ¶ 61,060 (1985).

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER88-372-000]

Take notice that on April 29, 1988, Florida Power & Light Company (FPL) tendered for filing as an initial rate schedule a Special Short Term Agreement to Provide Capacity and Scheduled Incremental Energy By Florida Power & Light Company To Florida Municipal Power Agency During Outage of Indian River Unit No. 3 and Cost Support Schedules C-S, D, F-S and G-S (together with Cost Support Schedule F-S Supplements) which support the rates for sales under the Special Short Term Agreement.

The new rate schedule provides for the sale of power and energy from FPL to the Florida Municipal Power Agency for a specified term commencing on May 1, 1988 and estimated to end the earlier of: (1) The return of Indian River Unit No. 3 or (2) August 31, 1988. FPL respectfully requests that the proposed Special Short Term Agreement and Cost Support Schedules C-S, D, F-S and G-S (together with Cost Support Schedule F-S Supplements) be made effective on May 1, 1988. According to FPL, a copy of this filing was served upon the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER88-373-000]

Take notice that on April 29, 1988, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing changes in the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreement to provide qualifying facility transmission service for Royster Company (Royster), designated as Tampa Electric's Rate Schedule FERC No. 28. Tampa Electric states that the revised transmission service rates are based on 1987 Form No. 1 data, and are developed by the same method that was utilized in the cost support schedules accompanying the initial filing of the transmission service agreement and in prior annual revisions.

Tampa Electric proposes that the revised transmission service rates be made effective as of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Royster and the Florida Public Service Commission.

Comment date: May 19, 1988, in accordance with Standard Pargraph E at the end of this notice.

10. Gulf States Utilities Company

[Docket No. ER88-374-000]

Take notice that on April 29, 1988, Gulf States Utilities Company (GSU) tendered for filing proposed changes in its Agreement for Wholesale Electric Service to Municipalities (Agreement) with the City of Kaplan, City of Gueydan, and Town of Erath (Customers). The rate schedule changes defer the Customers' obligation to pay GSU a monthly facilities charge set forth in "Rider A" to the Agreement under certain enumerated circumstances. The rate schedule changes do not constitute a rate increase. The rate schedule changes were agreed to by GSU and the Customers.

GSU requests an effective date of June 28, 1988, for the contract amendments. Copies of this filing were served upon the Customers.

Comment date: May 19, 1988, in accordance with Standard Paragraph E at the end of this document.

11. Mecklenburg County, North Carolina, Board of County Commissioners

[Docket No. QF88-196-000]

On April 15, 1988, Mecklenburg County, North Carolina, Board of County Commissioners (Applicant), of 720 East Fourth Street, Charlotte, North Carolina 28231 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. An amendment was filed on April 26, 1988. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Mecklenburg County, North Carolina. The facility will consist of two 115 ton per day mass burn combustors and associated steam generators and an extraction/condensing steam turbine generator. The maximum electric power production capacity will be 4,015 kilowatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for start-up and shut-down, however, such fossil fuel

usage will not exceed 2.5% of the total energy input to the facility during any calendar year period. Installation of the facility is scheduled to begin July 1987.

Comment date: June 9, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Indeck Energy Services of Baldwin, Inc.

[Docket No. QF88-350-000]

On April 22, 1988, Indeck Energy Services of Baldwin, Inc. (Applicant), of 1111 S. Willis Avenue, Wheeling, Illinois 60090 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pleasant Plain Township, Michigan. The facility will consist of a wood-fired stoker type steam generator and a condensing steam turbine generator. The net electric power production capacity will be 12 megawatts. The primary energy source will be biomass in the form of wood waste. The facility has no planned usage for natural gas, coal, or oil. Construction of the facility will begin in July 1989.

Comment date: June 9, 1988, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10361 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-352-000, et al.]

Panda Energy Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 4, 1988.

Take notice that the following filings have been made with the Commission:

1. Panda Energy Corporation

[Docket No. QF88-352-000]

On April 25, 1988 Panda Energy Corporation (Applicant) of 4100 Spring Valley, Suite 1001, Dallas, Texas 75244 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the grounds of the Rock-Tenn Company in Dallas, Texas. The facility will consist of three independent combustion turbine-generators and three heat recovery steam generators. The primary energy source of the facility will be natural gas. The useful thermal energy output of the facility, in the form of process steam, will be used in pulpers and dryers for the manufacture of recycled paper board. The net electric power production capacity of the facility will be 11.046 megawatts.

Comment date: June 9, 1988 in accordance with Standard Paragraph E at the end of this notice.

2. Encogen Two Partners, Ltd.

[Docket No. QF88-344-000]

On April 14, 1988, Encogen Two Partners, Ltd. (Applicant), c/o Enserch Development Corporation, Two World Trade Center, New York, New York 10048-0752, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Nestle Foods Corporation Plant in Freehold, New Jersey. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, and an automatic extraction steam turbine generator. Thermal energy recovered from the facility will be used for food processing in the plant. The net electric power production capacity of the facility will be 99,562 KW. The primary source of energy will be natural gas. Construction of the facility will begin in the first quarter of 1989.

Comment date: June 9, 1988 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10362 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 619-005; Project No. 619-006]

Pacific Gas & Electric Co.; Availability of Environmental Assessment

April 27, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of major license for the proposed Grizzly Development of the Bucks Creek Project No. 619 and has prepared an Environmental Assessment (EA) for the proposed development. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed development and has concluded that approval of the proposed development, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's office at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10373 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9730-001]

Summit Hydropower; Surrender of Preliminary Permit

May 4, 1988.

Take notice that Summit Hydropower, Permittee for the proposed Whitman River Water Power Project No. 9730, has requested that its preliminary permit be terminated. The permit was issued on April 18, 1986, and would have expired March 31, 1989. The project would have been located on the Whitman River in Worcester County, Massachusetts. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on March 31, 1988, and the preliminary permit for Project No. 9730 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10374 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9175-001; Project No. 2756-000]

Rivers Electric Co., Inc., the Burlington Electric Light Department & Winooski One Partnership; Availability of Environmental Assessment and Finding of No Significant Impact

May 6, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses listed below and has assessed the environmental impacts of the proposed developments.

LICENSES

Project No.	Project name	State	Water body	Nearest town or county	Applicant
9175-001	Eddyville Falls	NY	Rondout Creek	Kingston	Rivers Electric Co., Inc.
2756.000	Chase Mill	VT	Winooski River	Winooski	Burlington Electric Lt Dept & Winooski One Partnership.

Environmental Assessments (EA's) were prepared for the above-proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Public Reference Room, Room 1000, 825 N. Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10375 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-126-000]

Colorado Interstate Gas Co.; Filing of Compliance Purchased Gas Adjustment Clause Provision Pursuant to Order Nos. 483 and 483-A

May 4, 1988.

Take notice that Colorado Interstate Gas Company (CIG) on April 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement the provisions of Order Nos. 483 and 483-A. The tariff sheets listed in Appendix A to the filing are to be effective June 1, 1988.

CIG states that such tariff sheets revise its existing PGA Clause where required to implement the provisions of Order Nos. 483 and 483-A.

CIG further states that on April 12, 1988, the Commission issued an order in Docket No. RP88-44-000 granting CIG's request for waiver of the transitional May 1, 1988 PGA filing and CIG's regular June 1, 1988 quarterly PGA filing under Order Nos. 483 and 483-A. Thus, CIG states it has reflected no change in currently effective rates on Thirty-Fourth Revised Sheet Nos. 7 and 8, but has conformed its Statement of Rates effective January 1, 1988 to the new format specified in § 154.305(a)(1) of the Commission's Regulations implementing Order 483.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

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 sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10363 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-33-000]

El Paso Natural Gas Co.; Proposed Changes in FERS Gas Tariff

May 4, 1988.

Take notice that El Paso Natural Gas Company ("El Paso"), on April 29, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A. The proposed changes would decrease rates for

jurisdictional gas service rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's First Revised Volume No. 1 Tariff.

El Paso states that by Order No. 483, *et seq.*, issued at Docket No. RM86–14–000, the Federal Energy Regulatory Commission ("Commission") amended its regulations governing the procedures by which a pipeline company, using the PGA clause option, may pass through changes in the cost of purchased gas to its jurisdicational customers. Among other things, the amended Regulations require companies to make comprehensive annual filings, comprised of a Surcharge Adjustment, and a projected gas costs or "Current Adjustment" which is to be updated on a quarterly basis. El Paso's annual filings are to be effective each July 1, with quarterly adjustments on October 1, January 1 and April 1. El Paso states that the tendered tariff sheets, submitted in compliance with the Commission's Regulations, provide for a decrease attributable to the PGA of $0.3989 per dth in El Paso's currently effective rates.

El Paso requested that the Commission grant such waiver of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective July 1, 1988, as provided for in the Commission's Regulations.

Copies of the filing were served upon El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1988. 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 in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10364 Filed 5–9–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–121–000 and TQ88–1–26–000]

Natural Gas Pipeline Co. of America; Changes in Rates

May 4, 1988.

Take notice that on April 29, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, (Tariff) the tariff sheets listed on attached Appendix A to be effective June 1, 1988.

Natural states the purpose of the filing is to implement a revised Section 18 Purchased Gas Cost Adjustment (PGA) of the General Terms and Conditions of its Tariff. The revised Procedures incorporate §§ 154.301 through 154.310 of the Commission's Regulations. The filing also reflects Natural's regular Quarterly Adjustment under the revised procedures.

Natural states that the overall effect of the Quarterly adjustments when compared to its last semi-annual PGA filing effective March 1, 1988, is an increase in the DMQ–1 demand rate of $0.47 and decreases in the DMQ–1 entitlement and commodity rates of $(.0211) and (31.66)¢, respectively. The annual effect of these rate changes is a net decrease of $(81.3) million.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with of §§ 385.214 and 385.211. All such motions or protests must be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

Seventy-fourth Revised Sheet No. 5
Thirty-ninth Revised Sheet No. 5A
Ninth Revised Sheet No. 116
Sixth Revised Sheet No. 117
Ninth Revised Sheet No. 118
Fifteenth Revised Sheet No. 119
Thirteenth Revised Sheet No. 120
Thirteenth Revised Sheet No. 120A
Tenth Revised Sheet No. 121
Third Revised Sheet No. 121A
Second Revised Sheet No. 121B
Second Revised Sheet No. 121C
Second Revised Sheet No. 121D
Original Sheet No. 121E
Original Sheet No. 121F

[FR Doc. 88–10365 Filed 5–9–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM88–1–59–000]

Northern Natural Gas Co. Alaskan Natural Gas Transportation System (ANGTS); Semi-Annual Rate Adjustment

May 4, 1988.

Take notice that on April 29, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Federal Energy Regulatory Commission (Commission) its regularly scheduled semi-annual ANGTS rate adjustment, including the following tariff sheets, to be effective July 1, 1988 pursuant to Northern's F.E.R.C. Gas Tariff:

Third Revised Volume No. 1

Forty-Seventh Revised Sheet No. 4a
Fifty-Seventh Revised Sheet No. 4b
Twenty-Fifth Revised Sheet No. 4b.1
Fourth Revised Sheet No. 4g.2

Original Volume No. 2

Sixty-Fourth Revised Sheet No. 1c

In this filing, it is stated that, Northern Border Pipeline's estimated transportation costs for Northern Natural for 1988 have increased causing an increase in Northern's rates. Therefore, Northern is required to change its rates pursuant to paragraph 21.4 of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Paragraph 4.4 of its F.E.R.C. Gas Tariff, Original Volume No. 2.

The Company states that copies of the filing have been mailed to each of its Gas Utility customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10366 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-117-000 and TQ88-1-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on April 29, 1988, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to conform to the requirements of Commission Order Nos. 483 and 483-A. Northern is establishing a base average gas purchase rate of $2.2480 per MMBtu and a surcharge adjustment rate of $.0102 per MMBtu. Northern further intends to use its Flexible PGA to reflect the current market conditions on June 1, 1988 as necessary. Northern does not propose any changes to its D1 or D2 demand rates in this filing.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before May 11, 1988. 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 in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10367 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-63-002]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

May 4, 1988.

Take notice that on April 28, 1988, Northwest Pipeline Corporation ("Northwest") in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on March 25, 1988 in Docket No. RP88-63, submitted the following tariff sheets to be a part of its FERC Gas Tariff:

First Revised Volume No. 1

Substitute First Revised Sheet No. 119

Original Volume No. 1-A

Substitute First Amended First Revised Sheet No. 342
Substitute Original Sheet No. 414-B
Substitute Second Revised Sheet No. 415
Substitute First Revised Sheet No. 418

Northwest states the purpose of this filing is to revise the above listed tariff sheets to comply with the following conditions set forth in the March 25, 1988 order, and to otherwise conform its tariff to the Commission's January 19, 1988 order in Docket No. CP86-578-000.

(A) All tendered tariff sheets will be effective as of February 10, 1988. Northwest will refund all excess revenues collected for the period beginning February 10, 1988 to the date it reflects the lower sales rate in its customer's bills.

(B) Any language relating to capacity brokering has been deleted.

(C) Rate Schedule T-7 has been revised to indicate Northwest will offer alternate receipt points if capacity for firm transportation is not available at the receipt and delivery points requested.

(D) A take-or-pay affidavit will not be required as part of a shipper's transportation request; such affidavit will only be required at the time the contract is executed.

(E) Northwest has added operating conditions for storage service.

(F) Northwest shall bill all shippers on the basis of actual volumes delivered.

A copy of this filing is being served on all parties of record in this Docket and on all jurisdictional customers and affected state commissions.

Any persons desiring to be heard or 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 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1988. 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 Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10368 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

Docket Nos. RP88-114-000 and TQ88-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on April 29, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Eleventh Revised Sheet No. 10
Second Substitute Eleventh Revised Sheet No. 10A
First Revised Sheet No. 106
Second Revised Sheet No. 107
Substitute First Revised Sheet No. 108
Substitute First Revised Sheet No. 109
Substitute First Revised Sheet No. 110
Second Revised Sheet No. 111
Third Revised Sheet No. 112
Fourth Revised Sheet No. 113
Original Sheet No. 113A
Original Sheet No. 113B
Original Sheet No. 113C
Original Sheet No. 113D
Second Revised Sheet No. 114

Second Substitute Eleventh Revised Sheet Nos. 10 and 10A are being filed to reflect changes in purchased gas costs pursuant to the revised Purchased Gas Cost Adjustment clause of Texas Gas's FERC Gas Tariff. The remaining sheets are being filed to reflect revisions to Texas Gas's Purchased Gas Cost Adjustment clause to conform to FERC Order Nos. 483 and 483-A, issued November 10, 1987, and March 2, 1988, respectively, codified in §§ 154.301 through 154.310 of the Commission's Regulations. The sheets are proposed to be effective June 1, 1988.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules

and Regulations. 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. All such protests or motions should be filed on or before May 11, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc.88-10369 Filed 5-9-88: 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-24-002]

U-T Offshore System; Proposed Changes in FERC Gas Tariff

May 4, 1988.

Take notice that on April 29, 1988, U-T Offshore System ("U-TOS") tendered for filing, pursuant to Section 4 of the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 2
Ninth Revised Sheet No. 4
Original Sheet Nos. 8 through 28; and, 70 through 75

U-TOS states that this filing is made in accordance with the Commission's Order issued on April 6, 1988 approving, with modifications, the Stipulation and Agreement filed by U-TOS on January 13, 1988, in Docket No. RP87-24-000. In addition to reflecting the agreed upon reduction in rates, the filed sheets establish an Interruptible Transporation Service under Rate Schedule IT.

U-TOS requests that the above-described tariff sheets be made effective on May 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on, or before May 11, 1988. 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. All such protests or motions should be filed on or before May 11, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10370 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-135-000]

Valley Gas Transmission, Inc.; Filing of Revised Tariff Sheets

May 4, 1988.

Take notice that on April 29, 1988, Valley Gas Transmission, Inc. (Valley), 9311 San Pedro Avenue, Suite 1200, P.O. Box 795099, San Antonio, TX 78279-5099, tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff.

Original Volume No. 1

Second Revised Sheet Nos. 177-180
First Revised Sheet Nos. 180A and 180B

Valley states that these tariff sheets, which are proposed to become effective on June 1, 1988, are being filed as a result of the Commission's letter order of April 12, 1988 in Docket No. RP88-79-000, which directed Valley to implement a revised PGA clause pursuant to Order No. 483. Valley states that these sheets comply with that directive. Valley further states that this filing has been served on all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary,

[FR Doc. 88-10371 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-130-000]

Western Transmission Corp.; Proposed Changes

May 4, 1988.

Take notice that Western Transmission Corporation (Western) on April 29, 1988, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Thirty-first Revised Sheet No. 3-A, superseding
Second Substitute Thirtieth Revised Sheet No. 3-A.

Western proposes no increase in the monthly charges for purchased gas to Colorado Interstate Gas Company (CIG), Western's sole jurisdictional customer, in accordance with the provisions of Section 18 of the General Terms and Conditions of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is June 1, 1988.

Copies of this filing have been served on CIG.

For reasons set forth in its filing, Western also requests a waiver of the Commission's new Purchased Gas Cost Adjustment (PGA) regulations, as set forth in Order Nos. 483, *et seq.*

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 11 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-10372 Filed 5-9-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3378-3]

Science Advisory Board, Steering Committee of the Research Strategies Subcommittee; Open Meeting—May 16, 1988

Under Pub. L. 92-463, notice is hereby given that an emergency meeting has been scheduled of the Steering Committee of the Research Strategies Subcommittee of the Science Advisory Board. They will meet from 8:00 a.m. to 5:00 p.m. on May 16th at the Quality Inn Capitol Hill, 415 New Jersey Avenue, Washington, DC 20001 in the Executive Conference Room.

The purpose of the meeting is to enable top level EPA staff to meet with the Subcommittee members to complete their work from the April 25th meeting to further review the five workgroup draft reports including: Ecological Effects, Risk Reduction, Exposure Assessment, Health Effects and Sources, Transport and Fate.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 or Joanna Foellmer by May 13, 1988.

Date: May 5, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-10470 Filed 5-9-88; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before June 24, 1988. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, Room 386, 2401 E Street, NW., Washington, DC 20507; Telephone (202) 634-1932.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-6880.

Type of Request: Extension (No change).

Title: Local Union Report EEO-3.

Form Number: EEOC Form 274.

Frequency of Report: Annually.

Type of Respondent: Business/other institutions.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Referral Unions with 100 or more members.

Responses: 3,000.

Reporting Hours: 4,500.

Federal Cost: $21,600.

Applicable under section 3504(h) of Pub. L. 96-511: Not applicable.

Number of Forms: 1.

Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 88-10343 Filed 5-9-88; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Jay Daugherty et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Jay Daugherty, David Frantze, Douglas Linder, Stephen Martin, Roger Potter; Kirksville, MO.	BPH-870611MA	88-182
B. Irvin Davis; Kirksville, MO.	BPH-870615MF	
C. Dr. Irene Hickman; Kirksville, MO.	BPH-870615MS	
D. Northern Missouri Christian Broadcasting, Inc.; Kirksville, MO.	BPH-870615MX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Air Hazard, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services, Division, Mass Media Bureau.

[FR Doc. 88-10312 Filed 5-9-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, 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.: 224–200115.

Title: Port of Salem Lease Agreement.

Parties:

City of Salem Municipal Port Authority

Salem Marine Terminal Corporation (Salem)

Synopsis: The proposed agreement provides that the City shall lease to Salem certain real property and improvements situated in the boundaries of the City of Salem and State of New Jersey.

Agreement No.: 224–002758–004.

Title: Port of Oakland Preferential Assignment Agreement.

Parties:

City of Oakland

American President Lines, Ltd. (APL)

Synopsis: The proposed agreement amend the basic agreement to provide for APL's payment to the Port of additional compensation equal to one-half of certain facility improvement payments.

Agreement No.: 224–002758–004.

Title: Port of Oakland Preferential Assignment Agreement.

Parties:

City of Oakland

American President Lines, Ltd. (APL)

Synopsis: The proposed agreement amends the basic agreement to provide for APL's payment to the Port of additional compensation equal to one-half of certain improvement payments.

Agreement No.: 224–010946–004.

Title: Brazos River Navigation District Terminal Agreement.

Parties:

Brazos River Harbor Navigation District

American Rice, Inc.

Synopsis: The agreement amendment changes American Rice, Inc. from an agricultural cooperative to a publicly-held corporation and releases American Rice, Inc., the agricultural cooperative, from obligations under the agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88–10337 Filed 5–9–88; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. 4–88]

Puget Sound Tug & Barge Co.; Application for Section 35 Exemption

Notice is hereby given that Puget Sound Tug & Barge Company ("Puget") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a. Specifically, Puget seeks an order from the Federal Maritime Commission exempting from the tariff filing and rate regulatory requirements of sections 2, 3 and 4, of the Intercoastal Shipping Act of 1933, 46 U.S.C. app. 844, 845 and 845a, and sections 16, 17 and 18 of the Shipping Act, 1916, 46 U.S.C. app. 815, 816 and 817, all "transportation service performed by it during 1988 and 1989 for the carriage of general cargo in non-self-propelled barges in tow of towing vessels on approximately six one-way voyages annually from Seattle, Washington on the one hand to, on the other, the coast of Alaska above the Arctic Circle at a point * * * near the village of Kivalina, via the Gulf of Alaska, the Bering Sea, and the Chuckchi Sea."

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than May 23, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on counsel for Puget: William H. Fort, Esq., Kominers, Fort & Schlefer, 1401 New York Avenue NW., Suite 1200, Washington, DC 20005.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW. Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 88–10338 Filed 5–9–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

May 3, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations recieved, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OBM number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into

OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. 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)

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. *Report title:* Quarterly Report of Condition for a New York State Investment Company and its Domestic Subsidiaries
Agency form number: FR 2886A.
OMB Docket number: 7100–0207.
Frequency: Quarterly.
Reporters: New York State Investment Companies.
Annual reporting hours: 864.
Small businesses are not affected.

General Description of Report

This report is authorized by Federal law (12 U.S.C. 3106(b)(1) and 353 *et seq.)* and by state law [New York State Banking law 513]. Data from Schedule M are given confidential treatment (5 U.S.C. 552(b)(8)).

This report provides data used by the New York State Banking Department for supervisory purposes, and by the Federal Reserve in constructing various statistical series, including money stock, bank credit, assets and liabilities of domestically chartered and foreign related banking institutions, nondeposit sources of funds for commercial banks, and flow of funds accounts.

Board of Governors of the Federal Reserve System, May 3, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88–10287 Filed 5–9–88; 8:45 am]
BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Britton & Koontz Capital Corp.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Britton & Koontz Capital Corporation Employee Stock Ownership Stock Bonus Plan,* Natchez, Mississippi; to acquire an additional 4.47 percent of the voting shares of Britton & Koontz Capital Corporation, Natchez, Mississippi, and thereby indirectly acquire Britton & Koontz First National Bank, Natchez, Mississippi.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Security Bank Holding Company Employee Stock Ownership Trust, Coos Bay, Oregon; to acquire an additional 7.6 percent of the voting shares of Security Bank Holding Company, Coos Bay, Oregon, and thereby indirectly acquire Security Bank, Coos Bay, Oregon.

Board of Governors of the Federal Reserve System, May 4, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88–10288 Filed 5–9–88; 8:45 am]
BILLING CODE 6210–01–M

Canadian Imperial Bank of Commerce, Toronto, Canada; Application To Engage in Various Financial Advisory and Securities Activities

Canadian Imperial Bank of Commerce, Toronto, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and §§ 225.23(a) (2) and (3) of the Board's Regulation Y (12 CFR § 225.23(a) (2) and (3)), to acquire Wood Gundy Corp., New York, New York ("Company"), and thereby engage in:

(1) Providing brokerage and investment advisory services to institutional customers and Company's affiliates on a combined basis;

(2) Providing advice in connection with merger, acquisition, divestiture and finanical transactions, including public and private financings, loan syndications, interest rate swaps, interest rate caps and similar transactions to affiliated and unaffiliated financial and nonfinancial institutions; and

(3) Providing financial advice to the Canadian federal, provincial and municipal governments and their agents, such as with respect to the issuance of their securities in the U.S.

Applicant has also applied to engage in providing discount brokerage services together with related securities credit services pursuant to the Board's Regulation T (12 CFR Part 221) and incidental activities such as offering custodial accounts and cash management services and securities borrowing and lending for affiliates and institutional customers; providing portfolio investment advice and research to affiliates and institutional customers; furnishing general economic information and advice, general economic statistical forecasting services and industry studies to affiliates and institutional customers; and underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("bank-eligible securities"). The Board has previously found these latter activities to be generally permissible for bank holding companies. 12 CFR 225.25(b)(15), (4)(iii), (4)(iv) and (16) respectively. Applicant has also proposed to engage in futures, forward and options contracts on bank-eligible securities for hedging purposes in accordance with 12 CFR 225.142.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC,* 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); and Bank of Nova Scotia, 74 Federal Reserve Bulletin 249 (1988). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n* v. *Board of Governors,* 821 F.2d 810 (D.C. Cir. 1987), *cert. denied,* 108 S. Ct. 697 (1988).

Applicant has applied to conduct its brokerage activity in accordance with substantially all of the limitations approved by the Board in *Bank of Nova Scotia.* Unlike *Bank of Nova Scotia,* Applicant has proposed that Company be permitted to exchange confidential information with Applicant and its bank affiliates regarding their customers with such customers' consent. In addition, Applicant has committed that Company

will not transmit advisory or research recommendations *which are not generally available to its customers* to the commercial lending department of any affiliate. In *Bank of Nova Scotia*, this commitment was extended to all advisory or research recommendations. In the case of any office established in a building in which Applicant or any affiliated bank of Applicant also has offices, *only areas to which the public has access*, rather than all areas as in *Bank of Nova Scotia*, will be separate from the areas utilized by Applicant or any affiliated bank of Applicant. Finally, Applicant has committed that no officer or employee of Company will serve as an officer or employee of Applicant or any affiliated U.S. bank of Applicant and no director of Company will also be a director of Applicant or any affiliated U.S. bank of Applicant. Applicant further commits that no officer or employee of Applicant that serves as a director of Company will at the same time serve as an officer, employee or director of any "insured bank" subsidiary of Applicant (as defined in section 3(h) of the Federal Deposit Insurance Act) or as an officer or employee of a U.S. branch or agency of Applicant. In *Bank of Nova Scotia*, Applicant committed that Company would not have officer or director interlocks with its U.S. bank subsidiaries, branches or agencies.

Applicant has also proposed to engage in providing advice in connection with financing transactions for affiliated and unaffiliated financial and nonfinancial institutions. The Board has previously approved the provision of such advice to unaffiliated financial and nonfinancial institutions. *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987).

With regard to Applicant's proposed activity of providing financial advice to Canadian federal, provincial and municipal governments and their agents, the Board has previously approved providing financial advice to Canadian federal, provincial and municipal governments. *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988).

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 26, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10291 Filed 5-9-88; 8:45 am]

BILLING CODE 6210-01-M

E.N.B. Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Cos.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *E.N.B. Holding Company, Inc.*, Ellenville, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Ellenville National Bank, Ellenville, New York. Comments on this application must be received by May 25, 1988.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Hancock Bancorp, Inc.*, Hawesville, Kentucky; to acquire 100 percent of the voting shares of Breckinridge Bank, Cloverport, Kentucky.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10289 Filed 5-9-88; 8:45 am]

BILLING CODE 6210-01-M

Heritage Financial Services; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Heritage Financial Services*, Blue Island, Illinois; to engage *de novo* through its subsidiary, Heritage Trust Company, Blue Island, Illinois, in trust company functions including those of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10290 Filed 5-9-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vital and Health Statistics National Committee; Open Meeting

Action: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics.

Time and Date: 1:00 p.m.-4:30 p.m.—June 1, 1988; 9:00 a.m.-5:00 p.m.—June 2, 1988; 9:00 a.m.-1:30 p.m.—June 3, 1988.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Committee to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: May 4, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-10319 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement for Nurse Practitioner and Nurse Midwifery Grants Section 822(a), Public Health Service Act

In Federal Register Document 88-6522, page 9813, issue of Friday, March 25, 1988, the incorrect review criteria appear on page 9814. Column 1, Review Criteria, Items 1-3.

Correction

The following criteria will be used in the review of applications for section 822(a), PHS Act:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in Section 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;

3. The capability of the applicant to carry out the proposed project;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the project period.

Dated: May 4, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-10315 Filed 5-9-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Birch Creek Draft Environmental Impact Statement

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102 (2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions of the Birch Creek wastershed which drains into Birch Creek National Wild River.

The Birch Creek watershed is located approximately 70 miles northeast of Fairbanks, Alaska and covers nearly 1.4 million acres of land. Much of the study area is located within the Steese National Conservation Area in the Yukon-Tanana upland physiographic province. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, water quality and subsistence uses.

A proposed action and four alternatives incorporating management options ranging from emphasizing regulations under 43 CFR Part 3809 to a "no action" alternative are presented. The proposed action evaluates BLM's surface management practices in the affected wastershed.

Environmental consequences of all the alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from approximately May 16, 1988 to July 11, 1988. Comments received after July 11, 1988 may be too late to be integrated into the Final EIS (FEIS). Public meetings will be held to take comments on both the Birch Creek DEIS and the Beaver Creek DEIS. In compliance with section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), subsistence hearings for the Birch Creek DEIS will immediately follow the public meetings. The meetings will be held June 1, 1988 at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska; June 2, 1988 at Ryan Junior High School, 915 Airport Way, Fairbanks, Alaska; June 13, 1988 at the Tribal Hall, Beaver Village, Alaska; June 14, 1988 at the Cultural Center, Fort Yukon, Alaska; June 20, 1988 at the Community Office, Birch Creek Village, Alaska; and June 21, 1988 at Central School, Central, Alaska. All meetings will run from 7:00 p.m. to 9:00 p.m.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworksy—Project Manager, or Page Spencer—Technical Coordinator, at (907) 271-3114.

Lester K. Rosenkrance,

Acting State Director.

[FR Doc. 88-10317 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-08-4322-15; ID-030-08-4830-12]

Idaho Falls District Grazing Advisory Board and Idaho Falls District Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls Grazing Advisory Board and Advisory Council.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Tuesday, June 14, 1988. The Idaho Falls District Advisory Council will meet Tuesday, June 21, 1988. Notice of these meetings are in accordance with Pub. L. 92–463. The meetings will begin at 8:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meetings are open to the public; public comments will be accepted at each meeting from 8:00 a.m. to 8:30 a.m.

The agenda for the Grazing Advisory Board includes a float along a portion of the South Fork of the Snake River. During the float, various issues associated with public land management along the Snake River corridor will be discussed. Specific agenda items include: Livestock grazing, Bald Eagle management, the Snake River Activity/Operations Plan, erosion and watershed problems and water rights.

The agenda for the Advisory Council includes a field tour of the St. Anthony sand dune complex and of the Burnside Butte prescribed burn. Specific agenda items include: Egin-Hamer Road, ORV easement acquisition, the Dunes Tiger Beetle and interim management on the St. Anthony sand dunes WSA. There will also be a discussion on the Crystal Ice Caves and prescribed burning practices.

Persons interested in attending either of these meetings are welcome but must provide their own transportation. Detailed minutes of the Board and Council meetings will be maintained in the District office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Public Affairs Specialist, Telephone (208) 529–1020

Dated: May 2, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88–10299 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–GG–M

[WY–920–08–4111–15; W–84956]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–84956 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16–23 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–84956 effective August 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88–10298 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–22–M

[ES–970–08–4111–11–2411; ALES 30353]

Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of terminated oil and gas lease ALES 30353.

SUMMARY: Terminated oil and gas lease ALES 30353 located in Escambia County, Alabama T. 34 N., R. 4 W., containing 119.76 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Hale at (703) 274–0153.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease ALES 30353 terminated automatically by operation of law on May 1, 1987 (30 U.S.C. 188).

A petition for reinstatement of ALES 30353 was filed by William L. White (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all the following requirements for reinstatement:

(a) $500, Reimbursement of Departmental Administrative Cost

(b) $160, Back Rental Payments

(c) $136, Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent beginning June 1, 1987.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 88–10300 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–GJ–M

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Chukchi Sea
Oil and Gas Lease Sale 109

AGENCY: Minerals Management Service

ACTION: Technical Correction Notice

On Wednesday, April 20, 1988, at 53 FR 13080, the Notice for the Chukchi Sea Outer Continental Shelf Oil and Gas Lease Sale 109 was published in the Federal Register.

A typing error occurred on page 13088 of the Notice in the block list for Stipulation No. 7-Density Restriction for Protection of Bowhead Whales from Potential Effects of Noise.

The revised block listing for Official Protraction Diagram NR 3-4 is provided below with the technical correction underlined:

Official Protraction Diagram	Blocks
NR 3-4	243-244, 284, 327-328, 370-372, 412-416, 454-455, 497-499, 539-543, 581-587, 624-631, 667-675, 710-719, 753-763, 796-807, 839-851, 882-895, 925-939, 969-982

All other terms and conditions in the April 20, 1988, Notice remain unchanged.

Wm D. Bettenberg

Director, Minerals Management Service
William D. Bettenberg

5/5/88
Date

[FR Doc. 88-10422 Filed 5-9-88; 8:45 am]
BILLING CODE 4310-MR-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5391, Block 299, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located as Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 29, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–10292 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Federal Unit Agreement No. 14–08–0001–8850, has submitted a DOCD describing the activities it proposes to conduct on the Main Pass Block 299 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Bongiovanni; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2650.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: May 2, 1988

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–10923 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–MR–M

Other Continental Shelf Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc., Unit Operator of the West Delta—Grand Isle Federal Unit Agreement No. 14–08–001–2454, has submitted a DOCD describing the activities it proposes to conduct on the West Delta—Grand Isle Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on April 22, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736–2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: May 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10294 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6573, Block 188, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on April 21, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: W. Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 21, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10295 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4739, Block 119, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on April 29, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: May 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10296 Filed 5-9-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 30, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 25, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALABAMA

Mobile County

Mt. Vernon vicinity, *Mount Vernon Arsenal—Searcy Hospital Complex*, Coy Smith Hwy. ½ mi. W of AL 43

ARKANSAS

Faulkner County

Springfield vicinity, *Springfield Bridge*, CR 222 at Cadron Creek

CONNECTICUT

Fairfield County

Norwalk, *Haviland and Elizabeth Streets—Hanford Place Historic District*, Roughly bounded by Haviland St., Day St., Hanford Pl., and S. Main St.

New Haven County

Waterbury, *Overlook Historic District*, Roughly bounded by Hecla St., Farmington and Columbia Blvd., Cables Ave. and Clowes Terr., Lincoln and Fiske Sts.

New London County

Stonington, *Mechanic Street Historic District*, Roughly bounded by W. Broad St., Pawcatuck River, Cedar St., and Courtland St.

HAWAII

Honolulu County

Nihoa Island Archeological District

Necker Island Archeological District

KENTUCKY

Franklin County

Bridgeport vicinity, *Julian Farm*, S side US 60

Nelson County

Bardstown vicinity, *Culpeper*, N side of Springfield Rd./US 150

MINNESOTA

Beltrami County

Bemidji, *Beltrami County Courthouse*, Beltrami Ave. and Sixth St.
Bemidji, *Great Northern Depot*, Minnesota Ave.

NEW JERSEY

Atlantic County

Folsom Borough, *Jacobus Evangelical Lutheran Church*, Mays Landing Rd. and NJ 54

Burlington County

Pemberton Borough, *Pemberton Historic District*, Roughly bounded by Budd Ave., Budd's Run, Egbert and Cedar Rd., and Rancocas Creek and NJ Centeral Power and Light Co.

Middle County

New Brunswick, *King Block*, 316–324 Memorial Pkwy.

Ulster County

Stone Ridge, *Main Street Historic District*, US 209

OHIO

Cuyahoga County

Cleveland, *East Eighty-Ninth Street Historic District*, E. Eighty-Ninth St. roughly between Chester and Hough Aves.
Cleveland, *Notre Dame Academy*, 1325 Ansel Rd.
Cleveland, *Olney, Charles, House and Gallery*, 2241–2255 W. Fourteenth St.
Cleveland, *Quad Hill*, 7500 Euclid Ave.

Franklin County

Hilliard, *Hilliard Methodist Episcopal Church*, 4066 Main St.
Hilliard, *Merryman, Dr. James, House*, 5232 Norwich St.
Hilliard, *Odd Fellows Hall*, 4065 Main St.

Montgomery County

Dayton, *Schriber, Hyman, Building*, 306–308 Washington St.

Stark County

Canton, *Frances Apartment Building*, 534 Cleveland Ave., S.W.

PUERTO RICO

Arecibo County

Arecibo, *Calle Gonzalo Marin No. 61*, Calle Gonzalo Marin No. 61

Bayamon County

Bayamon, *Edifio Vela*, Dr. Veve and Palmer Sts.
Bayamon, *Farmacia Serra*, Degetau No. 11

Mayaguez County

Mayaguez, *Rivera, Nazario, Residencia*, Post St. No. 105
Mayaguez, *Baunin, Baldomero, Residence*, Calle Ramos Antonini No. 62

Ponce County

Ponce, *Nebot, Zaldo de, Residencia*, Calle Marina No. 27
Ponce, *Salazar—Candal House*, Calle Isabel No. 53

Yauco County

Yauco, *Casa Agostini*, Calle San Rafel
Yauco, *Logia Masonica Hijos de la Luz*, Avenida Jose C. Barbosa
Yauco, *Teatro Ideal*, Calle Comerio

SOUTH CAROLINA

Lancaster County

Lancaster vicinity, *Wade—Beckham House*, SC 200

WEST VIRGINIA

Kanawha County

Charleston, *Charleston City Hall*, Court and Virginia Sts.

Randolph County

Mill Creek vicinity, *See—Ward House*, US 219/250

Wetzel County

New Martinsville, *New Martinsville Downtown Historic District*, Main St., Washington St., and Monroe Alley
New Martinsville, *North Street Historic District*, North St. between Florida and the railroad tracks.

[FR Doc. 88–10376 Filed 5–9–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–98 (Sub–No. 1X)]

Exemption; Claremont & Concord Railway Co.—Exemption—Abandonment in the City of Claremont, NH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.5-mile line of railroad in or near the City of Claremont, NH, (1) from a point of switch on Tyler Street to the end of tracks just west of Plains Road, and (2) from a point just east of Pleasant Street and to the end of track along Washington Street.

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.

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). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective June 4, 1988 (unless stayed pending reconsideration and provided no formal expression of intent to file an offer of financial assistance has been received). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by May

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, ——— I.C.C. 2d ———, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

15, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 25, 1988 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: Robert L. Calhoun, 1025 Connecticut Ave., NW., Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 10, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 4, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10336 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31255]

Exemption; Southern Railway Co.—Merger Exemption—Carolina and Northwestern Railway Co.

The Southern Railway Company (Southern) and the Carolina and Northwestern Railway Company (Carolina) have filed a notice of exemption to merge Carolina into Southern on or about May 15, 1988.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). Southern controls Carolina through 100 percent stock ownership. Carolina owns 14.29 and 15.09 percent, respectively, of the Norfolk and Portsmouth Belt Line Railroad Company and the Atlantic and North Carolina Railroad Company. Carolina also leases the properties of several companies including the High Point, Randleman, Ashboro and Southern Railroad Company (HPRAS) and the Yadkin Railroad Company (Yadkin). The Norfolk and Western Railway Company (NW) is also an affiliate of Southern and Carolina. The proposed transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction will be effected by merger of Carolina into Southern, with Southern, which is incorporated under the laws of the Commonwealth of Virginia, being the survivor. Southern will become the successor to Carolina as lessee of the properties of HPRAS and Yadkin, and as lessor of the former Danville and Western Railway Company properties now leased to NW.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, One Commercial Place, Norfolk, VA 23510.

Decided: April 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–10335 Filed 5–9–88; 8:45 am]

BILLING CODE 7035–01–M

JUSTICE DEPARTMENT

Federal Bureau of Investigation

Advisory Policy Board; National Crime Information Center

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on May 25–26, 1988, from 9 a.m. until 5 p.m. at the Palm Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401.

The major topic to be discussed will be the architecture of the future NCIC System as proposed in the NCIC 2000 Study. Other topics to be discussed include the proposed automated interfaces between the Canadian Police Information Center and NCIC and the SENTRY System and NCIC and the status of the FBI's Automated Identification System.

Approximately 90 percent of this meeting will be devoted to discussions related to a presentation by the MITRE Corporation which will include information of a procurement sensitive nature which is necessary for prudent decision making. Vendor specific data will be presented in proposed solution scenarios. Information that MITRE will be presenting will be the proprietary information of MITRE and the Federal Bureau of Investigation. Releasing vendor specific data in a public forum would be prejudicial to those companies cited in the scenarios. Due to the nature and content of the discussions and MITRE's presentation, that portion of the meeting will be closed to the public pursuant to Title 5 U.S.C. 552b subsections (c)(4) and (c)(9)(B).

The remaining portion of the meeting will be open to the public, with approximately 25 seats available for the seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–342–2606.

Date: May 3, 1988.

William S. Sessions,

Director.

[FR Doc. 88–10304 Filed 5–9–88; 8:45 am]

BILLING CODE 4410–02–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) 523-6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the 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.

New

Pension and Welfare Benefits Administration
August 1988 CPS Retiree Health Insurance Benefits Supplement
On occasion
Individuals and households
57,000 responses, 2,300 hours, 1 form

The information collected by the survey will measure the extent to which employers provide health insurance coverage to persons over 39 years of age, with particular emphasis on continued coverage for retirees and their spouses.

Revision

Employment and Training Administration
JTPA Financial Status Report and JTPA Summer Performance Report 1205-0200; ETA 9009, ETA 9010
Quarterly; Annual
State or local governments
59 respondents; 1,917 burden hours; 2 forms

The information collected will be used to assess JTPA statewide programs and learn who is served by Title II-B Summer programs.

Participant and financial data will be used to respond to congressional oversight, to prepare budget requests based on more current data, and make annual reports to Congress per statute.

Extension

Occupational Safety and Health Administration
Ionizing Radiation
Businesses and other for-profit; Federal agencies or employees; Small businesses or organizations
210,000 respondents; 133,756 burden hours; 0 forms

This standard sets limits for employee exposure to ionizing radiation and requires employers to conduct monitoring and maintain records regarding employee exposure in the workplace.

Signed at Washington, DC, this 5th day of May, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-10385 Filed 5-9-88; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; American Silk Mill et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 20, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Silk Mill (Workers)	Orange, VA	5/2/88	2/26/88	20,634	Yarn & Fabric.
Bethlehem Steel Corp. (USWA)	Bethlehem, PA	5/2/88	4/18/88	20,635	Steel & Steel Products.
Cambridge Instruments, Inc. (ABGW)	Buffalo, NY	5/2/88	4/18/88	20,636	Scientific and Ophthalmic Instruments.
Durex (Company)	Union, NJ	5/2/88	4/21/88	20,637	Metal Stampings.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Edison Battery Products (Workers)	Belleville, NJ	5/2/88	3/21/88	20,638	Batteries.
Elite Wireline, Inc. (Company)	Skiatook, OK	5/2/88	3/18/88	20,639	Oil Well Services.
Forest Enterprises, Inc. (Workers)	USK, WA	5/2/88	4/11/88	20,640	Wood chips.
Gem Products, Inc. (Workers)	Rib Lake, WI	5/2/88	4/18/88	20,641	Women Shoes.
International Shoe Co. (UFCW)	Perryville, MO	5/2/88	4/11/88	20,642	Men's & Women's Footwear.
Jacobson Mfg. Co. Inc. (UAW)	Kenilworth, NJ	5/2/88	4/20/88	20,643	Industrial Fasteners.
Jacobson Mfg. Co. Inc. (UAW)	Union, NJ	5/2/88	4/20/88	20,644	Industrial Fasteners.
MKS Co., Inc. (Workers)	Elizabethton, TN	5/2/88	4/19/88	20,645	Synthetic Fiber.
Madison Garment Co. (Workers)	Madison Heights, VA	5/2/88	3/29/88	20,646	Nurses' Uniforms.
Mattel Toy, Co. (Workers)	Edison, NJ	5/2/88	4/18/88	20,647	Toys.
Morris Maier Shirt, Mfg. Co., Inc. (Workers)	Prescott, AZ	5/2/88	4/19/88	20,648	Ladies Blouses.
Pathfinder Mines Corp., Lucky McMins & Mill (USWA).	Riverton, WY	5/2/88	4/17/88	20,649	Uranium Oxide.
Pathfinder Mines Corp., Shirley Basin Mine & Mill (USWA).	Shirley Basin, WY	5/2/88	4/17/88	20,650	Uranium Oxide.
Pathfinder Mines Corp., Big Eagle Mine (USWA)	Jefferson City, WY	5/2/88	4/17/88	20,651	Uranium Oxide.
Westland Oil Development Corp. (Workers)	Montgomery, TX	5/2/88	4/21/88	20,652	Crude Oil & Gas.

[FR Doc. 88-10386 Filed 5-9-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20,339]

Beaumont Co. Morgantown, WV; Revised Determination on Reconsideration

The Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Beaumont Company, Morgantown, West Virginia. The notice was published in the Federal Register on April 4, 1988 (53 FR 10956).

The company claims, among other things, that the Department's survey was inadequate and submitted a new list of customers to be surveyed. The company provided new information showing that it met the decreased sales criterion in 1987.

On reconsideration, the Department found that the company had met the decreased sales criterion, in constant dollars, in 1987. The Department conducted a new survey of Beaumont's customers and found that customers accounting for over 100 percent of Beaumont's 1987 sales decline substantially increased their import purchases of glassware in 1987.

U.S. imports of glassware increased absolutely and relative to domestic shipments in 1986 compared to 1985 and absolutely in the first six months of 1987 compared to the same period in 1986.

The Morgantown plant experienced substantial worker separations in 1987 as well as reductions in hours worked per worker in 1987 compared to 1986.

Also, the Department of Commerce issued a certification to the Beaumont Company for firm adjustment assistance on August 4, 1986, F-WV-3493.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of glassware like or directly competitive with that produced at the Morgantown facility of the Beaumont Company contributed importantly to the decline in production and sales and to the total or partial separation of workers and former workers at the Morgantown plant of the Beaumont Company. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Beaumont Company, Morgantown, West Virginia who became totally or partially separated from employment on or after December 4, 1986, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of May 1988.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-10387 Filed 5-9-88; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Oakwood/Sabine Corp., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 25, 1988–April 29, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,517; Oakwood/Sabine Corp., Salyersville, KY
TA-W-20,488; Holley Automotive Div., Colt Industries, Inc., Bowling Green, KY
TA-W-20,515; DNE Corp., Brentwood, TN
TA-W-20,544; Windsor Records, Inc., Patterson, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,496; Varity International Services, Racine, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,527; U.S. Steel Mining Co., Inc., Decota Mining District Number Nine Preparation Plant, Decota, WV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,512; H.J. Jeffries Truck Line, Inc., Lone Star Terminal, Lone Star, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,511; Fun Footwear Co., West Hazelton, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,499; B.F. Goodrich Co., Aerospace & Defense Div., Akron, OH

U.S. imports of aircraft tires declined absolutely in 1987 compared to 1986.

TA-W-20,498; Anchor Hocking Corp., Consumer Products Div., Bremen, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,498A; Anchor Hocking Corp., Consumer Products Div., Canal Winchester, OH

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,474; Brownsville Mfg Co., Brownsville, KY

A certification was issued covering all workers of the firm separated on or after February 10, 1987 and before March 1, 1987.

TA-W-20,514; Mont-Hard (USA), Inc., New Braunfels, TX

A certification was issued covering all workers of the firm separated on or after February 22, 1987.

TA-W-20,537; Parsons Footwear, Inc., Parsons, WV

A certification was issued covering all workers in the Stitching Department engaged in production of fabric footwear separated on or after June 1, 1987.

TA-W-20,528; U.S. Steel Mining Co., Inc., Decota Mining District, Carbon Miscellaneous Unit, Decota, WV

A certification was issued covering all workers of the firm separated on or after March 4, 1987 and before October 15, 1988.

TA-W-20,515; DNE Corp., Brentwood, TN

A certification was issued covering all workers of the firm separated on or after February 24, 1987.

I hereby certify that the aforementioned determinations were issued during the period April 25, 1988–April 29, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 3, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-10404 Filed 5-9-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Young Scholars Projects for High Ability and High Potential Secondary School Students; Guidelines for Proposal Submission—FY 1989

Introduction

The Research Career Development Division of the Directorate for Science and Engineering Education (SEE) manages and coordinates a variety of programmatic efforts that aid young men and women in their development toward productive research and teaching careers in science, mathematics and engineering. Each effort, in its own way, focuses on a period in the lives of such students during which important career options must be analyzed and critical choices made. The designation of a field of specialization, selection of a graduate school, and choice of first employing organization are decisions made during periods targeted by current Division activities—periods when a modest amount of individual support can stimulate the development of careers that will strengthen the academic base and economic competitiveness of the United States.

One of the first decisions for young men and women is the choice of a career. For many of them the commitment to a career in the science, mathematics or engineering occurs during their secondary school years. In order to assist students in reaching an informed decision the National Science Foundation initiated in Fiscal Year 1988 the NSF Young Scholars Program, and announced the first awards in March, 1988. The National Science Foundation supported 68 projects which will provide enrichment experiences in science, mathematics and engineering for more than 2,500 high ability or high potential secondary school students each year. These awards were for one year with a second year of support contingent on NSF review of project activities and the availability of funds. We expect similar results in the 1989 competition.

The underrepresentation of women, minorities and the disabled at the advanced levels of science, mathematics and engineering deprives the Nation of much potential talent. Consequently the Foundation strongly encourages the full participation in this program by proposers and students from these groups.

Scope

Young Scholars projects should be designed to enhance participant knowledge of and exposure to science, mathematics and/or engineering as careers in order to facilitate their making realistic decisions based on the full range of career options available. Specifically, projects should provide participants with enrichment experiences in science and related fields which are not usually available to young students. Proposed activities should: (1) Enhance participant interest in science disciplines as possible career choices, (2) enable students to assess their potential skills and abilities in scientific disciplines, (3) increase their awareness of the academic preparation necessary for such careers, and (4) enhance their understanding of the career planning process and promote their confidence in career selection decisions.

Eligibility

There are three categories of eligibility for the Young Scholars program: submitting organization, activities and discipline focus. Proposals must meet the requirements in *all three categories* as outlined below to be eligible for consideration for funding.

Submitting Organization

Proposals may be submitted by colleges or universities, their associations or consortiums, scientific or professional societies whose members are primarily university faculty or researchers, and for-profit industries or other organizations which are engaged in significant advanced research efforts and have experience in interacting with students. Academic institutions are encouraged to combine efforts with industries with appropriate research facilities.

Secondary schools and school districts and other organizations with programs focused on secondary level education are not eligible to apply as submitting organizations.

Of course, any organization is welcome to collaborate in a project proposal developed and submitted by an eligible institution.

Activities

Required and eligible activities are discussed under Project Design. Tutorial or advanced placement courses are not eligible for support under these guidelines. Nor are activities which substantially duplicate secondary level education activities.

Discipline Focus

The *Grants for Research and Education in Science and Engineering* (NSF 83–57, rev. 11/87, p.1), specifies the fields of science and engineering which are eligible for support. Consistent with these guidelines, the Young Scholars program will not support activities focused on clinical or health science disciplines.

Any questions regarding a proposed project's eligibility under these categories should be referred to the program staff. Proposers may be asked to submit additional information regarding organizational or project characteristics. In some cases it may be necessary for NSF staff to review a formal proposal before a final and fair determination of eligibility can be made.

Project Design

Except where otherwise indicated, the Foundation intends to allow project directors maximum flexibility in designing their projects to address specific discipline areas and target groups. Particular attention should be paid to the following areas in the proposal:

Environment

The project should create a learning environment which challenges the students' intellectual abilities and encourages the development of the requisite skills for the use of these abilities. The environment also should foster close interaction among the participants and between the participants and science, mathematics, and engineering practitioners, including the project director and staff. The opportunities for interaction should be both formal and informal and the identification of mentors is strongly encouraged.

Activities

Proposers should keep in mind that students learn science best by *practicing science;* that is, by exercising their natural curiosity and engaging in scientific discovery. Projects may consist of any combination of activities involving instruction, problem solving, and exposure to the research environment and research methods that are appropriate for the targeted age group and the discipline focus. However, proposers should strive for balance between lecture, laboratory and field experiences. Activities should be strongly participatory, be intellectually challenging, and promote positive interaction among students and staff.

The Young Scholars program actively seeks innovative approaches to cost-effective enrichment activities for young students in all aspects. These include off-campus sites where scientific inquiry is especially intense, unusual designs for instruction and demonstration, and creative techniques for academic-year follow-up.

Young Scholars project activities are not intented to duplicate or replace the secondary school curriculum or offer tutorial services. Nor should the project provide course work primarily designed to prepare students for advanced placement, or to duplicate regular college courses. Further, college credit for the successful completion of project activities is neither required nor encouraged. Exceptions may be made when the institution involved requires that credit be given. However, grant funds cannot be used to pay per credit fees.

Required Activities—The following components must be included in all proposed projects:

Career Exploration—Since a major objective of this program is to heighten student awareness of science, mathematics and engineering as possible careers, each project must include career exploration activities which offer information and guidance regarding the opportunities of science as a profession, particularly in the discipline area of the project. These activities also should include attention to precollege science teaching as a career choice. Specific attention should be given to the secondary school and college academic requirements for a science degree in the selected discipline. The participation of female, minority and disabled scientists in this activity is especially encouraged.

Philosophy and Ethics of Science—The development of a mature and participating citizen, scientist or not, requires an appreciation of the role of science in society. Therefore, all projects must include some activity that focuses on the philosophy of science and scientific ethics *specific to the discipline focus of the project.* Examples of appropriate topics might be guidelines for the collection and use of scientific data, research ethics or the need for a "Hippocratic oath" for scientists.

Research Methodology—The specific methods and techniques of scientific research differ by field, but the scientific method serves as the basis for the discovery of knowledge across disciplines. Projects should include a general discussion of research methodology, with specific attention to the techniques and methods utilized in the disciplines which serve as the focus of the project. Hands-on activities in the laboratory and field could be included where appropriate along with interaction with scientists.

Follow-up Activities—An academic-year follow-up for summer programs to sustain the intensity of the experience is also required. Proposed activities should reinforce and expand the knowledge and skills learned during the summer by helping students utilize these skills in classroom activities. To this end, the follow-up academic-year component need not be limited to summer participants, but may also involve their classmates and teachers. A summer follow-up component may be proposed for academic-year programs.

Project Outcomes—Proposers must specify project goals and objectives and how they plan to measure the success of the project. Established programs should include a discussion of previous program outcomes. There will be additional data collection requirement specified by the NSF as part of its overall assessment of the Young Scholars program.

Setting

Residential or commuter projects during the summer are recommended as the principal mechanism for creating an enrichment experience. Project duration can vary from 2–8 weeks. However, projects offering an after school/weekend academic-year program as the principal mechanism are also eligible for funding.

Participants

Junior/Senior High Focus—Proposers are expected to design programs which target students entering grades 8–12. Skill development and skill application, including hands-on activities and exposure to research methods and techniques, are required for all students, regardless of grade level. (Established programs seeking support to augment program activities or expand participant groups are also eligible if the *majority* of current participants are within this grade range.)

Participants should be students of high ability or high potential, with interest in science, mathematics or engineering. The Foundation leaves the interpretation of high ability and high potential to the proposer, but encourages consideration of students previously identified as underachievers as well as those with limited prior opportunities to explore science as a career. Particular attention should be given to including women, minorities and disabled students.

The number of project participants will depend on the proposed activities and staff but should allow for

substantial one-on-one or small group interaction among students and between students and senior staff.

Participant Selection

Proposals must specify how participants will be identified, recruited and selected. Admission decisions regarding participants should be made on the basis of materials submitted by applicants. This information might include (a) recommendations from current or recent science or mathematics teachers and counselors, (b) a short essay by the student on why he or she would like to participate or some other appropriate topic and (c) selected background and biographical information. Other mechanisms such as examinations and interviews can also be considered.

The Foundation expects broad-based participation in these programs. For this reason participants should be selected from a variety of secondary schools and excessive representation from any one school is discouraged. In addition, geographic distribution of participants is also an important factor for consideration. Projects should be designed, where possible, to attract student participants on a regional or national basis, rather than only locally.

Participant Costs

Lack of personal or family financial resources should not be a barrier to participation by any eligible student. Therefore proposers may request NSF funding for all or a portion of student expenses, including room and board for residential projects, travel and a small stipend (not to exceed $100/week) for students whose participation will preclude needed employment income. However, proposers can require payment for room and board from participants whom they determine are able to assume responsibility for these expenses.

The narrative should detail per student costs for room and board if applicable, travel and any stipends proposed, as well as the percentage of any or all of these costs NSF is being asked to assume. Proposers who plan to charge room and board fees that will vary among NSF-supported participants should outline how applicant financial need will be determined. Ability to pay may be assessed on an individual or group basis. *Stipends for participants must be justified in terms of their use in attracting the target population. Further, the age of participants in terms of earning potential should be taken into consideration in requesting stipends.*

Staff

Project staffing requirements will depend on the design of the project and the target population. Senior staff, defined as those who will have primary responsibility for the selection of participants, the supervision of intellectual activity and the demonstration of research techniques and field instruction, should be academic faculty or active research scientists, mathematicians and engineers in industry. We also encourage the participation as support staff of precollege science and mathematics teachers, counselors, undergraduate and graduate students, and in projects involving junior high school students, older precollege students. The selection of women, minority and disabled scientists is encouraged. Staffing levels should be adequate to allow for substantive one-on-one interaction between participants and senior staff. Proposers are encouraged to solicit volunteers and to utilize part-time as well as full-time staff in order to reduce costs. Skill in teaching and the ability to interact with young students should be a prerequisite for the selection of all staff.

Sites

Since a major objective of this program is to acquaint students with the environment and resources of universities, colleges and research organizations, projects should be located at facilities where higher education or advanced research takes place.

Established Programs

The Foundation is aware that a number of activities similar to Young Scholars Projects, sometimes known at Secondary School Student Science Training Projects (SST), have been offered at various campuses in recent years, and have reached funding stability. The Foundation strongly encourages the continuation of such programs, and will not normally award support for such projects where NSF support would serve mainly to replace established funding. The Foundation, however, does invite proposals from institutions that organized such activities in the summer of 1988 or regularly in the last few years, where NSF support would serve to strengthen such projects, by funding new key components, or to expand such projects, by funding the participation of individuals previously unreachable. Twenty-seven such projects were supported in 1988.

Established projects for which supplementary support is proposed must in their entirety be eligible for Young Scholar support, and thus must include all the required Young Scholar components, and must be described fully in the proposal.

Program Assessment Activities

The Foundation has established a plan to facilitate early and regular assessment of program impact. This includes data collection instruments for project applicants, participants, staffing and operations. As a part of these activities NSF will provide guidance on the format and content of participant application materials at the time of the award. The cooperation of project directors will be an important factor in assuring the success of this effort.

Budget

Proposers may request from the Foundation appropriate direct, indirect and participant costs. Separate budgets should be prepared for year one and year two of project activities. Normally awards will be made for the first year only at this time; support for the second year will be contingent on the availability of funds and after review of the activities of the first year.

NSF has specific provisions regarding allowable costs for salaries and wages, indirect costs, fringe benefits, equipment purchases, participant support costs, tuition remission, consultant services and subcontracts. In general the Young Scholars Program is subject to these provisions as stated in the GRESE referenced below and proposers must follow these provisions in preparing the budget for a Young Scholars project.

General NSF provisions of special relevance to this program as well as additional *program specific regulations* are summarized below:

- The Foundation will consider requests for extra compensation (overload). Such requests should be clearly outlined in the budget justification section and will be reviewed on an individual basis with attention to the nature of the project as well as institutional and current NSF policies.
- Support will not be provided for general purposes office equipment such as typewriters or furniture, nor for permanent scientific equipment. Permanent equipment is defined as any item with a unit cost of $500 or more and an expected service life of two or more years. Where such equipment is deemed necessary, proposals should consider borrowing or renting. Rental costs are allowable under this program.

- Indirect costs will not be paid on participant costs.
- Funds should be included for the project director (one person only) to attend the annual two-day project directors meeting in the Spring in Washington, DC. Proposers should use their institutional guidelines regarding per diem allowances.
- Support may not be requested for social activities, attendance at any conference except the project directors meeting, or for teacher training components.
- Proposers are advised to determine whether coverage normally available to students and faculty on campus applies to participants in these, projects. The budget may request funds to purchase health and accident insurance for participants not covered by the usual student health plans. Insurance costs should be specifically justified, and will be reviewed on a case-by-case basis.
- The Young Scholars Program requires a reasonable degree of cost-sharing in all proposals. Arrangements for cost-sharing should be clearly detailed in the proposal's budget justification section, and will be taken into consideration in decisions on the extent of NSF support. *Fees assessed of participants are not considered cost-sharing.*

Proposal Preparation and Submission

Reference Documents

A formal proposal should be prepared following the guidelines contained in the NSF document *Grants for Research and Education in Science and Engineering* [GRESE] NSF 83–57, rev. 11/87 and the instructions contained in this solicitation. Additional information may be obtained from the NSF *Grants Policy Manual, Revised, NSF 77–47.*

Intergovernmental Review

This program is subject to intergovernmental review under the provisions of E.O. 12372 and NSF regulations. Appendix C lists those states that require review of proposals submitted to this program. Request for state review of proposals, where required, can be made simultaneously with the submission of this proposal. However it is the responsibility of the submitting organization to forward the state approval number to the Young Scholars program office when received. *For those states which require such review, a grant award cannot be made until the state review process is completed.*

Required Forms

There are several NSF and Young Scholars program forms which are required as part of the submission of a proposal to this program. These include a *Young Scholars Program Data Sheet* (Appendix B) which will be used in the assignment of proposals to appropriate review panels. All required forms and a checklist for proposal preparation can be found in the appendices to this solicitation. Please check that all forms are filled out completely and signed, where necessary. Forms may be photocopied.

Narrative Content and Format

The narrative is limited to *30 double-spaced pages* (15 single-spaced pages). There is no set limit on the length of the appendices. However, proposers should be judicious in this regard as NSF leaves to individual reviewer discretion what part of the appendices, if any, should be read. The narrative should discuss each of the following areas (in the order given) in sufficient detail to allow the proposal to be evaluated in accordance with the goals of this program:

- Project Goals and Objectives.
- Disciplinary Focus.
- Project Design.

—Disciplinary Focused Activities (must include a schedule of activities)
—Activities Focused on Research Methodology
—Career Awareness Activities
—Philosophy and Ehtics of Science Activities
—Follow-up Activities
—Project Setting

- Target Population.
- Participant Identification, Recruitment & Selection (including number of students, grade level, geographic area, procedures and rationale).
- Project Staff.
- Project Site (resources and equipment).
- Budget Explanation (including cost sharing arrangement and participant costs).
- Project Outcomes.

(A checklist for proposal preparation specifiying the order of presentation can be found in Appendix A)

The deadline for receipt of proposals for the Young Scholars Program is August 8, 1988.

Fifteen (15) complete copies of the formal proposal and (3) additional copies of the Cover Sheet and Project Summary should be prepared and sent to: Data Support Section, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Evaluation and Selection of Proposals

General critieria used in the evaluation of proposals are described in the NSF GRESE referenced above. The major criteria for the evaluation and selection of Young Scholars projects will be the ability of the proposed activities to achieve program objectives as stated in this solicitation.

Within the context of the Young Scholars Program specific evaluation criteria will include the appropriateness and quality of the following program elements for the target population: (1) Research, laboratory, field and classroom activities focused on the science discipline chosen, including hands-on projects and planned interaction between students and scientists and mathematicians; (2) follow-up activities; (3) scientific ethics and career awareness activities; (4) participant recruitment and selection procdures and demographics, including the representation of women, minorities and the disabled; (5) project design including time frame for implementation, discipline focus and type of project (commuter/residential; summer/academic year); (6) project staff qualifications and mix; (7) project site and resources; (8) budget including total costs, proposed cost sharing and participant costs; and (9) for established programs, the proposed use of NSF funds and the success of current program activities.

Proposals will be reviewed for scientific and educational merit by scientists, mathematicians, engineers, science educators including precollege teachers, and experts in other fields represented by the proposals.

Awards

The announcement of Young Scholars Project awards should be made in February, 1989. Notification of awards is made in writing by the Foundation. As soon as possible thereafter the Foundation will publish and distribute a project directory as a reference guide for potential applicants.

Awards will nomrally provide for one year of support, with a second year of support contingent upon acceptable progress in implementing program objectives and availability of funding.

Participants admitted and successfully completing these projects will be identified in NSF records as National Science Foundation Young Scholars. Project Directors may use this terminology in any presentations made in closing ceremonies and any reference to the participants thereafter. The terms "Science", "Mathematics" and

"Engineering" may be inserted as appropriate.

Grant Administration

NSF grants are administered in accord with the terms and conditions of NSF F.L. 200 (10–87), Grant General Conditions, copies of which may be requested from the NSF Forms and Publication Unit.

NOTE: PROPOSALS MUST INCLUDE ALL REQUIRED FORMS WHICH ARE AVAILABLE IN THE PRINTED PROGRAM ANNOUNCEMENT. COPIES OF THE PROGRAM CAN BE REQUESTED FROM THE ADDRESS LISTED BELOW: Young Scholars Program, Division of Research Career Development, Directorate for Science and Engineering Education, National Science Foundation, Room 630, Washington, DC 20550 (202) 357–7536.

Questions not addressed in this publication may be directed to Dr. Elmima C. Johnson at the address and phone number listed above.

Formal proposals should be prepared in accordance with the guidelines contained in the Grants for Research & Education in Science and Engineering [GRESE], pp. 1–8 and the instructions contained in this Program Announcement. Single copies of the GRESE (NSF 83–57, rev. 11/87) may be ordered from the: Forms and Publication Unit, Room 232, National Science Foundation, Washington, DC 20550.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment or general information. This number is (202) 357–7492.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women, minorities, and persons with disabilities to compete fully in the program described in this document.

Facilitation Awards for Handicapped Scientists and Engineers (FAH) provides funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to work on an NSF project. See the FAH program announcement, or contact the FAH Coordinator in the Directorate for Scientific, Technological, and International Affairs.

(Catalog of Federal Domestic Assistance Number 47.072—Young Scholars Program)

Elmema C. Johnson

Associate Program Director, Young Scholars Program.

May 5, 1988.

[FR Doc. 88–10326 Filed 5–9–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Environmental Assessment and Finding of No Significant Impact; Georgia Power Co. et al.

In the matter of Georgia Power, Oglethorpe Power Corp., Municipal Electric Authority of Georgia and the city of Dalton, Georgia.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) to: (1) Lower the minimum water level required for continued plant operation and change the point of measurement of water level from the river gauge to the pump intake structure; (2) provide an alternate requirement for determination of equivalent river level when a temporary weir is in place; (3) change the water level at which an increased frequency of level surveillance is required: (4) change the plant service water pump throttling requirement for Unit 1 and add a corresponding pump throttling requirement for Unit 2; and (5) amend the Technical Specification Bases to reflect the above changes.

The proposed action is in accordance with the licensee's application for amendment dated September 9, 1986, as supplemented by letter dated May 8, 1987, and partially revised on December 15, 1987.

The Need for the Proposed Action

The proposed change to the TS is required to enable the licensee to operate the plant at power during periods of low river water level while maintaining the capability for safe plant shutdown if required.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed changes would allow the licensee to adjust downward the water levels at which plant service water pump throttling and plant shutdown are required. However, the proposed adjusted water levels are still sufficient to assure protection of the pumps and to provide for adequate cooling to meet a plant shutdown requirements. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of an effluents that may be released offsite, and there is no change in the allowable or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on November 12, 1986 (51 FR 41036). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered

in the Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, dated October 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 9, 1986, as supplemented by letter dated May 8, 1987, and partially revised by letter dated December 15, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 4th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10327 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Issuance of Amendments to Facility Operating Licenses; Pennsylvania Power and Light Co.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 79 to Facility Operating License No. NPF–14 and Amendment No. 44 to Facility Operating License No. NPF–22, issued to Pennsylvania Power and Light Company, which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The amendments were effective as of the date of issuance, to be implemented prior to May 3, 1988 startup of Unit 2 following its refueling outage.

The amendments modified the Technical Specifications to revise the load profiles for 125V dc battery banks 2D612, 2D622, 2D632, and 2D642.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments.

Notice of Consideration of Issance of Amendments to Facility Operating license and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 22, 1988 (53 FR 9387). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1981.

For further details with respect to the action see: (1) The application for amendments dated January 8, 1988, (2) Amendment No. 79 to License No. NPF–14, (3) Amendment No. 44 to License No. NPF–22, and (4) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10328 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated November 19, 1987 (Reference GOL–87–275).

The proposed amendment would change the statement of the number of channels per trip system for main steam line flow, main steam line tunnel temperature, and temperature gradient in Table 3.3.2–1, "Isolation Actuation Instrumentation." This action if approved would correct inconsistencies between the FSAR and the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the Request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intevene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who had filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examination witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005–3502 and Mr. G.E. Doupe, Esq., Washington, Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–10329 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (the licensee), for operation of the Washington Nuclear Project 2 located in Benton County, Washington. The request for amendment was submitted by letter dated March 7, 1988 (Reference GOL–88–053).

The amendment would allow the operation of WNP–2 up to a power level of 75% with one recirculation loop operating to the design burnup of the reload fuel of 35,000 MWD/MT bundle average.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition, without requesting leave of the Board, up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005–3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99532, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of this proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 7, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland this 5th day of April 1900.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects — III, IV, V & Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–10330 Filed 5–9–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Annual Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of Annual Selection Meeting of the President's Commission on White House Fellowships; closed to the public.

SUMMARY: Notice is hereby given that the annual Selection Meeting of the President's Commission on White House Fellowships will be held at the Airlie House, Airlie, Virginia, June 2 through June 5, 1988, beginning at 5:00 p.m.

The Annual Selection Meeting is part of the screening process of the White House Fellowships program. During this three-day meeting the applications will be discussed and the applicants will be interviewed by members of the Presidential Commission. At the conclusion of this meeting the Commissioners will recommend to the President those they propose be selected to serve as White House Fellows.

It has been determined by the Director of the Office of Personnel Management that because of the nature of the screening process, wherein personnel records and confidential character references must be used, which if revealed to the public would constitute a clear invasion of the individuals' privacy, the content of this meeting falls within the provisions of section 552b(c) of Title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATE: The date of the Annual Selection Meeting of the President's Commission on White House Fellowships, which is closed to the public, is June 2–5, 1988.

FOR FURTHER INFORMATION CONTACT: President's Commission on White House Fellowships, 712 Jackson Place NW., Washington, DC 20503, (202) 395–4522.

Marcy L. Head,

Director, President's Commission on White House Fellowships.

[FR Doc. 88–10390 Filed 5–9–88; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25646; File No. SR–AMEX–88–12]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Margin Requirements for Equity and Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1) ("Act"), notice is hereby given that on April 25, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 462 as set forth below. *Italics* indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 462

(a)–(c) No change.

(d) 1. No change.

2. (A)–(C) No change.

(D) Subject to the exceptions set forth in subparagraphs (F) through (K) of this paragraph (d)(2) the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) No change.

(ii) In the case of a put or call dealt in on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on equity securities, 100% of the option premium plus [15%] *20%* of the market value of the equivalent number of shares of the underlying security, reduced by any excess of the exercise price over the current market price of

the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put.

(iii) In the case of *a* put[s] *or* [and] call listed or traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on a broad stock index group, 100% of the option premium plus [10%] *15%* of the product of the current index group value and the index multiplier applicable to the option contract. In each case, the amount shall decrease by any excess of the aggregate exercise price of the option over the product of the current index group value and the applicable index multiplier in the case of a call, or any excess of the product of the current index group value and the applicable index multiplier over the aggregate exercise price of the option in the case of a put.

(iv) In the case of *a* put[s] *or* [and] call[s] listed or traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation, and representing options on a stock index industry group, 100% of the option premium plus [15%] *20%* of the product of the current index group value and the index multiplier applicable to the option contract, reduced by any excess of the aggregate exercise price of the option over the product of the current index group value and the applicable index multiplier in the case of a call, or any excess of the product of the current index group value and the applicable index multiplier over the aggregate exercise price of the option in the case of a put.

(v) No change. Notwithstanding the foregoing:

(a) No change:

(b) The minimum margin or any and each put or call issued, guaranteed or carried "short" in a customer's account shall be not less than 100% of the option premium plus:

(1) No change.

(2) [5%] *10%* of the current market value of the equivalent number of shares of the underlying security in the case of an option on equity securities that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(3) [5%] *10%* of the product of the current index group value and the applicable index multiplier in the case of an option on a broad stock index group that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(4) [5%] *10%* of the product of the current index group value and the applicable index multiplier in the case of an option on a stock index industry group that is traded on a registered national securities exchange or a registered securities association and issued by the Options Clearing Corporation;

(5)–(7) No change.

(E) No change.

(F) If both a put and a call for the same number of shares of the same equity security *or the same underlying index with the same index multiplier* or the same principal amount of the same United States Government obligation are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or the call whichever is greater, as required pursuant to subparagraph (*D*) [(d)] of this paragraph (d)(2) [increased by the amount of any unrealized loss on] *plus 100% of the premium of* the other option. The minimum margin requirements, however, shall not apply to the other option.

II. Self-Regulatory Organzation's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes, due to the increase in market volatility experienced during the past six months, to raise margin requirements for both equity and index options.

Adopted in 1986, the formula for determining margin requirements for all short option positions is premium plus a fixed percentage "add on" of the market value of the underlying contract, reduced by any out-of-the-money amount to not less than the option premium plus a minimum add-on percentage. Currently, the initial fixed percentage "add-on" for equity and narrow-based index options is 15% and for broad-based index options is 10%.[1] In each case, margin is reduced by any out-of-the-money amount to a minimum of premium plus 5% of the current value of the underlying contract. These percentage levels were established to give coverage for 95% of the price movements in the underlying product which could be anticipated, based upon underlying market volatility, during any seven day period.

The Exchange also proposes to amend the straddle/combination margin requirements to include the premiums for both option components. This proposed change seeks to reflect, more accurately, the potential risk of the straddle/combination position.

Based on recently experienced market volatility, the Exchange believes it is appropriate to increase margin requirements for a six month period. Therefore, the Exchange proposes to increase the percentage "add-on" for equity and narrow-based index options to 20% and for broad-based index options to 15%, while the minimum for all options will be increased to premium plus 10%. At the end of the six month period, the new percentages will revert to the previous levels unless other percentages proposed by the Exchange are deemed appropriate in light of experienced market volatility. During this initial period, the Exchange, in conjunction with other securities regulators, plans to develop procedures to routinely monitor and adjust margin requirements so that both the investor and the firms are adequately protected based upon current market volatilities.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the rule change is designed to provide adequate levels of protection in line with the current increase in market volatility.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

[1] In November 1987, the Exchange increased margin requirements for broad-based index options from 5% to 10% for the fixed add-on and from 2% to 5% for the minimum add-on (*see*: SR–AMEX–87–29).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10331 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25652; File No. SR-NASD-87-43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 23, 1987, and amended on March 11, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends the Resolution of the NASD Board of Governors concerning Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions, to give the Board of Governors discretion in extraordinary circumstances to waive publication of disciplinary actions involving imposition of monetary sanctions of $10,000 or more.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25520, March 25, 1988) and by publication in the **Federal Register** (53 FR 10964, April 4, 1988).

One letter of comment was received, objecting to the proposed rule change.[1] The letter expressed the opinion of the Municipal Securities Rulemaking Board (MSRB) that the amendment would reduce the effectiveness of the Resolution and have a negative impact on compliance with MSRB rules, which the NASD is responsible for enforcing. The letter suggests that at a minimum the NASD should develop guidelines as to when its discretion should be exercised under this amendment.

The Commission has carefully considered the comment letter, but believes that the NASD, in limiting the Board's discretion to extraordinary circumstances, has sufficiently narrowed application of the amendment without unduly restricting the Board's ability to exercise such discretion in unusual instances.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Sections 15A and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 4, 1988.

[FR Doc. 88-10332 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Terrence E. Comerford, Vice Chairman, Municipal Securities Rulemaking Board, to Jonathan G. Katz, Secretary, SEC, April 21, 1988.

[Release No. 34-25645; File No. SR-NYSE-88-13]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Increasing Margin Requirements for Equity, Industry Index and Broad Index Stock Group Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1988 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("Exchange") is proposing to raise the margin requirements applicable to equity, industry index and broad index stock group options. The increased requirements raise the percentage levels to premium plus 20% for equity and industry index stock group options and to premium plus 15% for broad index stock group options. The "out-of-the-money" minimum would be raised to 10%.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change raises the margin requirements for equity, industry index and broad index stock group options. The margin required for such options is based on a premium plus formula which calls for 100% of the current market value of the option plus a percentage of the current market value of the underlying product. This margin may be reduced by any "out-of-the-money" amount attributable to the option, as long as a minimum percentage is maintained. The current percentage levels set in the rule are 15% for equity and industry index stock group options and 10% for broad index options. The minimum percentage is 5% for all such options. These percentage levels were established to cover 95% of all historical seven business day percentage price movements in the underlying product (confidence level) during the recent twelve month review period.

The Exchange proposes to raise the percentage levels to premium plus 20% for equity and industry index stock group options and to premium plus 15% for broad index stock group options. The "out-of-the-money" minimum would be raised to 10%. As a result of these increases the confidence level will remain at 95%, however, the applicable review period will be reduced from twelve to six months to be more responsive to recent market volatility. The proposed requirements are based on the six month review period and reflect the market volatility of the last quarter of 1987.

The Exchange will work with the other options self-regulators to develop procedures for monitoring the adequacy of option margin requirements on an ongoing basis and a system for adjusting requirements more expeditiously based on volatility data.

An additional change in the rule for margin on straddles will more accurately reflect the potential risk of such positions by requiring deposit of the current market value of the option rather than any unrealized loss.

It is expected that the other options self-regulatory organizations will be making substantially the same changes to their respective margin requirements for equity, industry index and broad index group options. However, the Exchange understands that some of the options self-regulatory organizations will include a six month "sunset" provision after which the new requirements would revert to their previous levels unless other percentages are deemed appropriate by those exchanges. The Exchange is not providing for such a sunset provision, but will continue to monitor market volatility data to determine if requirements should be adjusted.[1]

(b) The proposed rule change is consistent with the requirements of section (6)(b)(5) of the Securities Exchange Act of 1934 (the "Act") which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public by setting margin levels that provide adequate financial protection within the securities industry. The proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to section 7(a) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10333 Filed 5-9-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission notes that the Chicago Board Options Exchange has filed a proposed rule change to increase margin requirements that contains such a sunset provision. *See* Files No. SR-CBOE-88-06 and SR-CBOE-88-08.

DEPARTMENT OF TRANSPORTATION

[Docket 45613]

Order Regarding Brazil Cargo Charter Authorizations

AGENCY: Department of Transportation.

ACTION: Allocation Procedures for Brazil Cargo Charter Flights Order 88-5-9. Docket 45613.

SUMMARY: The operation of charter flights between the United States and Brazil is not currently encompassed by a formal aviation agreement. Since termination of the last Memorandum of Understanding with Brazil in late 1984, Brazil charters have been operated under informal arrangements between the two governments. For the past several years the carriers of each country have been able to operate a total of four (one-way or roundtrip) cargo charters per month. The current arrangement provides that each nation's carriers may operate a total of thirteen charters per three-month period, provided that no more than five flights are operated in any one month. The three-month periods commenced in November 1987. Until March 1988, demand to operate Brazil cargo charters was low and the flights were operated

on a first-come, first-served basis. The Department is now faced with competing applications for the limited available flights and is tentatively establishing the procedural framework and criteria for allocating Brazil cargo charters. The Department is also inviting interested carriers to file applications to operate Brazil cargo charters for the June-October 1988 period. In addition, the Department confirmed its April 20, 1988 oral allocation of four flights to Rosenbalm Aviation for the month of May 1988.

DATES: Objections to the Department's proposed procedures and criteria are due May 11, 1988. Answers are due not later than May 16, 1988. Applications to operate Brazil cargo charters during the June-October period are due no later than May 11, 1988. Interested parties may obtain a service copy of the order by calling the Documentary Services Division (202) 366-9327 or by writing to the address below.

ADDRESS: Objections, comments, supporting information and applications should be filed in Docket 45613, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 45613.

Dated: May 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10283 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43446, Order 88-5-10]

Reallocation Phase; Japan Charter Authorization Proceeding

AGENCY: Department of Transporation.

ACTION: Finalization of show-cause Order 88-3-66[1] and the institution of the *Reallocation Phase—Japan Charter Authorization Proceeding*, Docket 43446 (Order 88-5-10).

SUMMARY: U.S. air carriers can operate only 300 one-way charter flights per year between the United States and Japan under the terms of an Interim Aviation Agreement. The Department awarded these flights to 13 U.S. carriers for the year ending September 30, 1988. These authorizations are subject to forfeiture after 7 month depending on flight usage. The Department is finalizing the procedures and decisional criteria proposed in Order 88-3-66 for reallocation of the forfeited flights for the remainder of the charter year. We will announce the number of flights available for reallocation by May 9, 1988 and invite applications by interested carriers.

DATES: Applications and supporting information are due not later than May 13, 1988. The Department's decisionmaker will issue a show-cause order tentatively reallocating the available charters and establishing a waiting list for subsequently returned flights by May 27, 1988. He will issue the final decision by June 16, 1988.

ADDRESS: Applications and supporting information should be filed in Docket 43446 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 43446.

Dated: May 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10284 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-034]

Great Lakes Pilotage Review; Availability of Report

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of the draft study report and request for public comment.

SUMMARY: A number of issues have been raised the past several years concerning Great Lakes pilotage, last studied in depth during 1972. In view of the concerns expressed and the fact that the last study is over 15 years old, the Department of Transportation initiated a review, conducted by a multi-agency study group chaired by the Coast Guard. Early in the review process, the study group held a public meeting in Cleveland, Ohio (June 24, 1987). A meeting notice was published in the Federal Register (52 FR 19955) on May 28, 1987. A transcript of that meeting may be purchased from the transcriber, Fincum-Mancini, 601 Rockwell Ave., Cleveland, Ohio 44114, (216) 696-2272. Comments received at that meeting and since that meeting were considered in the review process.

The current Great Lakes pilotage review has been completed, and a copy of the draft report is available for public comment.

DATES: To insure full consideration, comments must be received by May 20, 1988. Comments received after that date will be considred to the extent possible.

ADDRESSES: Copies of the Great Lakes Pilotage Study Draft Report are available from, and comments should be mailed to: Commandant (G-LRA-2/21), CGD 87-034, U.S. Coast Guard, Washington, DC 20593-0001.

Between 7:30 a.m. and 3:30 p.m., Monday through Friday, the draft report and comments on it will be available for inspection or copying at the Marine Safety Council (G-LRA-2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477. Comments on the draft report may also be delivered to this location during the times stated.

FOR FURTHER INFORMATION CONTACT: The Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

Dated: May 5, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-10384 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

Change of Name of Approved Trustee; BT Trust Co. of California

Notice is hereby given that effective March 16, 1987, BT Trust Company of California, N.A., San Francisco, California, changed its name to Bankers Trust Company of California, N.A.

Dated: May 5, 1988.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 88-10391 Filed 5-9-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; Correction.

SUMMARY: NHTSA is correcting errors in the Conforming Products List of Evidential Breath Measurement Devices which appeared in a notice in the Federal Register on March 2, 1988 (52 FR 6727).

FOR FURTHER INFORMATION CONTACT: Ms. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone (202) 366–9825.

SUPPLEMENTARY INFORMATION: On March 2, 1988, NHTSA published a notice in the **Federal Register** (52 FR 6727) which contained a Conforming Products List (CPL) of Evidential Breath Measurement Devices which have been found to conform to the Model Specifications for these instruments. The CPL contained errors, under the headings CMI, Inc. and Smith and Wesson Electronics, which are discussed briefly below and corrected by this notice.

On page 6728, second column: CMI, Inc.'s Intoxilyzer 4011 (which is both Mobile and Non-Mobile) was omitted from the CPL; CMI, Inc.'s 4011AQ-A and 4011AQ-2 models should have read 4011AS-A and 4011AS-AQ, respectively; and Smith and Wesson Electronics' Breathalyzer 200 (Non-Humidity Sensor) should have read 2000 (Non-Humidity Sensor). For the public's convenience, in this notice, all models under these two headings are being published in their corrected form, as follows:

Manufacturer and model	Mobile	Non-mobile
CMI, Inc. Mintum, Co:		
Intoxilyzer 4011	X	X
4011A	X	X
4011AS	X	X
4011AS-A	X	X
4011AS-AQ	X	X
4011AW	X	X
4011A27-10100	X	X
4011A27-10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.).	X	X
5000 (w/3/8" ID hose option).	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer 900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (Non-Humidity Sensor)	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Robert Nicholson,

Deputy Associate Administrator for Traffic Safety Programs.

[FR Doc. 88–10341 Filed 5–9–88; 8:45 am]

BILLING CODE 4910–59–M

Rulemaking, Research, and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on June, 22, 1988, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by June 8, 1988. If sufficient time is available, questions received after June 8 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 8, and the issues to be discussed, will be mailed to interested persons on June 17, 1988, and will be available at the meeting.

ADDRESS: Questions for the June 22 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on June 22, 1988. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on May 4, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–10342 Filed 5–9–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: May 5, 1988.

The Department of 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.

Internal Revenue Service

OMB Number: 1545–0071.
Form Number: IRS Form 2120.
Type of Review: Extension.
Title: Multiple Support Declaration.
Description: A taxpayer who pays more than 10%, but not more than 50%, of the support of an individual may claim that individual as a dependent provided the taxpayer attaches declarations from the other contributors indicating that they will not claim the individual. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.
Respondents: Individuals or households.
Estimated Burden: 990 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, 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.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–10379 Filed 5–9–88; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

PLACE: Auditorium, HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201.

DATE AND TIME: Wednesday, May 18, 1988, 4:00 p.m.–6:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report.
  A. Status of Earmarks.
  B. Personnel Report.
  C. Activity Report.
IV. Resolution: Chairman Pendleton.
V. Resolution: Commissioner Allen.
VI. Regional Forums: Update.
VII. SAC Report: "Minority Political Participation in Selected Alabama Jurisdictions".
VIII. SAC Report: "Bigotry and Violence In Illinois".
IX. SAC Recharters.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, *Press and Communications Division.* (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–10461 Filed 5–6–88; 1:46 pm]

BILLING CODE 6335–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, May 16, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Reassessment of November 10, 1986 Decision to Terminate Pension Accrual Rulemaking Under section 4(f)(2) of the ADEA.

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda Rodriguez, Executive Officer (Acting) on (202) 634–6748.

Dated: May 5, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88–10421 Filed 5–6–88; 11:41 am]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on April 29, 1988 (53 FR 15492) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for May 3, 1988. This notice is to revise the agenda for that meeting to include additional items of discussion.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, May 3, is revised as follows:

Open Session

1. CEO Salary Proposals—
  - Central Bank for Cooperatives;
  - Federal Farm Credit Banks Funding Corporation; and
  - Farm Credit Bank of Springfield;
2. Salary Changes for the Springfield District;
3. Implementation of the Agricultural Credit Act of 1987—
  - Final Rule on Disclosure to Shareholders, 12 CFR Part 620;
  - Proposed Regulation on Mergers/Consolidations, 12 CFR Parts 611, 618 and 620;
  - Proposed Regulation on Secondary Market, 12 CFR Parts 611, 612, 614, and 617–623;
  - Proposed Regulation on Insurance to System Members and Borrowers, 12 CFR Part 618, Subpart B;
  - Final Regulation on FCA Organization, 12 CFR Part 600;
4. Delegation of Authority Concerning Disapproval of Association Consolidations and Other Proposed Restructurings;

***Closed Session**

5. CEO Salary Proposals—
  - Farm Credit Banks of Wichita; and
  - Farm Credit Banks of Sacramento;
6. Salary Changes for the Sacramento District;
7. Examination and Enforcement Matters.

Dated: May 5, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–10433 Filed 5–6–88; 12:57 pm]

BILLING CODE 6705–01–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 5:33 p.m. on Thursday, May 5, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

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

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*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (6), (8) and (9).

considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 6, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Assistant Executive Secretary (Operations).
[FR Doc. 88-10492 Filed 5-6-88; 3:24 p.m.
BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 5, 1988.

TIME AND DATE: 10:00 a.m., Thursday, May 12, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Quinland Coals, Inc.*, Docket No. WEVA 85-169. (Issues include whether substantial evidence supports the judge's finding of unwarrantable failure.)
2. *Local Union No. 5817, Dist. 17, UMWA v. Monument Mining Corp., and Island Creek Coal Co.*, Docket No. WEVA 85-21-C. (Issues include consideration of matter remanded from the Court of Appeals.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a) (3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 88-10441 Filed 5-6-88; 1:44 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, May 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 6, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10487 Filed 5-6-88; 3:08 pm]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 17, 1988.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 27590 (Sub No. 1), *Trailer Train Company, et al.—Pooling of Car Service With Respect to Flatcars*
and
MCF-18505; *GLI Acquisition Company—Purchase—Trailways Lines, Inc., GLI Acquisition Company—Control—Continental Panhandle Lines, Inc.*

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs. Telephone: (202) 275-7252.

Noeta R. McGee,
Secretary.
[FR Doc. 88-10486 Filed 5-6-88; 3:07 pm]
BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 9, 16, 23, and 30, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 9

Thursday, May 12

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting).
2:00 p.m.
Briefing on Efforts to License a HLW Repository and Status of Center for Nuclear Waste Repository Analysis (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Final Station Blackout Rule, USI A-44 (Tentative).

Week of May 16—Tentative

Tuesday, May 17

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting).

Wednesday, May 18

10:00 a.m.
Briefing on Master Plan for Integrating All Severe Accident Issues (Public Meeting).
2:00 p.m.
Annual Briefing by INPO (Public Meeting).

Thursday, May 19

2:00 p.m.
Briefing on NAS Human Factor Recommendations (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 23—Tentative

Thursday, May 26

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of May 30—Tentative

Tuesday, May 31

2:00 p.m.
Briefing on Human Factors Program and NRC Views of NAS Recommendations (Public Meeting).

Wednesday, June 1

2:00 p.m.
Briefing on Technical Specification Revisions (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, June 3

10:00 a.m.
DOE Briefing on LLW Program, West Valley Demonstration Project and Uranium Mill Tailings Remedial Action Project (Public Meeting).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

May 5, 1988.

[FR Doc. 88–10491 Filed 5–6–88; 3:23 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 9, 1988:

An open meeting will be held on Wednesday, May 11, 1988, at 1:00 p.m. A closed meeting will be held on Wednesday, May 11, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10) permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, May 11, 1988, at 1:00 p.m., will be:

Consideration of whether to issue a Memorandum Opinion and Order with respect to an application-declaration filed by Eastern Utilities Associates ("EUA"), a registered holding company under the Public Utility Holding Company Act of 1935 ("Act"), and its wholly owned electric utility subsidiary, EUA Power Corporation ("EUA Power"). EUA Power proposes to: (1) Issue up to $180 million of 17½% Series B Secured Notes due 1993 ("Series B Notes"), only in exchange for up to $180 million of 17½% Series A Secured Notes ("Series A Notes") now outstanding, and up to 180,000 Contingent Interest Certificates ("CICs"), one of which will be issued with each $1,000 principal amount of Series B Notes in exchange for Series A Notes; (2) issue up to $100 million of 17½% Series C Notes ("Series C Notes") to the Series B Noteholders and the Series C Noteholders in lieu of the payment of cash interest on the Series B and Series C Notes; and (3) issue and sell up to $25 million additional shares of Preferred Stock to EUA. EUA proposes to acquire EUA Power's Preferred Stock and, in connection therewith, to issue $25 million of short-term notes under its existing bank lines of credit. Consideration will also be given to whether to issue an order for a hearing in response to a request for a hearing pending in this matter. For further information, please contact Robert P. Wason at (202) 272–7684.

The subject matter of the closed meeting for Wednesday, May 11, 1988, at 2:30 p.m., will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

May 5, 1988.

[FR Doc. 88–10444 Filed 5–6–88; 8:45 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

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 AGRICULTURE

Farmers Home Administration

7 CFR Part 1900

Farmers Home Administration Appeal Procedure

Correction

In proposed rule document 88-8430 beginning on page 12695 in the issue of Monday, April 18, 1988, make the following corrections:

§ 1900.57 [Corrected]

1. On page 12700, in the second column, in § 1900.57, paragraph (d)(1)(i) should read as follows:

"(i) Appellants may tape record the proceedings at their own expense. Appellants must state when the taping begins."

2. On page 12702, in the second column, in the parenthetical instruction following the first heading, insert "not" between "is" and "required".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Medicaid Eligibility Determinations

Correction

In rule document 88-8679 beginning on page 12938 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 12939, in the first column, in the seventh line from the bottom, "use" should read "us".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 87N-0363]

Irradiation in the Production, Processing, and Handling of Food; Labeling

Correction

In rule document 88-8597 beginning on page 12756 in the issue of Monday, April 18, 1988, make the following correction:

On page 12756, in the first column, under **DATE**, in the first line, the effective date should read "April 18, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 79N-0155]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Compounding Oral Products

Correction

In rule document 88-8189 beginning on page 12644 in the issue of Friday, April 15, 1988, make the following corrections:

1. On page 12647, in the first column, the heading for F. should read "*F. Conclusions: Risk Versus Benefit*".

2. On page 12649, in the third column, in the first complete paragraph, in the first line, "empyema" was misspelled.

3. On page 12650, in the first column, in the first complete paragraph, in the fifth line, "place" should read "space".

4. Also in the same column, in the same paragraph, in the third line from the bottom, "neutral" should read "neural".

5. On page 12658, in the first column, "**PART 44**" should read "**PART 444**".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0131]

Determination of Regulatory Review Period for Purposes of Patent Extension; Prozac™

Correction

In notice document 88-8313 beginning on page 12601 in the issue of Friday, April 15, 1988, make the following corrections:

1. On page 12601, in the third column, under **SUMMARY**, in the eighth line, "Commission" should read "Commissioner".

2. On page 12602, in the first column, under **SUPPLEMENTARY INFORMATION**, in the eighth line, "as" should read "was".

BILLING CODE 1505-01-D

federal register

Tuesday
May 10, 1988

Part II

Office of Management and Budget

5 CFR Part 1320

Control of Paperwork Burdens on the Public; Regulatory Changes Reflecting Amendments to the Paperwork Reduction Act; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Control of Paperwork Burdens on the Public; Regulatory Changes Reflecting Amendments to the Paperwork Reduction Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final rule.

SUMMARY: This rule implements the amendments to the Paperwork Reduction Act of 1980 made by the Paperwork Reduction Reauthorization Act of 1986. In amendments to 44 U.S.C. 3507, Congress sought to enable the public to participate more fully and meaningfully in the Federal paperwork review process. Consistent with the purpose of these legislative amendments, this rule requires agencies (1) to include, in the **Federal Register** notice that indicates submission to the Office of Management and Budget of an information collection clearance package, an estimate of the average burden hours per response and—when seeking expedited OMB review—a copy of the collection of information; and (2) to indicate on each collection of information (or any related instructions) the estimated average burden hours per response, together with a request that respondents direct to the agency and OMB any comments on the accuracy of the estimate and suggestions for reducing the burden. In an amendment to 44 U.S.C. 3502(11), Congress also clarified the applicability of the Paperwork Reduction Act to collections of information contained in proposed and current regulations.

EFFECTIVE DATE: June 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jefferson B. Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (202/395-3176).

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget (OMB) issued 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—on March 31, 1983 (48 FR 13666). This rule implemented provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. Chapter 35) concerning agency responsibilities for obtaining OMB approval of their collections of information, and other paperwork control functions.

The Paperwork Reduction Reauthorization Act of 1986 (section 101(m) [Title VIII, Part A] of Pub. L. 99-500 (October 18, 1986) and 99-591 (October 30, 1986), 100 Stat. 1783-335, 3341-335) amended the Paperwork Reduction Act of 1980, effective October 30, 1986. As a result of these legislative amendments, OMB published proposed changes to 5 CFR Part 1320 in a Notice of Proposed Rulemaking (NPRM) on July 23, 1987 (52 FR 27768).

In response to this NPRM, OMB has received comments from 19 Federal agencies and 49 members of the public. Each comment has been considered in preparing this final rule. In developing these amendments to 5 CFR Part 1320, OMB has also relied upon its seven years of practical experience in administering the Paperwork Reduction Act of 1980, and upon its four and a half years of implementing 5 CFR Part 1320. Significant comments received in response to the NPRM, and significant changes made in the amendments proposed therein, are discussed in detail below.

As a convenience to those wishing to use 5 CFR Part 1320, OMB is reprinting the entire Part as it is now amended.

B. New Section 1320.21—Agency Disclosure of Estimated Burden

In the NPRM, OMB proposed adding a new § 1320.21—"Agency Display of Estimated Burden." (*See* proposed amendment 24, 52 FR at 27772.) This section requires agencies to indicate on each instrument for the collection of information the estimated average burden hours per response, together with a request that the public direct any comments concerning the accuracy of this burden estimate to the agency and to OMB's Office of Information and Regulatory Affairs (OIRA). This proposal is intended to facilitate agency management of its collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the paperwork reduction process. As discussed below, the final regulation retains this provision with some modification.

This section drew many comments. The majority of the public comments supported this proposal, citing the reasons given in the preamble to the proposed rule (52 FR at 27769-27770). However, several public comments and agency comments expressed concerns that biased or skewed responses would be received from the public (e.g., only those taking longer than average would respond), that benefits of collections of information were being ignored (e.g., beneficiaries of collections of information are not always the respondents), and that the costs to implement this section were too high.

OMB does not find these arguments persuasive. First, since the Act's goal is to minimize the paperwork burden on the public, it is only logical that agencies and OMB, in implementing the Act, need the input of those respondents who are most burdened by a collection of information. As one comment stated, "[s]uch complaints are not intended to provide a statistically valid sample of the burden, but should provide a warning of paperwork burden that may not be justified in light of the perceived benefits" (Comment of National Security Industrial Association).

Second, this proposal does not ignore the benefits of collections of information. Agencies are already required, as part of the paperwork clearance process, to justify the uses and explain the benefits of proposed collections of information to OMB. The affected public has the opportunity to supplement agency statements of need and benefit, as well as to point out the reporting burdens involved. Moreover, these descriptions of need and benefit are typically in instructions, in regulatory preambles, and in the required **Federal Register** notices.[1]

Third, the cost of this new procedure has not been found to be high by the one Department (Interior) currently testing this procedure on a trial basis. A legitimate cost issue, however, does arise with the possible redesign of forms. For many forms, inclusion of this notice should require only a modest rearrangement of the requested data items; for those forms that cannot be easily reformatted, agencies may include this notice on the instruction

[1] OMB believes that the American Bar Association (ABA) Section of Administrative Law excellently captured these points when it stated that:

"We are aware of the arguments that this display would emphasize only the burden of the collection, not its benefits, and that the responses and complaints that the agency or OMB might receive from the public as a result might be skewed.

"While there is some merit to this argument, we believe that the benefits to be derived from the display of the burden outweigh any negative effects. Accurate burden estimates for collections of information are critical to the calculus to be applied under the Paperwork Reduction Act. At the same time, agencies have a natural tendency to underrate the burden they impose on their respondents. Those who must comply with the collections are in the best position to determine the burden associated with them, but no one wants to impose another reporting requirement on these respondents to collect the burden information. A display of the estimated burden on the collection itself is a good compromise solution, because it is reasonable to expect that if the estimate is significantly awry, respondents will bring this to the agency's or OMB's attention. In this way, over time, the burden estimates can be refined."

sheet or on a separate, attached piece of paper. To allow adequate time to carry this out, OMB amends § 1320.21(c) to make this requirement applicable only to collections of information and their instructions printed or otherwise reproduced (or newly communicated or transmitted to the public by electronic or other means) after July 1, 1988.

There were a number of other comments on this proposed disclosure notice. Several requested clarification on whether this notice requirement applies to collections of information contained in or imposed by regulations submitted for review under §§ 1320.12 (e.g., those "interim final" rules) and 1320.13. Section 1320.21 *does* apply to such collections of information because they are among the most burdensome imposed by the Federal government.

Section 1320.21, however, does *not* apply to collections of information in current regulations that are only submitted for OMB review under § 1320.14. When an agency submits an information collection contained in a current regulation for review under § 1320.14, the agency does not propose changes to the current regulation, and therefore does not, as part of the clearance process, include the disclosure notice in either the text or preamble to the regulation. Instead, the agency provides the burden hour estimate and request for public comments as part of the **Federal Register** notice that indicates submission to OMB of the information collection clearance package. An agency need not engage in rulemaking solely to include the burden estimate and request for comments required by § 1320.21, nor need an agency engage in rulemaking every time it revises burden estimates for collections of information contained in a current regulation, *unless* the regulation itself otherwise undergoes regulatory amendment.

A comment requested clarification on whether the notice should be placed in the regulation's preamble or text. As proposed, § 1320.21(b) provides that "the agency may display the burden estimate and request for comments * * * at the beginning of the preamble to the proposed or final rule that contains the collection of information." On the other hand, in the existing rule, § 1320.7(f) already defines "display," as that term is used in this rule, to require that the OMB control number be published as part of the regulation's text, both when submitted for OMB review under § 1320.13 and when issued in final.[2] To eliminate this inconsistency between these two provisions, and to clarify the meaning of § 1320.21(b), OMB is replacing the references to "display" in § 1320.21 with the words "disclose" and "place." By "beginning of the preamble", OMB means at or near the beginning of the "**SUPPLEMENTARY INFORMATION**" section of the proposed or final rule containing the collection of information.

One comment recommended that the burden estimate and the request for comments be placed both in the text or preamble of the regulation containing the collection of information and also on the forms or other information collection instruments developed or relied upon to implement the regulatory collection of information. OMB agrees, and amends § 1320.21(b) accordingly.

In the "**SUPPLEMENTARY INFORMATION**" section of the NPRM, OMB also set forth two possible standard formats for the disclosure notice, and asked whether a standard format should be required by regulation (52 FR at 27770). Responses were received both supporting and opposing inclusion of the standard format in the rule. One comment, with which OMB agrees, recommended placing one particular provision of the standard format into the rule. This change to § 1320.21(a)(2) requires agencies to request from the public not only comments concerning the accuracy of the burden estimates, but also suggestions for reducing the burden itself.

To maintain needed agency flexibility, OMB has decided not to set forth a specific standard format in the rule. Based on public comment, however, OMB recommends that agencies adopt the standard formats, as set forth below. This agency disclosure notice should be included as part of each collection of information submitted for OMB review under the Act. Any change from the alternative formats set forth below should be explained in the information collection clearance package:

Public reporting burden for this collection of information is estimated to average ____ hours [or minutes] per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to [title and address of agency component]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Or

Public reporting burden for this collection of information is estimated to vary from ____ to ____ hours [or minutes] per response, with an average of ____ hours [or minutes] per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to [title and address of agency component]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. 44 U.S.C. 3507—Public Notice

1. In new § 1320.15(b), OMB proposed a new procedure for agencies to follow when requesting an expedited review (faster than 60 days from the date of submission). (*See* proposed amendment 20, 52 FR at 27772.) This proposal was designed to ensure maximum public participation in the paperwork review process. New § 1320.25(b) would require an agency seeking expedited review to include, as part of its **Federal Register** notice, a copy of the collection of information, together with any related instructions, for which it seeks OMB approval. An agency would also have to indicate the time period within which it is asking OMB to take action. As described below, the final regulation retains this requirement with some modification.

Proposed new § 1320.15(b) generated much comment, with almost all of the public comments supporting it and most agency comments opposing it. The agencies' major concern was the potential cost and burden it would impose on them. While there will be a cost (and administrative burden) to the agencies, OMB believes that this is more than offset by the requirement's enhancement of public participation in the paperwork process. Moreover, because this additional cost or burden in § 1320.15(b) is imposed only when agencies seek expedited review, agencies may avoid the cost or burden entirely merely by allotting sufficient time for nonexpedited review.

Several comments expressed concern about how this new § 1320.15(b) would affect collections of information contained in proposed regulations (i.e., those submitted for OMB review under § 1320.13). Such collections of information are not subject to § 1320.15(b). Section 1320.13 applies to collections of information contained in proposed rules published for public comment in the **Federal Register**. Such publication itself offers the public the

[2] With the deletion of the definition of "collection of information requirement," the definition of "display" is now found in § 1320.7(e). *See* proposed amendment 8, 52 FR at 27771.

opportunity to comment. To impose a second publication requirement in § 1320.15(b) would be duplicative. OMB amends § 1320.15 by stating more clearly that only subsection (a), and not subsection (b), is applicable to § 1320.13.

Other comments raised concerns about implementation, such as informal requests for quick review action. This concern is best handled on a case-by-case basis.[3] If agencies know, in advance of the submission to OMB, that they will be requesting a quick review of a proposed collection of information, they should assume it will be treated like a request for expedited OMB review under § 1320.18(g), and they should prepare the required **Federal Register** notice and comply with new § 1320.15(b).

Agencies may also utilize the current emergency review procedures in § 1320.18(a)-(f).

Several public comments suggested procedural changes to the required **Federal Register** notice. First, they suggested delaying the start of the OMB review period until the notice is published. In order to prevent excessive delay in an agency's collection of needed information, however, the Paperwork Reduction Act generally requires OMB review to be concluded within sixty (and in some cases, ninety) days "of receipt" of a collection of information (44 U.S.C. 3507(b)).

Second, the public comments suggested that OMB establish a minimum review period. In contrast, several agencies raised a concern that the standard OMB review period would now become 60 days from receipt of the agency submission. As a general matter, this is OMB's goal, mainly to provide adequate time for public participation in the review process. Agencies should take this time period into consideration when setting internal agency timetables for the preparation of OMB review submissions. To ensure that the public does receive adequate notice, agencies should also take special care to comply with the provisions in §§ 1320.12(a), 1320.13(b), and 1320.14(b), which require agencies to forward to the **Federal Register** and to OMB, on or before the day of actual submission to OMB, the public notice indicating submission of an agency's information collection clearance package.

Of course, emergency and expedited review procedures remain in place to handle special, and uncontrollable, circumstances. For example, OMB takes note of the fact that for certain types of information collections, such as biomedical research studies, normal review periods may be far less than 60 days.

One concern that was raised involves requests for expedited review of collections of information contained in "interim final" regulations, referred to in one comment as "non-notice" regulations. In some instances, these regulations are tied to agency enforcement actions. Depending on the nature of the enforcement action involved, pre-action disclosure of the underlying collection of information may enable individuals to respond in a way to defeat the purpose of the action. Thus, OMB recognizes the need for exemptions to the requirement for advance publication, and is amending new § 1320.15(b) accordingly. If an agency demonstrates that advance publication would defeat the purpose of the collection of information, OMB will consider the agency's request for exemption.

2. In new § 1320.15(a), "**Federal Register** notice of OMB review," OMB proposed to establish by regulation the content of the **Federal Register** notice that each agency is required to publish when submitting a paperwork clearance package to OMB for review under the Act. (*See* proposed amendment 20, 52 FR at 27772.) The notice would be required to contain, at a minimum, a title for the collection; a brief description of the need, use, likely respondents, frequency of response, and burden estimates disaggregated into discrete components applicable to each separate information collection instrument; the average hours per response; the frequency of response; and the likely number of respondents. Furthermore, OMB encouraged agencies to state the basis for their burden estimates. As described below, the final regulation adopts this proposed amendment.

Comments on this new § 1320.15(a) both supported and opposed disaggregating burden estimates. Those in opposition (primarily agencies) expressed concerns about the additional cost and administrative burden imposed on them by this proposal, and asserted that it would duplicate information provided to OMB in the agency information collection clearance packages. Public comments, however, clearly supported this section. Unless potential respondents receive notice in the **Federal Register** of the estimated burden to be imposed upon them, they will probably lack the incentive to contact the agency to request a copy of the information collection clearance package, and thus be unable to provide the agency and OMB with timely and meaningful comments. Indeed, many public comments expressed a desire for additional information in the **Federal Register** notice, including the inclusion of OMB approval numbers, agency form numbers, more extensive discussions of major changes to collections or summaries of new collections, bases for burden estimates, and requested expiration dates.

OMB believes the public's need for the information proposed to be included in the **Federal Register** notice outweighs the potential increase in agency burdens and costs. The need for the additional information that the public comments recommended, however, is not so clear. OMB, therefore, is not adopting any expansion of this proposal.[4]

3. The proposed addition to § 1320.4(b)(3) would require agencies to indicate in their collection of information clearance packages what practicable steps they have taken to consult with interested agencies and members of the public in order to minimize the burden of the collection of information. (*See* proposed amendment 3, 52 FR at 27771.) The final regulation adopts this section as proposed.

Public comments supported this amendment, with several suggesting that additional information be included in the clearance packages. These suggestions included required discussions of why sampling or other less burdensome collection procedures were not undertaken, and discussions of the potential uses of comparable (not just duplicative) data. OMB has not adopted these suggestions. OMB is now able to raise these and other appropriate concerns with the agency as part of its review of each agency's information collection clearance package.

4. The NPRM's Supplementary Information section discussed 44 U.S.C. 3507(h), which requires, with one exception, that any written communication between OIRA and an agency or a member of the public concerning a proposed collection of information be made available to the public (52 FR at 27769). OMB emphasized its support for this provision. However, OMB also raised in the NPRM a concern that complaints

[3] One comment asked how to handle irregularly shaped forms. Such issues should also be discussed with OMB and handled on a case-by-case basis.

[4] Several agencies raised concerns about specific situations in which they asserted that disaggregating burden estimates in particular ways would impose substantial burden without commensurate benefits to the public, e.g., in those cases in which different categories of respondents fill out different portions of a form, or fill out the form at different intervals. These cases should be discussed individually with OMB and handled on a case-by-case basis.

from possible whistleblowers about a collection of information might be hindered if these complainants believe that the sponsoring agency reviewing a substantive complaint will be able to identify them and institute possible actions of reprisal, such as more intensified regulatory enforcement, or a denial of a grant or other benefits.

OMB received a number of comments on this discussion, several supporting it, others expressing concerns about it, and still others requesting clarification. For the purposes of clarification, OMB reiterates that it will follow the legal requirements set forth in 44 U.S.C. 3507(h), notwithstanding the discussion of the Privacy Act in the NPRM. Thus, those who provide OMB with any communications concerning a proposed collection of information, regardless of whether they request confidentiality, should recognize that written communications concerning such collections of information will be made available to the public and also, as a general matter, to the sponsoring agency, except for those involving classified information.

OMB remains concerned about the potential discouragement of possible whistleblowers. As such, those who wish to submit comments on proposed collections of information, but who do not wish to be identified to the sponsoring agency, may need to consider in advance how best to do so. A comment from the ABA Section of Administrative Law suggested submission of anonymous comments, but questioned whether OMB would "discount comments submitted anonymously." OMB wants to assure the public that any substantive comment received on proposed collections of information, whether or not submitted anonymously, through an intermediary (e.g., a public interest group or a trade association), or with full disclosure of source, will be considered as part of any paperwork review and brought to the attention of the appropriate agency.

The paperwork clearance file will contain all written, nonclassified communications, including those submitted anonymously or through intermediaries, and will be publicly available in OMB's docket library. Moreover, and as required by 44 U.S.C. 3507(b), any determination to approve, modify, or disapprove a proposed collection of information and explanation thereof shall be publicly available.

D. 44 U.S.C. 3502(11)—OMB Clearance Procedures

Several comments discussed proposed amendments to clarify the applicability of the public protection provisions in 44 U.S.C. 3512 (*see* proposed amendments 4 and 5, 52 FR at 27771) and, more generally, numerous technical amendments replacing the terms "information collection request" and "collection of information requirement" with the term "collection of information." [5] The purpose of this action was, consistent with the 1986 amendment to 44 U.S.C. 3502(11), to make clear (unless circumscribed by the clearance procedures in 44 U.S.C. 3504(h), involving collections of information contained in proposed regulations) that all of the provisions of the Act apply to any collection of information, whether called for by a printed form, oral question, or a proposed or current rule. These provisions include, among many, the public protection provisions of the Act, the required **Federal Register** notices, and the three-year limit on the duration of an OMB approval of a collection of information. (*See* 52 FR at 27768–69.)

Several comments expressed concern with the statutory, three-year limit, namely, that an agency might try to nullify regulatory provisions for reporting or recordkeeping simply by allowing OMB approval for a collection of information contained in a current regulation to expire. OMB believes that this fear is unfounded. Congress debated and agreed to the three-year limit to OMB approvals when it enacted the Paperwork Reduction Act in 1980.[6]

More recently, when recommending passage of the 1986 Amendments, the Senate Committee on Governmental Affairs explicitly discounted the danger that an agency might nullify these regulatory provisions simply by allowing OMB approval to expire:

> If an agency fails to resubmit a collection of information requirement after its clearance expires, the public protection clause of the Act would preclude the agency from penalizing persons who fail to respond to the collection of information requirement. However, the rule requiring the collection of information would remain in effect, and in the committee's view the agency could be sued successfully for failing to enforce its own rules ["Federal Management Reorganization and Cost Control Act of 1986," Report to accompany S. 2230, Senate Committee on Governmental Affairs, July 31, 1986, Report 99–347].

In addition to these protections, OMB requires all agencies to submit collections of information contained in rules for review 90 days prior to the current expiration dates (§ 2320.14(a)). Every month, OMB routinely sends agency information collection clearance offices chronological listings of every collection of information that is going to expire within 120 days. Thus, agencies that do not seek to renew a collection of information in an existing rule are in violation of the OMB rule. To prevent inadvertent noncompliance with 5 CFR Part 1320, agencies should establish information collection management tracking systems. In response to comments from the ABA Section of Administrative Law, OMB is amending 5 CFR 1320.14(a) to stress the importance of agency compliance with this rule.

E. Other Amendments

The NPRM proposed a number of other amendments, including having agencies consider reducing burden through the use of automated collection techniques or other forms of information technology (§ 1320.6(k); *see* proposed amendment 7, 52 FR at 27771), having OMB make publicly available any OMB decision to approve or disapprove a collection of information and explanation thereof (§ 1320.11(d); *see* proposed amendment 9, 52 FR at 27771), and emergency processing requirements (§ 1320.18; *see* proposed amendment 22, 52 FR at 27772). These amendments proposed in the NPRM received few substantive comments, and are adopted as proposed.[7]

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[5] For example, in response to one comment, OMB amends section 1320.14(i) to state more clearly which collections of information would no longer be valid upon receiving a disapproval from OMB pursuant to that section.

[6] OMB stated the underlying rationale for this three-year limit in the NPRM:

> "[T]he three-year limit to paperwork approval, combined with the notice provisions in the Act, gives the public the opportunity to comment on any collection of information (including any recordkeeping requirement) contained in a current rule every three years, not just when the rule was first issued. After a respondent has complied with a collection of information (including a recordkeeping requirement) contained in a current rule for several years, the respondent should have clearer knowledge of the burdens involved, and the agency more concrete experience with the practical utility of the information obtained. Through this iterative review process, the agency is able on a continuing basis to improve and reduce the burden of its collection of information." (52 FR at 27768.)

[7] Upon further review of 5 CFR Part 1320, OMB has also decided to make the following technical amendments:

(1) Various provisions in 5 CFR Part 1320 have taken effect on different dates. For example, OMB published amendments to this Part on May 16, 1984 (49 FR 20792). As a result, the last sentence of § 1320.2, which made this regulation effective on May 2, 1983, is obsolete and is therefore deleted.

(2) OMB amends § 1320.6(e) to clarify that it applies to collections of information that provide for any payment or gift to respondents or potential respondents, including but not limited to compensation of respondents for their time or other costs incurred in providing the information requested.

Continued

F. Additional Public Comments

In response to the NPRM, OMB also received a number of comments which, although they concern OMB's paperwork review practices, neither address particular proposed amendments in the NPRM nor suggest alternative amendments. Although OMB is not obligated to respond to such comments, a few of them raise issues of widespread concern or interest. OMB therefore believes that a short discussion of these is worthwhile.

1. Several comments expressed a desire for OMB to explain how it reviews collections of information. OMB is now drafting an "Information Collection Review Handbook" for use by OMB staff. When it is completed, the Handbook will be provided to agencies and to interested members of the public. This Handbook will describe agency and OMB responsibilities under the Paperwork Reduction Act, the scope of the information collection review program, the information collection review process, the types of information collections that are and are not covered by the Act, the criteria for obtaining OMB approval, and public involvement in OMB reviews.

Some comments raised the kinds of issues that will be discussed in the Handbook. For example, the ABA Section of Administrative Law questioned whether it was OMB's intent to approve collections of information in an existing rule during the time agencies may seek to amend or repeal those collections of information through a regulatory amendment. Similarly, an agency asked OMB to clarify, when OMB approves a collection of information contained in a proposed regulation, whether an existing, related regulatory information collection remains in force until the new regulatory information collection can take effect through completion of the amendatory rulemaking.[8]

2. Several comments questioned whether financial monitoring, audit requirements, and audit guides are covered by the Act. The answer varies from case to case, depending on whether the audit guide contains "identical" reporting or recordkeeping requirements (see the amendment to § 1320.7(c)), and on whether the collection of information has been previously approved as part of another paperwork clearance (see 48 FR 13675, March 31, 1983).

3. Comments also expressed a concern about the Information Collection Budget (ICB). While the ICB was not the subject of the rulemaking, it is important to clarify an apparent misperception concerning the ICB and how it is used. The ICB is a management tool and it is an adjunct to the individual case-by-case review required by the Paperwork Reduction Act and OMB's paperwork clearance procedures. It is used by agency officials in their planning and control processes to review the totality of the collections of information their staff plans to keep, or put, in place during the forthcoming year. OMB uses the ICB in conjunction with its management reviews of agencies, to assure that they comply with the Act's direction to manage information needs and uses carefully. Some comments suggested that, through the ICB, OMB may disapprove a collection of information. This is inaccurate; disapprovals of collections of information may occur only as part of OMB's case-by-case review of each information collection clearance package, in accordance with the procedures and policies of the Act.

4. Several members of the public asserted that OMB, in implementing the Paperwork Reduction Act, spends too much time and effort in reviewing collections of information imposed on businesses. OMB believes that this criticism is unwarranted, and that it may arise due to a lack of public awareness of how the Federal government's paperwork burden weighs upon the various segments of our society. OMB records indicate that as of September 30, 1987, agencies estimated that approximately 63 percent of all Federal reporting burden fell on businesses and other institutions (including hospitals and universities), while 32 percent of the total fell on individuals and households, 4 percent on State and local governments, and 1 percent on farms. Broken down by major Federal agency, the imposition of reporting and recordkeeping burden by respondent category is, as follows:

ACTIVE INFORMATION COLLECTIONS, THE AFFECTED PUBLIC, PERCENT OF BURDEN HOURS BY AGENCY

Agency [9]	Individuals/ households (percent)	State/local government (percent)	Farms (percent)	Business and other institutions (percent)
Agriculture	22	64	10	4
Commerce	16	9	0	75
Defense	3	0	0	97
Education	30	10	0	60
Energy	0	0	1	99
HHS	15	9	0	76
HUD	2	53	0	45
Interior	10	18	0	72
Justice	83	0	0	17
Labor	1	6	0	93
State	99	0	0	1
DOT	2	4	0	94
Treasury	51	0	0	49

(3) The Civil Aeronautics Board no longer exists. The reference to it in § 1320.7(h) is therefore deleted.

(4) OMB amends § 1320.18(c) to state clearly that the new amendments to 5 CFR Part 1320 also apply to Standard and Optional Forms, and to any other collections of information prescribed by another agency.

(5) OMB amends section 1(e) of Appendix A to correct two cross-references (the prior references to §§ 1320.17 and 1320.19 are changed, respectively, to §§ 1320.18 and 1320.20).

[8] To answer these questions: A proposed regulatory information collection is reviewed under § 1320.13. A current regulatory information collection is reviewed under § 1320.14. As a basic matter, if an information collection in a proposed rule is going to change an information collection in a current rule, the agency should take care to assure that the existing regulatory information collection continues to be approved by OMB while the agency is conducting the regulatory amendment.

In addition, it is OMB practice to assure that this happens. When OMB approves a proposed regulatory information collection under § 1320.13, OMB allows the related current regulatory information collection to remain in effect until the approved, new or revised regulatory information collection takes effect, unless otherwise noted—in particular circumstances—in the conditions of clearance. Similarly, even when OMB fails to approve a proposed regulatory information collection submitted for review under § 1320.13, but instead files public comments, OMB approves the related current regulatory information collection for at least as long as it takes to resolve the dispute.

ACTIVE INFORMATION COLLECTIONS, THE AFFECTED PUBLIC, PERCENT OF BURDEN HOURS BY AGENCY—Continued

Agency [9]	Individuals/ households (percent)	State/local government (percent)	Farms (percent)	Business and other institutions (percent)
CFTC	0	0	0	100
CPSC	2	0	0	98
EEOC	0	98	0	2
EPA	1	3	0	96
FCC	1	2	0	97
FDIC	0	0	0	100
FEMA	13	87	0	0
FERC	0	0	0	100
FHLBB	0	0	0	100
FRS	0	0	0	100
FTC	0	0	0	100
GSA	4	0	0	96
ICC	3	0	0	97
NASA	0	0	0	100
NCUA	0	0	0	100
NSF	15	0	0	85
NRC	0	0	0	100
OPM	96	0	0	4
SEC	0	0	0	100
SBA	10	1	0	89
VA	83	2	0	15
All Government	32	4	1	63

[9] The abbreviated agencies are as follows: HHS=Health and Human Services; HUD=Housing and Urban Development; DOT=Transportation; CFTC=Commodity Futures Trading Commission; CPSC=Consumer Product Safety Commission; EEOC=Equal Employment Opportunity Commission; EPA=Environmental Protection Agency; FCC=Federal Communications Commission; FDIC=Federal Deposit Insurance Corporation; FEMA=Federal Emergency Management Agency; FERC=Federal Energy Regulatory Commission; FHLBB=Federal Home Loan Bank Board; FRS=Federal Reserve System; FTC=Federal Trade Commission; GSA=General Services Administration; ICC=Interstate Commerce Commission; NASA=National Aeronautics and Space Administration; NCUA=National Credit Union Administration; NSF=National Science Foundation; NRC=Nuclear Regulatory Commission; OPM=Office of Personnel Management; SEC=Securities and Exchange Commission; SBA=Small Business Administration; VA=Veterans' Administration.

Regulatory Impact and Regulatory Flexibility Act Analysis

OMB has analyzed the effects of this rule under both Executive Order No. 12291 and the Regulatory Flexibility Act. Copies of this analysis are available upon request. In summary, OMB has concluded that these amendments will have a salutary impact on small entities through the reduction of unnecessary paperwork and that, while the costs and benefits of procedural amendments such as these are largely unquantifiable, the amendments meet all the requirements of the Executive Order.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork, Collections of information.

Issued in Washington, DC, May 4, 1988.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

5 CFR Part 1320 is revised to read as follows:

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

Authority: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

§ 1320.1 Purpose.

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and State and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to ensure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (44 U.S.C. Chapters 21, 25, 27, 29, 31) and section 104 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1111) as well as the Act.

§ 1320.2 Effect.

This Part supersedes and rescinds Circular No. A-40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976.

§ 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in § 1320.7(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.7(c).

wherever conducted or sponsored, except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or section 13 of the Federal Trade Commission Improvements Act or section 13 of the Federal Trade Commission Improvements Act of 1980;

(b) During the conduct of intelligence activities, as defined in Section 4–206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities; or

(c) During the conduct of a Federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or its equivalent is opened with respect to a particular party. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date. An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension. Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set out in § 1320.6, where applicable, and shall indicate, in its submission of a collection of information for OMB review, what practicable steps it has taken to consult with interested agencies and members of the public in order to minimize the burden of that collection of information.

(c) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB pursuant to §§ 1320.13 or 1320.14, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(d) Except as provided in § 1320.20, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.

§ 1320.5 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information:

(1) That does not display a currently valid OMB control number; or

(2) In the case of a collection of information required by law or to obtain a benefit which is submitted to nine or fewer persons, that fails to state, as prescribed by § 1320.4(a), that it is not subject to OMB review under the Act. The failure to display a currently valid OMB control number for a collection of information contained in a current rule does not, as a legal matter, rescind or amend the rule; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(b) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition to the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or statement, as prescribed in § 1320.4(a), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If such a collection of information is disapproved in whole by OMB (and the disapproval is not overridden pursuant to § 1320.20), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If such a collection of information is ordered modified by OMB (and the order is not overridden pursuant to § 1320.20) the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so modified.

(c) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.

§ 1320.6 General information collection guidelines.

Unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information:

(a) Requiring respondents to report information to the agency more often than quarterly;

(b) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(c) Requiring respondents to submit more than an original and two copies of any document;

(d) Requiring grantees to submit or maintain information other than that required under OMB Circular A–102 or A–110;

(e) Providing for any payment of gift to respondents, other than remuneration of contractors or grantees;

(f) Requiring respondents to retain records, other than health, medical, or tax records, for more than three years;

(g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;

(h) Unless the agency has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities;

(i) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect its confidentiality to the extent permitted by law;

(j) Requiring respondents to maintain or provide information in a format other than that in which the information is customarily maintained;

(k) Unless the agency has considered reducing the burden on respondents by use of automated collection techniques or other forms of information technology.

§ 1320.7 Definitions.

For purposes of implementing the Paperwork Reduction Act and this Part, the following terms are defined as follows:

(a) "Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, and governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities.

(b) "Burden" means the total time, effort, or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the information into the requested format; to review its accuracy and the appropriateness of its manner of presentation; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

(2) A collection of information sponsored by a Federal agency that is also sponsored by a unit of state or local government is presumed to impose a Federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a Federal requirement.

(c) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, or identical reporting or recordkeeping requirements, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. In the Act, a "collection of information requirement" is a type of "information collection request." As used in this Part, a "collection of information" refers to the act of collecting information, to the information to be collected, to a plan and/or an instrument calling for the collection of information, or any of these, as appropriate.

(1) A "collection of information" includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, information collection requests, collection of information requirements, rules or regulations, information collection requests or collection of information requirements contained in, derived from, or authorized by such rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, interview guides, oral communications, disclosure requirements, labeling requirements, telegraphic or telephonic requests, automated collection techniques, and standard questionnaires used to monitor compliance with agency requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or to the public at large, through posting, notification, labeling, or similar disclosure requirements, constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) A "collection of information" includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(d) "Director" means the Director of OMB or his designee.

(e) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written collections of information, individually distributed to potential respondents, to print the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date) in the upper right hand corner of the front page of the collection of information;

(2) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, to publish the OMB control number in the **Federal Register** (as part of the regulatory text or as a technical amendment) and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances exist, to use other means to inform potential respondents of the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date).

(f) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(g) "A Federal education program" means any Federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(h) "Independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the

Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Credit Union Administration, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(i) "General purpose statistics" are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(j) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, magnetic tapes, or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument;

(2) Samples of products or of any other physical objects;

(3) Facts of opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the Federal Register or other publications, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information;

(10) Like items so designated by the Director.

(k) "Interagency reporting requirement" means any requirement that an agency report information to another agency or agencies.

(l) "Modify" means to approve in part and disapprove in part.

(m) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(n) "Person" means an individual, partnership, association, corporation, (including operations of government-owned contractor-operated facilities), business trust, legal representative, organized group of individuals, state, territory, or local government or component thereof. Current employees of the Federal government are excluded from this definition for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former Federal employees are included entirely within the definition of "person."

(o) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, "practical utility" means that actual uses can be demonstrated.

(p) "Recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records and includes requirements that information be maintained or retained by persons but not necessarily provided to an agency.

(q) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(r) "Sponsor." A Federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person. A collection of information undertaken by a recipient of a Federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

(s) "Ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the collection of information.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(2) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

§ 1320.8 Agency head and senior official responsibilities.

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Reduction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

§ 1320.9 Delegation of approval authority.

(a) The Director may, after complying with the notice and comment procedures of 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved, and

(2) Has sufficient resources to carry out this responsibility effectively.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accord with the terms and conditions of each delegation as specified in Appendix A to this part, the Director delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System.

§ 1320.10 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted or sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

§ 1320.11 Agency submissions of collections of information.

(a) Agency submissions of collections of information for OMB review may be made only by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe. Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calculated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) OMB shall review all agency submissions in accordance with the standards set forth in §§ 1320.4 (b) and (c).

(d) In determining whether to approve, disapprove, modify, review, initiate proposals for changes in or stay the effectiveness of its approval of, any collection of information, OMB shall consider any public comments received, and may provide the agency and interested persons additional opportunities to be heard or to submit statements in writing. Any such determination and explanation thereof shall be publicly available.

(e) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements set forth in § 1320.14. Agencies shall submit collections of information other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements set forth in § 2320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.16. Special rules for emergency processing of collections of information are set forth in § 1320.18.

(f) Prior to the expiration date assigned to a collection of information, after consultation with the agency, OMB may decide to review the collection of information, and shall so notify the agency. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error. Upon such notification, the agency shall submit the collection of information for review under the procedures outlined in §§ 1320.12 or 1320.14, as appropriate. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, after consultation with the agency, OMB may stay the effectiveness of its approval of any collection of information not specifically required by agency rule, whereupon the agency shall cease sponsoring such collection of information while the submission is pending, and shall publish a notice in the **Federal Register** to that effect.

(g) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to Federal education programs, or research or evaluation studies related to

implementation of Federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC), or organizational unit fulfilling the same statutory function within the Department of Education, prior to approval or disapproval by OMB. Collections of information addressed to educational agencies or institutions and submitted to the Secretary of Education under the provisions of 20 U.S.C. 1221–3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the Feburary 15 preceding the school year in which the information is to be collected.

(h) No substantive or material modification may be made by an agency in a collection of information after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(i) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(j) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

§ 1320.12 Clearance of collections of information.

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the Federal Register or in current rules that were published as final rules in the Federal Register, in accordance with the following requirements:

(a) On or before the day of submission to OMB, the agency shall, in accordance with the requirements set forth in § 1320.15, forward a notice to the Federal Register stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the Federal Register, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days of its receipt of a proposed collection of information, OMB shall notify the agency involved of its decision to approve, modify, or disapprove the collection of information and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period [or 90-day period if notice of an extended review has been given], the agency may request, and OMB shall assign without further delay, a control number that shall be valid for not more than one year.

(d) A collection of information may not become effective until the agency has displayed a valid OMB control number [and, unless OMB determines it to be inappropriate, an expiration date].

§ 1320.13 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements set forth in § 1320.15, in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the rule, and identified as such, have been submitted to OMB for review under section 3504(h) of the Act. The statement shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the Federal Register, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, OMB may file public comments on collection of information provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may disapprove it at any time.

(e) When the final rule is published in the Federal Register, the agency shall explain how the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(f) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the collection of information contained in a rule before the final rule is published in the Federal Register, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

(g) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved pursuant to § 1320.13(f) [and not substantively or materially modified by the agency after approval]. Not later than 60 days after publication OMB shall approve, modify, or disapprove the collection of information contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB:

(1) The agency failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change of sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(h) After making such decision to approve, modify, or disapprove a collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not

acted upon the submission within the time limits of this section, OMB shall assign a control number. If OMB disapproves the collection of information, it shall make the reasons for its decision publicly available.

(i) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(j) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision. If OMB has approved or failed to act upon the collection of information, the agency shall include the OMB control number in such notice. A collection of information may not become effective until OMB has assigned a control number, and such number is displayed.

§ 1320.14 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the following procedures:

(a) In order to prevent the control number and OMB approval for a collection of information subject to this section from expiring without the agency first having complied with all applicable procedures attendant to the amendment or repeal of the rule containing the collection of information, agencies shall submit to OMB all previously approved collections of information subject to this section not later than 90 days before the expiration date of the OMB control number assigned to the collection.

(b) On or before the day of submission to OMB, the agency shall, in accordance with the requirements set forth in § 1320.15, forward a notice to the **Federal Register** stating that OMB review is being sought. The notice shall direct requests for information, including copies of the collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the **Federal Register**, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) Within 60 days of its receipt of a collection of information submission, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the collection and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date.

(d) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number that shall be valid for not more than one year. Upon assignment of a control number by OMB, the agency shall display such number in accordance with § 1320.7(e)(2).

(f) If OMB has notified the agency of a decision to initiate proposals for change in the collection of information, it shall extend the existing approval of the collection for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.12(b) or § 1320.13(g), as appropriate. In the case of a collection of information not previously approved, a control number shall be granted for such period. The agency shall publish a notice on the agency's next practicable publication date in the **Federal Register** to inform the public that OMB has initiated proposals for change in the collection, and has granted or extended its approval of the collection of information.

(g) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the **Federal Register**. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, modification, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the **Federal Register** and submission to OMB shall initiate OMB clearance procedures under section 3504(h) of the Act and § 1320.13. If the agency does not employ notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of such notice and submission to OMB shall initiate OMB clearance procedures under section 3507 of the Act and § 1320.12. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(h) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB directive to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(i) Upon disapproval by OMB of a collection of information subject to this section, the OMB control number assigned to such collection shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

§ 1320.15 Federal Register notice of OMB review.

(a) In each notice prescribed by §§ 1320.12(a) and 1320.14(b), and the statement prescribed by § 1320.13(a), agencies shall set forth, at a minimum:

(1) The title for the collection of information;

(2) A brief description of the agency's need for the information to be collected, including the use to which it is planned to be put;

(3) A description of the likely respondents; and

(4) An estimate of the total annual reporting and recordkeeping burden that will result from each collection of information. This total burden for each collection of information shall also be disaggregated and set forth in terms of the estimated average burden hours per response, the proposed frequency of response, and the estimated number of likely respondents.

(b)(1) If, at the time of submittal of a collection of information for OMB review in accordance with the requirements set forth in § 1320.12 or 1320.14, an agency plans to request, or has requested OMB to conduct its review on an expedited schedule (a review faster than 60 days from the date of receipt by OMB), the agency shall publish as part of this Federal Register notice the time period within which it is requesting OMB to approve or disapprove the collection of information, and a copy of the collection of information, together with any related instructions, for which OMB approval is being sought.

(2) If advance publication of the collection of information and any related instructions would defeat the purpose of the collection of information, OMB may, in consultation with the agency, exempt from the requirements of this subsection specific collections of information or categories thereof.

§ 1320.16 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms in use during that year for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the information.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this section shall be treated under the standards and procedures of §§ 1320.11–1320.15, and 1320.21, as appropriate.

§ 1320.17 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, as amended, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees, and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

§ 1320.18 Emergency and expedited processing.

An agency head or the Senior Official may request emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency, and that public harm will result if normal clearance procedures are followed, or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory or judicial deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the Federal Register notice prescribed by § 1320.15 a statement that it is requesting emergency processing, and the time period stated under § 1320.18(b).

(e) OMB shall approve or disapprove each such submission within the time period stated under § 1320.18(b), provided such time period is consistent with the purposes of the Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

(g) Upon request by an agency, OMB may agree to act on a collection of information submission on an expedited schedule, even though such submission may not qualify for emergency processing under this section.

§ 1320.19 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this rule, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations. Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified.

(b) Agencies conducting or sponsoring a collection of information shall take reasonable steps to inform potential respondents of the identity of the Federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, the average burden hours per response, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any (citing authority).

§ 1320.20 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a collection of information by majority vote of its members or commissioners. The agency shall certify any such

override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall promptly assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this authority is exercised. No override shall become effective until the independent regulatory agency has displayed the OMB control number.

§ 1320.21 Agency disclosure of estimated burden.

(a)(1) Agencies shall disclose on each collection of information, as close to the current OMB control number as practicable, the agency estimate of the average burden hours per response.

(2) Agencies shall include with this estimate of burden a request that the public direct to the agency and the Office of Information and Regulatory Affairs any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

(b) If it is not practicable to place the burden estimate and request for comments on the front page, or otherwise at the beginning of the collection of information or in the regulatory text, the agency may place the burden estimate and request for comments at the beginning of the instructions that accompany the collection of information, or at the beginning of the preamble of a proposed or final rule that contains the collection of information. If an agency develops or relies upon forms or other instruments in order to implement a collection of information in a proposed or final rule, the agency shall place the applicable burden estimate and the request for comments on both the rule and the forms or other information collection instruments.

(c) An agency need place the burden estimate and request for comments only on copies of the collection of information, or on its instructions, printed or otherwise reproduced (or newly communicated) after July 1, 1988.

(d) If special circumstances exist, OMB may, in consultation with the agency, exempt from the requirements of this section specific collections of information or categories thereof.

§ 1320.22 Other authority.

(a) The Director shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of the Director under the Paperwork Reduction Act of 1980, the Paperwork Reduction Reauthorization Act of 1986, or any other law. Nothing in this Part, the Paperwork Reduction Act of 1980, or the Paperwork Reduction Reauthorization Act of 1986 shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

Appendix A—Agencies With Delegated Review and Approval Authority

1. The Board of Governors of the Federal Reserve System.

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program, provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the **Federal Register** notices specified in (3)(i) below.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** informing the public of the proposed collection of information, notifying the public of the availability of copies of the "clearance package," and providing the public with the opportunity to comment. Such **Federal Register** notices shall also advise the public that they may also send a copy of their comments to the OMB/OIRA Desk Officer for the Federal Reserve Board.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may approve of the collection of information without providing opportunity for public comment. At the earliest practical date after approving the collection of information, the Board will publish a **Federal Register** notice informing the public of its approval of the collection of information and indicating why immediate action was necessary.

(B) In such cases, before taking final action to reauthorize the collection of information for an additional period, the Board will take into account any comments received after the institution of the collection.

(ii) Provide the OMB/OIRA Desk Officer for the Federal Reserve Board with a copy of the Board's **Federal Register** notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to ensure that the collection of information conforms to the requirements of 5 CFR 1320.4(b). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.6, unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v) Assure that each approved collection of information displays an OMB control number and that all collections of information, except those contained in regulations, display the expiration date of the approval.

(vi) Assure that each approved collection of information, together with a completed SF83, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's **Federal Register** notice or a summary of these comments, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board receives written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to, and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that Board approvals of collections of information have been received by OMB and incorporated into OMB's public docket files and inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this Appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notices and generally only if:

(1) Prior to the commencement of a Board review (e.g., during the ICB review), OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed. When OMB exercises this authority it will consider that the period of its review began the day that OMB received the **Federal Register** notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.18 and 5 CFR 1320.20 continue to apply.

(31 U.S.C. Sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35)

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Tuesday
May 10, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Neighborhood Development Demonstration Program; Notice of Fund Availability For Fiscal Year 1988

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-88-1801; FR-2492]

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1988

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Funds have been appropriated for Fiscal Year 1988 for HUD to carry out, for a third round, the Neighborhood Development Demonstration program under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The purpose of this program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of the 1988 awards may be to previous grantees in the program; the remaining 70 percent of the awards will be made to those organizations selected from among new applicants. All applicants, including previous participants, are to compete through the same selection process.

EFFECTIVE DATE: May 10, 1988.

Application due date: Applications are due by August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Karen McMillan, Office of Procurement and Contracts, Community Services Division (ACC-KM), Department of Housing and Urban Development, Room 5252, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-5662. (This is not a toll-free number.) (Use this mailing address to obtain copies of the Request for Grant Applications, which provides further information on the Demonstration. See Part IV of this Notice.)

SUPPLEMENTARY INFORMATION:

This document (1) notifies the public of the availability of funds for the Demonstration; (2) identifies the objectives of the program; (3) describes the method of allocation and distribution of funds; (4) defines eligible neighborhood development organizations; (5) sets forth eligible neighborhood development activities; (6) sets forth application requirements for the funds; (7) identifies the selection criteria for the award of funds; and (8) specifies grantee reporting requirements.

Before requesting a grant application package as provided for under Part IV, organizations should carefully review this notice, particularly the eligibility factors under Part III. Many organizations that spent time and effort preparing applications for first round assistance were determined to be ineligible under the statutory requirements.

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

The information collection requirements contained in this Notice have been approved by OMB and the assigned OMB control number is 2535-0084.

Notice of Fund Availability

I. Background

A. Legislation

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) authorized the Neighborhood Development Demonstration program. The report of the Senate Committee on Banking, Housing, and Urbar Affairs referred to the new authority as a:

> Demonstration Program to assist neighborhood organizations to carry out community development activities through an innovative matching grant mechanism. Designed to encourage greater financial self-sufficiency on the part of non-profit neighborhood development groups, the program would provide federal matching funds of up to $50,000 per organization on the basis of charitable contributions which organizations raise from individuals, businesses, and religious institutions in their areas. Different matchnig ratios would be established for participating organizations based upon the size and economic condition of the community in which those organizations operate, although the ratio could not be lower than 50/50. [S. Rep. No. 142, 98th Cong., 1st Sess. 29 (1983).]

Under the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) $2 million was authorized for the program for FY 1988; however, only $1 million was actually appropriated to fund the program. See section 101(f) of Pub. L. 100-202. (In the interest of ensuring an efficient and timely distribution of funds, HUD will hold only one competition, but selected enough applications so that in the event additional funds are appropriated in FY 1989, some of the applicants not assisted from the original appropriation of $1 million may be assisted from the FY 1989 appropriation.) Under section 123(e)(6)(E), HUD may use no more than five percent of the appropriation for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. Federal payments will be made on a quarterly basis, beginning with the first quarter of the one-year period, as neighborhood organizations report and verify the amount of funds raised from private sector sources during the previous quarter.

B. Program Objectives

The Neighborhood Development Demonstration program is designed to determine the ability of neighborhood organizations to fund and implement neighborhood development activities, using cooperative efforts and monetary support from individuals, businesses and non-profit and other organizations located within the neighborhood boundaries. The Federal matching funds are incentive funds to promote the development of this concept and to encourage neighborhood organizations to become more self-sufficient in their development activities.

The Neighborhood Development Demonstration program has the following objectives:

—To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities undertaken at the neighborhood level through Federal incentive funding;

—To determine the correlation, if any, between the demographics of a neighborhood (*i.e.*, the income level of its occupants, the amount of non-residential development, the percent of persons employed, the tenant/homeowner breakdown, the racial/ethnic makeup of the neighborhood,

etc.) and the neighborhood organization's ability to raise funds within the neighborhood boundaries;
—To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and
—To determine the correlation, if any, between the characteristics of an organization and the success of its fund-raising efforts.

II. Allocation and Distribution of Funds

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), grantee organizations may receive no more than $50,000 in Federal matching funds in a single program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. *Funds raised from organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities.* The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are to be established in accordance with the statutorily required " smallest number of households or greatest degree of economic distress" criteria. Subject to the statutory maximum of $50,000.00, with Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria. Applications will be ranked on *each* of the two criteria. Applications best satisfying *either* criterion will be placed in the matching ratio category eligible to receive six Federal dollars for each neighborhood dollar. Applications placed in the other matching ratio categories will receive proportionally less, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching funds ratio *in excess* of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match *below* the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

III. Eligibility

NOTE: ORGANIZATIONS ARE CAUTIONED THAT, TO AVOID WASTED EFFORT, THEY SHOULD CAREFULLY REVIEW THE FOLLOWING REQUIREMENTS. OVER 39 PERCENT OF THE 281 APPLICATIONS RECEIVED IN 1984 WERE INELIGIBLE UNDER THESE STATUTORY REQUIREMENTS.

A. Eligible neighborhood development organizations

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. It must meet all of the following statutory requirements:

(1) The organization must carry out its activities in an area that meets the Urban Development Action Grant Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing regulation at 24 CFR Part 570, Subpart G. These provisions require, among other things, that a neighborhood must be located in a governmental jurisdiction or pocket of poverty that is found to be a distressed area and secondly, that the governmental jurisdiction in which an area is located must have demonstrated results in providing housing and employment for low- and moderate-income persons and members of minority groups. The neighborhood organization must be located in an area currently meeting the following distress criteria in order for the neighborhood organization to be able to apply:

(i) A city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; OR

(ii) An area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

The second test of UDAG eligibility, which assesses the localities' demonstrated progress in providing housing and equal opportunity in employment, must be met by the deadline for receipt of applications by HUD, *i.e.*, August 1, 1988. In order to meet this deadline, the local unit of government, if not previously certified as UDAG-eligible, must submit a "Request for Determination of UDAG Eligibility" by July 1, 1988. The nonprofit applicant should contact the community development department of its local unit of government by June 1, 1988, notifying it of the applicant's intent to apply. The applicant should inform the locality of the need (if the locality is not already certified as eligible to participate in the UDAG Program) for the local government to submit to HUD a "Request for Determination of UDAG Eligibility" to allow the applicant to partcipate in the demonstration. The UDAG eligibility requirements are set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

(2) The organization must be incorporated as a private, voluntary, non-profit corporation under the laws of the State in which it operates.

(3) The organization must have conducted business for at least three years before the date of its application.

(4) The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

(5) The organization must have conducted one or more eligible neighborhood development activities, as defined in Section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For purposes of the preceding sentence, "low- and moderate-income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as

determined by HUD, with adjustments for smaller and larger families.

B. Eligible neighborhood development activities.

Funds may be used by eligible neighborhood development organizations to develop or carry out a project designed to achieve the following:

(1) Create permanent jobs in the neighborhood;

(2) Establish or expand businesses within the neighborhood;

(3) Develop new housing, rehabilitate existing housing, or manage housing stock within the neighborhood;

(4) Develop delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as Fair Housing counseling services, child care centers, youth training, or health services; or

(5) Plan, promote, or finance voluntary neighborhood improvement efforts, such as establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup program.

C. Equal Opportunity Requirements

The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(1) The requirements of Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. 3601–3619) (Fair Housing Act) and implementing regulations at 24 CFR Parts 105, 108, 109, 110, and 115; Part 200, Subpart M; Executive Order 11063 (Equal Opportunity Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(3) The requirements of section 3 of the Housing and Urban Development Act 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter); and

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

D. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

(1) Ineligible contractors. The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) Flood insurance. No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency [FEMA] as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

(3) Lead-based paint. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35.

(4) Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122, with respect to the acceptance and use of assistance by private nonprofit organizations.

IV. Application Process

A. Application requirements

(1) There are three steps in the application submission process:

(i) Organizations must determine first whether they are in an area or pocket of poverty currently eligible for assistance under the Urban Development Action Grant (UDAG) program. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress which are used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant program are advised to consult two notices published by the Department in the Federal Register entitled, "Urban Development Action Grant; Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

These notices identify, among other things, (1) the most current minimum standards of physical and economic distress for cities and urban counties, and (2) those cities and urban counties that currently meet the minimum standards. In addition, it is possible for an applicant to be eligible on the basis of its neighborhood's being located in a "pocket of poverty." See 24 CFR 570.466. Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for the Neighborhood Development Demonstration programmatic information is Mrs. Joyce Walther, telephone number (202) 755–6186. (This is not a toll-free number.)

(ii) Organizations in an area that is eligible for funding under the UDAG progarm that wish to apply must send a request in writing, with two self-addressed labels, for a "Request for Grant Application" (RFGA) package from Ms. Karen McMillan in the HUD Office of Procurement and Contracts, as identified under "FOR FURTHER INFORMATION CONTACT". The RFGA contains the forms and other information regarding the application process and the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122. (This Notice of Fund Availability summarizes major provisions of the RFGA.)

(iii) An original and three copies of an application must be submitted to the address stated under "FOR FURTHER INFORMATION CONTACT" earlier in this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

(2) Each application must contain the following, as required by the Request for Grant Application:

(i) A transmittal letter, a table of contents referenced to numbered pages, and Standard Form SF–424;

(ii) An abstract describing, among other things, the applicant and its

achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(iii) A completed fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

(iv) Evidence that the applicant meets eligibility and other criteria, including the following:

—A legible map, with street names, prepared by the city community development or planning office delineating the applicant's neighborhood. Census tract, block or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

—A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

—The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition.

—A list of the names of the neighborhood organization's governing body members and their addresses (with zip codes), noting those who reside and (separately) those who conduct business, in the neighborhood.

—A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

—Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph III B;

—A description of the means by which the governing body members account to the residents of the neighborhood, including the method and frequency of selection of members of the governing body, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.*, a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

—Evidence of the applicant's sound financial management, determined from its financial statements or audits;

—A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter); and

—A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(v) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(vi) A project management plan, including a schedule of tasks for both fund raising and project implementation; and

(vii) A project budget and budget narrative.

V. Selection Criteria for Award Funds

Applications will be evaluated on the basis of the Factors for Award outlined below (the maximum possible points that may be awarded are shown under each Factor):

A. Neighborhood/Organizational Qualifications

(1) The degree of economic distress within the neighborhood; (15 points)

(2) The extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization; (5 points)

(3) The record of demonstrated measureable achievements in one or more of the activities specified under III B, including benefits to low- and Moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously sponsored projects involving housing; (15 points) and

(4) The extent to which the governing body of the organization reflects the demographics of the neighborhood (education, age, sex, race, income level, types of employment, etc.). (5 points)

B. Project qualifications

(1) The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low income neighborhood or an application that is especially meritorious); (5 points)

(2) The extent to which a strategy has been developed for achieving greater long-term private sector support for this demonstration and future funding; (10 points)

(3) The extent to which the proposed activities will benefit persons of low and moderate income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low and moderate income relationships should be described; (15 points) and

(4) The quality of the management plan submitted for accomplishing one or more of the activities specified under III B, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff, and coordination efforts involved, including working relationships with local governments when applicable. (30 points)

VI. Reporting Requirements

In addition to complying with relevant provisions of OMB circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in any of the following—the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on

successful projects that will be distributed to other neighborhood organizations.

VII. Environmental Reviews

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4 The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983, (Pub. L. 98–181) sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 2, 1988.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 219

Railroad Operating Rules; Random Drug Testing Program; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 219

[FRA Docket No. RSOR-6, Notice No. 18]

Railroad Operating Rules; Random Drug Testing Program

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes a rule to: (1) Prohibit the abuse of controlled substances, whether on duty or off duty, by railroad employees who perform covered service, and (2) require that railroads implement random drug urine testing programs approved by the FRA. These measures are designed to facilitate the control of drug use in railroad operations and thereby prevent accidents, injuries and property damage.

DATES: (1) FRA will hold informal hearings on this proposal at times and places to be announced in a subsequent notice.

(2) Written comments must be received no later than August 8, 1988. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) Hearing locations will be announced in a subsequent notice.

(2) Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC–30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Special Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0897) or Grady Cothen, Special Counsel (Telephone: (202) 366–0628).

SUPPLEMENTARY INFORMATION:

Introduction

On February 10, 1986, the final rule on Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219) became effective. (*See* 51 FR 3973; January 31, 1986.) On and after that date, railroad employees subject to the Hours of Service Act were prohibited from using, possessing, or being impaired by alcohol or any controlled substance while on duty. The railroads were required to exercise due diligence to prevent such conduct. Railroads were also authorized to comply with requirements for post-accident testing. Additional provisions of the rule became effective on February 10, 1986, including an authorization to require breath or urine samples for testing under conditions constituting "reasonable cause," improved accident/incident reporting requirements (49 CFR 225.17, as amended), requirements that the railroads adopt and implement policies to identify employees troubled by alcohol and drug abuse problems and provide them the opportunity to obtain counseling or treatment, and more detailed specifications for reporting the results of operational tests and inspections related to alcohol and drug use (49 CFR 217.13, as amended).

On March 10, 1986, compliance with post-accident testing provisions became mandatory. Requirements for pre-employment drug screens became mandatory on May 1, 1986; and, as of that date, the current alcohol and drug regulations were fully effective in all respects.

In the preamble to its current rule, FRA stated its intention to monitor the experience of the railroads under this rule, including the success of complementary efforts in the private sector to address alcohol and drug use in railroad operations (50 FR 31508, 31567; August 2, 1985). On February 18, 1987 FRA held a public hearing to review experience during the first year of the rule's application (52 FR 2118; January 20, 1987). The purpose of the inquiry was to solicit and review data on the first year of the rule's implementation and, on the basis of that information, determine whether any revisions to the final rule should be considered.

In the near future FRA will issue a separate notice of proposed rulemaking (NPRM) dealing with relatively narrow issues developed in the safety inquiry regarding the operation of the current rule. The present notice proposes significant additions to the current rule which are beyond the scope of that inquiry, but which derive from experience in administration of the current rule since February of 1986.

For reasons set forth in the preamble, FRA elected not to incorporate a random testing requirement in its current rule. However, our experience over the past two years has convinced us that the current reasonable cause testing program should be supplemented by a random testing mandate.

Even as FRA has worked to implement and refine its current program, it has become apparent that a significant portion of the substance abuse problem remains unaddressed. As a consequence, FRA is proposing to forbid any use of controlled substances by covered employees that is not medically authorized and to add a random testing program for controlled substances to the existing regulatory program.

The success of a reasonable cause testing program—both in detection and deterrence—depends on the extent to which the drug choice produces noticeable manifestations of impairment or results in an on-the-job event that falls squarely within the regulatory criteria for testing. Unfortunately, the symptoms of drug use are often undetectable by even a reasonably trained supervisor. Further, some "functional" drug users seem able to avoid job-related problems until their problems reach a crisis stage. There is, in short, a category of cases in which drug use in violation of the Federal rule will not trigger the testing mechanism provided in current law short of a major compromise in safety that could have catastrophic consequences.

More serious is the fact that some drug users understand the difficulty in perceiving symptoms and remain confident (rightly or wrongly) that their actions will never trigger testing under the current reasonable cause testing authority. In fact, one hallmark of chronic drug use is the user's confidence that he/she can operate normally despite consumption or impairment, a confidence that limits the otherwise significant deterrent value of a reasonable cause testing program.

Finally, a reasonable suspicion rule can be defeated by procedures as simple as reporting for work unimpaired, then consuming controlled substances in the workplace. The engineer of the Conrail movement at fault in the Chase, Maryland, accident recently testified that use of the reasonable suspicion standard would not have detected any problem with his behavior on reporting for duty. In that case, the engineer and front brakeman used marijuana after departing the terminal.

Random testing addresses these problems by ensuring that any member of the safety-critical workforce is subject to testing at any time, regardless of the ability of the individual drug user to cloak the symptoms of use or impairment. Detection is accomplished

prior to the time when the safety risk associated with drug use becomes manifest in a potentially life-threatening event.

This not to suggest that random testing is a substitute for reasonable cause authority. They are not mutually exclusive, but are in fact complementary.

Random testing is both broader and narrower than reasonable cause testing. It is broader because random testing ensures that all carriers must conduct a minimum level of testing activity in any given time period. Reasonable cause testing, in contrast, is an authority, not a mandate. The carrier can elect not to exercise that authority or to exercise it at a lesser degree of intensity than other railroads. In the rail mode, mandating reasonable cause testing for a broad range of individually unpredictable events would create major logistical problems. By contrast, in the railroad industry mandatory random testing can be centrally planned and administered on a more cost effective basis.

Conversely, however, random testing is narrower than reasonable cause testing because it does not empower the supervisor to test an employee unless that employee's name appears on the random selection list for that test period.

Extent of Drug Use Problem

In previous rulemaking documents FRA has described the extent of drug use prevalence in society at large and in the railroad industry. Prevalence varies by a number of demographic factors, but no railroad or part of the country is free from this common problem.

A recently issued Special Report from the Comptroller General of the United States entitled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states as follows:

> Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society.

Drug use in the railroad workplace is a matter of particular concern because it affects the public safety, as well as the health and safety of drug using and non-drug using employees.

Experience under FRA's current rule has confirmed the existence of a residual problem that persists despite the deterrent effect of the current regulatory program, voluntary alcohol/drug prevention activities, and a long history of substance abuse treatment programs targeted at the railroad employee population.

During the period February 10, 1986, through December 31, 1987, mandatory post-accident testing was conducted after 349 qualifying events. A total of 1508 employees were tested. Of the 1508, 76 employees (5.0%) tested positive for alcohol or a controlled substance used without medical authorization (illicit drug use or self-medication). Of the 76 employees, 10 (.7%) tested positive for alcohol and 66 (4.4%) for a controlled substance. An additional 12 employees (.8%) tested positive for prescription drugs.

The 4.4 percent positive rate for illicit drugs (and non-authorized use of prescription drugs) is encouraging to a degree, since it is below many previous estimates of drug use prevalence, notwithstanding the fact that drug users would be expected to be overrepresented in the population sampled (employees involved in accidents). On the other hand, it is also possible that the statistic understates general drug use prevalence among railroad employees, since any single-event testing program will capture drug use only in a very discrete time frame (*e.g.*, a non-dependent user may bring drugs into the workplace only on certain occasions).

Post-accident data indicate that behavior modification has taken place in response to the current rule. However, a 4.4 percent positive figure is not an acceptable figure, as evidenced by the fact that drug use may have contributed to the probable cause of several significant accidents since issuance of the current rule and presents a continuing threat to public safety.

The National Transportation Safety Board recently concluded that the Chase, Maryland, accident of January 4, 1987, was caused by impairment of the Conrail engineer by marijuana. The engineer and front brakeman of the Conrail movement have acknowledged smoking marijuana immediately prior to the accident. Sixteen persons were killed and 174 injured in that accident, which illustrates the catastrophic consequences that can occur when railroad employees responsible for passengers or hazardous materials are under the influence of drugs.

During the thirteen-month period January 1987 through January 1988, the nation's railroads experienced 41 accidents (including Chase, Maryland) in which one or more employees tested positive for alcohol or illegal drugs. Alcohol or drug use by one or more employees was detected in over 20% of qualifying events for post-accident testing. FRA believes that there are significant indications that alcohol or drug use played a causal or contributory role in 13 of these events, accounting for 19 fatalities, 220 injuries and $19,956,000 in property damage. Of the 13 events, illicit drug use was present in 10 and alcohol use in only 3, despite estimates at the time the current rule was issued that alcohol prevalence and drug use prevalence were roughly equal. The 10 accidents involving drug positives accounted for 18 fatalities, 220 injuries, and $18,725,628 in property damage. These data present a stark contrast to the preponderance of alcohol involvement over drug involvement in accident statistics assembled before routine post-accident toxicological test results became available.

The tentative lessons from the above are twofold: (1) The current rule has been more effective in limiting alcohol use than drug use; and (2) the drug use problem affecting railroad safety is, as projected at the time of the issuance of the current rule, a more significant problem than previously documented.

Support for New Initiatives

Several commenters on the NPRM which preceded the current rule on the Control of Alcohol and Drug Use in Railroad Operations also advocated the grant of authority for random testing (50 FR 31547; August 2, 1985). These commenters include the Association of American Railroads and several major railroads. The Washington Legal Foundation agreed that there was justification for deferring a decision on random testing when it commented on the NPRM for the current rule and advocated that the FRA should review the effectiveness of the current rule for one year and reconsider random testing in light of the results. At the safety inquiry hearing called for first-year review of the current rule, several commenters reiterated their support for random testing.

Effects of Drug Use on Safety

This NPRM proposes to prohibit railroad employees in covered service from using controlled substances without medical authorization, whether on duty or off duty. The premise of this proposal is very simple: Use of any controlled substance has the potential to degrade safety performance. In order to understand this premise, it is necessary to review what controlled substances are and what effects they have on individual persons.

Drugs are chemicals that affect the body (physiological or function-altering effects) and often the mind (pharmacological or mind-altering effects). In broad summary, controlled substances are certain drugs identified by the government as having mind- or function-altering effects of a kind that

create a potential for abuse and/or dependency. In comments before the Federal Railroad Administration, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

Most controlled substances have at least some accepted medical applications, but those classified in Schedule I of the controlled substances list do not. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal ("illicit") drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal ("licit") drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified by pharmacological properties as—

- Narcotics, such as the opiate-based drugs;
- Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, and methaqualone;
- CNS stimulants, such as cocaine and amphetamines;
- Hallucinogens, such as LSD and PCP; and
- Cannabis (marijuana derivatives).

All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experienced by the user. Instead, drug effects are complex and, in many cases, long-lived. They include—

- *Acute* effects, including the often sought-after change of mental state and physiological changes;
- *After*-effects from individual doses or series of doses;
- *Chronic* effects from prolonged use, which may include profound biochemical changes and changes in cognitive functions; and
- *Withdrawal* effects when a drug-dependent individual ceases use of the drug.

All of these potential effects are of concern with respect to transportation safety, yet only the acute effects correlate in time with body fluid concentrations of the impairing substance; and for some drugs that correlation is imperfect.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are coming to realize that "off-duty use" and "on-duty use" are not completely distinct categories warranting entirely separate consideration, but are instead facets of an overall picture—*i.e.*, fitness for duty involving safety-sensitive functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

Developing opinion in the transportation industries is informed by a growing body of information related to drug effects on safety. Numerous behavioral studies and extensive clincial experience have established the fact that controlled substances can powerfully alter the capacity of human beings to respond appropriately to their environment.

The following discussion will endeavor to explain in summary how drugs can and do adversely affect safety. Since each human being is, from the scientific point of view, a unique and whole organism, any such discussion will suffer from incompleteness, on the one hand, and an absence of total analytical integration, on the other. However, the available literature does offer useful information that can be placed in appropriate context and that can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Sussman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1987) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are of greatest concern for transportation employees. "Motor performance" concerns the ability to make timely, accurate, and steady control movements. Both simple and complex reaction time, as well as tracking and steadiness, are skills of concern to transporation. "Vigilance" is a term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. "Cognitive functions" refers to the ability to classify, store, integrate, and recall information. Judgment, memory, proclivity for risk-taking, and ability to manage multiple tasks are areas of particular concern for transportation.

The clear message from available evidence is that all controlled substances tend, to a greater or lesser degree, to affect adversely one or more of the faculties critical to safe conduct of transportation and transportation-related duties. In some cases, acute effects may be of greatest concern, while with other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy equipment operators except where side-effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention.

Behavorial studies of the acute effects of CNS depressants have demonstrated decrements to motor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after-effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high dependency potential, and severe withdrawal symptoms can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transporation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context; and withdrawal from other CNS Depressants presents risks of equal gravity.

CNS stimulants such as cocaine and the amphetamines tend to increase mental activity, responsiveness to external stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamine) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called "recreational drugs". The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity.

Side-effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures after a single dose, and its ability to produce psychosis after chronic use. *See, e.g., Cocaine: Pharmacology, Effects, and Treatment of Abuse*, Research Monograph Series, No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences suggest strongly that cocaine use may promote risk-taking and cause the user to over-estimate his degree of control. Cocaine is not an attractive "operational" drug becuase of it short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting effects of stimulants over an extended time period have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space. These drugs generally produce relaxation and shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may trigger mental disturbances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as an hallucinogen but has properties that warrant its separate treatment. As the most popular illicit drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available on the illicit market increased and a large segment of the population gained experience in its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980*, Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Motor performance on flight simulator tasks was adversely affected, as were tracking tasks and pursuit rotor tracking. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as car handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal detection tasks. Studies evaluating cognitive functions indicated that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex divided attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142:1325–1329 (1985)). Some experts also believe that the accumulation of cannabinoids in the body through chronic use may produce adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. *See* Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:572–578 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the

human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM)85-1386 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.*, examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular affects and performances in individual phases of the study. However, when the data were combined the authors concluded as follows:

> Secoberbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses; the marijuana doses were considered moderate to strong by the subject population used; the alcohol effects were reported for levels up to and slightly above the legal limit. *No clear-cut differences in the pattern of effects were found among the drugs tested.* All drugs impaired perceptual-motor skills *(e.g.,* tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decisionmaking tasks.

Id. 19 (emphasis supplied). This research suggests that the subtle differences in the way that certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment. Those effects may be exacerbated by use of two or more drugs in combination.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high concentrations in the blood stream, but rather to the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood, but what is known is a source of concern.

Conclusions

The full extent of drug effects and the dose-response characteristics of individual drugs on particular subjects is the subject of continuing study. Such study could be expected to continue indefinitely, even if the pharmacopoeia were a closed class and a steady stream of new compounds were not being introduced into licit and illicit marketplaces on a daily basis. But the fact that continuing study is warranted does not mean that no other action is appropriate. It is important to draw reasonable conclusions from the available data that can help to protect the public safety.

The only responsible conclusion that can be drawn from available evidence is that the non-medical use of controlled substances among transportation employees in safety-sensitive functions constitutes a clear threat to the public safety. The threat flows from the after-effects, chronic effects, and withdrawal effects of these substances, as well as the more heavily-researched acute effects. Any set of countermeasures must therefore encourage drug abusers in the subject populations to abate their habits or seek treatment for their chemical dependencies, as appropriate.

FRA Conclusions and Proposals (With Section-by-Section Analysis)

FRA proposes to amend Part 219 of Title 49, Code of Federal Regulations, Control of Alcohol and Drug Use in Railroad Operations, by adding a prohibition on non-authorized use of controlled substances by a covered employee at any time and by mandating a program of random testing. Commenters are requested to address the interrelationships among the proposed provisions and existing regulatory provisions.

General Provisions

Responsibility for Compliance

Section 219.9 would be amended to include reference to the responsibility of a railroad to comply with the new § 219.102 and the random testing provisions of subpart G, and the testing safeguards of subpart H. This provision specifies when a railroad will be liable for a civil penalty.

Implied Consent

Section 219.11 would be amended to require that covered employees consent to random testing under the circumstances specified in the proposed rule. Under the current rule, consent to the tests is required and is implied as a matter of law. However, the regulations do not authorize physical coercion.

Prohibition on Use of Controlled Substances

FRA proposes to add a new § 219.102 to the current rule prohibiting an employee who performs covered service from using a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103. Section 219.103 of the current rule permits use of a therapeutic controlled substance as approved by a medical practitioner and at the prescribed or authorized dosage. It is important to include licit drugs in the general prescription of use, since certain therapeutic drugs can have effects many hours or even days subsequent to last ingestion, making a uniform pre-duty abstinence period impractical.

Random Testing Program

Random Testing Issues

FRA proposes to amend 49 CFR Part 219 by adding a new subpart G mandating a program of random testing for railroad employees subject to the current alcohol and drug rule. Commenters are asked to address the following general issues in light of the specific discussion that follows:

1. What additional data is available concerning the prevalence of drug use by railroad employees? How do data collected by individual railroads compare with mandatory post-accident testing statistics set forth above?

2. If FRA adopts a random testing mandate, what level of detail should be specified? Should the FRA dictate the method of random selection or merely review proposed methodologies? If FRA dictates a method, what method would be suitable for all railroads, given their diversity in size, resource and operations?

3. Should FRA exclude small employers? What should the cutoff point be? What special problems would small railroads face in implementing random testing? Should the random testing requirement exclude railroads with 15 or fewer Hours of Service employees, as is currently the case for certain elements of the existing rule? (See further discussion below.)

4. Would it be possible to make multi-employer arrangements for selection and/or testing of employees, particularly with respect to smaller railroads? What facilitating role should FRA play in this process, if any?

5. What problems do the railroads foresee with respect to administration of a random selection program and the availability of employees for regular or unscheduled assignments? Will hours of service restrictions pose problems? What design elements could be included in a random testing program to alleviate or avoid these problems?

6. As a matter of cost-effectiveness, would it make sense to focus the random testing program on employees with particularly critical functions, such

as locomotive engineers, dispatchers or operators? Should the program be phased in by craft or function? Should the random testing rule be extended to apply to other safety-sensitive employees, particularly maintenance-of-way personnel; or, conversely, should it be limited to certain categories of Hours of Service employees? Does the Hours of Service Act establish the appropriate distinction between those railroad employees who should be subject to random testing and those for whom such tests are not necessary? Where should the line be drawn? (In this, as in other areas, FRA reserves the right to broaden or constrict the final rule based on analysis of comments received.)

7. What would be the cost of a random testing program in employee/supervisory time, expenses of collection and shipping, laboratory analysis, and follow-up steps?

8. What level of effort would provide the greatest level of benefit given cost and other considerations? FRA proposes to use an annual sampling rate ("level of effort") of *up to* 125 percent of covered employees. Comments are invited on how much lower this potential maximum level of effort could be set while still maintaining a credible deterrent. Comments on the optimum level of effort, as well as FRA's suggestion below regarding the adjustment of level based on effectiveness of the program, are encouraged. Please relate recommendations concerning level of effort to effectiveness in reducing or eliminating drug use incidence. Will the relationship between level of effort and effectiveness be linear? Is it possible to pre-identify an optimum level of effort from a cost-benefit standpoint? Is any level of risk acceptable? Will the nature of the sanction applied (*e.g.*, dismissal or suspension and requirement for treatment) impact effectiveness at a constant level of effort?

9. Should employers be allowed or required to limit the size of the population subject to a full range of testing strategies (*e.g.*, pre-employment, reasonable cause, post-accident, random) to those sub-groups of employees for whom an initial round of testing has revealed a more serious drug-use problem? (In such a case, the employers might be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems remain risk free.) In addition, are there ways employers may avail themselves of less costly and less intrusive technologies as such advances are made while ensuring an appropriate level of safety? Commenters are requested to submit any empirical data that support their views.

10. Would a high level of effort add sufficient deterrence to reduce the costs of and need for rehabilitation over a period of time? What would the impact of a low level of effort (*e.g.*, 12.5%) or a high level of effort (125%) be on voluntary EAP referrals? (Please state assumption with respect to consequence from a positive test.)

11. Should additional drugs or drug groups be included in the testing requirement? If so, which drugs?

12. For what maximum period is it reasonable to follow up employees who test positive and are referred for rehabilitation? To what extent should aftercare be dictated by individual clinical decisions, rather than by regulation?

13. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in more flexible approach?

Commenters should include available supporting information, including empirical and cost/benefit data, with comments submitted in response to these questions.

Commenters should note, however, that it is not necessary to respond to all questions posed in order to have individual responses considered.

Specific Provisions

Section 219.601(a) would require each railroad to submit to FRA a random testing program that complies with the requirements of subpart G. Programs developed by railroads would be submitted to FRA for approval 120 days after the effective date of the rule. FRA would review each railroad program to ensure that it complies with the criteria set forth in the rule. If, after implementation, a railroad wishes to amend its program, the railroad would be required to file notice of the amendment with FRA at least 30 days prior to intended implementation. This section expressly prohibits the implementation of random testing programs under this subpart prior to their approval by FRA.

Paragraph (b) sets forth criteria for the form of the random testing programs. It requires each railroad to develop a testing program that selects employees on a basis that is random, *i.e.*, where every covered employee has an equal statistical chance of being selected on any selection date or within a given time frame. The section specifically states that the method may not permit subjective factors to play any role in selection. This requirement is for the purpose of eliminating the possibility that railroads will have any discretion in the selection of employees to be tested.

FRA is not proposing to mandate a specific industry-wide random selection system at this time. That is, prior to hearings and comments that may be received in response to this proposal, FRA is not prepared to impose a single, uniform random testing scheme. Such a plan would have to take into account differences in the industry. Size, geographic diversity, and computer capability or expertise are factors which may dictate differing methodologies. On the basis of comments received, FRA may consider developing a selection of random schemes which take into account these differences, yet comply with the criteria set forth above. FRA may also consider imposing a random selection method of its own design for all carriers.

Mode of selection is an important design element for a random testing program. Three generic models of "random" testing programs are suggested for comment. First, a system could be devised that would ensure that each employee would be tested at least once during a particular period, with the date for testing to be determined on a random basis. Retests could be required of a certain proportion of employees on a strictly random selection basis. Second, a strict random selection program could be devised that would select a certain number of employees based on the target population. Such a system would result in some employees not being tested during the subject period and others being tested more than once. This is the concept contained in the rule draft, but is only one of the alternatives under consideration. Third, it would be possible to do unweighted random selection in the first instance, but employ a statistical bias against re-selection, and a much greater (or even absolute) bias against a second or third re-selection. Under such a system, only a few employees would not be tested in a given period, the possibility of selection would be real at all times, and all employees would be protected from an excessive number of repeated negative tests. Additionally, a bias against re-selection would work to increase the probability that all employees are tested.

Level of effort is also a crucial element in the design of any random testing program. Comment is solicited regarding the effectiveness, cost and

feasibility of levels of effort ranging up to 125 percent of the total number of covered employees employed by the railroad at the beginning of a given year. The level selected would be a minimum requirement for random testing, with individual railroads free to increase their level of testing subject to FRA approval.

FRA is considering whether programs should provide for adjustment of the minimum level based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experience, the results of random testing would provide the most useful gauge of the need. FRA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or on individual railroad application and specifically requests comments on this issue. FRA also solicits comments on whether railroads that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, FRA reserves the right to make appropriate adjustments in the rule in response to public comments.

Although we propose at this time to leave the methodology for random selection to the employer to devise, several components of the program are set forth in the proposed rule. An essential feature of a random testing scheme is that the employee selected for testing not have notice of his selection until the day of testing, and then only such notice as is reasonably necessary to ensure the employee's presence for testing. The absence of advance warning is critical to avoiding the artificial effects of deliberate temporary abstinence designed to avoid detection. (Of course, it will be necessary for certain other railroad personnel to have some advance warning of selection in order to ensure job assignments are protected.)

The proposal states that the employee is subject to random testing on any day that the employee is on duty, scheduled for duty, or rested under the Hours of Service Act and subject to call. The intent of the proposal is that the railroad would either test employees already on duty to perform covered service or would, in fact, call employees to duty for the purpose of testing (*i.e.*, employees would be compensated for making themselves available for testing under circumstances where they are required to be available for covered service). This approach is designed to balance the practical concerns that the railroad may have about delaying operations for the purpose of testing and the need to give notice to employees of the times they may be called upon to cooperate in random testing. The requirement gives the railroad some flexibility in developing a program that will not unduly interfere with its operations (as long as that program meets the randomness requirements of this subpart). In addition, because the employee may be chosen for testing only when on duty or subject to call, selection for testing will not interfere with the employee's off-duty rest time, sick leave, or vacation.

Paragraph (c) would require FRA approval in writing of random testing programs submitted under paragraph (a). Should the FRA find any portion of the random testing program submitted by the railroad to be inconsistent with the FRA criteria, FRA will inform the railroad with a specific explanation regarding the necessary revisions. The railroad must resubmit its program within 30 days or be considered in violation of the requirement to implement a random testing program.

Paragraph (d) would require implementation by the railroads of random testing programs approved by the FRA within 90 days of the railroad's receipt of FRA approval. It sets forth the requirement that a railroad shall require covered employees selected through an approved random testing program to cooperate in urine testing, and that such testing shall comply with the conditions and procedures set forth in subparts G and H. This paragraph states that the purpose of testing is to determine compliance with the prohibition against the misuse of controlled substances contained in the new section 219.102.

Section 219.603 would outline the procedures to be followed when a laboratory reports that controlled substances have been detected in the employee's sample.

Paragraph (a) provides that a test will be deemed positive only after it has been confirmed as required by subpart H and then only after review by a Medical Review Officer (MRO), to whom all laboratory test results would be sent. Interposition of the MRO between the laboratory and railroad supervision will help ensure that information concerning authorized use of therapeutic drugs will not be disclosed to a wider circle of persons than is necessary and that laboratory data requiring interpretation is properly explicated before it is reported. The MRO would not be required to discuss the test results with the employee prior to declaring them positive, but would be free to do so if it appeared appropriate under the circumstances. The MRO would be required to request and review all relevant information concerning use of drugs detected by the laboratory that have therapeutic uses.

The MRO must be a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results, together with the employee's medical history and any other relevant biomedical information. A railroad could utilize salaried medical officers on its staff or contract physicians with appropriate training to perform this function.

Paragraph (b) would require that the employee receive a copy of the laboratory report if the MRO declares the test to be positive. Like other phases of the testing process, the laboratory report would be required to meet the requirements of subpart H. The MRO would issue all negative results (those not constituting evidence of non-authorized use of a controlled substance) over his own signature, since otherwise it would be possible to distinguish those tests involving "positive" laboratory findings that are declared negative by the MRO.

Paragraph (c) permits the railroad to immediately suspend an employee from covered service on the basis of a test result declared positive by the MRO. This is consistent with practice in the railroad industry and other transportation modes where there is a firm basis for belief that the employee presents a threat to his own safety or that of the public.

Paragraph (d) sets forth the procedural requirements for employees who elect to claim the right to investigation of the rule charge. The provision requires notice and an opportunity for a prompt hearing. Where the provisions of a collective bargaining agreement govern, compliance with the collective bargaining agreement satisfies the requirements of the rule. These agreements have consistently been construed to require adequate notice of the charges and a full hearing on all factual issues. An employee who has such an agreement also enjoys the right

to have an unresolved dispute adjusted by a neutral arbitrator (under section 3 of the Railway Labor Act). No purpose would be served by requiring a separate "Federal" hearing.

Section 219.605 would require maintenance of records relating to random testing for 5 years and impose restrictions on use of those records. (See discussion below regarding confidentiality of this data.)

Consequences of Drug Use Detection: Discipline, Abatement and Rehabilitation

We join with the other Modal Administrations now engaged in drug prevention rulemakings in soliciting specific comment on three generic options for dealing with the issue of rehabilitation as a matter of right. Under those options, an opportunity for rehabilitation would be required (and disciplinary sanctions barred) for—

Option 1. Those who test positive on any required test or who come forward voluntarily;

Option 2. Those who test positive on a random or periodic test, or who come forward voluntarily; or

Option 3. Only those who come forward voluntarily.

These options are presented against the background of the policy of FRA's current rule, which gives management the latitude to determine whether on-the-job drug use or impairment should lead to a disciplinary sanction.

The options may be further refined to an almost infinite degree and could also be varied by including sources of drug use information other than chemical tests.

For instance, FRA's reasonable cause testing rule is presently designed to identify and document alcohol drug use and impairment in the workplace. A positive urine test creates a rebuttable presumption of impairment, unless the employee claims the optional right to a blood test. If a blood test result is available, then the factfinder proceeds on the basis of the two chemical tests (particularly the blood test) and other information available concerning the demeanor or performance of the employee. The railroad currently remains free, however, to apply a more stringent drug-free rule, barring unauthorized use of drugs at any time; and many railroads do so. If the FRA rule is changed to bar unauthorized drug use at any time (as proposed herein), it would be possible to retain the current structure for cases of on-the-job use or impairment, while either leaving the railroads free to apply their own policies or requiring that employees who have not been demonstrated to have used drugs on the job be given the opportunity for rehabilitation. Similar options would be pertinent to results of mandatory post-accident tests, where blood tests and performance information are routinely available. Although these issues are beyond the scope of this rulemaking, they form a necessary backdrop for issues presented here.

Random testing and consequences. The present proposal raises the issue of what consequences should flow from a confirmed and fully reviewed positive following a random drug test. It is clear, in the first instance, that the employee should have the right to a hearing on the question of drug use if he or she wishes to claim it. The proposed rule text described above provides for that right. The next obvious question is whether the railroad should be free to apply disciplinary sanctions or should be required to provide the employee a one-time opportunity for rehabilitation. Further, if this right is recognized, should it be available to employees who have previously taken advantage of a similar option under existing rules (*e.g.*, the co-worker report provision of 219.405) or railroad corporate policies?

Advantages of discipline. Leaving employers free to take disciplinary action when illicit drug use is detected, or requiring that such action be taken, has obvious advantages. First and most important, it permits employers to impose strict sanctions. The threat that such sanctions will be imposed can create a high degree of deterrence against occasional use. Further, the threat of sanctions will create powerful incentives for early self-referral, since the consequences of accepting rehabilitation early will be materially more favorable than the consequences of being detected later. In this sense, allowing employer latitude to sanction emphasizes prevention.

Second, testing with stiff sanctions on positives need not be as extensive as testing that does not produce an equal level of deterrence, since the threat of detection will modify behaviors in many cases before individual drug users are actually required to provide a specimen.

Third, allowing flexibility in the random testing context may be more consistent with sound practice for other forms of testing. In those cases where drug use has characteristics that are clearly job-related in an immediate sense (*e.g.*, where an employee tests positive after causing a personal injury to a co-worker, or where an employee tests positive for a drug after being identified for reasonable suspicion testing on the job), permitting the employer to apply disciplinary sanctions is more clearly proportional to the harm that the employee has caused in the workplace (whether it be the personal injury or disruption of the railroad's operations associated with removing the employee from service and obtaining a replacement). Further, no sound regulatory policy could insulate employees engaged in unsafe practices from the discipline applicable to those practices, independent of any detected alcohol or drug use. Treatment professionals and recovering substance abusers often point out that the chemically dependent should face the consequences of their actions, although they should not be penalized for the status of being dependent. Mandating rehabilitation after positive random tests may raise expectations regarding what is reasonable after tests in connection with accidents and unsafe practices.

Fourth, mandating the opportunity for rehabilitation after detection could be characterized as a form of "enabling" behavior that facilitates, rather than discourages, further abuse. The literature of substance abuse counseling is replete with discussions of such behavior.

Advantages of rehabilitation in lieu of discipline. However, arguments can also be made for requiring that employers should provide opportunities for rehabilitation in appropriate instances. Although testing with the option of rehabilitation creates only a limited deterrent effect, the fact that rehabilitation is available can reassure those subject to testing that the program has remedial, rather than punitive objectives. Providing this reassurance can help enlist the support of the workforce for the testing program and an overall prevention effort.

Second, in those cases where drug use is not yet accompanied by a clear deterioration in performance, rehabilitation may be viewed as a more appropriate response.

Third, the opportunity for rehabilitation can salvage the employer's investment in the training the employee has received and the experience that the employee has accumulated, while reducing the possibility that the employee will continue a drug abuse habit to the detriment of the employee and society at large. FRA notes that it has long encouraged railroads to test employees in the context of its medical qualification programs, with the test results to be used exclusively in the context of those programs. Railroads have responded with a variety of approaches, all of which include

confidential handling and an opportunity for rehabilitation of employees testing positive.

Hybrid models. It should be noted that discipline and rehabilitation are not necessarily incompatible. On certain railroads, alcohol an drug violations lead to immediate dismissal; however, the relevant collective bargaining provisions require probationary reinstatement if the offender agrees to participate in the EAP program and thereafter remains alcohol and/or drug-free during the probationary period. (These are known as "companion agreements" and form an optional element of Operation Red Block, the joint labor/railroad/FRA prevention program.) This hybrid approach is viewed as having significant value, since it provides incentives for the alcohol or drug user to resolve his or her problem and makes it clear that no arbitrator or grievance settlement will rescue that employee from making an important change in his or her life.

Alcohol. FRA notes that any abatement/rehabilitation requirements applying to use of drugs will need to be sufficiently precise to address use of alcohol as a significant subset. Railroads have a strong tradition of prohibiting any alcohol use or the presence of any amount of alcohol in the blood while an employee is on duty. Although the present rulemaking does not address random testing for alcohol, that subject presents a discrete and complex problem, since alcohol can remain in urine long after it falls to nondetectable levels in the blood; and alcohol use off duty could not be subject to blanket prohibition.

Form of rehabilitation. Any Federal requirement that rehabilitation be provided should be consistent with existing regulations applicable to railroad employees. Those regulations recognize that some casual drug users can simply abate (discontinue) their drug use habits given sufficient incentive, while others will require counseling and treatment. Those requiring counseling and treatment for chronic drug abuse problems and chemical dependencies will typically require secondary care involving outpatient attention and/or participation in self-help groups, as well as careful monitoring by the EAP counselor.

One-time right. As a general rule, it is important that any opportunity for rehabilitation be a one-time right, rather than an open invitation to the continued misuse of drugs. However, the passage of an extended period of time may warrant a revival of this right. FRA requests comments on whether any right to rehabilitation should include a revival of the opportunity after a set period (e.g., 5 years, 10 years).

Comments solicited. FRA solicits comments on all options for response to drug use detected through a positive random drug test—from mandatory rehabilitation, on the one hand, to mandatory discipline, on the other, including allowing latitude for individual employers to establish and publish policies of their own design. Specifically, FRA seeks comments on the three rehabilitation options discussed above that are under consideration by DOT modal administrations and their applicability in the railroad context.

Follow-Up Testing

Depending on the regulatory determinations made with respect to options for rehabilitation and the decisions of railroads consistent therewith, a range of situations will arise involving the return to service of employees who have tested positive, indicating past drug use. It may then be necessary to conduct additional tests to ensure continued disassociation from drugs, particularly for those who are not participating in a formal, structured program of aftercare. Should a final rule be adopted in this proceeding, FRA will provide procedures for the conduct of such tests. Public comment is invited regarding those procedures.

For example, should there be a uniform testing period after primary abatement/treatment, or should this be determined on a case-by-case basis? Who should make such a determination (*i.e.*, the EAP counselor, the MRO, both, or a third party)? Should the employee be involved? How could employee involvement be accomplished? If a uniform post-treatment period is adopted, how long should it be? Should the length of the follow-up period depend on the drug or drug class detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? Could follow-up testing be excused where aftercare is highly structured or itself includes chemical monitoring?

During the period after primary abatement or treatment, should FRA prescribe the minimum and/or maximum number of tests to be administered? Tests should be given with sufficient frequency to ensure that the employee is free of drugs. However, testing should not become an instrument of harassment.

One alternative, on which comment is also invited, would be a specified post-treatment testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following primary abatement/treatment. A drawback of this alternative might be the reluctance of the EAP counselor to insist on appropriate follow-up testing, either because of an excess of confidence in his clinical judgment or because imposing such a requirement might be seen as interfering with the professional/client relationship (*i.e.*, by seeming to suggest a lack of confidence in the client). On the other hand, there is significant evidence of an anecdotal nature to repose trust in substance abuse professionals who perform EAP functions, based on their handling of the very diverse current case load.

Confidentiality

FRA solicits comments on the extent to which the random drug test result and matters related to subsequent disposition of the employee, whether through discipline or treatment, should be required to be held in confidence. Section 219.605 of the proposed rule text contains certain general rules.

The issue of confidentiality involves handling of data within the company, as between the company and collective bargaining representatives (who have a duty of representation under the agreement and the Railway Labor Act), as between the company and government agencies, and as between the company and other parties.

One approach would require that confidentiality be maintained regarding the random test result, any referral for evaluation and treatment and subsequent handling, and follow-up testing. However, test results would have to be available for purposes of a railroad investigation under the collective bargaining agreement, if discipline were contemplated or if the employee demanded the right to a hearing. Confidentiality might be totally or partially waived if the employee failed to cooperate in treatment or abate the use of controlled substances or if the employee was later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

It should be noted that confidentiality would not be required in aid of any constitutional right to privacy. The courts have not recognized a privacy right with respect to illicit drug use (by contrast to medical use of drugs, where a qualified right of privacy has been

recognized). However, no public purpose is served by publication of information concerning drug use of individual railroad employees, except as may be necessary to conduct accident investigations and similar inquiries directly affecting public safety. Imposing a duty of confidentiality could reduce the perceived intrusiveness of the test procedure.

We expressly invite comment on the desirability of adopting confidentiality requirements. Comments should address handling of drug testing and referral information within the corporate structure of the employer, as well as release of the information to persons outside the enterprise. With respect to dissemination outside the corporate structure, four basic options include (i) release of data only at the specific request of a future employer with a need to know, (ii) release at the discretion of the employer conducting the test, and (iii) release only at the request of the employee. Under the third option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A fourth option (see section 219.605 of the proposed rule text) would be to authorize release of test results to future employers only in specified circumstances. This could be done under defined circumstances or only at the request of the employee (in a manner similar to release of National Driver Register information to motor carriers).

An additional complicating factor is enforcement of redisclosure restrictions. For instance, it would be important for a railroad hiring a former employee of another railroad to know of any substance abuse history, whether or not rehabilitation appeared successful as of the date of application. The new employer would need to retain a confidential record of this information since, in the event the employee became involved in drug abusing behavior again, prior history would be relevant to the employee's right to an opportunity for rehabilitation. Such information might also be pertinent to the individual's prospects for recovery should a further opportunity be provided. However, by what means would redisclosure restrictions be enforceable against a future employer not subject to FRA jurisdiction (e.g., a local bus company)? To what extent could such a problem be controlled by establishing a contractual relationship between the applicant/employee and the new employer (*i.e.*, enforceable at common law)?

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. The proposed provision provides that no record of tests shall be used or disseminated for any purpose other than providing for compliance with the FRA alcohol/drug rule, including assessing disciplinary sanctions (where appropriate), except with the voluntary written consent of the employee. It also would require each railroad to institute procedures to prevent inappropriate disclosure. The FRA requests comment on whether we can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee, such as the general public, or the news media. To what extent should access be available to other government agencies that may want the data for statistical, regulatory, or law enforcement purposes?

This raises the related issue of whether the FRA should distinguish between general statistical data (the total number of positive tests at a company in a month or year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed random testing program. Since small operators will have fewer individuals to test in any given time period, even seemingly neutral statistical data might result in identification of an individual employee who was dismissed or referred for treatment as a result of a confirmed positive test result. This potential problem could be exacerbated if the FRA requires that only a small percentage of employees be tested each year. However, anonymity would be protected if only larger railroads were required to report aggregated data. This may suggest that the reporting requirements, as distinct from testing requirements, should be limited to larger railroads, with monitoring of smaller railroads being accomplished by FRA's examination of records maintained by the railroad.

FRA reserves the right to apply any confidentiality provisions that may be crafted in response to this notice to the existing provisions of the alcohol/drug rule, without further notice. FRA notes that its previous attempt to elicit public comment regarding any need for the addition of confidentiality provisions to the current rule failed to elicit response as commenters, almost without exception, focused on other issues of interest. (*See* 52 FR 2118, 2120; Jan. 20, 1987.)

Small Railroads

Under the existing FRA rule, railroads with 15 or fewer Hours of Service employees are not required to conduct pre-employment drug screens. Those railroads do not enjoy the authority to test for reasonable cause and are not subject to the requirements for voluntary referral and co-worker report policies. However, these same railroads are required to conduct mandatory post-accident testing.

This proposal for random testing does not provide an exclusion for small railroads, and FRA specifically solicits comments on the following issues:

—Is this approach (*i.e.*, no exclusion) appropriate, or should the random testing rule contain an exclusion similar to that contained in the current rule? What are the economic cost/benefit considerations supporting the commenter's position?

—If a final random testing rule includes the right to rehabilitation, should small railroads be required to institute voluntary referral and co-worker report policies?

—Since a random testing mandate would require small railroads to make some of the logistical arrangements necessary for pre-employment testing and some of the arrangements for authorized reasonable cause testing, as well, should these provisions be made applicable to small railroads?

(*See*, also, "Regulatory Impact" discussion below.)

Procedures and Safeguards for Urine Drug Testing

FRA proposes to further amend Part 219 by adding a new subpart H, which would mandate procedures and safeguards for urine drug testing under the existing subparts D (reasonable cause testing) and F (pre-employment drug screens), as well as the proposed subpart G (random testing). Although the existing rules contain adequate safeguards and procedures, FRA believes that making procedures uniform for all testing events will further ensure the quality of urinalysis, promote uniformity with the practices of other transportation companies, and permit all collection, testing and reporting to be done in a single manner regardless of the triggering event.

Subpart H would not apply to collection of urines during mandatory post-accident testing (subpart C), since special procedures are required to provide for collection and handling of the blood and urine specimens collected in that context. However, comment is solicited regarding what elements of the

subpart H procedures and safeguards might be separately incorporated in post-accident testing. Comment is also solicited on what special problems may be created by an attempt to impose detailed, uniform sample collection procedures in any case where the employee to be tested is injured and has been transported to a medical facility where pre-arrangements have not been made for an FRA-mandated or authorized collection. Such an occasion could arise either in relation to a mandatory post-accident test, involving blood and urine collection, or a reasonable cause test.

Subpart H incorporates by reference the Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines). Those Guidelines were published in final form in the **Federal Register** of April 11, 1988 (53 FR 11970), following notice and comment. Individual copies are available from the Docket Clerk at the address set forth above. Although FRA proposes that standards for the collection of specimens and laboratory analysis, etc., shall not be less stringent than those contained in the HHS Guidelines, FRA solicits comments on the extent to which differences in practice may be required in order to accomplish collection at independent medical facilities (a practice firmly established in FRA's current rule) and in order to recognize that private transportation companies, rather than government agencies, must administer the urine testing program.

Section 219.701 would require each railroad to submit its comprehensive program for implementation of urine drug testing for FRA review and approval. FRA believes that the wide variety of railroad operating environments and internal railroad organizations may necessitate specialized procedures and assignments of responsibility consistent with the minimum standards proposed for the new subpart. The section would also require publication of notice to employees regarding the railroad's program.

Section 219.703 provides generally for what controlled substances are to be detected, at what levels, and by what methods. Tests would be conducted for marijuana, cocaine, opiates, amphetamines and PCP. Testing of a specimen taken under this part for other biomedical purposes would not be permitted. Certain drugs normally obtained by prescription, the barbiturates and benzodiazepines, are also under consideration for mandatory inclusion in the testing program. Comments are solicited regarding the compounds to be included in the analysis.

Detection limits for the drugs to be tested will be those specified in the HHS Guidelines.

Although the section restricts analysis of urine specimens to certain controlled substances, it incorporates an approval procedure to permit supplementary testing under two general conditions. First, the railroad must explain why testing for the additional drug is requested. For example, a new drug might come into wide usage due to easy street availability in a particular region. Second, the railroad must establish that the drug can be reliably detected and specifically confirmed by a laboratory certified by the Department of Health and Human Services to perform the necessary assays. FRA regards this proposal as creating a "standby" capability to address changing drug use patterns and would not contemplate granting approvals under this section in the immediate future.

Use of alternative analytical methods would also be permitted upon an adequate showing, consistent with the HHS Guidelines.

Section 219.705 would provide for review of positive reports by a Medical Review Officer (MRO), who would transmit the laboratory reports to railroad supervision and the employee only after being satisfied that the report was evidence of unauthorized drug use. Negative reports would also issue from the MRO over the MRO's signature (and without the accompanying laboratory report) in order to avoid identification of employees using therapeutic drugs or for whom the laboratory reported results insufficient in the judgment of the MRO to establish unauthorized use of a controlled substance.

Section 219.707 addresses retention and retesting of specimens. Positive specimens would be required to be retained for at least 365 days. The specimen would be automatically discarded unless a request for longer retention was made within that period. FRA encourages comments regarding the retention period.

The employee could make one request for a retest (reconfirmation), either by the original laboratory or by a second laboratory certified to perform the particular test.

Responsibility for Compliance

FRA proposes to add to the penalty schedule found in Appendix A, 49 CFR Part 219, to provide penalties for violations of the proposed Subpart G on random testing. Comments are requested on the proposed penalty schedule, which will constitute an integral part of any final rule.

Reporting Requirements

Finally, FRA proposes to amend 49 CFR Part 217 to require annual reporting of random testing, including results by drug, follow-up action by the railroad, and refusals to be tested. FRA specifically solicits comments regarding whether more frequent reporting intervals may be appropriate.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

The proposed rule has been evaluated in accordance with existing regulatory policies and is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the DOT policies and procedures (44 FR 11034; February 26, 1979) because it would initiate a substantial regulatory program.

Consequently, FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the proposed rule. It may be inspected and copied at Room 8201, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the same address.

The economic evaluation examines a range of options involving the conduct in any year of random tests equal in number to 12.5 to 125 percent of the affected employee population. The options also consider varying assumptions for the rate of positive tests at the inception of the program (5% vs. 7.5%). The analysis identifies total estimated first year costs in the range of $2,207,395 to $22,828,300, including rehabilitation costs. Costs would decrease in successive years, as drug abuse is deterred and/or detected and as rehabilitated former drug users begin to equal and then exceed the population of employees who continue to use impairing drugs. The first year cost range not including rehabilitation is $1,337,219 to $9,775,656. The range of estimated costs for a ten-year period (discounted to current value) is from $8,519,856 to $98,236,418 with rehabilitation costs included and from $4,974,005 to $49,062,465 excluding rehabilitation costs.

FRA has not been able to prepare an adequate quantitative estimate of benefits from the proposed program. However, it is believed that the benefits of the proposed rule would substantially exceed its costs. Benefits would fall into

at least three categories. First, consistent with the purpose of the program, railroad safety would be enhanced. Accidents and injuries would be avoided. The extent of these direct benefits is difficult to estimate. Pre-1986 data for drug involvements in railroad accidents/injuries is extremely fragmentary. Data developed under FRA's post-accident testing program is still under review, but does indicate that drug use continues to have significant adverse effects on the safety of rail transportation. Over a period of years, a random testing rule would reduce this remaining risk materially.

Second, employing railroads would benefit from certain indirect benefits from the program. It is widely accepted by major United States corporations, including the railroads, that investments in substance abuse prevention and treatment programs are more than offset by avoidance of lost productivity, absenteeism, health costs, and other problems associated with substance abusing employees. Random testing will create important incentives for early self-referrals and/or provide an effective means of identifying those who are abusing drugs, supplementing voluntary referrals, supervisory referrals, medical evaluations, and other sources of referrals presently available.

Third, society as a whole would realize indirect benefits from the program, as other public and private resources now devoted to dealing with the consequences of drug abuse are turned to productive use.

The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness", which estimated that the economic cost of drug abuse to the United States during 1983 was $59.7 billion. This study, prepared by the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime * * * reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As the FRA obtains other data on drug use, it will place that data in the docket.

FRA welcomes comments on the methodology of the analysis and unit costs employed in the analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires a review of proposed rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA concluded that the rule could have a significant impact on a substantial number of small entities. FRA knows of no practicable alternatives for small employers to adopt that would reduce the cost of compliance yet achieve the levels of protection sought by these proposals. However, FRA also notes that in prior rulemakings significant differences in safety risk factors have been identified that may apply to certain small railroads (e.g., 50 FR 31529, Aug. 2, 1985). A regulatory flexibility analysis discussing this issue in more detail has been placed in the docket.

FRA specifically requests comment on the impact that this proposal would have for the very small railroads in addition to comment on the impact of the proposal on small railroads in general.

Paperwork Reduction Act

The rules proposed in this notice contain information collection requirements in the following sections: 219.601, 219.603, 219.605, 219.701, 219.703, 219.705, 219.707. Revised information collection requirements are also contained in the amendment to § 217.13. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Any comments on the revised information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

The regulations proposed herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Public Comment

FRA proposes to amend Parts 219 and 217 of Title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rules and the data and analysis advanced in explanation of the proposed rules, whether through written submissions, or participation at the public hearings, or both. FRA may make changes in the final rules based on comments received in response to this notice.

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

Authority: Sections 202, 208 and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, 438) and section 1.49 of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49).

Issued in Washington, DC, on May 5, 1988.

John H. Riley,

Federal Railroad Administrator.

PART 219—[AMENDED]

In consideration of the foregoing FRA proposes to amend Chapter II, Subtitle B, of Title 49, Code of Federal Regulations as follows:

The authority citation for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

1. By amending Part 219 as follows:

a. Amend the table of contents to add new entries as follows:

* * * * *

Subpart G—Random Drug Testing Program

Sec.

Subpart H—Procedures and Safeguards for Urine Drug Testing

* * * * *

b. Amend § 219.9(a) by revising paragraph (a)(1), redesignating paragraph (a)(5) as (a)(7) and republishing it, and by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 219.9 Responsibility for compliance.

(a) A railroad that—

(1) Having actual knowledge, requires or permits an employee to go or remain on duty in covered service while in violation of § 219.101 or § 219.102;

* * * * *

(5) Fails to adopt or publish, or willfully and with actual knowledge fails to implement, a policy required by Subpart G of this part;

(6) Willfully and with actual knowledge, requires an employee to submit to testing under a program required by subpart G without observance of the procedures and safeguards contained in subpart G or subpart H of this part; or

(7) Fails to comply with any other requirement of this part; shall be deemed to have violated this part and shall be subject to a civil penalty as provided for in Appendix A.

* * * * *

c. Revise § 219.11(a) to read as follows:

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after the effective date of the relevant subpart shall be deemed to have consented to testing as required in Subparts C, D, and G of this part; and consent is implied by the performance of such service.

* * * * *

d. Add a new § 219.102 to read as follows:

§ 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103 of this subpart.

e. Add a new Subpart G to read as follows:

Subpart G—Random Testing

§ 219.601 Railroad random testing programs.

(a) *Submission.* No later than 120 days after the effective date of this subpart, each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. The program shall be submitted to the Associate Administrator for Safety, FRA. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs prepared by each railroad under this subpart shall meet the following criteria:

(1) Selection of covered employees for testing shall be made by a method based on objective, neutral criteria which ensure that every covered employee has an equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document the process shall be retained for not less than one year from the date upon which the particular tests were conducted.

(2) The program shall select for testing in any given year a number of covered employees equal to [a percentage to be determined not to exceed 125 percent] of the total number of covered employees employed by the railroad at the beginning of that year. A railroad may propose or FRA may require, after investigation and consultation, a higher level of testing.

(3) Notice of an employee's selection shall not be provided until the day of testing, and then only such notice as is reasonably necessary to ensure the employee's presence at the time and place set for testing on a basis reasonably convenient to the employee and the railroad.

(4) A covered employee is subject to random testing under this subpart on any day that the employee is on duty, scheduled for duty, or is rested under the Hours of Service Act and subject to call.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(c) *Approval.* The Associate Administrator notifies the railroad in writing whether the program is approved as consistent with the criteria set forth in this subpart. If the Associate Administrator determines that the program does not conform to those criteria, the Associate Administrator informs the railroad of any matters preventing approval of the program, with specific explanation as to revisions that are necessary. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* Within 90 days of receipt of approval of its testing program from FRA, the railroad shall implement that program. A railroad shall, under the conditions specified in this subpart and subpart H, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102.

§ 219.603 Positive test results; procedures.

(a) *Medical review.* A result of a test required under this subpart shall be deemed positive only after it has been (i) properly confirmed as required in Subpart H of this part and (ii) reviewed by a Medical Review Officer (MRO) to determine if it is evidence of prohibited drug use under section 219.102, as provided in subpart H. No information concerning any unconfirmed screening test indicating presence of an analyte shall be reported or otherwise communicated by a laboratory to any person at any time. This section establishes procedures for administrative handling by the railroad in the event a specimen provided under this subpart is reported as positive by the MRO.

(b) *Notification.* Within the period specified in § 219.705(e) of this part, the railroad shall notify an employee of the results of any test that is (i) positive, by providing a copy of a laboratory report meeting the requirements of subpart H or (ii) negative, by providing a written notice issued by the MRO.

(c) *Suspension.* If the railroad representative determines that there is reason to believe that an employee is in violation of 219.102, as evidenced by a positive test result, the railroad may immediately remove the employee from covered service. In each case, the employee shall be provided with the report of the test results and notice of the basis for the removal.

(d) *Hearing procedures.* If an employee testing positive under this section elects to claim the right of investigation of the rule charge the following procedures shall apply:

(1) The railroad shall provide written notice to the employee of the disciplinary charges growing out of the test and an opportunity for hearing before a presiding officer.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining

agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within ten calendar days of any suspension arising from positive testing results or, in the case of an employee who is unavailable due to injury, illness or other sufficient cause, within ten days of the date the charged employee becomes available for hearing.

(3) A proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the requirements of this paragraph.

§ 219.605 Reports; FRA access to records; confidentiality.

(a) Each railroad shall retain records of each test conducted under this section for at least 5 years and make them available to FRA for review.

(b) No record of tests conducted under this section or information drawn therefrom shall be used or disseminated for any purpose other than providing for compliance with this part (and carrier rules consistent herewith), unless with the voluntary written consent of the employee. Each railroad shall institute procedures to guard this information against inappropriate disclosure.

(c) A railroad may advise another transportation operator to which an employee has applied for employment (or with which an employee has obtained employment) in a safety-sensitive position of the nature of any disciplinary action that grows out of a positive test under this subpart. Reasonable effort shall be made to notify the employee of the provision of such information, and the employee shall be entitled to a copy of any writing describing such disciplinary disposition or positive test result.

f. Add a new Subpart H to read as follows:

Subpart H—Procedures and Safeguards for Urine Drug Testing

§ 219.701 Railroad programs.

(a) The conduct of urine drug testing under subparts D, F, and G of this part shall be governed by the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970 (April 11, 1988) and this subpart. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under those guidelines. Where the Guidelines refer to "Federal agencies" or "the agency," this shall mean "the railroad" for purposes of this regulation.

(b) Within 120 days after the effective date of this subpart, each railroad shall submit for approval of the Associate Administrator for Safety a program of procedures and safeguards for the conduct of urine drug testing under this subpart.

(c) Each testing program shall be effectively published to all subject employees, who shall be provided actual notice in advance of being required to provide any specimen that they are subject to testing under this part, a detailed description of the circumstances under which testing may be required, and at least summary information regarding the procedures and safeguards contained in this subpart, specifically including the right of an employee to receive a copy of test results on any specimen provided by the employee.

§ 219.703 Drugs tested.

(a) Urine specimens collected under subparts D, F, and G of this part shall be analyzed only for the presence of designated controlled substances and, as necessary, to ascertain the degree of concentration of the urine or the presence of adulterants.

(b) Each specimen submitted shall be analyzed for marijuana, cocaine, PCP, opiates, and amphetamines, as provided in the HHS Guidelines.

(c) A railroad may request approval of the Associate Administrator for Safety to test for additional controlled substances or by alternate methods. Such request shall—

(1) Specify the proposed methods to be employed, the proposed detection limits, and the reason(s) why supplementary or alternative testing is deemed appropriate;

(2) Provide information sufficient to establish the reliability of the screening technique proposed and the reliability, accuracy, precision and specificity of the confirmatory technique, as applicable; and

(3) Certify that the laboratory is currently certified by the Department of Health and Human Services to perform the proposed assays.

§ 219.705 Review by MRO.

(a) Test results reported positive by the laboratory as provided in the HHS Guidelines shall not be deemed positive or disseminated to any person (other than to the employee tested, if an interview is deemed appropriate) until they are reviewed by a Medical Review Officer (MRO) of the railroad.

(b) The MRO or an attorney employed by the railroad shall also review the chain-of-custody record to determine that it contains no material variance from the requirements of the railroad program and this part. A material variance means any entry or omission that could reasonably lead to an error in the collection, handling or testing of a covered employee's specimen. If a material variance is detected and the MRO deems the result positive after the medical review contemplated by this paragraph, then the result shall nevertheless be reported as negative unless adequate and valid supplementary documentation has been obtained to remedy any variance in the chain-of-custody record for the specimen.

(c) The MRO shall complete review of test results within not more than 10 days or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10 day period shall be extended by a period equal to the period attributed to the employee's delay.

(d) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances under circumstances indicating non-medical use, the MRO will report the results to a designated railroad officer for action in keeping with the requirements of this part. The employee shall be provided a copy of the approved test results within 48 hours of delivery to the railroad officer, or immediately upon the railroad's taking any action adverse to the employee, whichever first occurs.

(e) Test results reported as negative by the laboratory shall also be communicated to the employee through the MRO. The MRO shall immediately transmit the negative finding to the employee (and, as the railroad may provide, to the appropriate railroad officer) over the MRO's signature.

§ 219.707 Retest.

(a) Specimens that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days. Within this 365-day period, the employee or his representative, the railroad, or the FRA may request that the laboratory retain the specimen for an additional period. If the laboratory does not receive a request to retain the specimen during the 365-day period, the specimen may be discarded.

(b) In the case of a test declared positive by the MRO, the original specimen shall be retested at the written

request of the employee. The employee may specify retesting by the original laboratory, or by a second laboratory designated or accepted by the employee that is certified by the Department of Health and Human Services to perform the relevant confirmatory test.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample. Unless the test by the second laboratory fails to confirm the analysis provided by the first, the employee shall be responsible for all costs associated with the retest.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the HHS Guidelines, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

g. Amend Appendix A to add the following:

APPENDIX A.—SCHEDULE OF CIVIL PENALTIES [1]

Section		Violation	Intentional violation [2]
	Subpart G—Random Drug Testing		
219.601	Failure to implement and/or submit to FRA for approval a random drug testing program that satisfies the requirements of this subpart and subpart H		2,500
	Failure to facilitate conduct of required random drug testing by failing to take all practical steps to require employee participation or by otherwise failing to comply with Subpart G such that test cannot be conducted	1,000	2,500
	Required employee to provide samples in reliance on Subpart G where not required	750	2,500
219.603	Required employee to submit to testing without observance of procedures and safeguards contained in Subparts G and H		2,000
219.605	Failure to provide notice of positive test result or failure to provide opportunity for hearing meeting procedural requirements	1,000	2,000
	Failure to comply with other Subpart G requirement	500	1,250

[1] Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) requires the Secretary of Transportation to "include in or make applicable to, any railroad safety rule, regulation, order or standard issued under this title a civil penalty for violation thereof * * * in such amount, not less than $250 nor more than $2,500, as he deems reasonable." The Administrator reserves the authority to assess the maximum penalty of $2,500 for a violation of any requirement of Part 219. Each day of violation constitutes a separate offense. Section 219.605 sets forth the standards of liability applicable to the various requirements of this part.

[2] For purposes of this schedule, an intentional violation is a failure to comply in which the railroad has acted willfully and with actual knowledge of the facts constituting the violation. Knowledge of the regulations is presumed by law.]

PART 217—[AMENDED]

1. The authority citation for Part 217 continues to read as follows:

Authority: Secs. 202 and 209, 84 Stat. 971 and 975 (45 U.S.C. 431 and 438), and sec. 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

2. Part 217 is amended by amending § 217.13 to add a new paragraph (d)(5) as follows:

§ 217.13 Annual report.

* * * * *

(d) * * *

(4) * * *

(5) Number and results of random drug tests conducted under the authority of § 219.601 of this title. For positive tests indicate the number for each controlled substance by drug group, and the following information by drug group: number and type of disciplinary actions taken, number of employees referred for abatement or rehabilitation, number of employees referred for abatement/rehabilitation evaluated as requiring rehabilitation, number of employees receiving outpatient rehabilitation exclusively, number of employees receiving inpatient rehabilitation, number of employees failing to complete abatement and rehabilitation, number of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group. Also indicate the number of refusals to cooperate in random testing.

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Part V

Department of Transportation

Federal Highway Administration

49 CFR Parts 383, 391, and 392

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Notice of Proposed Rulemaking and Public Information Forum

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 391, and 392

[FHWA Docket No. MC-128]

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Notice of Proposed Rulemaking and Public Information Forum

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking and public information forum.

SUMMARY: The FHWA is requesting comments on proposed revisions to §§ 383.5, 383.51, 391.15, 391.3, and 392.5 of the Federal Motor Carrier Safety Regulations (FMCSRs) that respond to the Commercial Motor Vehicle Safety Act of 1986 (the Act). The revisions would define 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV under section 12008 of the Act. As used in this document, BAC means alcohol concentration as may be determined from either blood or breath samples. The proposal would also require CMV operators with any measured positive BAC to be placed out-of-service for a 24-hour period in accordance with Section 392.5 of the FMCSRs. Sections 12009 and 12011 of the Act require States to adopt similar licensing sanctions for CMV operators to avoid a withholding of Federal-aid highway funds.

The proposal is based on comments received to an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on March 23, 1987 (52 FR 9192), and findings of a study by the National Academy of Sciences (NAS), 1987, Special Report No. 216, "Zero Alcohol and Other Options: Limits for Truck and Bus Drivers" (the NAS Study).

DATES: Comments must be received on or before June 29, 1988. Public forums will be held to obtain comments on this proposal. Dates, times, and locations for the forums will be announced in a future **Federal Register** notice.

ADDRESS: All written comments must be signed and should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Viner, Office of Safety and Traffic Operations, Research and Development, (703) 285-2419, Ms. Jill L. Hochman, Office of Motor Carriers, (202) 366-4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, 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: On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Pub. L. 99-570, Title XII, 100 Stat. 3207, 3207-170) was signed into law by the President. This supplementary information section contains: background information on relevant provisions of the Act and comments obtained from the ANPRM; a summary of the NAS study; and a discussion of the proposed rule and its relation to current out-of-service requirements.

Background

Summary of the BAC Level Provisions of the Act

Section 12008(f) of the Act requires the Secretary of Transportation (Secretary) to establish the BAC level, not to exceed 0.10 percent, at or above which a person when operating a CMV shall be deemed to be driving under the influence (DUI) of alcohol and subject to the licensing sanctions described in the Act in section 12008 (discussed below). Failure to issue such a rule by October 27, 1988, will result in this level being set at 0.04 percent.

Under section 12009(a)(3) of the Act, each State must adopt and enforce laws consistent with the Federal requirement, and consistent with any out-of-service regulations issued by the Secretary under section 12008(d)(1) of the Act, in order to avoid having Federal-aid highway construction funds withheld.

Also under section 12009, States must adopt disqualification provisions for CMV operators described in the Act. These disqualification provisions became effective on July 1, 1987 (52 FR 20574), and are contained in § 383.51 of the FMCSRs (49 CFR 383.51). Disqualifications under the Act apply to operators of "commercial motor vehicles" as defined in the Act and occur for offenses which were committed after July 1, 1987. Certain of these disqualifications, or licensing sanctions, would apply to CMV drivers who are "deemed to be under the influence of alcohol."

Section 12008 of the Act provides that CMV operators who are found to have committed a first violation of driving a CMV under the influence of alcohol shall be disqualified for at least 1 year. For a CMV operator carrying hazardous materials, this disqualification shall be for at least 3 years. Any CMV operator found to have committed a second such offense (at any time without regard to a time limit for the second offense) shall receive a lifetime disqualification or a disqualification for a period of not less than 10 years, as may be prescribed by the Secretary.

The FHWA recognizes that the terms "deemed to be under the influence" and other similar phrases are accepted terms of art in State statutes—particularly State criminal statutes—and, as such, have important related criminal sanctions and penalties for *all* drivers. Section 12009(b), however, provides that a State may satisfy the requirements of section 12009, in part, by implementing a commercial driver's licensing program which includes penalties and disqualifications for CMV drivers that result in license suspensions, revocations, or cancellations. In other words, the Act does not require that any other State sanctions, particularly criminal sanctions, apply to CMV drivers who violate the BAC levels established by this rule. The FHWA believes that States can meet the intent of the Act by adopting standards which would result in CMV operators being disqualified from driving CMVs, i.e., subject to administrative sanctions, when they are found to have committed certain offenses. Therefore, the FHWA proposes to establish a series of licensing sanctions related to driving a CMV while impaired by alcohol that would be separate from the administrative and criminal penalties currently embodied in State law. These administrative sanctions would augment but not replace those criminal sanctions.

In order to avoid a withholding of Federal-aid highway funds under section 12011 of the Act, States would be required, pursuant to section 12009 of the Act, to adopt the BAC level proposed by the FHWA for purposes of disqualifying drivers from operating CMVs in accordance with § 383.51 of the FMCSRs (52 FR 20574). These proposed administrative sanctions are not intended to supersede or preempt the criminal or administrative penalties which a State may invoke at established or other BAC levels.

Section 391.15 of the FMCSRs also contains disqualification provisions for drivers of motor vehicles engaged in interstate or foreign commerce if they are convicted of certain offenses. Interstate drivers of motor vehicles with gross vehicle weight ratings of 10,001

pounds or more are covered by § 391.15. The disqualification provisions for drivers who are subject to § 391.15 are administrative sanctions which augment currently used criminal sanctions.

The requirement in the Act for the Secretary to commence rulemaking to determine the appropriate BAC level by October 27, 1987, was fulfilled by publication of the ANPRM of March 23, 1987 (52 FR 9192). Also as required by the Act, the FHWA contracted with the NAS to conduct a study of the appropriateness of reducing the BAC level at or above which a person, when operating a CMV, is deemed to be driving while under the influence of alcohol from 0.10 to 0.04 percent. The findings of the NAS study and comments received on the ANPRM form the basis of this proposal and are discussed in the following sections.

Comments on the ANPRM

The ANPRM solicited comments on the appropriate BAC level required to be established under the Act. In particular, detailed information and supporting data for particular positions were sought and made available to the NAS for its study.

A total of 31 responses were received. Of these, two favored retention of 0.10 percent BAC as the appropriate level. Twenty-three favored a lower level, including six who supported the 0.04 level specified in the legislation and 11 favored even lower levels. The remaining six did not state a preference.

Of the six respondents that did not state a preference for a BAC level for the purpose of this Act, two, the Arizona Department of Public Safety and the International Association of Chiefs of Police, favored a change to Section 12008(f) of the Act. These two respondents believed that setting the BAC level at 0.04 percent would create an apparent double standard between CMV drivers and other drivers. These respondents, thus favored a legislative change to permit States to adopt administrative regulations which would allow them to place a CMV driver out-of-service with *any* measurable BAC level. Proposed changes to the Act itself are beyond the scope of this rulemaking action.

The International Brotherhood of Teamsters (IBT) was among the six respondents that did not state a preference for a BAC level. The IBT was opposed, however, to a double standard. The IBT noted that alcohol related fatalities are a larger problem on a national basis among other drivers than among CMV drivers. It noted that the Fatal Accident Reporting System (FARS) data indicate twice as many passenger car drivers with BAC levels above 0.10 percent are involved in fatal accidents as all heavy truck fatal accidents with or without alcohol involvement. The IBT favored the identification of an appropriate BAC level at which a driver can reasonably be judged to be driving under the influence, and which can be reasonably and fairly enforced and applied by Federal regulation to all drivers. The authority in the Act, however, is limited to operators of CMVs. This proposal does not, therefore, address BAC levels for non-CMV drivers.

The problem of CMV drivers called to work on short notice is a concern of the IBT. The IBT urged that the FHWA incorporate a provision, as part of this regulation, which would prohibit an employer from discharging, disciplining, or discriminating against a driver who, when called for dispatch, informs the employer that he/she has consumed alcohol recently and may be in violation of the established BAC level.

Roadway Express, Inc., was also among the respondents who did not state a preference for a BAC level. Roadway Express stated that "Congress recognized the inherent difficulty in identifying this level and correctly sought assistance from those best able to provide it—the National Academy of Sciences." Roadway Express called for a careful evaluation of costs and benefits of the suggestion to lower the BAC level to 0.04 percent, noting that difficulties exist with the 2-hour call period which is common in the industry. They noted that costs are involved with the extension of the call period to protect drivers who report consuming alcohol, and believe that some drivers would use an extended call period to avoid working at inconvenient times. Roadway Express also noted that current rules and practices have had good results in deterring driving while impaired, and that setting a Federal BAC level implies that levels below that are acceptable, a situation that should not in its view be encouraged.

The American Trucking Associations, Inc. (ATA), was also among the respondents who did not state a preference for a BAC level. It stated that the multiple constraints of State laws, Federal regulations, company policy, and the manner in which violations can jeopardize a driver's livelihood have resulted in an environment in which the incidence of DUI of alcohol for CMV drivers is much lower than the rest of the driving public. The ATA believes that it is vitally important that no action be taken that will be interpreted by drivers as allowing them to consume alcoholic beverages, as long as their BAC is below a designated level.

Of the seven responses received from States, five expressed concern over enforcement issues relating to a BAC level less than 0.10 percent. Responses included comments that it will add further confusion to a burdensome problem, will create an apparent double standard, and will be difficult to detect and enforce. However, all seven States favored a tightening of Federal BAC level requirements in one form or another.

The Pennsylvania DOT, one of the two respondents that favored retention of the 0.10 percent level, suggested extending the time prior to driving in which alcohol consumption is not permitted from 4 to 8 hours. The California Highway Patrol favored placing a driver out-of-service for a minimum of 4 hours on evidence of alcohol consumption. As stated earlier, the Department of Public Safety expressed a somewhat similar position. The Michigan Department of State supports a level below 0.10 percent based on sound data as may be developed by the NAS study. The Hawaii DOT Motor Vehicle Safety Office favored a level of 0.04 percent or lower. The Ohio Department of Public Safety took the position that any amount of alcohol in the system of a CMV driver is a cause for concern. The Colorado Department of Health favored a zero alcohol policy for CMV operators at the time of driving as it believes that such a position would avoid creation of confusion in what they perceive is an overburdened judicial system.

The Amalgamated Transit Union favored no reduction in legislated BAC levels. It noted that bus accident rates are low and stated that the proposed 0.04 percent BAC level is neither scientifically nor statistically justifiable.

Safety was the dominant issue for the 23 respondents supporting a lower BAC standard. Comments included: a need exists to demand more stringent requirements of CMV drivers; a double standard between commercial and non-commercial drivers is acceptable as this was the intent of the Act, because there is a greater potential for severe accidents with heavy vehicles; most deaths in accidents with these vehicles are suffered by other road users; the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA) have adopted 0.04 percent standards; and scientific evidence of impairment at low BAC levels exists.

The NAS Study

Approach—This study was conducted by the Committee on the Benefits and Costs of Alternate Federal Blood Alcohol Concentration Standards for Commercial Vehicle Operators. The committee was established by the NAS for the express purposes of producing the study mandated by the Act. Time constraints dictated that the study be largely limited to a critical review of existing literature. The study also included available findings from other research studies underway, analyses using existing accident data bases, and consultations with other professionals in the field. As part of the internal NAS review of the draft study report, a peer review was conducted using experts outside the committee.

Findings—Alcohol impairment related to the driving task has been studied through three different techniques; laboratory studies, closed course driving studies, and accident studies. Hundreds of laboratory studies have examined at least one facet of driver related performance at one or more BAC levels. The findings of such studies conducted at low BAC levels were reviewed by the NAS panel. Response to an emergency driving situation requires the ability to see the situation developing (visual performance); to recognize it (cognitive performance); to decide how to respond (cognitive performance); and to physically react e.g., brake or steer (motor response).

Studies of visual performance have found glare response is degraded at BAC levels as low as 0.01 percent, and focus for depth perception is degraded at the 0.04–0.05 percent BAC level. In the area of cognitive performance, a study of single task and divided attention tasks at BACs of 0.06 and 0.09 percent found performance degradation for the divided attention tasks but not for single task performance. (In the driving situation, steering is a single task and steering and avoiding crossing traffic is an example of a divided attention task.) A divided attention study conducted at BAC levels of 0.015, 0.03, 0.045, and 0.06 percent found a significant increase in errors at a BAC level at 0.015 percent compared to a zero BAC level, and that the error rate increased linearly with an increase in BAC level. Similar results were found in two other studies with BAC levels ranging from 0.23 to 0.089 percent.

A motor response study at zero, 0.021, 0.050, and 0.073 percent BAC found improvement in simple reaction time with positive BAC; however, errors in task performance were significant at all positive BAC levels, and increased with BAC.

In summary, laboratory studies have shown significant degradation in the first three steps at low BAC levels, while the fourth step, reaction time, is unaffected or may even improve slightly.

A closed course driving study found degraded performance at a mean test BAC level of 0.036 to 0.037 percent. (In this study more pylons were hit, greater stopping distances occurred, and there were more collisions with a dummy suddenly appearing in the path for drivers at these BAC levels than for drivers with zero BAC.) Emergency braking and steering in another closed course driving study were found to be significantly degraded when drivers were in a hangover condition, i.e., zero BAC, 8 hours after obtaining a mean BAC of 0.147 and allowed to sleep.

The largest and perhaps most cited case-control accident study of alcohol impairment is the Grand Rapids study discussed in the NAS report. When the data from these 5,985 crashes are sorted by overall drinking habits, the risk of crash involvement is found to increase with BAC without evidence of a threshold effect as shown in Figure 3–3 of NAS report. That is, risk increases at any positive BAC. When the data are not controlled (sorted) by general drinking behavior or other important variables (age, sex, etc.), the picture is not so clear. In any case, accident studies still show a rapid increase in responsibility for a crash at a BAC above about 0.04 percent. Also, accident frequencies increase above a BAC of about 0.08.

The NAS study noted factors affecting CMV drivers that may differ from the general driving population. Skilled drivers may be less affected at low BAC levels than unskilled drivers in relatively routine driving tasks. However, even skilled drivers show a decrease in performance under the complex demands of a potential accident situation. Truck driving is much more demanding than car driving as indicated by such factors as: more information displays (about 34 vs. 17 in a car); more vehicle controls (about 52 vs. 33); greater braking distances required; overturn and jackknife risks not present in car driving; and certain heavy vehicles operate close to the design limits of the highway. Also, alcohol as a central nervous system depressant interacts adversely with driver fatigue. Most CMV drivers work a 9 to 10 hour-day and crash frequency tends to increase after about 7 hours on the road.

In summary, the NAS study concluded that, at any BAC above zero, most commercial drivers would experience a degradation in skill that would increase the risk of crash involvement. The NAS study further estimated that each year there are about 750 fatal accidents, 7,700 injury accidents, and another 4,750 property damage only accidents involving a CMV driver with a positive BAC.

Estimates of drivers with a positive BAC in fatal accidents were: all drivers, 45 percent; all CMV drivers, 15 percent; all heavy truck drivers, 14 percent; all medium truck drivers, 24 percent; and all bus drivers—limited data to estimate, likely to be much lower than heavy truck drivers. (Only 20 percent of the victims in fatal accidents involving a CMV are CMV drivers.)

The NAS study noted that the benefits of a BAC standard for CMV operators will depend on the BAC level established and the amount of enforcement. According to the NAS study, and that estimates of these benefits require extrapolating from a small and imperfect data base. Two basic enforcement scenarios and three BAC levels (zero, 0.04, and 0.10 percent) were used in the study's cost-benefit evaluations. In these scenarios, ranges in annual benefits were estimated as follows:

a. Fatalities reduced by 80 to 250 per year;

b. Injuries reduced by 1,100 to 3,300 per year; and

c. Property damage only accidents reduced by 700 to 2,200 per year.

Costs, like benefits, will vary with BAC level selected and amount of enforcement. According to the NAS study, annual costs associated with the above benefits are estimated to range from $27 million to $54 million. All BAC and enforcement level combinations studied showed benefits exceeding costs. Larger annual reductions in lives lost and injury and property damage accidents avoided were associated with setting BAC limits at the lowest (zero) level and greater enforcement.

In the area of enforcement, the study noted that field behavioral sobriety tests are widely used in establishing a reason to believe a driver had been drinking in order to justify further investigation of the extent of any impairment. These tests, however, typically do not detect instances when a driver's BAC level is lower than 0.10 percent. The study noted that the agency may be able to use its regulatory authority to require CMV drivers to submit to BAC tests in accident or field check point stops.

In practice, BAC limits enforced are higher than those specified by law. Average BAC at arrest is 0.16 percent although most States have a 0.10 percent limit.

Recommendations—The recommendations section of the NAS study is reproduced in its entirety in Appendix A. Briefly, the NAS study concludes that at any BAC level above zero, most commercial drivers would experience a degradation in skill that would increase the risk of crash involvement. The majority (three-fourths) of the committee recommended that penalties required by the Act be applied to violations of 0.04 percent BAC. The majority also recommended reducing the BAC limit for commercial driver to zero, but with a lesser penalty (license revocation for 24 hours to 30 days) for violations below 0.04 percent. A minority (one-fourth) of the committee recommended that existing State per se limits (perhaps reduced to 0.08 percent BAC) are appropriate when the penalties associated with violation are those mandated by the Act.

The complete report, "Zero Alcohol and Other Options—Limits for Truck and Bus Drivers," Transportation Research Board Special Report 216, 1987, may be purchased from the Transportation Research Board, 2101 Constitution Avenue NW., Washington, DC 20418. There is a $20.00 fee for this report. A copy of the complete report is available for examination in the docket.

Discussion of Proposed Rule

Based on both the findings and evidence presented in the NAS report and the comments received in response to the ANPRM, the FHWA proposes to amend Parts 383, 391, and 392 of the FMCSRs. The proposed rule would also establish 0.04 percent or above as the level of BAC at which a CMV operator would be deemed impaired by alcohol and subject to disqualification. The proposed rule would also establish 0.10 percent BAC, or such lesser amount as established by a State, as the level a commercial driver is "under the influence" of alcohol and subject to State sanction for such a violation.

The proposed changes to Parts 383 and 391 also include a definition of "conviction." On June 1, 1987, the FHWA published a final rule implementing the Act in part (52 FR 20574). This final rule defined "conviction" to mean:

> * * * the final judgment on a verdict [or] finding of guilty, a plea of guilty, or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirements in this part, or an implied admission of guilt in States with implied consent laws.
> (52 FR at 20587).

The term "conviction" is used in § 383.51 pertaining to the disqualification of drivers. Drivers who are convicted of certain criminal offenses will be disqualified from driving a CMV. Similarly, § 391.15 of the FMCSRs provides that convictions for certain offenses will result in disqualification. Part 391, however, does not include a definition of conviction. In the past, the FHWA has looked to State laws to determine whether a person was "convicted" of an offense, thus triggering a disqualification. Because of the stringent penalties contained in the 1986 Act, the FHWA determined that it would be necessary to ensure that interstate drivers be treated equitably. Thus, the FHWA decided to develop a uniform definition of "conviction" for purposes of the Federal disqualification provisions. The agency also believes that a uniform definition will promote the purposes of the Act, i.e., to remove unsafe commercial drivers from the road.

The responses received by the FHWA to the series of questions raised about the definition of "conviction" in the June 1, 1987, final rule clearly indicated support for the definition of conviction used in the Uniform Vehicle Code and Model Traffic Ordinance (UVC). Thirty-five States already use definitions which closely follow the UVC. Of these thirty-five, almost all include forfeiture of bond or collateral and certain administrative findings, and thirteen include pleas of "no contest."

Accordingly, the FHWA now proposes to amend the definition of "conviction" in 49 CFR 383.5 and to define "conviction" in 49 CFR 391.3. The proposed definition is based, in part, on the comments received in response to the June 1, 1987, final rule and is drawn from the UVC. The proposed definition includes pleas of nolo contendere and would also include an administrative finding by the State that a violation was committed.

Finally, the proposed change to Part 392 would result in any measured positive BAC of an in-service driver being considered as a violation of the prohibition on alcohol impairment within 4 hours of going on-duty.

BAC Levels for Driving Under the Influence

The FHWA believes that the NAS report presents convincing evidence that significant driving impairment occurs at BAC levels below 0.10 percent, the standard found in most State laws. The findings from three research approaches of alcohol impairment laboratory studies, closed course driving studies, and accident studies are consistent both within the general research approach type, and between research approach types in support of this conclusion.

As outlined in the NAS report, truck driving is much more demanding than car driving. Fatigue is a significant factor in truck accidents and alcohol interacts adversely with fatigue. Thus, the FHWA is proposing that 0.04 percent BAC be set as the BAC level at which a person when operating a CMV shall be subject to the disqualification provisions of Parts 383 and 391.

The FHWA believes that, in enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress intended the FHWA and the States to work together to remove unsafe operators of CMVs from the road. In specifically enacting sections 12008, 12009, and 12011, the FHWA believes that the Congress intended that the FHWA and the States take actions necessary to remove operators of CMVs from the road when those operators drink and drive. The FHWA views the disqualification provisions of the Act as supplementing existing State drunk driving laws and programs, and as being targeted to a specific group of regulated drivers who pose an extraordinary risk to public safety by reason of sizes of the vehicles they drive, the nature of the cargos they transport, and the typical mileage they drive in any given period of time. To comply with the Act, the FHWA expects States to adopt laws and/or regulations necessary to disqualify CMV drivers from operating CMVs when they have been found to have operated CMVs at a BAC level in excess of the level established by this rulemaking action. The FHWA views this as the minimum State action necessary to avoid the loss of Federal-aid highway funds. The FHWA does not intend to require the States to impose additional sanctions against CMV drivers with such BAC levels; nor does not FHWA intend to preclude the States from going beyond these minimum requirements.

The FHWA envisions its current proposal as establishing three progressively more stringent penalties to address drunk driving by CMV operators. The first step would place a CMV operator immediately out-of-service for 24 hours, if found to have a measurable positive BAC level, even below 0.04 percent. The FHWA is proposing to revise 49 CFR 392.5 accordingly. The second step would be to impose the disqualifications set forth in section 12008 on those drivers found to have operated a CMV with a BAC

level at or above 0.04 percent. The third step would be to impose a disqualification in accordance with section 12008 coupled with any other State penalty required by State law (e.g., mandatory imprisonment, fines, rehabilitation programs, etc.) for those CMV operators found to have operated a CMV with a BAC level at or above the level adopted by the State to define operating a motor vehicle "under the influence of alcohol" by any driver in the State (this level is 0.10 percent BAC in most States).

The FHWA recognizes that disqualifications for drivers with law BAC levels would not occur unless States adopt the 0.04 percent BAC standard for CMV operators. For drivers subject to Part 383 and its disqualifications, the States would need to adopt the 0.04 percent standard to avoid a loss of Federal-aid highway funds beginning in FY 1994.

Out-of-Service Violations

The NAS panel and several respondents to the ANPRM were concerned that no action be taken that could be interpreted as implying that it is acceptable to operate a CMV with some alcohol in the operator's system. These groups recommended that a zero BAC standard with some out-of-service sanctions be established to address this concern. A majority of the NAS suggested that the penalty for a positive BAC below 0.04 percent be 24 hours to 30 days license revocation for the first offense and 30 days to 1 year for second and subsequent offenses. By contrast, the California Highway Patrol believes that there should be a penalty on evidence of alcohol consumption, but the penalty should be a minimum of 4 hours out-of-service.

Motor vehicle operators subject to the current § 392.5 of the FMCSRs are prohibited from consuming an intoxicating beverage or being under the influence of alcohol within 4 hours of going on duty or operating or having physical control of a motor vehicle. As shown in Figure 3–1 of the NAS report (page 42), alcohol is metabolized in the body at a rate of about 0.015 percent BAC per hour. In 4 hours, therefore, approximately 0.06 percent BAC would be metabolized by the average person. Consequently, a BAC level of 0.06 percent, or lower, 4 hours before going on duty would, in effect, result in a zero BAC level by the time the average driver goes on duty.

Thus, the FHWA proposes to amend Part 392 to clarify these rules based on the proposed selection of 0.04 percent BAC for the sanctions of the Act and available information on alcohol metabolism rates. Any CMV driver with a measured positive BAC level while he/she is in-service would be subject to the 24-hour out-of-service sanction.

In summary, the FHWA proposes to amend Parts 383, 391, and 392 to establish a set of sanctions for operators of CMVs found to be driving commercial motor vehicles while at positive BAC levels as follows:

(1) Any measured positive BAC level—immediate 24 hour out-of-service sanction;

(2) At or above 0.04 percent BAC—the disqualification sanctions of the Act; and

(3) At or above 0.109 percent BAC or any lesser level set by State law for "driving under the influence"—existing State sanctions.

The BAC levels of drivers of CMVs are generally determined by tests administered by the police officers or other law enforcement agents during lawful stops and investigations on the highways. Nothing contained in the proposed rule or in the discussion is intended to alter in any way the conditions under which highway stops and investigations are currently authorized, the method by which tests are administered or the frequency of such testing.

State Compliance

Three levels of penalties would be established by this proposal for CMV operators who drink and drive. States would need to adopt and implement these penalties or face a loss of Federal-aid highway funds. The first level would require that any CMV operator with a positive level of alcohol concentration be placed out-of-service for 24 hours. This penalty would be consistent with section 12009 (a)(21) of the Act and the full NAS committee recommendation that any alcohol consumption on the job is inappropriate for CMV operators and incompatible with safety. The second level, which would trigger the disqualification sanctions of the Act when a CMV driver has an alcohol concentration of 0.04 or higher, results from the requirements of sections 12009 (a)(15) and (16) as they pertain to penalties for drinking and operating a CMV. This penalty would reflect the recommendation of the majority of the NAS committee. The third level would trigger existing State penalties for convictions for driving while under the influence that result from current State laws as well as the disqualification sanctions. This penalty relates to the requirements of sections 12008(f) and 12009(a)(3).

All States have illegal per se laws have with BAC limits of 0.10 percent or lower, except for one. This State, however, has a presumptive law with a BAC level of 0.10. The FHWA's assessment, therefore, is that States would substantially comply with the Act if they have adopted the 0.04 percent threshold for disqualification, and if they have either per se or presumptive BAC limits of 0.10 percent or lower. The FHWA requests comment on whether States would be in substantial compliance with the Act based on their adoption and implementation of the penalties as described above.

Other Issues

A minority of the NAS committee members believes that existing State per se limits (perhaps reduced to 0.08 BAC) are appropriate when the penalties associated with violations are those mandated by the Act. Two reasons were stated for this minority position: the severity of the penalties mandated by the Act, and perceived problems enforcing lower BAC standards, including possible challenges under the Fourth Amendment to the United States Constitution (i.e., prohibition against unreasonable searches and seizures) or under State law.

The FHWA believes that the convincing evidence presented in the NAS report that significant driving impairment occurs at low BAC levels, including the 0.04 percent level recommended in that report, coupled with the serious risks posed to public safety by drivers whose abilities to control CMVs are impaired by alcohol use, warrant the imposition of these severe sanctions. The FHWA believes that most drivers faced with the possibility of disqualification will avoid it by complying with the law. The FHWA further believes that those who cannot or will not comply with the law should be removed from the road so as to eliminate the public safety risk they present.

The FHWA recognizes the seriousness of the legal issues, including possible constitutional issues, raised by those concerned with enforcement of low BAC standards. The FHWA proposes to rely primarily on the States to enforce the disqualification requirements for drivers with the BAC levels specified by this action. In accordance with the President's Executive Order on Federalism (E.O. 12612, October 26, 1987), the FHWA believes that it should allow States the maximum administrative discretion possible to achieve the objectives of the Act. The FHWA encourages the States to develop their own policies to achieve these objectives.

The FHWA believes that the evidence of the NAS study justifies these proposals as cost-effective, appropriate safety measures in the public interest. The FHWA proposal would result in a more stringent standard for CMV drivers than other motor vehicle operators. However, improving safety is the purpose of the Act and the FHWA believes that Congress intended that a stricter standard for CMV drivers be applied if justified by an evaluation of related costs and benefits. The 0.04 percent BAC standard recommended by NAS and included in the FHWA proposal for purposes of disqualification would also treat CMV operators in a way which is comparable to the way that aviation, commercial maritime, and railroad operators are treated with respect to driving under the influence of alcohol. Federal rules currently establish a 0.04 percentge BAC level as defining "under the influence" for railroad employees (49 CFR 219.101), any crew member on a civil aircraft (14 CFR 91.11), and any commercial vessel operator (49 CFR 95.020).

The FHWA believes that such a standard can be reasonably and fairly enforced. Devices to measure BAC are currently required to satisfy standards for precision and accuracy at zero, 0.05, 0.10, and 0.15 percents BAC (**Federal Register** December 14, 1984 (49 FR 48854)).

Concern was expressed by the IBT on issues relating to drivers called to work on short notice. The IBT urged that motor carriers be prohibited from penalizing drivers who inform their employers that the have recently consumed alcohol and may be in violation of BAC requirements. Roadway Express noted costs associated with some drivers using an extended call period to avoid working at inconvenient times. The FHWA believes that such issues are best handled by management-labor negotiations and that the time required for the States to adopt needed revisions in their laws will provide an opportunity for such negotiations.

A majority of the NAS proposed that second violations in a BAC range from any measured positive BAC to 0.04 percent be met with some intermediate level sanction. Drivers subject to Part 392 are currently required to report out-of-service sanctions to the licensing State and employer (49 CFR 392.5(d)). Some States currently place these violations on their records. Private enforcement of such repeat violations is another option. The FHWA is requesting comments on whether some intermediate level sanctions for second offenses below 0.04 percent BAC are appropriate.

The NAS panel recommended that drivers detected with positive BACs less than 0.04 percent be referred to a competent authority to determine whether they have an alcohol problem and, if so, be referred for treatment. The FHWA supports voluntary rehabilitation programs. However, the FHWA believes that it would be inappropriate to mandate such referrals in this Federal regulation.

As noted in the NAS study recommendations, States would be required to adopt the Federal BAC standard of 0.04 percent as the level at which CMV drivers would be subject to the mandated disqualifications to avoid a loss of Federal-aid highway funds. To implement this standard, some States may need to repeal or at least amend (i.e., to exempt CMV drivers from) that section of their presumptive laws under which a person testing below 0.05 percent BAC is presumed not to be under the influence of alcohol. The FHWA is seeking to determine if practical alternatives exist to such requirements.

Questions

In conjunction with the proposed rulemaking actions, comments are requested on the following questions:

(1) Are some intermediate Federal sanctions for second offenses below 0.04 percent BAC appropriate?

(2) What are the practical alternatives to the repeal or amendment with respect to CMV drivers of those sections of State laws under which persons testing below 0.05 percent BAC are presumed not to be under the influence of alcohol?

(3) As discussed earlier, a minority of the NAS panel members believes that the current State BAC limits (generally 0.10 percent) are appropriate for commercial drivers given the severity of the sanctions mandated in the Act. Some States and industry representatives have expressed the concern that the severity of these sanctions could serve to inhibit either enforcement of the standard or convictions based on the standard. Therefore, the FHWA is interested in whether there are ways to resolve these concerns. One alternative may be to create a set of sanctions with lesser penalities than the FHWA proposal for first-time violators. Under such an alternative, drivers with a first or subsequent violation consisting of a positive BAC level less than 0.04 percent would be placed out-of-service for 24 hours. The first-time violator who has a BAC level while on-duty at an "intermediate level" of between 0.04 percent and 0.10 percent would be disqualified from operating a CMV for a period less than 1 year. For example, 120 days, which is the current sanction for three serious traffic violations in a 3-year period (49 CFR 383.51(c)(3)(ii)) could be used as the disqualification period. The first-time violator with a BAC level of 0.10 percent or more, while on-duty would be subject to the 1-year or 3-year sanctions of the Act. Drivers with subsequent violations with BAC levels at or above 0.04 percent would be subject to lifetime disqualification as included in the Act. The FHWA solicits comments on ways, such as the example discussed above, which might resolve the enforcement and conviction concerns. Also, the FHWA is interested in the details of such alternatives, including what the appropriate sanction imposed would be for the "intermediate level" violations and whether or not drivers carrying hazardous materials should be subject to more severe sanctions for violations at BAC levels of less than 0.10 percent.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The proposed rule is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of CMV safety and alcohol use and the expected benefit in transportation safety, this proposed rule is considered significant under the regulatory policies and procedures of the DOT. For this reason, and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. The FHWA has prepared an overall regulatory evaluation for the various motor vehicle rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987 (52 FR 20574), and the proposed testing and licensing standards published on December 11, 1987 (52 FR 47326), is in the public docket and available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590, Room 4205. Specific impacts associated with this NPRM were

analyzed in the NAS study and are summarized below.

The NAS study examined the costs and benefits of a scenario which involved increased enforcement at three BAC levels, 0.10, 0.04, and zero percent. In this enforcement scenario passive sensors and/or portable breath testers were assumed to be used. Using $1 million as the value of a life, the specified minimum value for DOT regulatory purposes, the NAS study found the benefit to cost ratio for the 0.10 percent BAC option to be 6.6. For both the 0.04 percent and zero BAC options the benefit cost ratio was found to be 6.7.

Using the same increased enforcement strategy assumptions, but assuming that the use of passive sensors and or portable breath testers would not be legally permitted resulted in benefit to cost ratio ranging from 4.1 to 4.9 for the three BAC levels studied.

As noted in the NAS report, the estimated benefits and costs are based on extrapolation from a limited and imperfect data base. Nonetheless, the benefits would have to be overestimated by in excess of 650 percent, relative to cost, before any of the stated increased enforcement levels and/or lower BAC levels would not be cost-effective when the above devices are used to determine probable cause. Greatest absolute benefits were with the zero BAC option with the least being at 0.10 percent BAC.

A significant part of the motor carrier industries covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the NAS study and the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and have had opportunities to submit comments to the public docket established in conjunction with FHWA's ANPRM of March 23, 1987, (52 FR 9192). The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal.

Federalism Assessment

This action proposes to amend portions of the FMCSRs primarily to include driving at BAC levels of 0.04 percent or higher as a disqualifying offense for CMV operators. Section 12008(f) of the Act directs the Secretary to take this action pursuant to notice and comment rulemaking. Failure to establish a BAC level will result in the adoption of a 0.04 level by operation of law.

State laws and regulations are not preempted by this action. However, in order to avoid a withholding of Federal-aid highway funds, States are required to adopt the BAC level established pursuant to this rulemaking or that level which is established by section 12008 if the agency does not set the level.

The statutory basis for this proposed action is expressly set forth in the Act. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. This proposed action limits the policymaking discretion of the States only in narrow ways, and does so ony to achieve the national safety goals of the Act. This action would impose only minimal additional costs and burdens on the States as outlined above. The FHWA does not believe that this proposed action would materially affect the States' ability to discharge traditional State governmental functions or other aspects of State sovereignty. Accordingly, the FHWA further believes that this proposed action would be consistent with the President's Executive Order on Federalism.

Appendix A—Recommendations of the NAS Study

The Commercial Motor Vehicle Safety Act of 1986 requires the Secretary of Transportation to establish a BAC standard for commercial vehicle drivers and mandates a penalty for violating the newly established BAC limit as license revocation for one year on the first offense and permanent loss of the commercial license on the second offense.

The study committee believes that any consumption of alcohol on the job by commercial vehicle drivers is inappropriate for the work place and incompatible with traffic safety. The majority of the committee (three-fourths) recommends that the penalities required by the Act be applied to violations of 0.04 percent BAC. Moreover, consistent with the principle that alcohol consumption is inappropriate for the work place, the majority favors reducing the BAC limit for commercial vehicle drivers to zero, but also recommends that a lesser penalty than that required by the Act be applied to DUI violations below 0.04 percent. A penalty of license revocation for 24 hours to 30 days is recommended for drivers detected with BACs greater than 0.01 but less than 0.04 percent (use of 0.01 for the lower end of the range would account for measurement error). The driver should also be referred to a competent authority to determine whether he has an alcohol problem, and if so, should receive treatment. In addition, the violation should be placed on the driver's record. This recommendation parallels the current Federal regulation that prohibits interstate commercial vehicle drivers from drinking on the job and within 4 hours of reporting to work. The penalty for violating the current Federal regulation is for the driver to be placed out-of-service for 24 hours. In contrast to this penalty, the majority of the committee recommends that some action on the license be taken to ensure that a record is made of the violation and that the driver is referred for screening and subsequent treatment. On the second and subsequent offense of driving with a BAC greater than zero but less than 0.04 percent, the period for loss of license should range from 30 days to 1 year. Through the broad regulatory power of the office, the Secretary of Transportation could set the BAC standard at zero with these lower penalties and still require the States to adopt the penalties mandated by the Act for violations of 0.04 percent BAC.

The majority of the committee favors setting an explicit policy of zero BAC because it provides an unequivocally clear message to driver that alcohol in the bloodstream—whether from a beer with lunch or because of a hangover—is incompatible with the safe operation of commercial vehicles. A zero limit enforced by the public sector would also strengthen the policies of many private companies that strictly prohibit alcohol consumption on the job or before reporting to work.

A minority of the committee members believes that the existing state per se limits (perhaps reduced to 0.08 percent BAC) are appropriate when the penalties associated with violation are those mandated by the Act. These members also believe that it will be very difficult to establish probable cause at low BACs. The steps needed to establish probable cause at low BACs, facilitated by use of portable breath testers to screen drivers, could be interpreted as a search under the Fourth Amendment and could therefore be ruled unconstitutional. Without the use of portable breath testers and passive sensors, few drivers with BACs below 0.08 would be detected and the deterrent effect would be small. The majority of the committee, however, believes that the courts will recognize the government's interest in protecting innocent drivers and permit use of portable breath testers for screening.

The entire committee recommends that the BAC standard decided on by the Secretary of Transportation apply to drivers of CMVs weighing 26,000 pounds or more, drivers of passenger buses, and drivers of vehicles hauling hazardous materials. The estimated benefits and costs of the zero BAC policy for drivers of buses and trucks weighing 26,000 pounds or more are summarized in Table 7–3. The Federal Highway Administration has already ruled that the uniform license provisions of the Act will not apply to drivers of CMVs weighing between 10,000 and 26,000 pounds. The Federal Government and the States have a considerable task ahead of them to develop and coordinate the application of these new regulations to drivers of heavy trucks and passenger buses. Once that process is well under way, the

committee recommends reducing the BAC limit, as suggested earlier, for drivers of CMVs weighing less than 26,000 pounds.

If the Secretary adopts a lower BAC standard, some additional steps are necessary to ensure a successful policy. The U.S. Department of Transportation should develop support for enforcing a lower BAC limit from State and local authorities and develop a public information campaign to communicate the new policy to CMV drivers. To assist in deterrence, the States should handle violations of the adopted BAC limit by revoking driver licenses through an administrative process with appropriate protection of due process. If the Secretary adopts a BAC limit below 0.05 percent, the States will also need to repeal that section of their presumptive laws under which a person testing below 0.05 percent BAC is presumed not to be under the influence of alcohol.

TABLE 7-3.—ESTIMATED BENEFITS AND COSTS OF ZERO BAC STANDARD (EXCLUDING MEDIUM TRUCKS)

Category	Annual effect
Lives saved	120–220
Nonfatal injuries averted	1,400–2,500
Medical savings (in thousands of dollars)	9,000–16,000
Property damage savings (in thousands of dollars)	7,000–12,000
Delay savings (in thousands of dollars)	3,000–6,000
Public and private enforcement costs (in thousands of dollars)	34,000–38,000

Those States that have not already adopted the language recommended in the Uniform Code that defines per se limits in terms of both alcohol concentration and breath alcohol concentration should be urged to do so.

The Secretary should also consider adopting additional steps to facilitate enforcement. For example, it could be required, by regulation, that as a condition of licensure, drivers consent to being screened with hand-held breath-testing devices to assist in establishing reasonable suspicion and probable cause. Such a requirement would assist officers in those cases when a driver refuses to cooperate in the screening phase. The refusal of a driver to submit to screening would be permitted as evidence in establishing probable cause. Drivers might also be required to consent to an evidential test once probable cause has been established. In addition, in order to maximize the deterrence benefits, the Secretary could urge the 25 States not currently allowing the use of portable breath testers in the screening phase to pass enabling legislation.

Adoption of lower BAC limits and experimentation with different enforcement strategies and sanctions should be carefully evaluated. This evaluation should be carried out by independent researchers. To improve quality of data for such an evaluation, the DOT should continue to emphasize the importance of reporting BACs of commercial vehicle drivers involved in crashes and should support research to determine the incidence of drinking and driving by commercial vehicle drivers. Experience with the costs of alternative BAC limits and estimates of their deterrent effects will provide the best basis for deciding whether the BAC limits and sanctioning patterns recommended in this report are appropriate or should be adjusted.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as follows:

List of Subjects in 49 CFR Parts 383, 391, and 392

Highway safety driver requirements, Highways and roads, Licensing, Motor carriers—driver qualification, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 5, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.5 is amended by adding two definitions and revising the definition entitled "conviction," placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"Alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

* * * * *

"Conviction" means a final conviction, or an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine, a plea of guilty or a finding of guilt on a traffic violation charge, regardless of whether the penalty is rebated, suspended, or probated.

* * * * *

"Under the influence of alcohol" means at or exceeding an alcohol concentration level of 0.10 percent or such lesser amount as prescribed by State law.

3. Section 383.51(b)(2) is amended to add paragraph (b)(2)(v) as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

(2) * * *

(v) Driving a commercial motor vehicle with an alcohol concentration of 0.04 percent or more.

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

5. Section 391.3 is amended by adding three definitions as paragraphs (e), (f), and (g) as follows:

§ 391.3 Definitions.

* * * * *

(e) The term "alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(f) The term "conviction" means a final conviction, or an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by the court, the payment of a fine, a plea of guilty or a finding of guilt on a traffic violation charge, regardless of whether the penalty is rebated, suspended, or probated.

(g) "Under the influence of alcohol" means that a driver's alcohol concentration (AC) level has been determined to be 0.10 percent, or such lesser amount as prescribed by State law.

6. Section 391.15(c)(2) is amended by adding a new paragraph (c)(2)(v) as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(v) Driving a commercial motor vehicle with an alcohol concentration of 0.04 percent or more.

PART 392—DRIVING OF MOTOR VEHICLES

7. The authority citation for Part 392 continues to read as follows:

Authority: 49 App. U.S.C. 2505; 49 U.S.C. 3102; sec. 12008, Pub. L. 99–570; 49 CFR 1.48.

8. Section 392. § 392.5(a)(2) is revised to read as follows:

§ 392.5 Intoxicating beverages.

(a) * * *

(2) Consume an intoxicating beverage regardless of its alcohol content, be under the influence of an intoxicating beverage, or have any measured positive alcohol concentration, while on duty, or operating, or in physical control of a motor vehicle.

* * * * *

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Part VI

Department of Education

School Dropout Demonstration Assistance Program for Fiscal Year 1988; Notice Inviting New or Amended Applications

DEPARTMENT OF EDUCATION

[CFDA No. 84.201]

Revised Notice Inviting New Applications or Amended Applications for the School Dropout Demonstration Assistance Program for Fiscal Year 1988

SUMMARY: This notice is being published to invite new applications or amended applications for the School Dropout Demonstration Assistance Program for fiscal year 1988. A notice inviting new applications for this program was originally published in the Federal Register on March 14, 1988 (53 FR 8400), establishing a deadline of April 25, 1988 for transmittal of applications. Subsequent to that deadline, the "Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988" (Pub. L. 100–297) was enacted. Section 1004 of Pub. L. 100–297 provides that the priority provisions of section 6005(c) of Pub. L. 100–297 shall apply to funds appropriated for fiscal year 1988. As a result, the Secretary revises the priorities that must be addressed before an application will be considered for funding. To be considered, applications must address projects that BOTH: (1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency and (2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

An applicant that has previously submitted an application addressing only one of these priorities must submit an amended application addressing both priorities no later than June 10, 1988 in order to be considered for funding. An applicant that has previously submitted an application addressing both of these priorities need not (but may if it chooses) submit an amended application. New applicants are invited to submit applications that address both priorities by the June 10, 1988 deadline.

In addition, the Secretary notifies applicants that the Intergovernmental Review requirements of Executive Order 12372 and of 34 CFR Part 79 apply to this program. The Intergovernmental Review deadline was inadvertently omitted in the March 14, 1988 Notice. All applicants are required to comply with the Intergovernmental Review requirements by the deadline stated in this notice.

The following changes are made to the original Notice Inviting Applications and are reflected in this Revised Notice: (1) The priorities sections and corresponding portion of the application form are revised; (2) the Intergovernmental Review deadline and a discussion of the Intergovernmental Review requirements is added; (3) the deadline for transmittal of applications is changed; (4) applicants are encouraged to submit applications for a two-year period, to the extent possible, and are notified that the relevant provisions of Pub. L. 100–297 govern the fiscal year 1989 grant awards; and (5) the Department of Education contact person for this program is changed.

Purpose: To provide Federal financial assistance to local educational agencies, community-based organizations, and educational partnerships to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Deadline for Transmittal of Applications: June 10, 1988.

Deadline for Intergovernmental Review: July 11, 1988.

Available Funds: $23,935,000.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 125.

Budget Period: 12 months.

Project Period: Up to 24 months.

Important Notes to Applicants: To the extent possible, applicants should submit applications for a two-year period. Applicants are notified that the relevant provisions of Pub. L. 100–297 govern the fiscal year 1989 grant awards.

Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department of Education is not bound by these estimates. This notice is a complete application package containing the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application materials are necessary.

Applicable Regulations: The following regulations apply to the School Dropout Demonstration Assistance Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review).

Intergovernmental Review Requirements: The March 14, 1988 Notice Inviting New Applications for the School Dropout Demonstration Program for Fiscal Year 1988 inadvertently omitted the deadline for Intergovernmental Review. This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In States that have established a State Review Process, applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. The names and addresses of the State Single Points of Contact were published in 52 FR 44338 on November 18, 1987.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the deadline for Intergovernmental Review indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.201, U.S. Department of Education, MS 6355, 400 Maryland Avenue, SW., Washington, DC 20202. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education. If an applicant has submitted an application prior to the publication of this notice in the Federal Register, and the applicant did not also submit the application to the State Review Process, the applicant must immediately submit the application to the State Review Process.

Proof of mailing to the State Review Process will be determined on the same basis as the mailing of applications to the Department of Education.

Supplemental Information and Requirements: References to the authorizing statute refer to section 137(c) of Pub. L. 100–202 (Continuing Appropriations for Fiscal Year 1988) as referenced to parts A and C of Title VIII of the Senate amendment to H.R. 5.

(a) *Selection criteria.*

(1) The Secretary uses the following criteria under 34 CFR 75.210(b) as adjusted in accordance with 34 CFR 75.210(c), to evaluate an application.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*

(1) *Meeting the purposes of the authorizing statute.* (40 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) above will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications, under paragraphs (b)(4)(i) (A) and (B) above the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) *Evaluation.* Among other requirements that apply in Part 75 of Title 34 of the Code of Federal Regulations, applicants should be aware of the following requirements. A grantee shall evaluate at least annually—

(1) The grantee's progress in achieving the objectives in its approved application;

(2) The effectiveness of the project in meeting the purposes of the program; and

(3) The effect of the project on persons being served by the project, including, any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women; and

(iii) Handicapped persons.

(d) *Federal evaluation.* A grantee shall cooperate in any evaluation of the program by the Secretary. (1) The Secretary announces that the Department intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. All grantees will be asked to provide descriptive information and outcome data on their projects. A smaller number of grantees will be selected to participate in a more in-depth evaluation. This evaluation will involve use of control or comparison groups and collection of data on student retention, attendance, achievement, and attitudes. Projects selected for in-depth evaluation will receive assistance in conducting activities associated with the evaluation.

(2) Applicants should note that 34 CFR 75.591 requires the cooperation of grantees in any evaluation of the program by the Secretary, and that 34 CFR 75.592 states that if a grantee cooperates in a Federal evaluation of a program, the Secretary may determine that the grantee has met the evaluation requirements of the program, including those in 34 CFR 75.590.

(e) *Definition of dropout.* (1) For the purpose of this program, the Secretary makes a general statement of policy that the term "dropout," means a student who—

(i) Was enrolled in the district at some time during the previous regular school year;

(ii) Was not enrolled at the beginning of the current regular school year;

(iii) Has not graduated or completed a program of studies by the maximum age established by a State;

(iv) Has not transferred to another public school district or to a nonpublic school or to a State-approved educational program; and

(v) Has not left school because of illness or a school-approved absence.

(2) For the purpose of paragraph (e)(1)—"completed a program of studies" means received a certificate of completion—or similar designation—conferred by a public or nonpublic educational institution to indicate that the student has completed his or her program of studies, e.g., a certificate of attendance, completion of an individualized educational program (IEP) by a special education student, or completion of a State-approved, full-time alternative secondary school, including the general education development (GED) certification.

(3) Applicants are encouraged to use this definition. If an applicant plans to use another definition in the design or evaluation of its project, the applicant should describe the definition in its application.

Authority and Program Description: For fiscal year 1988, a program titled "School Dropout Demonstration Assistance Program" (School Dropout Program) is authorized under Pub. L. 100-202 (Continuing Appropriations for Fiscal Year 1988). Section 137(c) of Pub. L. 100-202 states that, subject to certain qualifications, the School Dropout Program is to be carried out in

accordance with parts A and C of Title VIII of the Senate Amendment to H.R. 5. While your attention is called to the text of these provisions, the following is a summary of some of the pertinent parts of that legislation. Unless otherwise noted, section numbers in parentheses after each paragraph refer to sections in Title VIII of the State Amendment to H.R. 5.

Section 1004 of Pub. L. 100-297 provides that the fiscal year 1988 appropriation under the School Dropout Program will be governed by the priority provisions of section 6005(c) of Pub. L. 100-297. The priority sections of this notice reflect the Congressional intent of sections 1004 and 6005(c) of Pub. L. 100-297.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to local educational agencies (LEAs), community-based organizations, and educational partnerships to establish and demonstrate (1) effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

(Section 8002)

Funding Categories

The Secretary will allot the fiscal year (FY) 1988 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, $5,983,750 for FY 1988); (2) LEAs administering schools with a total enrollment of at least 20,000 but less than 100,000 (40 percent of the amount appropriated, $9,574,000 for FY 1988), (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, $7,180,500 for FY 1988); and (4) community-based organizations (5 percent of the amount appropriated, $1,196,750 for FY 1988). For category (3), grants may be made to intermediate educational units and consortia of not more than 5 LEAs if the total enrollment of the largest such LEA is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

(Section 8004 as amended by section 137(c) of Pub. L. 100-202)

Educational Partnerships

In each of the first three categories mentioned under *Funding Categories*, the Secretary will allot 25 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; (2) a business concern, business organization, or community-based organization; and (3) one of the following: a private nonprofit organization, an institution of higher education, a State educational agency, a State or local public agency, a private industry council (established under the Job Training Partnership Act), a museum, a library, an educational television or broadcasting station, or a community-based organization.

(Section 8004)

Distribution of Funds

The Secretary will ensure that, to the extent practicable, in approving grant applications: grants will be equitably distributed on a geographic basis within each enrollment size category; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

(Section 8007)

Limitation on Costs

Not more than 10 percent of any grant may be used for administrative costs.

(Section 8007)

Federal Funds

The Federal share of grants under this program shall not exceed 90 percent of the total cost of a project for the first year and 70 percent of such cost for the second year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be in cash or in kind.

(Section 8004)

Applications

Grants may be made only to an LEA, an educational partnership, or a community-based organization that submits an application to the Secretary.

Applications must contain (1) documentation of the number of children who were enrolled in the schools of the applicant for five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as dropouts; (2) documentation of the percentage that such number of children is of the total school-age population in the applicant's schools; (3) a plan for the development and implementation of a dropout information collection and reporting system for documenting the extent and nature of the problem; and (4) a plan for the development and implementation of a project that will include activities designed to carry out the purpose of the program.

(Section 8005)

Allowable Activities

The plan referred to in paragraph (4) of the *Applications* section may include activities that: (1) Implement identification, prevention, outreach, or reentry projects for dropouts and potential dropouts; (2) address the special needs of school-age parents; (3) disseminate information to students, parents, and the community related to the dropout problem; (4) include coordinated activities involving at least one high school and its feeder junior or middle schools and elementary schools for those local educational agencies having such feeder systems; (5) as appropriate, include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act; (6) involve the use of educational telecommunications and broadcasting technologies, and educational materials for dropout prevention, outreach, and reentry; (7) focus on developing occupational competencies that link job skill preparation and training with genuine job opportunities; (8) establish annual procedures for (i) evaluating the effectiveness of the project, and (ii) where possible, determining the cost-effectiveness of the particular dropout prevention and reentry methods used and the potential for reproducing such methods in other areas of the country; (9) coordinate, to the extent practicable, with other student dropout activities in the community; or (10) use the resources

of the community and parents to help develop and implement solutions to the local dropout problem.

(Section 8005)

Authorized Activities

In addition to the activities mentioned under *Allowable Activities*, grants may also be used for educational, occupational, and basic skills testing services and activities, including, but not limited to: (1) The establishment of systemwide or school-level policies, procedures, and plans for dropout prevention and school reentry; (2) the development and implementation of activities, including extended day or summer programs, designed to address poor achievement, basic skills deficiencies, language deficiencies, or course failures, in order to assist students at risk of dropping out of school and students reentering school; (3) the establishment or expansion of work-study, apprentice, or internship programs; (4) the use of resources of the community, including contracting with public or private entities or community-based organizations of demonstrated performance, to provide services to the grant recipient or the target population; (5) the evaluation and revision of program placement of students at risk; (6) the evaluation of program effectiveness of dropout programs; (7) the development and implementation of programs for traditionally underserved groups of students; (8) the implementation of activities which will improve student motivation and the school learning environment; (9) the provision of training for school staff on strategies and techniques designed to identify children at risk of dropping out, intervene in the instructional program with support and remedial services, develop realistic expectations for student performance, and improve student-staff interactions; (10) the study of the relationship between drugs and dropouts and between youth gangs and dropouts, and the coordination of dropout prevention and reentry programs with appropriate drug prevention and youth gang prevention community organizations; (11) the study of the relationship between handicapping conditions and student dropouts; (12) the study of the relationship between the ratio of dropouts among gifted and talented students compared to the ratio of dropouts among the general student enrollment; (13) the use of educational telecommunications and broadcasting technologies and educational materials designed to extend, motivate, and reinforce school, community, and home dropout prevention and reentry activities; and (14) the provision of other educational, occupational, and testing services and activities that directly relate to the purpose of the program.

(Section 8006)

Activities for Educational Partnerships

Grants under this program may be used by educational partnerships for: (1) Activities that offer jobs and college admissions for successful completion of the program for which assistance is sought; (2) internship, work study or apprenticeship programs; (3) summer employment programs; (4) occupational training programs; (5) career opportunity and skills counseling; (6) job placement services; (7) the development of skill employment competency testing programs; (8) special school staff training projects; and (9) any other activity described under *Authorized Activities*.

(Section 8006)

Priorities

In approving applications, the Secretary will give priority to applications that both: (1) Show the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA and (2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(Sections 1004 and 6005(c) of Pub. L. 100-297)

Special Considerations

The Secretary will give special consideration to: (1) Applications that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; and (2) applications which contain provisions for significant parental involvement in the design and conduct of the program for which the assistance is sought.

(Section 8005)

Continuation

In any application from a local educational agency for a grant to continue a project for a second year, the Secretary reviews the progress being made toward meeting the objectives of the project. The Secretary may refuse to award a grant if the Secretary finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

(Section 8005)

Supplement, not Supplant

LEAs must use Federal funds received under this program only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the activities described above.

(Section 8201)

Coordination and Dissemination

LEAs receiving funds under this program must cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

(Section 8201)

Definition

As used in this program, the term "community-based organization" means a private nonprofit organization that is representative of a community or significant segments of a community, and that provides educational or related services to individuals in the community.

(Section 8202)

Priorities and Special Considerations:

(a) *Priorities:* In accordance with EDGAR, 34 CFR 75.105(c)(3), applications that meet both of the priorities in paragraphs (1) and (2) below will receive from the Secretary absolute preference over applications that do not. Applications that do not address both of the priorities will not be considered. Applications must propose projects that both:

(1) Replicate successful programs conducted in other local educational agencies or expand successful programs within a local educational agency; and

(2) Reflect very high numbers or very high percentages of school dropouts in the schools of the applicant.

(b) *Special Considerations:* (1) In accordance with EDGAR, 34 CFR 75.105(c)(2), the Secretary will give special consideration to applications that:

(i) Emphasize early intervention designed to identify at-risk students in elementary or early secondary schools; or

(ii) Contain provisions for significant parental involvement in the design and conduct of the program for which assistance is sought.

(2) An application that meets either of these two conditions will receive a competitive preference over an application of comparable merit that does not.

(c) *Invitation Priority:* (1) In accordance with EDGAR, 34 CFR 75.105(c)(1), the Secretary invites applicants to propose projects that

include activities designed to promote and foster—

(i) Strong instructional leadership;

(ii) A safe and orderly climate in schools and related facilities;

(iii) An emphasis on basic skills;

(iv) Frequent assessment of pupil progress;

(v) High teacher expectations for student achievement;

(iv) Opportunities for parents to enroll their children in a school of their choice within the project area;

(vii) Cost-effectiveness for ease of replication or continuation without Federal funding; and

(viii) A positive impact on the family.

(2) An application that meets this invitational priority does not receive from the Secretary competitive or absolute preference over other applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.201), Washington, DC 20202

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.201), Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and the title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number of this program.

Application instructions and forms: This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF–424 and instructions).

Part II: Budget information (form and instructions).

Part III: Application Narrative.

No grants may be awarded unless a completed application form has been received.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)	☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER b. DATE Year month day 19	3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE	a. NUMBER b. DATE ASSIGNED Year month day 19
		Leave Blank			

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER 84.201
MULTIPLE ☐
b. TITLE Dropout Demonstration Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A ☐

12. PROPOSED FUNDING		13. CONGRESSIONAL DISTRICTS OF:	
a. FEDERAL	$ .00	a. APPLICANT	b. PROJECT
b. APPLICANT	.00		
c. STATE	.00	15. PROJECT START DATE Year month day 19	16. PROJECT DURATION Months
d. LOCAL	.00		
e. OTHER	.00	18. DATE DUE TO FEDERAL AGENCY ► Year month day 19	
f. Total	$ .00		

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST: U.S. Department of Education
a. ORGANIZATIONAL UNIT (IF APPROPRIATE): Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS: Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19
25. FEDERAL APPLICATION IDENTIFICATION NUMBER
26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING	
a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19
30. STARTING DATE Year month day 19
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)
32. ENDING DATE Year month day 19
33. REMARKS ADDED ☐ Yes ☐ No

Instructions for Part I Federal Assistance Face Sheet (SF–424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option)

4a–h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED–CRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-M

PART II
BUDGET INFORMATION
Section A - Budget Categories for Program Year 1988-89

1. Salary and Wages	$
2. Fringe Benefits	
3. Travel	
4. Equipment	
5. Supplies	
6. Contractual Services	
7. Other (itemize)	
8. Total Direct Costs (lines 1 to 7)	
9. Total Indirect Costs	
10. Total Project Costs (lines 8 + 9)	

Section B - Cost Sharing

1. Program Income	$
2. Non-Federal Funds (State, local, etc.)	
3. In-Kind Contributions	

Section C - Estimate of Funding Needs

1. First Fiscal Year	$
2. Second Fiscal Year	
3. Third Fiscal Year	N/A

Section D - Estimate of Unobligated Funds

1. Unobligated Federal Funds from Preceding Fiscal Year	$ N/A
2. Unobligated Non-Federal Funds from Preceding Fiscal Year	N/A
3. Total Unobligated Funds from Preceding Fiscal Years (lines 2 + 3)	N/A

Section E - Budget Narrative (see instructions)

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Budget Summary

Enter the total fund (Federal) requirements by budget categories

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. Contractual Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1–6 above.

8. Total Direct Costs: Show total for lines 1–7.

9. Total Indirect Costs: Indicate the amount of indirect cost to be charged to the program or projects. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

1. Unobligated Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year.

2. Unobligated Non-Federal Funds: Indicate the amount of funds remaining from the preceding fiscal year that are from non-Federal sources.

3. Total: Show total for lines 1 and 2.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for indivuidal direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

BILLING CODE 4000-01-M

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Absolute Priorities

Indicate whether you are submitting an application addressing both of the priorities below by marking the appropriate boxes. Only those applications that address both of these priorities will be considered.

☐ Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA, and

☐ Application reflects very high numbers or very high percentages of school dropouts in the applicant's schools.

Competitive Priorities: Special Considerations

Identify the special consideration under which you are submitting the application by marking the appropriate box.

☐ Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.

☐ Application contains provisions for significant parental involvement in the design and conduct of the program.

Invitational Priorities

Identify each invitational priority under which you are submitting the application, if applicable.

☐ _____

☐ _____

☐ _____

☐ _____

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM
Data Sheet

Please check the appropriate box.

☐ Total enrollment of 100,000 or more elementary and secondary school students.

☐ Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.

☐ Total enrollment of less than 20,000 elementary and secondary school students, intermediate educational unit, or consortium. Check here if enrollment is less than 2,000 ____.

*Please check the box below if the applicant is a community-based organization.

☐

**Please check the box below if the applicant is submitting the application as an educational partnership. Then list the three members of the partnership and circle the type of organization

☐

(A) _____
LEA

(B) _____
business concern, business organization, or community-based organization

(C) _____
any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization.

*Evidence of the applicant's non-profit status should be attached.

**Evidence of the applicant's non-profit status should be attached if the educational partnership includes a nonprofit private organization.

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please provide the information set forth below on the number and percentage of children who were enrolled in the applicants' schools for 5 academic years prior to the date of this application who have not completed their elementary or secondary education and who are classified as dropout students.

School Year	No. Dropout Students	Total Enrollment	Percentage of Dropouts
1986-87			
1985-86			
1984-85			
1983-84			
1982-83			

Applicant's Definition of a Dropout:

BILLING CODE 4000-01-C

Instructions For Part III—Application Narrative

Before preparing the Application Narrative, applicants should read carefully the programmatic requirements, the information regarding priorities, and the selection criteria for the School Dropout Demonstration Assistance Act. The information is included in this application notice. In addition, applicants should read the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 Administration of Grants and Part 75 Direct Grant Programs.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract—that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice; and

3. Supply necessary data on the data sheets provided. Applicants should record the appropriate priorities, enrollment data, number and percent of dropouts and potential dropouts. Applicants should include the definition of a dropout that they use in collecting data.

Please limit the Application Narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

(Approved by the Office of Management and Budget under control number 1810-0535)

Assessment of Educational Impact: The Secretary requests comments on whether the information collection requirements in this notice would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

FOR INFORMATION CONTACT: John Fiegel, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-4342.

Program Authority: Pub. L. 100-202.

Dated: May 6, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-10427 Filed 5-9-88; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
May 10, 1988

Part VII

Department of Transportation

Maritime Administration

Notice of Application to Effect Proposed Sale of Certain Vessels and Proposed Assignment of ODSAs; Apex Resources, Inc. et al.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-828]

Apex Resources, Inc. et al.; Application To Effect Proposed Sale of Certain Vessels and Proposed Assignment of ODSAs

AGENCY: Maritime Administration, DOT.

ACTION: Correction of Docket No. S-828.

SUMMARY: The subject notice was published in the **Federal Register** on May 6, 1988 (53 FR 16334-16335). The signature date shown on 53 FR 16335 of April 4, 1988 is incorrect. The correct signature date is May 4, 1988.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: May 6, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-10556 Filed 5-9-88; 9:50 am]

BILLING CODE 4910-81-M

federal register

Tuesday
May 10, 1988

Part VIII

International Development Cooperation Agency

Agency for International Development

Housing Guaranty Programs; Kenya; Notice of Investment Opportunity

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity; Kenya

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Kenya as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Kenya. The Government of Kenya has authorized A.I.D. to request proposals from eligible investors.

Note: This is one of two investment opportunities for the Government of Kenya advertised separately on the same date of publication.

The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Kenya

Loan Number: 615–HG–007A—$11.45 Million.

Attention: Mr. J.A.K. Kipsanai, Managing Director, National Housing Corporation, P.O. Box 30257, Nairobi, Kenya, Telegram Housing.

Interested investors should telegram their bids to the Borrower's representatives on May 25, 1988, but no later than 5:00 p.m. New York time. Bids should be open until 5:00 p.m. New York time on May 27, 1988. Copies of all bids should be simultaneously sent to the following addresses.

Mr. Fredrick A. Hansen, Assistant Director/East & Southern Africa, RHUDO/Nairobi, USAID/Nairobi, Box 241, APO New York, NY 09675, *Telex No.:* 22964 AMEMB, *Telephone No.:* 254–2–331–160;

Michael G. Kitay, Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, *Telex No.:* 892703 AID WSA, *Telefax No.:* 202/647–4958 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $11.45 Million

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate with Borrowers option to convert to fixed rate starting three years after loan closing).

(e) *Draw Down:* $1.45 Million from borrowing will be disbursed to Borrower upon signing after payment of fees. Balance of $10 Million will be delayed and disbursed within twelve months of closing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg), SA–18, Washington, DC 20523, Telephone No.: 703/875–4877.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Dated: May 6, 1988.

[FR Doc. 88–10575 Filed 5–9–88; 10:03 am]

BILLING CODE 6116–01–M

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Kenya as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Kenya. The Government of Kenya has authorized A.I.D. to request proposals from eligible investors.

Note: This is one of two investment opportunities for the Government of Kenya advertised separately on the same date of publication.

The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Kenya

Loan Number: 615–HG–006C—$9.550 Million.

Attention: Mr. C. Mbindyo, Permanent Secretary, Ministry of Finance, P.O. Box 30007, Nairobi, Kenya, *Telex No.:* 22696. *Telepone No.:* 336126.

Interested investors should telegram their bids to the Borrower's representative on May 25, 1988, but no later than 5:00 p.m. New York Time. Bids should be open until 5:00 p.m. New York time on May 27, 1988. Copies of all bids should be simultaneously sent to the following addresses:

Mr. Frederick A. Hansen, Assistant Director/East & Southern Africa, RHUDO/Nairobi, USAID/Nairobi, Box 241, APO New York, NY 09675. *Telex No.:* 22964 AMEMB. *Telephone No.:* 254–2–331–160.

Michael G. Kitay, Barton Veret, Agency for International Development, GC/PRE, Room 3328 N.S., Washington, DC 20523. *Telex No.:* 892703 AID WSA. *Telefax No.:* 202/647–4958 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $9.550 Million

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of three rates: (fixed, variable, or variable rate with Borrowers option to convert to fixed rate starting three years after loan closing).

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subjected to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount therof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director Office of Housing and Urban Programs, Agency for International Development, Room 315 (Center Bldg), SA–18, Washington, DC 20523. *Telephone No.:* 703/875–4877.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Dated: May 6, 1988.

[FR Doc. 88–10576 Filed 5–9–88; 10:03 am]

BILLING CODE 6116–01–M

federal register

Tuesday
May 10, 1988

Part IX

The President

Federal Register
Vol. 53, No. 90
Tuesday, May 10, 1988

Presidential Documents

Title 3—

The President

Proclamation 5815 of May 6, 1988

National Safe Boating Week, 1988

By the President of the United States of America

A Proclamation

As a people whose land is blessed with a bounty of rivers, lakes, and streams, Americans have always prized the relaxation and pleasure of the open water. "You feel mighty free and easy," Twain's Huck Finn said, "and comfortable on a raft." This quality of the American spirit has made recreational boating one of the most steadily popular and rapidly growing leisure-time activities in the United States.

Each year, however, our Nation's waterways become more crowded with new and faster watercraft as well as an increasing number of traditional vessels. Despite this fact, boating remains one of the least regulated transportation activities. It is essential, therefore, that all operators be familiar with the rules and courtesies of safe boating. National Safe Boating Week reminds all Americans who use the Nation's waterways to educate themselves about and to respect the dangers of the marine environment and to learn how to operate watercraft in a safe and prudent manner.

Boating has its very own "rules of the road." An operator needs to know a great deal before going out on the water. For this reason, the theme of this year's National Safe Boating Week is "Know Before You Go." Those who operate small boats for fishing, hunting, and other sporting activities should have detailed knowledge of the boats they are using, their handling characteristics, how to safely load them, how to prevent them from capsizing, and how to operate and maintain their equipment. In case of an emergency, all boat operators and riders should know how to use their craft's safety devices and be certain they will work as intended; for example, life jackets should be checked, tested, and properly fitted. In addition, boaters need to be watchful for potentially dangerous situations. They must have a thorough knowledge of the waters they are using, the particular hazards they may encounter, and the prospects for environmental conditions such as tides, currents, temperature, and weather that may be dangerous. To avoid collisions and keep traffic moving, all boaters should know the Navigation Rules and the courtesies of safe boating. Most of all, boaters should know their own limitations so that they do not involve themselves and others in situations beyond their skill or physical endurance.

One especially dangerous problem for boaters is the use of alcohol or drugs. Wise boaters will avoid the use of alcohol and drugs while operating a vessel. That wisdom is backed by the law: Operation of a vessel while intoxicated is a major impediment to safety and is now a Federal offense punishable by hefty civil and criminal penalties.

Boating safety is the responsibility of all who use America's waterways. Let National Safe Boating Week be the start of a major campaign to educate boaters to "know before they go."

To promote boating safety, the Congress enacted the Joint Resolution of June 4, 1958 (36 U.S.C. 161), as amended, authorizing and requesting the President to proclaim annually the week commencing on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 5, 1988, as National Safe Boating Week. I invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia, to provide for the observance of this week.

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

Ronald Reagan

[FR Doc. 88-10586
Filed 5-9-88; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12639 of May 6, 1988

Administration of Foreign Relations and Related Functions

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning foreign assistance to the Secretary of State, the Secretary of Defense, and the Director of the International Development Cooperation Agency, it is hereby ordered as follows:

Section 1. Section 1–102(a) of Executive Order No. 12163, as amended, is further amended by amending paragraphs (9) and (10) to read as follows:

"(9) section 538 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202), to be exercised by the Administrator of the Agency for International Development within IDCA; and

"(10) the first proviso under the heading "Population, Development Assistance" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202), to be exercised by the Administrator of the Agency for International Development within IDCA.".

Sec. 2. Section 1–201(a)(11) of Executive Order No. 12163, as amended, is further amended by inserting "and (e)" after "620C(d)".

Sec. 3. Section 1–201(a) of Executive Order No. 12163, as amended, is further amended by amending paragraph (22) to read as follows:

"(22) Section 402(b)(2) of Title 10 of the United States Code, which shall be exercised in consultation with the Secretary of Defense;".

Sec. 4. Section 1–201(a) of Executive Order No. 12163, as amended, is further amended by deleting "and" at the end of paragraph (25) and by amending paragraph (26) to read as follows:

"(26) sections 513, 527, 528, 542, 561, 570, 571, 586(c), and 590 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202);".

Sec. 5. Section 1–201(a) of Executive Order No. 12163, as amended, is further amended by inserting the following new paragraphs at the end thereof:

"(27) the fourth proviso under the heading "Southern Africa, Development Assistance" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202);

"(28) the proviso relating to tied aid credits under the heading "Economic Support Fund" contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202), which shall be exercised in consultation with the Administrator of the Agency for International Development;

"(29) subsection (c)(2) under the heading "Foreign Military Sales Debt Reform" contained in Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202), and section 572 and section 573(c) of that Act, each of which shall be exercised in

consultation with the Secretary of Defense. In addition, section 573(c) shall be exercised in consultation with the Director of the United States Arms Control and Disarmament Agency.

Sec. 6. Section 1–301 of Executive Order No. 12163, as amended, is further amended to add the following section:

"(f) The functions conferred upon the President under section 573(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as enacted in Public Law 100–202)."

Sec. 7. Section 1–701 of Executive Order No. 12163, as amended, is further amended:

(1) in subsection (d) by deleting "670(a)(2)" and inserting in lieu thereof "670(a)"; and

(2) by amending subsection (g) to read as follows:

"(g) Those under sections 130, 131, 504 and 505 of the ISDCA of 1985".

Ronald Reagan

THE WHITE HOUSE,
May 6, 1988.

[FR Doc. 88–10587
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Billing code 3195–01–M

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The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S. 1378/Pub. L. 100–307

To provide for setting aside the first Thursday in May as the date on which the National Day of Prayer is celebrated. (May 5, 1988; 102 Stat. 456; 1 page) Price: $1.00

S.J. Res. 222/Pub. L. 100–308

To designate the period commencing on May 1, 1988, and ending on May 7, 1988, as "National Older Americans Abuse Prevention Week." (May 5, 1988; 102 Stat. 457; 1 page) Price: $1.00

S.J. Res. 242/Pub. L. 100–309

Designating the period commencing May 2, 1988, and ending on May 8, 1988, as "Public Service Recognition Week." (May 5, 1988; 102 Stat. 458; 1 page) Price: $1.00