6-9-89
Vol. 54 No. 110
Pages 24661-24884

Federal Register

Friday
June 9, 1989

Briefing on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

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Reader Aids
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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
Vol. 54, No. 110
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-001]

Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983, as amended, prohibits the importation of flue-cured and burley tobacco which contains any prohibited pesticide residue and establishes related certification and testing requirements. This rule will amend the implementing regulations to: (1) Substitute the term "prohibited pesticide residue" for "banned pesticide"; (2) revise the list of pesticides for which testing is conducted; (3) revise the maximum allowable concentrations of residues; and (4) require that shipments of imported flue-cured and burley tobacco not be altered or moved from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable concentrations of residues. These changes will improve effective implementation of the 1983 Act, as amended.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department will amend the regulations governing the inspection and grading of tobacco (7 CFR Part 29, Subpart B) as they pertain to the testing of imported flue-cured and burley tobacco for prohibited pesticide residues and to related matters. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) ("the Act") and the Tobacco Inspection Act (7 U.S.C. 511-511q).

A proposed rule was published in the **Federal Register** on March 9, 1989 (54 FR 10012) and interested persons were provided 30 days to submit comments. Thirty-two comments were received. The comments were submitted by domestic tobacco producers' organizations, tobacco trade associations, tobacco dealers, tobacco cooperatives, tobacco importers and exporters, tobacco manufacturers, chemical manufacturers, foreign governments, and other interested persons.

Ten of the comments supported the proposed rule in its entirety. Other comments, discussed below, questioned one or more aspects of the proposed rule.

This final rule will substitute the term "prohibited pesticide residue", which is defined as any pesticide residue exceeding the maximum concentration of residue for a specific pesticide or combination of pesticides as set forth in § 29.427, for the term "banned pesticide" (which was defined in § 29.401(p) as any pesticide which has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide and Rodenticide Act).

Conforming changes will also be made in two other sections which used the term "banned pesticide." Thus § 29.401(u), the definition of testing, will refer to chemical analysis to determine "levels of pesticide residues", rather than "levels of banned pesticides." Also, § 29.429, Disposition of imported tobacco exceeding pesticide residue standards, will refer to any lot which contains "prohibited pesticide residues" rather than "a banned pesticide exceeding the standards." This change in terminology is necessary because "banned pesticide" is a term that is used by various national and international organizations to refer to pesticides the use of which has been completely prohibited in a particular jurisdiction. These changes are made in order to avoid any possible confusion.

Ten comments expressed concern that the elimination of the specific reference to pesticides which have been canceled, suspended, revoked, or othewise prohibited under FIFRA could result in the inclusion of pesticides that are approved for use on tobacco on the list of prohibited pesticide residues in § 29.427. This was not the intent of the proposed rule and we do not believe this particular concern necessitates a change in our proposal in this regard.

When the initial regulations concerning pesticide residues in tobacco were issued (51 FR 30196, August 22, 1986), it was stated in the supplementary information that the list of pesticides for which residue limits were established would be subject to revision from time to time as the circumstances require. The list comprises those pesticides which are not approved for use on tobacco in the United States (i.e., those pesticides which have been canceled, suspended, revoked, or otherwise prohibited under FIFRA) but which are known or believed to be used on tobacco in foreign countries and for which reliable testing methodologies exist. The proposed rule called for the addition of six pesticides to the list in § 29.427; these were DDE, hexachlorobenzene (HCB), methoxycholor, cypermethrin, methamidophos, and lindane.

Four comments objected to the addition of any pesticides to the list in § 29.427 and also set forth the commenters' views about the perceived adverse economic effects of the Act. It is our view that effective implementation of the Act requires that the regulations be revised from time to time as changes occur in the use of pesticides and as additional information becomes available to us.

With respect to the specific additions proposed by us, thirteen comments questioned the inclusion of methamidophos because that pesticide is a metabolite of another pesticide, Orthene, which is approved for use on tobacco in the United States. The manufacturer of Orthene noted that methamidophos occurs as a plant metabolite from the application of Orthene and that such residues cannot always be distinguished from residues of methamidophos applied by itself. The agency believes that these comments have merit. Accordingly, methamidophos is not included in this final rule.

Twelve of the comments questioned the inclusion of lindane, correctly noting

that this pesticide is still approved for use on tobacco plant beds. The agency believes that these comments have merit. Accordingly, lindane is not included in this final rule.

The proposed rule also called for the revision of some maximum allowable concentrations of residues and the establishment of levels for the newly-added pesticides. With minor modifications, based upon the comments addressing the proposed revisions, the proposed maximum allowable concentrations of residues for individual pesticides and combinations of pesticides are adopted in this final rule.

The maximum allowable concentrations of residues were established in the following manner. The program for testing flue-cured and burley tobacco for pesticide residues has been under review since its inception. Initially, the maximum allowable concentrations of pesticide residues were established by analogy to the residue tolerances established by the Environmental Protection Agency (EPA), for food crops. The agency believes that the program can be placed upon a footing that is more specific for pesticide residues on tobacco. In establishing new maximum allowable concentrations of residues, we relied upon research conducted by several land-grant universities, information from the Codex Alimentarius Commission, published scientific literature, regulations of the Environmental Protection Agency, data from the Department's Agricultural Stabilization and Conservation Service (ASCS) domestic tobacco monitoring program, and data on pesticide residues in imported tobacco collected by testing imported tobacco under the present regulations.

During the two-and-a-half years that the regulations have been in place, over 14,000 samples of imported flue-cured and burley tobacco have been tested for pesticide residues. The resulting data provides norms for expected pesticide residue levels. Residues significantly in excess of expected levels indicate that good agricultural practices may not have been followed in the production of that tobacco. Consideration has been given to sources of pesticide residues which would not be inconsistent with good agricultural practices, such as incidental drift from the spraying of adjacent fields and unavoidable exposure to contaminated soil and ground water.

Some pesticides are persistent and degrade very slowly in the environment and thus may continue to occur in tobacco for many years after application of the pesticide has ceased. Limits for these unavoidable residues will be based upon the levels that are unavoidable in domestically grown tobacco. The levels for persistent pesticides were derived by analyzing results of tobacco monitoring samples taken from various areas of the United States. The pesticides involved are DDT, TDE, DDE, aldrin, dieldrin, toxaphene, heptachlor, heptachlor epoxide, chlordane, hexachlorobenzene (HCB), formothion, and dibromochloropropane (DBCP).

The available data for the pesticides dicamba, 2,4–D, cypermethrin and permethrin are more limited than that for other pesticides. Although all of the maximum allowable concentrations of residue are subject to change as new data becomes available, the levels for these pesticides will be denominated "temporary" in order to indicate a greater likelihood of revision.

Four comments asked that the data used to determine the maximum allowable concentrations of residues be published for public comment before the final rule is issued. We do not believe the publication of this data in the **Federal Register** is either necessary or practical. We indicated in our proposed rule that this information was available for public inspection and it remains available to all interested parties. However, we do not believe this final rule should be delayed for this reason.

Four comments objected to the establishment of maximum allowable concentrations of residues for combinations of pesticides, arguing that the combinations could result in the inappropriate exclusion of tobacco containing only trace residues or in inaccurate measurements from the totaling of small amounts. The agency does not believe that the residue levels for combinations of pesticides pose any significant problem. Although not expressly stated in terms of combinations, the pre-existing regulations relied upon that concept. For example, residues of the pesticides chlordane, formothion, toxaphene, permethrin, DDT, and TDE can be measured only by measuring their component isomers and totaling the individual residue levels. In the two-and-a-half years in which the regulations have been in place, no problems have been encountered in this regard. The measurement of the residues of component isomers in increments of hundredths of a part per million and the totaling of the levels before rounding-off to the nearest tenth of a part per million is consistent with the practices of the Food and Drug Administration and the Environmental Protection Agency. The necessity of totaling the residue levels of component isomers was taken into account when it was decided to set the maximum allowable concentrations of residue no lower than 0.1 ppm.

One comment suggested that, for combinations of pesticides, a minimum amount should be established for inclusion in the total residue level because different laboratories may have different lowest detectable levels. The agency believes, however, that private laboratories which cannot detect a particular pesticide or isomer at the hundredth part per million should, in those instances where such levels would be significant (*i.e.*, where such levels, if present, could result in a total over that allowed), report the results as inconclusive and importers should not certify the tobacco as being free of prohibited pesticide residues.

Three comments concerned the designation of certain proposed maximum concentrations of residues as "temporary." These suggested that a minimum time period be specified before temporary maximum concentrations of residues for pesticides become "permanent" in order to give interested parties the opportunity to comment on any modification. The agency believes ample opportunity will be afforded for comment. Before any change would be made in these regulations, a proposed rule would be published in the **Federal Register**, allowing interested persons an appropriate period of time to comment. Accordingly, this final rule will not be modified in that respect.

Three comments were received concerning the temporary maximum allowable concentration of residue for dicamba. Comments from major tobacco manufacturing companies and the Pesticide Committee of the Tobacco Workers Conference supported the temporary maximum allowable concentration of residue for dicamba in the proposed rule. One comment questioned the increased temporary maximum allowable concentration of residue because of the sparsity of available information on dicamba residues in tobacco. Dicamba is approved for use on commodities other than tobacco and even under good agricultural practices may appear as a residue in tobacco. It is the agency's view that the maximum allowable concentration established in this rule for dicamba should recognize these factors. The agency recognizes that the available data on dicamba is limited and so the residue level should be designated as temporary. Accordingly, this final rule will not modify the residue level specified in the proposed rule for dicamba.

Four comments questioned the proposed establishment of separate maximum allowable concentration of residue for the o,p and for the p,p isomers of DDT, TDE, and DDE, noting that these classifications would not be consistent with the reporting procedures of other government agencies. The agency believes that these comments have merit. In order to remain consistent with the reporting procedures of other government agencies, a combined maximum allowable concentration of residues will be established in this final rule for all six isomers of DDT (o,p DDT, o,p TDE, o,p DDE, p,p DDT, p,p TDE, and p,p DDE). The maximum concentration of residues for the sum of DDT, TDE, and DDE will be 0.4 ppm, rather than 0.2 ppm each for the o,p and p,p isomers as in the proposed rule.

The Act prohibits the entry into the United States of imported flue-cured and burley tobacco which is found to contain prohibited pesticide residues. Tobacco which is not certified by the importer as being free of prohibited pesticide residues must be tested and found to meet the tobacco pesticide residue requirements. Tobacco certified as not containing prohibited pesticide residues is subject to random sampling and testing. If the test results are positive, the importer may request a retest. The testing process involves a delay between the time samples are taken and the time that test results are available. In order to prevent the entry and use of tobacco later found to be contaminated, and to preserve the integrity of the testing and retesting process, it is necessary to require that imported flue-cured and burley tobacco not be mixed, blended, manipulated, altered, processed, manufactured, moved, shipped or transported from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable pesticide residue concentrations set forth in § 29.427. This final rule will establish these requirements in a new § 29.431.

Five comments opposed this new provision but suggested that, if the provision is adopted, exemptions should be provided which would allow tobacco to be partially processed under defined circumstances while awaiting the test results. These comments also expressed concern over delays in the receipt of test results and the costs associated with deferring processing until the test results are received. Although in the past there have been delays in providing test results, we believe the problems causing the delays have been corrected and the turnaround time is now approximately ten working days. The agency believes that these new requirements do not impose unreasonable burdens on importers. The agency also believes that the proposed safeguards are the only practical means of assuring that imported tobacco containing prohibited pesticide residues is denied entry into the United States as the law requires. Accordingly, this final rule adopts § 29.431 as set forth in the proposed rule.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

The information collection requirements contained in the provisions of the regulations that would be amended by this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0056.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this final rule. Few, if any, of the firms which will be affected by this final rule meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

For reasons set forth in the preamble, the regulations in 7 CFR Part 29, Subpart B, are amended as follows:

PART 29—[AMENDED]

1. An authority citation for Part 29, Subpart B, is added to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. In § 29.401, paragraphs (p) and (u) are revised to read as follows:

§ 29.401 Definitions.

* * * * *

(p) *Prohibited pesticide residue.* The maximum concentration of residue allowable for a specific pesticide or combination of pesticides as set forth in § 29.427.

* * * * *

(u) *Testing.* The chemical analysis of a pesticide test sample to determine levels of pesticide residues.

* * * * *

3. Section 29.427 is revised to read as follows:

§ 29.427 Pesticide residue standards.

The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (ppm) are:

CHLORDANE	3.0
DIBROMOCHLOROPROPANE (DBCP)	1.0
DICAMBA (Temporary)	5.0
ENDRIN	0.1
ETHYLENE DIBROMIDE (EDB)	0.1
FORMOTHION	0.5
HEXACHLOROBENZENE (HCB)	1.0
METHOXYCHLOR	0.1
TOXAPHENE	0.3
2,4-D (Temporary)	5.0
2,4,5-T	0.1
Sum of ALDRIN and DIELDRIN	0.1
Sum of CYPERMETHRIN and PERMETHRIN (Temporary)	3.0
Sum of DDT, TDE (DDD), and DDE	0.4
Sum of HEPTACHLOR and HEPTACHLOR EPOXIDE	0.1

4. Section 29.429 is revised to read as follows:

§ 29.429 Disposition of imported tobacco exceeding pesticide residue standards.

Within 10 days of the receipt of test results from pesticide test samples, the Director shall notify the importer or entity responsible for the lot of tobacco of the test results. If the test results indicate that the lot or any portion of the lot contains prohibited pesticide residues, the Director will notify the importer or entity responsible for the affected tobacco and the appropriate U.S. Customs officials that the tobacco cannot enter the United States. The importer or other entity shall notify the Director in writing of the methods by which the tobacco will be disposed of and provide 5 days advance notice of time and place of final disposition. The Department will monitor the disposition procedures to verify that the tobacco has been accurately identified as to lot, kind, type, and grade.

5. A new § 29.431 is added to read as follows:

§ 29.431 Handling of imported tobacco pending test results.

After an individual shipment of imported flue-cured or burley tobacco has been sampled, regardless of whether it is certified as being free from prohibited pesticide residues, it must be

kept in the original packages, and not be mixed, blended, manipulated, or altered in any manner, or moved, shipped, or transported from the point of entry until it has been determined that the tobacco does not contain prohibited pesticide residues.

Dated: June 6, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-13739 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 313]

Food Stamp Program; Employment and Training Requirements—Performance-Based Funding

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of a proposed rule published in the **Federal Register** on September 27, 1988 (53 FR 37582). Through this rule the Department is establishing a performance-based measure and allocation method to annually distribute $15 million in Employment and Training (E&T) grant funds to State agencies for operation of their food stamp E&T programs, beginning in Fiscal Year 1990. The allocation method finalized in this rule is intended to provide financial incentives for State agencies to operate effective E&T programs.

DATES: This action is effective July 10, 1989. The funding discussed in § 273.7 of this final rule will be made available to State agencies for use in Fiscal Year 1990.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3762.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12291. This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, investment, productivity, and innovation will remain unaffected. This rule will have an effect on employment in that its goal is to correct and clarify current rules, thereby improving efforts to place food stamp recipients in employment. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For the reasons set forth in the final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act. Reporting and recordkeeping requirements related to performance based funding as contained in 7 CFR 273.7(c)(6) are approved by OMB under approval # 0584-0339.

Background

This rule puts into final regulatory form a performance-based measure and allocation method to distribute annually $15 million in E&T grants to State welfare agencies beginning in Fiscal Year 1990. This amount is part of the $75 million Congress has authorized for the Department to provide, unmatched, to State welfare agencies to operate food stamp E&T programs.

The Department appreciates the effort which went into the preparation of the substantial number of comments received on the proposed rulemaking. These comments received full consideration and certain modifications have been made in response to them.

Implementation

The proposal to distribute incentive funding in Federal Fiscal Year 1989 received much unfavorable comment. Commenters said that distributing the funding for use during a year which has already begun would be counterproductive and deprive the State agencies of adequate time to plan for and absorb the funding. The Department concurs with the commenters and through this rule is delaying implementation until Fiscal Year 1990. The $7.5 million that was intended to be distributed based on a performance measure in Fiscal Year 1989 will be allocated to State agencies on the basis of Food Stamp Program participation in each State as a percentage of total nationwide participation. This is the same allocation method used to distribute all other unmatched E&T grant funding for FY 1989.

Measurenent Period for Performance Based Funding

The proposed rule stated that the measurement period for each fiscal year's funding would be the calendar year which ends three quarters before the beginning of the pertinent fiscal year. The proposal would have begun distributing incentive funding in Fiscal Year 1989 using data from the second, third and fourth quarters of Calendar Year (CY) 1987. Many commenters pointed out that the December 31, 1986 regulation said that data from Fiscal Year 1988 would be used to calculate the incentive amount for Fiscal Year 1989. In addition, commenters insisted that it would be unfair to utilize Fiscal Year 1987 data, particularly since that time was a period of implementation for State agencies. The proposed measurement period for each fiscal year's funding will be retained. However, because the year of implementation has been moved to Fiscal Year 1990, the timeframe for the first measurement period will be altered. This final rule specifies that the Department will use data reported by State agencies for Calendar Year 1988 to determine the amount of the Fiscal Year 1990 performance based funding. These data should accurately reflect the level of service provided by each State agency. State agencies will be informed of the amounts they will receive with enough time for advance planning.

Process-Based Standards

A number of commenters suggested that the proposed use of a process measure is inappropriate in light of the provisions of the Hunger Prevention Act of 1988, (Pub. L. 100-435) which amended the Food Stamp Act to mandate that outcome-based performance standards be implemented by April 1991.

As announced in the preambles to the December 31, 1986 final regulation and the September 27, 1988 proposed rule, the Department originally intended to implement performance-based funding in Fiscal Year 1989. Since that became impractical, the date is being moved forward one year. The Department remains committed to and continues to

place a high priority upon the institution of a performance-based funding system. At this time, however, we believe the only feasible basis by which to reward performance is by measuring a process over which State agencies have control and for which there are reliable data, that is, the number of work registrants placed in Employment and Training Programs. The Food Stamp Program does not currently require State agencies to collect any E&T outcome data. Formulation and implementation of such a collection requirement would take many months. The Department will change to an outcome-based method of allocating incentive funding after implementation of the provisions of the Hunger Prevention Act. Moreover, we believe that the current basis of grant allocation—caseload—does not adequately reflect differences in State agency funding needs and that the overall equity of the funding system would be improved by the adoption of performance-based funding.

Commenters also said that the proposed rule failed to give credit to State agencies which chose to provide intensive services to fewer participants. The Department's position is that programs which have the greatest impact overall for the entire work registrant population are those which serve the largest number of work registrants possible. The Department is aware of research which suggests that for the Aid to Families With Dependent Children Program (AFDC) population, a greater net impact may be achieved by providing intensive services to the hard-to-serve. The Food Stamp Program population differs from that of the AFDC program and the results of that research are not directly generalizable to food stamp recipients. The Department is currently conducting a wide ranging evaluation of the impact of food stamp employment and training programs. We expect the evaluation to yield important information, which will guide future work policies. At this time however, the Department does not believe compelling evidence exists to indicate that high cost, lengthy interventions are superior for food stamp work registrants.

Method of Measurement

The Department proposed to allocate incentive funds based on the number of E&T mandatory participants (work registrants not exempted by the State agency from E&T participation) placed in the E&T program of an eligible State as a proportion of E&T mandatory participants placed in E&T programs nationwide. The definition of "placed" is found at § 273.7(o)(2) of the Food Stamp Program regulations. It includes E&T mandatory participants sent a Notice of Adverse Action for failure to comply with work requirements. As discussed earlier, a good deal of comment was received about measuring placement in an E&T program rather than placement in employment. Another aspect of the methodology which received much comment was that only the placement of E&T mandatory participants was included in the calculation. Commenters objected to excluding volunteers from the number placed. Volunteer placements were intentionally excluded from the calculation in order to stress the importance the Department places on service to work registrants. Food Stamp work registrants are the main focus of Food Stamp E&T programs. Although service to volunteers is an allowable cost, the measure of effectiveness the Department has chosen is service to work registrants.

For these reasons the Department is retaining the methodology of the proposed rule and will consider only the placement of mandatory E&T participants in calculating the amount of incentive funding to be allocated to each State.

Eligibility for Performance Based Funding

The September 27, 1988 proposed rule limited eligibility for performance funding to State agencies which meet their E&T performance standards, as set forth in § 273.7(o) of the food stamp regulations, for the second prior fiscal year. For example, to be eligible for incentive funding in Fiscal Year 1991 the State agency would have had to have met its performance standard for Fiscal Year 1989. If a State agency fails to meet its performance standard in a given year, it would be ineligible for any share of performance funding two fiscal years later. The September 27, 1988 proposed rule established the March 1 prior to the FY for which performance-based funding would be distributed as the date beyond which no new information would be considered by the Department in making the determination of whether State agencies are eligible for performance-based funding.

The Fiscal Year 1989 performance standard is unique because it is split, i.e., States must serve 35% of eligibles in the first quarter and 35% over the remaining three quarters. To determine eligibility for performance-based funding in Fiscal Year 1991, the Department will average the two periods—this will not be done to determine whether or not State agencies have met their performance standards.

Comment was received saying that establishing the March 1 a deadline would be unjust to State agencies which miscalculate performance and those which fail to meet a performance standard, appeal, and establish an acceptable performance rate after March 1. The Department concedes that this could be a problem. Altering the concept of a cut-off date would be at the expense of all other State agencies. The intent of a cut-off beyond which no further State agency performance data could be included is to ensure that FNS has time to review the performance data submitted by the State agencies, calculate performance rates, and inform State agencies of the amount of funding they can expect to receive early enough to incorporate the amount into their planned E&T budgets. The Department considered holding aside a portion of the performance based funding and distributing an amount less than $15 million among State agencies, but this, also, could be to the detriment of State agencies which maintain accurate data and submit timely reports. The Department is retaining a March 1 cut-off date for determining whether a State agency has met its performance standard in the second preceding year. In recognition of problems which could result when State agencies fail to meet a performance standard, the Department will make every effort to resolve questions of a State agency's good cause prior to March 1. The Department's success in this endeavor, is dependent upon receipt of adequate documentation of good cause from the State agency, certainly no later than January 15 of the affected year. The Department will strive to ensure that State agencies which claim to have good cause for failing to meet a performance standard will not be denied the potential to receive performance funding.

The provision from the proposed rule saying that State agencies which are ineligible for performance-based funding in a given year will have their placements omitted in computing the national placement total when FNS calculates performance-based shares for eligible State agencies received no comment and is finalized in this rulemaking.

The Department did not receive comment on and is retaining the provision that if State agencies have their performance standards lowered by the Department prior to the start of a fiscal year, they will be eligible for performance funding if the approved lower standard is met.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, food stamps, grant programs—social programs, reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

For the reasons set out in the preamble, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new peragraph (g)(107) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(107) *Amendment No. 313.* The performance-based funding provisions for Employment and Training programs shall be effective October 1, 1989.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7:

a. The title of paragraph (d)(1) is revised.

b. The first sentence of paragraph (d)(1)(i)(A) is amended by removing the words "paragraph (d)(1)(i)(B)" and adding the words "paragraphs (d)(1)(i)(B) and (C)" in their place.

c. Paragraphs (d)(1)(i)(B) through (d)(1)(i)(E) are redesignated as paragraphs (d)(1)(i)(C) through (d)(1)(i)(F), and a new paragraph (d)(1)(i)(B) is added to read as follows:

§ 273.7 Work requirements.

* * * * *

(d) *Federal financial participation—*

(1) *Employment and training grants.*

(i) * * *

(B) The Secretary shall allocate $15 million of the Federal funds available each fiscal year for unmatched employment and training grants based on the ratio of the number of E&T mandatories placed (as defined in § 273.7(o)) in a food stamp E&T program in an eligible State to E&T mandatory participants placed in all eligible States in the calendar year that ends nine months before the beginning of the fiscal year. For example, Fiscal Year 1991 performance-based funding shall be based on mandatory participants placed in Calendar Year 1989. In order to be eligible for a share of performance-based funding for a given fiscal year, a State agency shall have met its performance standard (as established prospectively) for the second preceding fiscal year, e.g., to receive any performance-based funding for Fiscal Year 1991, a State agency must have met its performance standard for Fiscal Year 1989). Fiscal Year 1991 will be the first year this particular criterion will be imposed. Performance over the entire Fiscal Year of 1989 will be considered to determine eligibility for Fiscal Year 1991 funding. Corrections to reports required to be submitted in accordance with § 273.7(c) must be received by FNS, and State agency good cause appeals must be resolved no later than March 1 to be used in determining whether a State agency is eligible for performance-based funding and in calculating the performance-based funding share for the fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard for the second preceding fiscal year or if missing reports prevent the Department from being able to determine if a State agency met such performance standard or a good cause determination was not made by FNS by March 1, the State agency would not be eligible for performance-based funding. Only data from eligible State agencies will be used when determining performance-based funding shares among those State agencies.

* * * * *

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

Date: May 30, 1989.

[FR Doc. 89–13646 Filed 6–8–89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 669]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 669 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period June 11 through June 17, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 669 (§ 910.969) is effective for the period June 11 through June 17, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building. P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administration Committee (Committee) and upon other available information. It is found that

this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on June 6, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after the publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.969 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.969 Lemon Regulation 669.

The quantity of lemons grown in California and Arizona which may be handled during the period of June 11, 1989, through June 17, 1989, is established at 400,000 cartons.

Dated: June 7, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–13905 Filed 6–8–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 917

[Docket No. FV–89–058]

Pears, Plums and Peaches Grown in California; Modification of Pack Requirements for Plums for the 1989/90 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes pack requirements established for California plums for the 1989/90 season, to permit the shipment of plums packed in 24-pound net weight loose-filled or tight-filled packages or containers. Currently, such containers must contain 28 pounds, net weight, of plums. This action would provide handlers with more marketing flexibility.

DATES: This interim final rule becomes effective June 5, 1989. Comments received by July 10, 1989, will be considered prior to issuance of a final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2025–S, Washington, DC 20090–6456. Three copies of all material should be submitted and will be available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR Part 917), both as amended, regulating the handling of fresh pears, plums and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 390 handlers of plums subject to regulation under marketing order (7 CFR Part 917), and there are approximately 1,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000. Small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California plums may be classified as small entities.

Inspected shipments of California plums for the 1988 season totalled approximately 15,250,000—28-pound equivalent packages, and were marketed primarily in the fresh market. Inspected shipments of plums during the 1989 season are expected to total slightly more than 14 million 28-pound equivalent packages.

Shipments of California plums are regulated by container and pack under Plum Regulation 17 (7 CFR 917.454). Paragraph (a)(5) of § 917.454 specifies that each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages, shall bear on one outside end in plain sight and in plain letters, the words "28 pounds net weight." Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as approved by the Secretary.

On May 3, 1989, and again on May 24, 1989, the Plum Commodity Committee (committee) considered a request from one handler to test market plums packed in 24-pound net weight volume-filled containers which are 5 and 3/4 inches deep. The handler indicated that a market exists for 5 and 3/4 inch deep, 24-pound net weight containers. The 28-pound net weight containers currently in use are generally 6 and 1/2 inches deep. The 24-pound container is the same length and width as the larger container and is generally used for shipping plums packed in molded forms (tray-packs). According to the handler, an individual buyer prefers the small containers, volume filled, because their use reduces handling costs by allowing the buyer to ripen and display the fruit without the need for moving the plums from packing to display containers. The buyer also contends that because peaches and nectarines are packed in the smaller containers, similar use of smaller containers for plums enhances the display of summer fruit in the buyer's stores and thus increases sales.

At both meetings, some committee members opposed the use of the smaller 24-pound net weight container because they believe such use could cause confusion in the marketplace. They believe this could defeat the purpose of having one standard sized 28-pound net weight container. Also, previous research has shown that less fruit bruising results from fruit packaged in the 28-pound net weight container. In addition, some members believed that approval of this handler's request would set a precedent, and could require approval of future requests for different net-weight containers. Further, it was indicated that the 5 and 3/4 inch deep containers would limit the handler to using smaller sized fruit because larger fruit would either not fit in the smaller container or could be bruised during packaging or shipment. Other members indicated that the request to market fruit in a 24-pound net weight container should be approved if sales of fruit could be increased. One member was of the opinion that the use of a 24-pound net weight container would not cause confusion in the marketplace. It was suggested that information was needed from other retailers on the 24-pound pack. Representatives of the handler requesting the use of the 24-pound net weight container and of the retailer who wishes to purchase fruit in that container attended both meetings. The handler indicated that the 24-pound net weight container would only be used in shipments to the one buyer. The handler further indicated that the quantity expected to be shipped to that buyer would be approximately 1 percent of total industry plum shipments during the 1989/90 season. Thus, the handler and retailer both felt that there is little possibility of confusion in the marketplace caused by the use of another sized/weight container. Most members agreed that additional marketing research on the 24-pound net weight container would be helpful in making a recommendation on the use of that shipping container in the future. The committee voted to authorize a study of the marketing effects of the smaller containers and of buyer interest before shipments are authorized. At both meetings, the committee voted to not recommend the use of the 24-pound net weight container.

The Department has carefully considered the votes of the committee, the differing viewpoints of the individual committee members, and other information. The Department believes that handlers should be permitted to take advantage of marketing outlets which desire 24-pound net weight containers of plums, while the committee conducts a study evaluating the effects of using such containers. Moreover, the Department believes that the limited use of the smaller container as discussed above for the 1989/90 season would not disrupt the market.

The Department also believes that approval of the 24-pound net weight container, packed loose-filled or tight-filled, will not necessarily result in additional handler requests for different sized containers with net weights other than 24 and 28 pounds. If this action should result in a proliferation of handler requests for other sized or weight containers, the committee should review such requests and recommend, when appropriate, the use of those containers.

In view of the above, it is the Department's view that this change in container requirements will provide additional marketing opportunities and should not disrupt the marketplace. Thus, to allow the shipment of plums in 24-pound net weight containers, paragraph (a)(5) of § 917.454 should be revised for the 1989/90 marketing season.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the container requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of the 1989/90 plum crop have already begun; (2) this action gives handlers the opportunity to use a smaller net-weight container to meet buyer preferences; and (3) no useful purpose would be served by delaying the effective date of the changed requirements.

Further committee recommendations, other information, and all written comments timely received in response to this publication will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 917

Marketing Agreements and Orders, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Section 917.454 is amended by revising paragraph (a)(5) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 917.454 Plum Regulation 17.

(a) * * *

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1989/90 marketing season, "24 pounds net weight.", whichever is appropriate.

* * * * *

Dated: June 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13655 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[FV-89-016FR]

Raisins Produced From Grapes Grown in California; Suspension of a Provision Regarding Desirable Carryout Levels and Establishment of a Formula To Calculate Desirable Carryout Levels Under the California Raisin Marketing Order's Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Suspension of a rule.

SUMMARY: This action suspends, for an indefinite period, an order provision relating to desirable carryout levels for certain varietal types of raisins regulated under the marketing order for raisins produced from grapes grown in California. The final rule establishes a formula to calculate new desirable carryout levels to become part of the order's administrative rules and regulations. The suspension of the desirable carryout level will allow the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, to adopt a formula to calculate the desirable carryout levels used in the Committee's annual marketing policy deliberations for all varietal types of raisins.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California and the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. The agreement and order are effective under the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This action will not have a significant economic impact on small producers or handlers. The suspension of the desirable carryout levels and establishment of a formula to calculate new desirable carryout levels should allow greater flexibility in marketing consistent with recent market trends. Also, when the desirable carryout levels are increased, the free tonnage percentage will correspondingly increase, allowing more raisins to be available for immediate sale. Producers are usually paid at the time of delivery to handlers for the free tonnage portion of the crop. The reserve portion of the crop must be held by handlers for the account of the Committee to be sold in specified outlets throughout the crop year. Payments to equity holders (producers) from reserve sales are made periodically throughout the crop year. Therefore, an increase in the desirable carryout levels will provide returns to producers earlier in the season on more free tonnage raisins.

This action suspends the desirable carryout levels specified in § 989.54(a) of the order and establishes a formula to calculate new desirable carryout levels as part of the order's administrative rules and regulations. These actions were unanimously recommended by the Committee at its December 7, 1988, meeting.

Section 989.54(a) of the order currently specifies the desirable carryout levels for certain varietal types of raisins. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of each crop year to meet market needs, while waiting for the next crop to be harvested. Under current order provisions, the desirable carryout level for Natural (sun-dried) Seedless raisins is 60,000 tons. In 1984, the order was amended to increase the desirable carryout level by 5,000 tons each crop year from 45,000 tons, until it reached 60,000 tons (49 FR 48194, December 11, 1984). The Committee reached the 60,000-ton ceiling last season. The desirable carryout levels for Dipped Seedless and Oleate and Related Seedless raisins are also specified in § 989.54(a) at 1,500 tons.

The Committee has determined that the current desirable carryout levels for Natural (sun-dried) Seedless and Dipped Seedless raisins specified in the order are too low and that higher levels are more appropriate because they will allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The Committee has also determined that the desirable carryout level for the Oleate and Related Seedless varietal type is too high and the specified tonnage in § 989.54(a) should be suspended regarding this varietal type since the specified tonnage no longer reflects the actual tonnage needed during the beginning of the season. Thus, the Committee has recommended that the two sentences in § 989.54(a) relating to desirable carryout levels for these varietal types of raisins be suspended indefinitely.

In addition, the Committee recommended that a formula to calculate desirable carryout levels be established in the order's rules and regulations. The Committee has recommended that total shipments (converted to a natural condition basis) for these raisin varietal types from August, September, and October (the first three months of the crop year) of the prior crop year be used to establish the desirable carryout levels each season. If prior shipments in a particular crop year are limited due to adverse crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year. The Committee has indicated that

this formula method is an appropriate procedure for determining desirable carryout levels, since it will better reflect changes in each season's marketing conditions.

The Committee has indicated that shipment levels during the beginning of the crop year (the three-month period of August, September, and October) have increased from 57,266 tons in 1982 to 95,323 tons in 1988 for Natural (sun-dried) Seedless raisins. The Natural (sun-dried) Seedless raisin varietal type comprises about 90 percent of the industry's annual raisin crop. If the new formula were in effect for the current season, the desirable carryout level would be increased by approximately 43,948 tons for Natural (sun-dried) Seedless raisins, to 103,948 tons (converted to a natural condition basis). Shipments of Natural (sun-dried) Seedless raisins during the first three months of the crop year totaled 83,410 tons in 1986; 87,688 tons in 1987; and 95,323 tons in 1988.

The formula would also be likely to result in an increase in carryout levels for the Dipped Seedless varietal type because shipments of this varietal type during the first three months of the crop year have increased in recent years. The desirable carryout level would be increased by approximately 1,860 tons for the Dipped Seedless varietal type to 3,360 tons (converted to a natural condition basis) if the new formula were in effect for the current season. Shipments of the Dipped Seedless varietal type during the first three months of the crop year totaled 1,108 tons in 1986; 1,822 tons in 1987; and 1,767 tons in 1988.

Shipment levels of the Oleate and Related Seedless varietal type, on the other hand, have been below the 1,500 ton level specified in the order. Shipments of this varietal type during the first three months of the crop year totaled 840 tons in 1986; 922 tons in 1987; and 114 tons in 1988. Therefore, the formula to calculate the desirable carryout levels for this varietal type results in a desirable carryout figure that more closely reflects the shipments during the August through October period.

The Committee also intends to use this formula to calculate desirable carryout levels for all varietal types listed uner § 989.110 of the rules and regulations. The desirable carryout levels of the varietal types that are not currently specified under § 989.54(a) (Golden Seedless, Muscats, Sultanas, Zante Currants, Monukka, and Other Seedless raisins) are determined by the Committee each crop year based on the marketing conditions from the prior year and anticipated marketing conditions for the upcoming year. The Committee has determined that the formula method will be more appropriate in determining the desirable carryout levels for these varietal types.

Recommendation of this action was published in the **Federal Register** (54 FR 10158) on March 10, 1989. Written comments were invited from interested persons until April 10, 1989.

One comment was received from Mr. Barry F. Kriebel, President of Sun-Maid Growers of California. The comment strongly supported the proposed action recommended by the Committee. The commenter also pointed out an inadvertent error in the supplementary information section of the proposed action. In the discussion relating to the calculations of the desirable carryout levels for Natural (sun-dried) Seedless raisins, the calculations were not converted to a natural condition basis as recommended in the new desirable carryout formula. This has been corrected in the supplementary information section of this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendations, the comments received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Note:—These sections will appear in the annual Code of Federal Regulations.

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

§ 989.54 [Amended]

2. In paragraph (a) of § 989.54 *Marketing policy*, the sentences, "The desirable carryout shall be increased from 45,000 to 60,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for the three crop years following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and for Oleate and Related Seedless raisins 1,500 tons.", are suspended indefinitely.

Subpart—Administrative Rules and Regulations

3. A new § 989.154 is added to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period August through October of the prior crop year, converted to a natural condition basis, *Provided*, That if the prior year's shipments were limited because of crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year.

Dated: June 6, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–13738 Filed 6–8–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R–0655]

RIN: 7100–AA91

Truth in Lending; Home Equity Disclosure and Substantive Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation Z (Truth in Lending) to implement the Home Equity Loan Consumer Protection Act of 1988. The law requires creditors to provide consumers with extensive information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Creditors will have to provide information at the time an application is provided to the consumer, including information about the payment terms, fees imposed under the plan, and, for variable-rate plans, information about the index and a fifteen-year history of changes in the index values. Creditors will be required to provide consumers with a brochure prepared by the Board (or a suitable substitute) describing home equity plans. The regulation also imposes duties on third parties who

provide applications to consumers and modifies the rules relating to advertisements for home equity plans.

In addition to these disclosure requirements, the regulation limits a creditor's right to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened, and limits the type of index that can be used for variable-rate plans.

EFFECTIVE DATE: June 7, 1989, but compliance is optional until November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Leonard Chanin or Thomas Noto, Staff Attorneys, or Michael Bylsma, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

In December 1987 the Board proposed amendments to Regulation Z to change the existing disclosure requirements for home equity lines of credit secured by the consumer's principal dwelling (52 FR 48702). Subsequently, the Home Equity Loan Consumer Protection Act was enacted on November 23, 1988 (Pub. L. 100–709). The law superseded the Board's proposal.

The statute and amendments to the regulation leave in place existing disclosure requirements for open-end plans. They add, however, two requirements to this framework. First, as is the case for certain closed-end adjustable-rate mortgages (see § 226.19(b) of Regulation Z), creditors generally will be required to provide detailed disclosures about their home equity plans when an application is provided to the consumer. Second, creditors will be required to provide additional information, along with the current disclosures, prior to the first transaction under the plan. In addition to these disclosures the statute and regulation place certain substantive limitations on home equity plans.

On January 23, 1989, the Board published a proposed rule to amend Regulation Z to implement the statute. (54 FR 3063). The Board received approximately 150 comments on the proposal. A number of commenters expressed concern about the new law, and in particular about the substantive requirements. They felt, however, that the Board had provided a workable framework to provide guidance to creditors. Many commenters recognized that the statute provided the Board with little flexibility in implementing the act, but requested further guidance on various issues.

Based on a review of the comments and further analysis, the Board is adopting a final rule implementing the act. The statute provides that creditors must comply with the law five months after enactment of final regulations by the Board. Therefore, compliance is mandatory as of November 7, 1989. Creditors are free to comply with the new requirements prior to that date.

(2) Amendments To Regulation Z

The Home Equity Loan Consumer Protection Act is quite detailed and, for the most part, the regulatory amendments mirror the statutory requirements. The amendments to Regulation Z incorporate the disclosure provisions into a new § 226.5b of the regulation and into existing § 226.6. (A new § 226.5a was added to Regulation Z by the Board on April 6, 1989, to implement the Fair Credit and Charge Card Disclosure Act. See 54 FR 13855. The changes now being made amend the regulation as it has been modified by the amendments implemented under the Fair Credit and Charge Card Disclosure Act.) Modifications are made to the form and timing rules in § 226.5, the change in terms rules in § 226.9, the rescission provisions in section 226.15, and the advertising rules contained in § 226.16. Technical amendments also are made to §§ 226.1, 226.5a, and 226.14.

This notice contains a detailed section-by-section discussion of the new rules and provides guidance on a large number of technical questions raised by the commenters. In general, the amendments apply to open-end credit lines secured by the consumer's dwelling (not limited to the principal dwelling).

The new rules require that creditors provide disclosures and a brochure at the time an application for such a line of credit is given to the consumer, although extra time is permitted in certain cases, such as where applications are made on the telephone or through intermediaries. The disclosures generally have to be grouped together and separated from any unrelated information. Among other things, creditors must describe the payment terms of the plan, including how the minimum payment is determined. The disclosures cover both the draw period and any repayment period, although some information about the repayment period may be delayed until repayment begins. Creditors must itemize and provide the amount of any fees they impose to open or use the plan, and an estimate of fees imposed by third parties to open the plan.

Detailed information about any variable-rate feature will be provided by creditors. This includes the index used to determine the rate adjustments, the frequency of changes in the annual percentage rate (APR), and a fifteen-year historical table showing how the APRs and payments would have been affected by index value changes over that time.

In addition to these early disclosures, the regulation requires that certain information (such as payment information) be given a second time along with the disclosures currently required when open-end credit accounts are opened. The regulation specifies which disclosures must be given a second time.

Though the regulation principally deals with creditors, third parties have a limited duty to provide information if they provide applications to consumers. The advertising rules also are modified. For example, if an advertisement states any payment information it must include other cost information.

In addition to disclosures, the regulation contains substantive limitations on the way home equity plans may be structured. The regulation limits the ability of a creditor to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened. The regulation also limits the type of index a creditor can use for variable-rate plans.

Renewals and "conversions" of home equity lines raise a number of issues. Guidance on how these should be handled appears later in this notice, as well as how the effective date of the new rules will affect applications and new plans being offered on that date. Much of the information in this notice will be incorporated into the annual update to the Official Staff Commentary on Regulation Z that will be proposed for comment in the fall. Furthermore, a number of cross-references and modifications will be added to existing commentary provisions when the Official Staff Commentary is proposed. For example, comment 6(a)(2)–2 (dealing with the ability of a creditor to increase a rate without reference to an index) and comment 17(b)–2 (dealing with conversion of open-end credit to closed-end credit) will be modified to reflect the new home equity rules.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

The amendments to § 226.1 are largely unchanged from the proposal, except that they add a reference to the credit and charge card rules adopted by the Board in April 1989. The amendments to § 226.1(b) reference the fact that variable-rate contracts secured by the consumer's dwelling must state a maximum interest rate. (This requirement was added to § 226.30 of the regulation in November 1987.) This section also references the limitations imposed on home equity plans. The addition of § 226.1(c) reflects the fact that certain requirements of the home equity rules apply to persons other than creditors who provide applications to consumers. The amendments to § 226.1(d) add a reference to the new home equity rules, and amendments made to implement the Fair Credit and Charge Card Disclosure Act (added to the regulation in April 1989).

Section 226.5—General Disclosure Requirements

Footnote 8 accompanying § 226.5(a) is amended to reflect the fact that the disclosures required at the time of application need not be in a form that the consumer can keep. The existing rule in § 226.5(a)(2) also applies to the early disclosure statement. Thus, when the term "annual percentage rate" is disclosed with a number, it must be more conspicuous than other required disclosures. A new paragraph (4) is added to § 226.5(a) to reflect the fact that § 226.5b disclosures have their own form rules. A new paragraph (4) is added to § 226.5(b) to reflect the fact that § 226.5b disclosures have their own timing rules.

Section 226.5a—Credit and Charge Card Applications and Solicitations

Section 226.5a(a)(3) is modified to substitute the new regulatory citation of the home equity rules for the statutory citation in § 226.5a. (Section 226.5a—dealing with credit and charge card applications and solicitations—does not apply to home equity plans accessible by a credit or charge card.)

Section 226.5b—Requirements for Home Equity Plans

Section 226.5b provides that the amendments to Regulation Z apply to all open-end credit plans secured by the consumer's dwelling. Several commenters asked whether the home equity rules apply only where the consumer's principal dwelling is involved. While the statute uses the term "principal dwelling," it is specifically defined to include any vacation or second home of the consumer. The Board is using the term "dwelling" since it has an established meaning under Regulation Z. The final rules apply to all dwellings, a term defined in § 226.2(a)(19) of the regulation to include residential structures containing one to four units. Thus, the new rules are not limited to plans secured by the consumer's primary dwelling. The regulation does not set out special owner-occupancy rules. However, the existing commentary to § 226.3(a) (which discusses whether transactions are consumer or business purpose credit in part based on owner-occupancy criteria) provides guidance on whether a home equity plan is subject to Regulation Z at all.

The fact that coverage of these rules is broader than just principal dwelling does not affect the scope of any other provisions of the regulation. Thus, for example, the right of rescission applies only in cases where the consumer's principal dwelling secures the credit.

The APR referred to throughout new § 226.5b is the APR corresponding to the periodic rate, as determined by § 226.14(b). Since a number of commenters were concerned that the statement to that effect in footnote 10c in the proposal was ambiguous, the provision now appears in the introduction to the section.

Conversion Rules

A number of commenters requested guidance on what disclosures are required if the initial agreement calls for the draw phase of a plan to "convert" to a repayment phase, which has many aspects of closed-end credit. Some home equity plans provide in the initial agreement for a period during which repayment of the amount borrowed is made, but no further draws may be taken. In such cases, the disclosures must include information about both phases of the plan. All of the disclosures in § 226.5b, as applicable, must be given for the repayment phase. Thus, for example, creditors must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). The information set out in § 226.5b(d)(7), § 226.5b(d)(9) and, if the rate during repayment will be variable, in § 226.5b(d)(12) also must be given for the repayment phase. If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an APR under § 226.5b(d)(6) with regard to that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion—even if the rate during the repayment phase will be fixed—creditors must provide the information in § 226.5b(d)(12), as applicable.

Although full disclosure of the terms about the repayment phase is required, creditors have a choice with regard to when it must be given. Creditors may provide all of this information at the time the other early disclosures are given to the consumer, in accordance with § 226.5b. As an alternative, creditors need disclose only the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures, and defer all the other required disclosures about the repayment phase until conversion. If provided at conversion, disclosures must be based on information available at that later time. For example, the historical table as discussed under § 226.5b(d)(12)(xi) must reflect the index for the most recent fifteen years. Sample form G–14C has been added to the appendix to the regulation to illustrate how this later disclosure might look. Creditors using either of these alternative disclosure rules are required to provide information about the repayment phase as set forth in § 226.6 (See the discussion of this requirement under that section.)

Creditors providing these disclosures, whether early or at conversion, are not required to provide any additional disclosures under the rules in Subpart C of the regulation for closed-end credit. The existing rules (such as those in comments 17(b)–2 and 19(b)–2 of the Official Staff Commentary, which discuss converting an open-end account to a closed-end one) do not apply to home equity plans in which a repayment phase is provided for in the original agreement. The Congress, in the act, requires disclosures about the closed-end aspects of a home equity line to be given as part of the home equity "plan." The Board believes the Congress intended to provide special treatment for this product. Consistent with this approach of treating both phases as a single open-end credit plan, during the repayment phase creditors are required to continue providing periodic statements under § 226.7 and to comply with other open-end credit rules set forth in Subpart B of the regulation, as well as the substantive rules set forth in § 226.5b(f). For example, if the original agreement provides for a repayment phase with a variable-rate feature, rate changes must be tied to an index not within the control of the creditor, as discussed in § 226.5b(f)(1).

If the original home equity line agreement does not call for a repayment phase to follow the draw period, and the creditor and consumer later enter into a closed-end credit agreement to repay the outstanding balance, the creditor must give closed-end credit disclosures (including those under § 226.19(b) and 226.20(c), if applicable) since this would be deemed a new transaction. In such cases, the substantive rules in § 226.5b(f) do not apply to the closed-end credit transaction.

Section 226.5b(a)—Form of Disclosures

Unlike existing Truth in Lending requirements for closed-end and open-end credit, the disclosures provided at the time of application need not be in a form the consumer can keep. Thus, although the disclosures must be in writing, creditors are permitted to place the first set of disclosures on the application form the consumer returns to the creditor to apply for the plan. Although several commenters questioned this rule, the act and legislative history make it clear that creditors are not required to provide this information in a form the consumer can keep. (The disclosures provided under § 226.6(e) of the regulation, however, must be in a form the consumer can keep. See also the discussion under § 226.6(e) for special rules when the early disclosures are given in a retainable form.)

Section 226.5b(a) requires most of the disclosures to be grouped together and "segregated" from unrelated information provided to the consumer in connection with the application. The brochure and the variable rate information described in § 226.5b(d)(12) may be provided either separately from or with the other disclosures. Creditors choosing to provide a description of the items referred to in § 226.5b(d)(4)(iii)—for example, the conditions under which the creditor may prohibit additional extensions of credit—may give this information separately from or with the other disclosures. Similarly, creditors choosing to provide a good faith itemization of fees imposed by third parties—as set forth under § 226.5b(d)(8)—also may give those disclosures separately from or with the other disclosures. (The disclosures required under these sections are set forth in greater detail under the specific sections.)

Under the regulation, greater flexibility is permitted in complying with the segregation standard than currently exists for closed-end credit. Disclosures for home equity plans tend to be less concise and more narrative in form than those for closed-end credit. Therefore, the regulation applies a more liberal standard that permits inclusion of information that explains or expands on the required disclosures. Information on other aspects of the plan that is not related to the required disclosures, such as underwriting criteria, however, is not permitted to be interspersed with the disclosures. Such information, of course, could be provided as long as it is separate from the required disclosures. The segregation requirement does not apply to the second set of disclosures, which are provided under § 226.6 prior to the first transaction.

In the first set of disclosures, that is, those given at application, § 226.5b(a)(2) of the regulation provides that certain items will be further highlighted by requiring them to precede the other disclosures. Consumers will be notified, for example, that: (1) They should keep a copy of the disclosures; (2) they have a right to obtain a refund of fees if terms change and they decide not to enter into the contract as a result; (3) they risk the loss of the dwelling in the event of default; and (4) a creditor may terminate a plan or suspend future advances under certain circumstances. With regard to the last item, if a creditor describes these conditions, the precedence rule does not apply to that descriptive disclosure. The precedence rule does not apply to the second set of disclosures at all.

If creditors give a single disclosure form covering all of their home equity offerings, all aspects of their plans must be described in the first set of disclosures. For example, if a creditor offers several payment options, all options have to be set forth. Furthermore, if any aspects of a plan are linked together—for example, if the consumer can obtain certain payment options only in conjunction with other plan features, such as a particular variable-rate feature—the creditor must clearly disclose the relation among those plan features. Creditors need not, however, reflect all payment options in providing the minimum payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x), and the historical table under § 226.5b(d)(12)(xi). (See the comments accompanying these sections for the specific disclosure requirements.)

As an alternative to the combined disclosure method, creditors may prepare separate disclosure forms where multiple options exist. For example, creditors offering more than one payment option during the draw phase or during any repayment phase of a plan may choose to create separate disclosure forms for such variations. Thus, creditors who offer consumers a choice during the draw period, for example, of (1) minimum payments equal to any accrued unpaid finance charge or (2) minimum payments equal to two percent of the outstanding balance, could choose to create separate disclosure forms for the two payment options. Creditors who follow this alternative of preparing separate disclosures must include a statement on each form that the consumer should ask about the creditor's other home equity programs. (This disclosure would be required only with respect to other programs available to the public and not, for example, employee preferred-rate plans.) Creditors would have to provide disclosures about their other programs as soon as reasonably possible in response to any request for the disclosures.

Section 226.5b(b)—Time of Disclosures

Section 226.5b(b) requires the disclosures and brochure to be given at the time an application is provided to the consumer. In the case of applications contained in publications such as magazines or received by the creditor through third parties, footnote 10a allows the creditor to mail or deliver the disclosures and brochure to the consumer within three business days of its receipt of the application. Several commenters suggested this three-day period begin upon receipt of a "completed application", recommending that the Board use the term as used in Regulation B (which implements the Equal Credit Opportunity Act). This has not been adopted in the final regulation. Regulation B uses the term "completed application" to begin the time period in which creditors must notify an applicant of action taken on an application. This is appropriate since a creditor may not be able to make a credit decision until all relevant information has been received. The purpose of the home equity early disclosure rules is quite different. They are meant to assist consumers in shopping for credit; thus it is important to provide information early in the shopping process.

The three-day delay applies where the creditor takes an application over the telephone. If, however, the consumer simply requests over the telephone that an application be mailed, the creditor must provide the disclosures and a brochure with the application sent to the consumer. (Creditors should consult the rules in § 226.5b(h) regarding the imposition of a nonrefundable fee before receipt of the disclosures.)

Some creditors use a general purpose application for their home equity plans

as well as their other credit products. The home equity disclosures and brochure must accompany this type of application if the application or materials accompanying it indicate that it can be used to apply for a home equity line of credit. In addition, if a general purpose application is provided to a consumer as a result of an injury about a creditor's home equity plan, the disclosures and brochure must accompany the application, even if the application or accompanying materials do not specify that it can be used to apply for a home equity plan.

Commenters also asked how the disclosure rules relate to mail solicitations and so-called "take-ones." In cases where the creditor sends applications through the mail, the creditor must send the disclosures and a brochure along with the application. Applications made available to the public without need for a request, such as "take-ones," also have to be accompanied by (or combined with) the disclosures and a brochure.

Several commenters raised the issue of whether disclosures had to be provided with "response cards." Some creditors provide a response card instead of an application in solicitation materials sent to consumers. Consumers are requested to return the card to the creditor to indicate their interest in the home equity product. Creditors need not provide the home equity disclosures and brochure with the response card if the only action taken by the creditor upon receiving the card is to send an application form to the consumer (which would then be accompanied by the disclosures and a brochure), or to telephone the consumer regarding an application.

In any situation in which footnote 10a applies, thus permitting a delay in disclosures, the creditor may determine within the three-day period that the application will not be approved. In such a case, the creditor need not provide the disclosures or the brochure. The same would be true if the consumer withdraws the application within that time period.

If an application contained in a magazine or other publication is mailed to an intermediary or broker or if such a person takes an application over the telephone, footnote 10a permits that person to mail the disclosures and a brochure within three business days of receipt. (See the discussion below of when such third parties have a duty to provide disclosures.)

Section 226.5b(c)—Duties of third parties

In addition to requiring creditors to provide disclosures and a brochure to consumers at an earlier time, § 226.5b(c) of the regulation imposes a limited duty on third parties who provide applications to consumers.

Under § 226.5b(c), a third party is required to provide disclosures only if that party has the disclosures for a creditor's particular home equity plan in its possession. Third parties do not have an affirmative duty to obtain such disclosures about a creditor's program, or to create a set of disclosures based on what the third party knows about a creditor's program. The Board believes that requiring both a third party and a creditor to provide the consumer with identical information about the same plan would result in unnecessary duplication. If, however, a creditor supplies disclosures to a third party along with its application form, the third party must give the consumer the disclosures when the application form is given out. In all cases, consumers will be provided disclosures by the creditor within three days after the creditor receives the application. Furthermore, a nonrefundable fee cannot be collected from the consumer by the creditor or a third party until after the consumer receives the disclosures. (See § 226.5b(h).)

Although the duty of third parties to provide the disclosures may arise infrequently, the regulation requires third parties, in all cases, to give the home equity brochure at the time an application is given to the consumer. Because providing the brochure is not linked to the availability of information from a creditor about its specific plan, the Board believes third parties will have access to the brochure, and thus be able to provide it with the application.

This provision imposes duties on third parties and not on creditors. Therefore creditors are not responsible for ensuring that the third parties comply with the requirements of this section.

Section 226.5b(d)—Content of disclosures

Section 226.5b(d) of the regulation lists the information to be given to consumers when they receive an application for home equity plans. As is the case with existing Truth in Lending disclosure rules, the information would be provided only to the extent applicable; thus, for example, if negative amortization cannot occur in a program, no mention of it need be made.

Section 226.5b(d)(1)—Retention of information

Because the disclosures need not be in a form the consumer can keep, the consumer will be advised to make and retain a copy of the disclosures. Creditors need not include this statement if the disclosures are in a form the consumer can keep, for example, if the disclosures are not part of the form that must be returned to the creditor to apply for a plan.

Section 226.5b(d)(2)—Conditions for disclosed terms

Creditors will include a statement of any time by which an application must be submitted to obtain specific terms disclosed. A number of commenters misunderstood this provision in the proposal. Creditors are free to not guarantee any terms, in which case they must indicate that all of the terms are subject to change. In that case, they need not include a date or time period. The legislative history makes clear that a creditor also may choose to guarantee some of the terms of the plan and not others. If creditors choose to guarantee only some of the terms, they must indicate which terms may change prior to opening the plan. Creditors can provide a specific date or use a time period as long as the consumer can determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms.

Creditors also must notify the consumer of the right to a refund of all fees paid in connection with the application if any disclosed term changes before opening the plan and as a result the consumer chooses not to enter into the plan. The final regulation has been amended to clarify that this provision does not apply to changes resulting from fluctuations in the index value in a variable-rate plan; this includes changes in the APR and changes in the maximum rate or "cap" if it is expressed as an amount over the initial interest rate. (See the discussion of this provision at § 226.5b(g).)

Section 226.5b(d)(3)—Security interest and risk to home

Creditors will have to disclose the fact that a security interest is being taken in the consumer's dwelling and that the consumer may lose the home in the event of default.

Section 226.5b(d)(4)—Possible actions by creditor

Under § 226.5b(d)(4), a statement must be provided that, under certain circumstances, a creditor may terminate

the plan and accelerate any outstanding balance, prohibit additional advances or reduce the credit limit, and, if applicable, implement certain modifications to the original terms, as set forth in the initial agreement. The regulation, in conformity with the legislative history accompanying the act, also requires a statement that fees may be imposed if the account is terminated by the lender. This disclosure regarding fees is required, for example, if a penalty or prepayment fee may be imposed upon termination by the lender in such circumstances. The disclosure would not be required if the fees are the same ones that would be imposed when the plan expires in accordance with the agreement. The actual amount of such fees need not be provided. In response to commenters, the Board is clarifying that this disclosure is not required if the only fees that may be imposed upon termination are fees such as attorney fees or court costs involved with the collection of the debt. Additionally, an increase in the APR—such as a higher rate of interest if the consumer fails to make payments—does not trigger this disclosure.

Section 226.5b(d)(4)(ii) provides that consumers will be notified that they can receive, upon request, a description of the conditions that permit the creditor to terminate the plan, prohibit additional advances or reduce the credit limit, and implement modifications during the term of the plan. Upon receiving a request from a consumer for such information prior to the consumer opening the plan, the creditor must provide this information as soon as reasonably possible. This requirement had previously been incorporated in § 226.5b(g) of the proposal.

As an alternative to disclosing that the consumer has the right to receive a statement of the conditions under which the creditor may take the indicated actions, § 226.5b(d)(4)(iii) provides that the creditor may simply disclose what those conditions are. One way to make this disclosure is to provide a highlighted copy of the contract, security agreement or other document which contains such information. The relevant items must be distinguished in some fashion from the other information contained in the document, for example, by use of a cover sheet that specifically points out which contract provisions contain this information, or by marking the relevant items. If a creditor does not choose to provide a document of this sort, it may simply describe the conditions using the language in §§ 226.5b(f)(2) and 226.5b(f)(3)(vi). If specified changes may be implemented during the plan as described in § 226.5b(f)(3)(i), a statement such as the following could be made: "The initial agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events." Whichever method is used to provide the list of conditions, it may appear with the segregated disclosures or apart from those disclosures. If it is with the segregated disclosures, it need not appear before other disclosures.

Section 226.5b(d)(5)—Payment terms

Under § 226.5b(d)(5), creditors are required to describe the payment terms of the plan, including the length of the draw period and any repayment period. (The combined length of the draw period and any repayment period does not have to be stated.) If the length is indefinite, creditors would state that fact.

Several commenters requested guidance on how renewal provisions should be handled in making these disclosures. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to "renew" or extend the original draw period of the plan, such provisions should be ignored for purposes of the disclosures. Thus if an agreement provides that the draw period is for five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. A creditor may discuss a renewal feature with the other disclosures without violating the segregation rules.

Where a creditor provides a combined disclosure form for all of its home equity offerings, all payment options must be stated, including any different payment terms that may exist during the draw period and during any repayment period, as well as any differences that may apply within either period. As mentioned in the discussion of conversion rules under § 226.5b, creditors may give some of the disclosures about the repayment phase at the time of conversion, rather than with the early disclosures. Whether those disclosures are delayed or not, creditors must provide the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures about both the draw and repayment phases.

If the plan permits the consumer to convert any of the loan balance to a fixed repayment term, this feature must be disclosed under § 226.5b(d)(5)(ii). Such a provision would be ignored for purposes of other disclosures, however, including the historical table under § 226.5b(d)(12)(xi).

The disclosures must set forth how the minimum periodic payment is determined, the frequency of payments, and whether making only the minimum payments may not repay any or all of the principal balance by the end of the plan. The regulation also calls for a disclosure of the possibility of any balloon payment. Under some programs, a balloon payment may occur under certain circumstances, but is not certain or even likely. In such cases the disclosure would indicate that a balloon payment *may* occur. In other cases, such as programs where payments include interest only, a balloon payment will occur as a matter of course and the disclosures should reflect that fact. If repayment of the entire outstanding balance would be required only in the case of termination and acceleration, the balloon disclosure would not apply. Section 226.5b(d)(5)(ii) does not require the amount of any balloon to be provided. (See the requirement under § 226.5b(d)(5)(iii), however.) The term "balloon payment" need not be used. Several commenters asked whether a final payment that is only slightly larger than any other payment (for example, because of rounding) must be considered a balloon payment. Creditors need not disclose there is a balloon payment if the final payment is not more than twice the amount of other minimum payments under the plan. An explanation of the balance computation method is not required by this section.

Section 226.5b(d)(5)(iii) requires creditors to disclose an example, based on an assumed $10,000 outstanding balance and a recent APR, showing the amount of the minimum periodic payment and of any balloon payment, and the time it would take to pay off the balance if the consumer made only those payments. If it is relevant to calculating its payments, a creditor may assume the credit limit as well as the outstanding balance is $10,000. The issue was raised of whether a creditor that only offers lines of credit for less than $10,000 would have to use this amount in the example. If a creditor only offers lines of credit under $10,000, the creditor may use an alternative assumed outstanding balance of $5,000 rather than $10,000.

Footnote 10c provides that, for fixed-rate plans, a recent APR is one that has been in effect under the plan within the twelve months prior to the date the disclosures are provided to the consumer. The footnote also provides that, for variable-rate plans, a recent

APR is the most recent index value and margin provided in the historical table (see § 226.5b(d)(12)(xi)), or a more recent rate.

As an alternative to providing examples for each payment option—in plans that have multiple payment options within the draw period or within any repayment period—creditors may provide representative examples. For purposes of this disclosure, as well as for the variable rate disclosures under § 226.5b(d)(12)(x) and (xi) the Board is establishing three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories, even if other features exist, such as varying lengths of a draw or repayment period, required payment of any past due amounts, minimum dollar amounts, and the payment of late charges.

The creditor may use a single example within each category to represent the payment options in that category. For instance, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the § 226.5b(d)(5)(iii) example for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. Creditors choosing to use a representative example within each category must use the same examples for purposes of the disclosures under § 226.5b(d)(5)(iii), 226.5b(d)(12)(x), and 226.5b(d)(12)(xi). Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods.

This approach of allowing a single example to represent a category of payment options does not apply to the requirements under any other provisions. Creditors must fully describe all payment options under § 226.5b(d)(5)(i) and (ii). Similarly, the payment information provided in accordance with § 226.6(e)(2) must reflect the actual payment option chosen by the consumer (or all of the options available if the consumer retains several options during the plan).

Certain "reverse mortgages" (sometimes called "reverse annuity mortgages" or "RAMs") involve an open-end line of credit and require repayment in full only when certain events occur, such as the consumer's death. These RAMs are subject to the new rules if the line is secured by the consumer's dwelling. The payment disclosures will reflect that a single payment is due when one of the specified events happens. The single payment may be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single, $10,000 advance to the consumer when the plan is opened and should assume repayment will occur upon the consumer's death, if that is one of the events requiring repayment. In such cases, the disclosures may be based on a representative life expectancy, that is, one that is an average of, or is typical of, life expectancies recently used in developing the creditor's RAM. In making the disclosures, the creditor must assume that the $10,000 advance and any accrued interest will be paid in full by the consumer and must disregard any non-recourse provision (which provides that the consumer is not obligated for an amount greater than the value of the dwelling). Some RAMs provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. As part of the disclosure of the payment terms, the creditor also must describe the shared appreciation feature. (See the discussion of this feature under § 226.5b(f)(3)(i).) (See also the discussion of RAMs under § 226.5b(d)(12) (x) and (xi).)

Section 226.5b(d)(6)—Annual percentage rate

Section 226.5b(d)(6) provides that, for fixed-rate plans, a recent APR will be provided. Consumers also must be told that the APR does not include costs other than interest. Some commenters argued that the proposal's reference to "the APR" was too broad since the "historical APR" on periodic statements does in fact include finance charges other than interest. The introduction to § 226.5b makes clear that APR as used throughout § 226.5b refers to the APR that corresponds to the periodic rate, as determined under § 226.14(b).

Section 226.5b(d)(7)—Fees imposed by the creditor

Under § 226.5b(d)(7), creditors will provide a description and the amount of charges they impose to open, use and maintain the account, and a statement of when the consumer must pay the charges. These fees include items such as application fees, points, annual fees, transaction fees, and fees imposed when the plan converts to a repayment phase (if the conversion is provided for in the original agreement). Fees imposed by third parties, that are initially paid by the consumer to the creditor, may be included in this disclosure or in the disclosures under § 226.5b(d)(8). As discussed in § 226.5b(f)(3)(i), a creditor may provide a step fee schedule in which a fee will increase a specified amount at a specified date. The amount of any fees and when the fee is payable must be disclosed under this section. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit or house value. Several commenters asked whether fees imposed for late payment, stop payment, exceeding the credit limit, or closing out an account would have to be disclosed under this section; they do not. Creditors need not use the term "finance charge" or "other charge" in describing the fees imposed by the creditor under this section or those fees imposed by third parties under § 226.5b(d)(8).

Some creditors provide that they will rebate closing costs, for example, to the extent any interest is paid during the first year of the plan. Regardless of such a provision, if closing costs are imposed—even if possibly "rebated" later—creditors must disclose such costs. (The existence of the rebate feature may be included in the disclosures.)

Section 226.5b(d)(8)—Fees imposed by third parties to open a plan

Under § 226.5b(d)(8), an estimate of the total fees imposed by third parties to open the account (such as appraisal, credit report, government agency and attorney fees) stated as a single dollar amount or a range will be provided. Fees imposed by third parties, even if initially paid to the creditor, may be included in this disclosure. Even if such fees may be "rebated" (as discussed in § 226.5b(d)(7)), they must be disclosed. In response to comments, the Board has modified the regulation to clarify that this section covers only those fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee

imposed by a third party, such as a government agency, at the end of a plan to release a security interest.

Creditors also must provide a statement that the consumer may request more specific cost information about such fees from the creditor. Upon receiving a consumer's request for such an itemization prior to the consumer opening the plan, the creditor must respond as soon as reasonably possible. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Where impractical to provide the dollar amount, fees may be expressed on a unit cost basis, for example, $.50 per $100 of the credit line. If provided, this itemization may appear together with or separate from the other disclosures.

Section 226.5b(d)(9)—Negative amortization

Under § 226.5b(d)(9), a statement if the plan has negative amortization—which will increase the principal balance and reduce the consumer's equity in the dwelling—must be provided.

Section 226.5b(d)(10)—Transaction requirements

Section 226.5b(d)(10) requires creditors to state any limitations on the number of extensions or amount of credit that can be obtained during any time period, and any minimum draw or minimum outstanding balance requirement stated as a dollar amount or as a percentage. A limitation on ATM usage is not covered by this provision, unless that is the only means by which the consumer can obtain funds. This provision does not require a disclosure of the maximum credit limit offered by the creditor.

Section 226.5b(d)(11)—Tax implications

Section 226.5(d)(11) requires that consumers be told to consult a tax advisor if further information regarding the deductibility of interest and charges under the plan is desired.

Section 226.5b(d)(12)—Disclosures for variable-rate plans

Section 226.5b(d)(12) requires creditors to provide information about any variable-rate feature contained in a plan. Many of these disclosures closely parallel the disclosures currently required for closed-end variable-rate transactions secured by a consumer's principal dwelling. (See § 226.19(b) of the regulation.) As discussed above in the general comments on § 226.5b, under this section information must be provided as to variable-rate features of both the draw period and any period in which repayment occurs with no further ability to obtain advances. There is, however, some flexibility regarding the timing of the disclosures about the repayment period. These disclosures, like others, need be provided only as applicable. (See § 226.5b(f)(3)(i) for features that are not considered variable rate and thus do not require disclosure under this section.)

Subsection (i)—APR may change. Creditors are required to state that the APR may change and that the payment or term may change due to the fact that the APR is variable.

Subsection (ii)—APR includes only interest. A statement that the APR does not include costs other than interest must be provided. (See the discussion at § 226.5b(d)(6) about the fact that this refers to the APR that corresponds to the periodic rate.)

Subsection (iii)—Index information. Creditors have to identify the index used to determine rate adjustments and a source of information about the index. (See the comments accompanying § 226.5b(f)(1) for further discussion of what constitutes a source of information.)

Subsection (iv)—How the APR is determined. Creditors have to describe how the APR will be determined (for example, by stating that a margin is added to the index value). This provision does not require disclosure of the specific amount of the margin.

Subsection (v)—"Ask about" current rate information. Because the disclosure forms can be preprinted and rate information may not be current, consumers will be told to "ask about" the current index value, margin, discount or premium (if applicable), and APR.

Subsection (vi)—Discounted or premium rate. If the initial rate is discounted or is a premium, a disclosure of that fact as well as the period the discounted or premium rate will be in effect must be provided.

Subsection (vii)—Frequency of changes in the APR. The frequency of changes in the APR must be stated, for example, monthly or quarterly.

Subsection (viii)—Rules relating to index value, APR and related changes. Rules relating to changes in the index value and the APR and resulting changes in the payment amount must be set forth. This provision requires an explanation of preferred-rate provisions in variable-rate plans, where the rate will increase not only when the index increases but also upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ, or the consumer closing an existing account with the creditor. Similarly, an explanation must be given if the plan permits the consumer to switch from a variable rate to a fixed rate, including disclosure of whether a fee may be imposed for such a change. Any payment limitations and the possibility of rate carryover also must be provided.

Subsection (ix)—Rate limitations. The proposal required a statement of any annual limitations on rate increases. Several commenters raised concerns about how to comply if their rate caps were not expressed as annual limits (for example, if there were only monthly caps). In response to this concern, the regulation provides that an annual cap must be stated if there is one, and that a rate cap for a shorter period can be stated instead if there is no annual cap. Caps for shorter periods must be stated in terms of a specific amount of time (for example, six-month limitations). A limit based on twelve monthly billing cycles should be treated as an annual cap. If there are no annual (or shorter) limits on rate increases, the fact that there is no annual limit must be stated.

The maximum rate that may be imposed under each payment option over the life of the plan also must be provided. The life of the plan includes the draw period and any repayment period that is provided for in the original agreement. This rate may be stated as a specific rate (for example, 18%) or as a stated amount above an initial rate (for example, 5 percentage points above the initial interest rate). In either circumstance, creditors may use a range of the lowest and highest rate limitations that may be applicable in disclosing both the periodic limitations and the maximum overall rate in the early disclosures given at application. Creditors that disclose the caps as ranges and creditors that disclose the maximum rate as a stated amount above an initial rate must include a statement that the consumer should ask about the rate limitations that are currently applicable. This statement may be included with the other features consumers are told to ask about under § 226.5b(d)(12)(v).

Subsection (x)—Maximum payment example. Creditors must show the minimum periodic payment required when the maximum rate for each payment option is in effect, based on a $10,000 outstanding balance. (See the discussion in § 226.5b(d)(5) for circumstances in which creditors may use a lower outstanding balance.) If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for this disclosure. The disclosure also must

state the earliest time the maximum rate could be imposed; this would reflect, for example, the effect of periodic rate caps.

As an alternative to making disclosures based on each payment option, creditors may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the discussion at § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods.

In a single payment open-end reverse mortgage, creditors should assume that the APR reaches the maximum as quickly as permitted under the plan and that the maximum rate stays in effect until repayment is called for. (See the discussion at § 226.5b(d)(5) concerning the other assumptions that the creditor should make in disclosing RAMs.)

Subsection (xi)—Historical example. A 15-year historical table, based on an assumed $10,000 initial extension of credit and showing how the APRs and payments would have been affected by the index value changes under the plan, must be provided. (See the discussion in § 226.5b(d)(5) for circumstances in which a creditor may use a lower outstanding balance.) Index values and APRs must be shown for the entire 15 years and must be based on the most recent 15 years. If the length of the plan is less than 15 years, however, payments need only be shown for as long as the plan lasts. If the values for an index have not been available for 15 years, creditors need only go back as far as the values have been available in giving the history and may start the example at the year for which values are first available. In providing this information, creditors should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan. Creditors should assume that the consumer takes no subsequent draws. (If relevant, the creditor may assume the $10,000 is both the advance and the credit limit.)

The history must reflect the method of choosing values for the plan. For instance, if an average of index values is used in the plan, averages would be used in the history, but if an index value as of a particular date is used a single index value would be shown. The creditor is required to assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history.

Only one index value per year need be shown, even if the plan provides for adjustments to the APR or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the APR and payment. Updating will be necessary only once each year to reflect the most recent year's index value. To assist creditors in constructing histories of certain common indices, the Board is publishing in this notice tables of index values for commonly used indices.

The payment figures in the example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted APR, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have been applicable. Both periodic and overall rate limitations must be reflected in the example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest annual and overall rates must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

Creditors need show only one payment per year in the table, even though payments may vary during a year. (The calculations, however, should be based on the actual payment computation formula.) Creditors may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date. Creditors must be consistent in the manner of selecting the month that is used to illustrate payment information.

A few commenters asked whether annual balance information or balloon payments could be added to the table. Information about the remaining balance and any balloon payment may, but need not, be reflected in the table.

Creditors need not provide the required historical disclosure for all of their various payment options, but may select a representative payment option within each of the three categories of payments upon which to base their disclosure. (See the discussion at § 226.5b(d)(5).)

An historical example is required for single payment plans such as RAMs. Although 15 years of index values and APRs would be shown, the payment column would be blank until the year that the single payment would be required, assuming that payment is estimated to occur within 15 years. (See the discussion at § 226.5b(d)(5) for additional guidance in making RAM disclosures, including the assumptions to be made about the term for repayment.)

A value for the margin must be assumed in order to prepare the example. Creditors must select a margin that they have used during the six months preceding preparation of the disclosures and state that the margin is one that they have used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values. Similarly, if the home equity plan has a discounted or premium initial rate, creditors will be permitted to select a discount or premium that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. A creditor may assume that a discount or premium that will be in effect for part of a year is in effect for the entire year for purposes of reflecting it in the example.

In setting forth the historical example under this section, creditors that choose to provide disclosures about the repayment phase as part of the early disclosures (see the general discussion about conversion under § 226.5b) must reflect all features of the repayment phase in the table, including the appropriate index values, margin, length of the phase, and payments. For example, if different indices are used during the draw and repayment phases, the index values for that portion of the 15 years that reflects the repayment phase must be the values for the appropriate index.

Creditors who choose to provide information about the repayment phase at the time the plan converts to the repayment phase, rather than with the early disclosures, need not reflect the repayment phase in the table (just as they may omit information about the repayment phase for purposes of all the disclosures under § 226.5b(d)(12)). In such cases, the index values and APRs relating to the draw period would be shown for the entire 15 years (even if the draw period is less than 15 years).

Section 226.5b(e)—Brochure

Section 226.5b(e) requires both creditors and third parties providing applications to furnish consumers with a brochure prepared by the Board describing home equity plans, or a

suitable substitute. The Board's brochure (which is expected to be published by the end of June 1989) describes home equity plans, including the potential advantages and disadvantages. The brochure also provides guidance on how to compare home equity plans with closed-end credit. The Board envisions that any substitutes must be comparable in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular home equity programs than contained in the Board's brochure.

The regulation requires third parties to provide consumers with the brochure if an application is given to the consumer by the third party. The Board believes, however, that requiring a second brochure to be given by the creditor in such circumstances is unnecessary. Therefore, the creditor's duty to provide the brochure will be met if the third party provides the brochure to the consumer. This will avoid duplication.

A number of commenters misunderstood this provision in the proposal, thinking that the Board was attempting to make creditors directly liable for a duty that the act places on the third party. In fact, this provision does not affect the duty of the third party but merely relieves creditors of the need to give a second brochure to the consumer on condition that the creditor ensures that the brochure was actually given. If a creditor does not wish to rely on the actions of the third party, it of course may provide a copy of the brochure.

Section 226.5b(f)—Limitations on home equity plans

The substantive limitations in § 226.5b(f) apply to both actions creditors may take and the provisions that they include in contracts. These limitations apply to assignees and holders as well as the original creditor. The substantive rules apply to both the draw period and to any repayment period that is provided for by the initial agreement. (If the agreement does not call for a repayment period, and the parties subsequently enter into a closed-end transaction to pay off the outstanding balance, the later agreement is not subject to the substantive limitations.)

Section 226.5b(f)(1)—Changing the APR

Under § 226.5b(f)(1), a creditor may change the APR after the plan is opened only if the change is based on an index outside the creditor's control and the index value is available to the public. This provision prohibits a creditor from using its own prime rate or its own "cost of funds" or simply retaining the right to change rates at its discretion. A creditor is permitted, however, to use the prime rate published in a publication or a newspaper, such as the *Wall Street Journal*, for example, even if the bank's own prime rate is one of several rates used to establish that rate. A creditor also may use any other index not within the creditor's control. A publicly available index need not always be published in a newspaper, but the creditor must make certain that a consumer could independently verify any rate information.

This provision does not prohibit specific rate changes if set forth in the initial contract, such as in preferred rate and step rate plans, as provided under § 226.5b(f)(3)(i).

Section 226.5b(f)(2)—Termination and acceleration

Under § 226.5b(f)(2), creditors are prohibited from terminating an account and accelerating payment of the outstanding balance prior to the scheduled expiration of the plan. If a creditor offers an "evergreen" account, that is, one that has a potentially indefinite draw period, a creditor may not terminate the plan or accelerate payment of the balance.

There are three exceptions to the rule against termination and acceleration. First, a creditor may terminate the plan if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by State law and the agreement between the parties and may include acts of omission, as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Second, a creditor may terminate the plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement. This provision permits termination if the consumer actually fails to make payments. A creditor may not terminate a plan if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Filing for bankruptcy may permit termination, if the consumer fails to make payments under the plan.

Finally, a creditor is permitted to terminate and accelerate if the consumer acts or fails to act in a way that adversely affects the creditor's security for the plan, or any right of the creditor in such security. In response to commenters, the Board has revised the regulation to more closely parallel the language used in the statute with regard to the creditor's rights in the security. The regulation limits the exception to action or inaction by the consumer (and not third parties) as provided in the statute.

This provision permits termination, for example, if the consumer transfers title to the property or sells the property without the permission of the creditor, or if the consumer fails to maintain required insurance on the dwelling. This exception also may be invoked if the consumer commits waste or otherwise destructively uses or fails to maintain the property such that it adversely affects the security.

Failure to pay taxes on the property or some other action by the consumer resulting in the filing of a lien senior to that held by the creditor also might impair the creditor's security. Death of the consumer and taking of property through eminent domain both permit termination since the title to the property transfers as a result. Commenters asked whether events such as the filing of a judgment against the consumer or illegal use of the property would permit termination. The Board believes that whether the creditor can terminate an account depends on the circumstances. For example, the filing of a judgment against the consumer would permit the creditor to terminate the plan if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. Foreclosure by a prior lienholder would permit termination of the line if the creditor's security interest is adversely affected.

If an event occurs which allows termination and acceleration, a creditor may take action short of terminating an account and accelerating payment of the outstanding balance. Commenters raised a number of questions about the permissible extent of such action. Under the final regulation, if one of the exceptions would apply, a creditor is permitted to temporarily or permanently prohibit additional extensions of creditor or reduce the credit limit without demanding payment in full. In addition, a creditor may take other action; for example, the creditor may change the payment terms or may require the consumer to pay a fee if the consumer fails to maintain required property insurance and the creditor subsequently purchases the insurance. A creditor may provide in its agreement

that a higher rate or higher fees apply, for example, if the consumer fails to meet the repayment terms or otherwise acts so that the creditor is permitted to terminate the plan and accelerate the balance. Furthermore, a creditor that does not immediately and permanently terminate an account and accelerate payment or take another permitted action may take such action at a later time, if the condition constituting an exception under § 226.5b(f)(2) still exists at that time (or if another of the exceptions applies).

Creditors are not permitted to specify in their contracts any other events that allow terminating an account or accelerating payment of the outstanding balance beyond those listed in the regulation. Thus, for example, the contract may not contain a demand provision that may be exercised before the end of the stated term nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

Section 226.5b(f)(3)—Change of terms

Section 226.5b(f)(3) provides that a creditor in general may not change the terms under the plan after the account has been opened. Generally, a creditor may not increase any fee or impose a new fee once the plan has been opened. There are several exceptions to the rule prohibiting the creditor from changing the terms of the plan after it has been opened.

Subsection (i)—Events provided for in the contract. This provision permits a creditor to implement specific changes set forth in the contract that are contemplated on the occurrence of a specific event. Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee loan program, the contract could provide that a specified higher rate—or specified higher margin in a variable-rate plan—will apply if the borrower's employment with the creditor ends. A creditor also could have a step rate or step fee schedule in which specified changes in the rate or the fees are set to occur on certain dates or at specified time periods. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific percentage of the appreciation and the specific circumstances in which it must be paid are set forth. A contract also may permit a consumer to switch among minimum payment options during the plan. This option could be provided in the initial agreement (as long as the specific features are described) or could be offered after the plan is opened since it would constitute a "beneficial change" as discussed in § 226.5b(f)(3)(iv).

Because this provision applies only to specific changes that are contemplated on the occurrence of specific events, the regulation does not permit a creditor to include a general provision in its contract permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan.

The regulation also does not permit a creditor to include in the initial agreement any "triggering events" *or* permissible responses that the regulation expressly addresses. Based on public comment, the proposal may not have been clear on whether the prohibition was intended to cover the inclusion of triggering events, or responses, or both. The Board intends that both be covered. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, since the triggering event (a material change in the consumer's financial circumstances) is set forth in the regulation and the permissible response (freezing the line or lowering the credit limit) is spelled out. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decrease in property value since the regulation allows that response only for a significant decrease. A creditor may not freeze the line, reduce the credit limit, terminate the plan, or accelerate the balance except in those circumstances specified in the regulation, since such consequences are set forth in the regulation.

The Board solicited comment in the proposal on whether creditors should be permitted to specify a second index (for variable-rate plans) in the initial agreement, which would be used should the original index become unavailable. Based on further analysis, the Board believes the statute does not permit such an action since it expressly provides the conditions that must be met to substitute an index when the original index becomes unavailable. The Board has modified the requirement for this second index, however, as set forth under § 226.5b(f)(3)(ii), to provide greater flexibility to lenders if the original index becomes unavailable.

Subsection (ii)—Substitution of index. This provision provides that the creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the two indices were substantially similar, and as long as the new index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the new index is newly established and therefore does not have any historical rate history, creditors may nevertheless use it as long as the new index and margin produce an interest rate substantially similar to the rate in effect when the original index became unavailable.

Subsection (iii)—Changes made by written agreement. The regulation prohibits unilateral changes; it permits creditors to change the terms after a plan is opened provided the consumer expressly agrees in writing to the change at that time. Thus, for example, under this subsection a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance.

Any subsequent agreement must be consistent with the rules set out in § 226.5b(f). For example, a creditor and consumer could not enter into an agreement to base changes in the APR on the movement of an index controlled by the creditor, because § 226.5b(f)(1) provides that any index used as a basis for APR changes must be one not under the creditor's control. Similarly, an agreement could not specify events that will permit termination and acceleration beyond those set forth in the regulation.

In addition, creditors are not permitted to assume consent because the consumer uses an account, even if use of an account constitutes acceptance under state law. The Board believes this restriction will carry out the Congressional intent to limit changes after a plan is opened, yet accommodate the need for adjustments explicitly agreed to by the consumer.

Subsection (iv)—Beneficial changes. This provision permits creditors to make changes, after the plan has been entered into, that "unequivocally benefit" the consumer as long as the change is beneficial for the entire term of the agreement. In response to suggestions by commenters, the Board is providing additional examples of beneficial changes. A creditor may make changes that offer more options to consumers, as long as existing options remain. For example, a creditor could offer the consumer the option of making lower monthly payments or could increase the credit limit (although the right of rescission under § 226.15 may apply if the credit limit is increased). Similarly, a creditor could extend the length of the plan, as long as it was extended or renewed on the same terms. Creditors

are permitted to temporarily reduce the rate or fees charged under a plan. The rate or fees, however, may not later be increased to a level higher than that initially disclosed. (If fees are later increased up to the original level, creditors may need to comply with the requirements in § 226.9(c) concerning notification of changes in terms.) Creditors also may add additional means to access the line even if fees are associated with using the device, provided that the consumer retains the ability to use prior access devices on the original terms.

Subsection (v)—Insignificant changes. This subsection provides an exception to the general prohibition against changing terms after the plan has been entered into for changes to "insignificant terms." This is intended to address operational and similar problems, such as changing the address of the creditor for purposes of sending payments. In response to commenters, the Board is providing additional examples of items that would constitute insignificant changes. The provision permits minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are used to determine changes to the rate for variable-rate plans. A creditor also may change its rounding rules, in accordance with the tolerance rules set forth in § 226.14. For example, a creditor may change its rules to state an exact APR of 14.3333 percent as 14.3 percent, even if it previously stated the APR as 14.33 percent. A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the daily balance method (including new purchases) to the average daily balance method (including new purchases). This exception would not permit a creditor to unilaterally change a term such as a fee charged for late payments.

Subsection (vi)—Temporary suspensions of credit and reduction of credit limit. This subsection provides that a creditor may temporarily prohibit additional extensions of credit or reduce the credit limit in seven circumstances. First, a creditor may take such action if the value of the dwelling that secures the plan declines significantly below the property's appraised value for purposes of the plan. A number of commenters asked the Board to provide guidance on what constitutes a "significant" decline in the property. The Board believes what constitutes a significant decline will vary according to individual circumstances. In any event, however, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, that will be deemed a significant decline in the value of the dwelling for purposes of the regulation. For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000. Therefore, the creditor could prohibit further advances if the value of the property declines from $100,000 to $90,000.

Second, a creditor may prohibit additional extensions of credit or reduce the credit line if the creditor reasonably believes the consumer will be unable to fulfill the repayment obligations under the plan due to a material change in the consumer's financial circumstances. Two conditions must be met for a creditor to use this exception. First, there must be a "material change" in the consumer's financial circumstances. For example, a significant decrease in the consumer's income could meet this part of the requirement. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. This second condition has been modified from the proposal. A creditor does not have to rely on specific "evidence" (such as the failure to pay other debts) to meet this test. This provision does require, however, that the creditor have some basis for believing that the consumer will be unable to make payments under the plan.

The third exception permits a creditor to prohibit additional extensions of credit or reduce the credit line if the consumer is in default of any material obligations under the agreement. The regulation does not define what qualifies as a default of a material obligation. Some commenters requested that the regulation provide examples of what is a material default. A number of other commenters, however, expressly asked that the regulation not define or provide examples of this provision. They stated that any definition or use of examples might limit the conditions considered a default of a material obligation.

The fourth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a governmental body precludes the creditor from imposing the agreed-upon APR. This exception will generally apply where, for example, a state usury law is enacted which prohibits a creditor from imposing the APR being used at the time of the action.

The fifth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a governmental body adversely affects the priority of the creditor's security interest to the extent that the value of the security interest is less than 120 percent of the amount of the credit line (for example, through imposition of a tax lien).

The sixth exception enables creditors to suspend further advances or reduce the credit limit during any period in which the APR corresponding to the periodic rate reaches the maximum rate allowed under the plan. This provision permits a creditor to suspend credit advances even if a contract contains a "usury savings clause." For example, if a state enacts a rate ceiling lower than the maximum rate specified in the contract, a usury savings clause deems the new state ceiling to be the maximum rate permitted under the plan. Thus, the creditor may freeze the line during any period the APR reaches that maximum rate.

If the APR subsequently declines below the maximum APR, the creditor would have to reinstate credit privileges. This provision was contained in § 226.5b(f)(3)(i) of the proposal. It has been expanded to allow reduction in the credit limit as well as freezing of advances and therefore is part of § 226.5b(f)(3)(vi) which governs temporary suspensions.

Finally, a seventh exception has been added which permits a creditor to prohibit additional advances or reduce the credit line due to certain governmental actions. Several commenters expressed the concern that, because of the restriction on termination and change in terms, they might be required to continue to extend credit even when a federal or state regulatory agency had provided a notice that future extensions could constitute an unsafe and unsound banking practice. To avoid this problem the Board is adding a provision allowing a creditor to temporarily suspend further advances or reduce the credit limit when a regulatory agency with responsibility for supervising the creditor provides notification that continuing to advance funds may constitute an unsafe and unsound practice. The Board believes this limited exception is analogous to the statutory provisions which provide

that a creditor may prohibit additional advances as a result of specified government actions.

Under the regulation, creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only as long as any of these seven circumstances exist. Thus, for example, if the creditor cuts off further advances due to a significant decline in the value of the dwelling and during the length of the draw period the value of the dwelling subsequently increases, the creditor would have to reinstate drawing privileges. If a second event occurs that would permit continuing the freeze, of course, the line need not be reinstated as long as that circumstance exists. The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment. (Section 226.9(c)(3) provides that a creditor must notify the consumer of the decision to freeze the line or reduce the credit limit.)

Several commenters asked whether the creditor is required to automatically reinstate credit privileges when the circumstances allowing suspension cease to exist; they pointed out that some state laws provide that future advances "relate back" to the mortgage only if the creditor is obligated to make advances. The concern was expressed that any advances made after the suspension may not have priority over intervening liens. If there are intervening liens in such a case, the exception provided in section 226.5b(f)(2)(iii) for consumer action that adversely affects the creditor's security interest would apply. Therefore, the creditor could refuse to make further advances due to the intervening lien resulting from consumer action.

A number of commenters asked the Board to provide guidance as to when credit privileges have to be reinstated. They were most concerned about having to constantly monitor accounts, particularly in cases where the consumer is in the best position to know if the circumstances triggering the freeze have changed.

Because the statute states that freezing the line can be only temporary, creditors have the responsibility of ensuring that the freeze is temporary. The creditor must monitor on a regular basis and reinstate credit privileges as soon as reasonably possible if the condition that permitted the creditor to take such action ceases to exist.

As an alternative to this ongoing duty, the Board is providing that the creditor may shift the initial duty to the consumer to request reinstatement of credit privileges. In this circumstance, when the creditor notifies the consumer of action taken, as discussed in § 226.9(c)(3), the creditor also must inform the consumer at the same time that reinstatement of credit privileges must be requested by the consumer. Once the consumer has made such a request, the creditor must investigate and determine whether the condition allowing the freeze has changed.

This section does not prohibit a lender from refusing to permit advances on a line if specifically requested to do so by a consumer. Thus, for example, if two consumers are obligated under a plan and each has the ability to take advances, the agreement may permit either of the two persons to direct the creditor not to make further advances; this section permits the creditor to honor such a request. This may be done only at the express request of one of the parties obligated under the plan. If that person subsequently requests reinstatement of draw privileges, the creditor must honor such a request, unless an event set forth in § 226.5b(f)(2) or § 226.5b(f)(3) permits a continued freeze or other action.

Section 226.5b(g)—Refund of Fees

Section 226.5b(g) imposes a duty on a creditor to refund all fees paid by the consumer in connection with an application if any term disclosed changes (other than one resulting from a variable rate index change) between the time the early disclosures are provided to the consumer and the time the plan is opened, and if, as a result of the change, the consumer decides to not enter into the plan. If a refund is required, it applies to all fees paid in connection with the plan, such as credit report fees, appraisal fees, and insurance premiums, whether such fees are paid directly to the creditor or to third parties. This requirement applies whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).

If a disclosure, such as the maximum rate cap, is stated as a range in the early disclosures, and the rate cap ultimately applicable to a plan falls within that range, a change will not be deemed to occur for purposes of this section. If, however, no range is used and the cap is changed, for example, from 5 to 6 percentage points over the initial rate, this change would permit the consumer to obtain a refund of fees. (See the discussion in § 226.5b(d)(2) dealing with changes in the maximum rate if tied to an initial variable rate.)

The fact that a term is stated in the early disclosures as an estimate does not render this section inapplicable if the term ultimately differs from that disclosed. For example, in the case of fees imposed by the creditor described in § 226.5b(d)(7), an increase in those fees—even if they were stated as estimates in the early disclosures—would entitle the consumer to a refund if the consumer decides not to enter into the plan because of that increase. In the case of the estimated disclosure of fees imposed by third parties under § 226.5b(d)(8), however, a change will not be deemed to occur even if the fees increase later. As in all cases, however, creditors must use the best information available in providing disclosures about such fees.

The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. Some commenters questioned the relationship between this provision and the requirement that application fees be charged to all applicants in order to be excluded from the finance charge (pursuant to comment 4(c)(1)–1 of the Official Staff Commentary to Regulation Z). Refunding fees under this section does not affect that test.

The right to a refund of fees under this provision is distinct from the existing right of rescission under § 226.15, which applies only when a plan secured by the consumer's principal dwelling is opened.

Section 226.5b(h)—Imposition of nonrefundable fees

Under § 226.5b(h) neither the creditor nor any other party may impose a nonrefundable fee in connection with an application until three business days after the disclosures and brochure have been provided to the consumer. If disclosures are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing. Several creditors asked whether a refundable fee can become nonrefundable. A refundable fee may become nonrefundable after the three-day period expires. If a fee is collected before the consumer receives the disclosures, the fee must be refunded if, within three days of receiving the disclosures, the consumer decides not to enter into the agreement.

The interaction of this provision with existing rules as well as other parts of the new rules is complex. Comment 5(b)(1)–1 provides that the creditor cannot collect a fee—except an application fee or a refundable membership fee—prior to the time the creditor provides the disclosures under § 226.6. Since membership fees may be

collected prior to providing the § 226.6 disclosures only if they remain refundable (and since other fees such as appraisal and credit report fees may not be collected prior to providing the § 226.6 disclosures) the practical effect of § 226.5b(h) as to the fees collected by the creditor is limited to application fees, which may be collected at any time—provided they remain refundable until three business days after the consumer receives the § 226.5b disclosures. After the three-day period expires, an application fee may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects not to enter into the plan because of a change in terms. (In addition, of course, all fees, including application fees, must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6—Initial Disclosure Statement

Section 226.6(e)—Home equity plan information

In addition to the early disclosures given with an application, the amendments require certain additional disclosures at the time of opening a plan. Section 226.6(e) requires creditors to provide a few of the disclosures set forth in § 226.5b(d) along with the disclosures currently required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. This requirement can be met by providing a separate list or by identifying the provisions in the contract which contain such conditions. (See the discussion under § 226.5b(d)(4) regarding the form of this information.) The disclosures must be provided prior to the first transaction under the plan, in accordance with the existing rule in § 226.5(b).

Whereas the proposal stated that § 226.5b disclosures that duplicate existing § 226.6 disclosures need not be given, the final rule states specifically which disclosures must be given at the later time. Creditors have to provide, as applicable: (1) A statement of the conditions under which the creditor may terminate the plan or change the terms as described in § 226.5b(d)(4)(i); (2) the information in §§ 226.5b(d)(5) (i) and (ii) relating to the payment terms of the plan (including both the draw period and any repayment period); (3) the information in § 226.5b(d)(9) relating to negative amortization; (4) the information in § 226.5b(d)(10) relating to transaction requirements; (5) the information in § 226.5b(d)(11) relating to tax implications; and (6) a statement that the APR corresponding to the periodic rate imposed under the plan does not include costs other than interest.

Creditors also have to provide the payment example disclosure under § 226.5b(d)(5)(iii) and the variable-rate information under §§ 226.5b(d)(12) (viii), (x), (xi), and (xii) unless the following conditions are met: (1) The early disclosures were provided in a form a consumer could keep; and (2) the early disclosures of the payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen. For example, if a creditor offers three payment options (one in each of the categories described in § 226.5b(d)(5)) and describes all three options in its early disclosures and provides the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case if it chose to give a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the § 226.5b(d)(5)(iii) information and §§ 226.5b(d)(12) (viii), (x), (xi) and (xii) disclosures must be given to any consumer who chose one of the other two options. If the § 226.5b(d)(5)(iii) and § 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

In cases where the creditor has included complete information about both the draw and repayment phases in the § 226.5(b) disclosures given at application, the creditor should similarly make disclosures about both phases when giving the second set. In particular, such a creditor must include the disclosures in § 226.6(e) and the information required in footnote 12 (dealing with any variable-rate feature) for the repayment phase.

On the other hand, if the creditor defers providing the bulk of the § 226.5b disclosures for the repayment phase until conversion, the creditor does not have to provide any information about the repayment period under § 226.6 other than the basic payment items listed in § 226.6(e)(2). Thus, for example, if the disclosures are delayed, the creditor would not have to give the variable-rate information set out in footnote 12 for the repayment phase.

The segregation standard set forth in § 226.5b(a) does not apply to the second set of disclosures provided by the creditor prior to the first transaction under the plan. Rather, they are governed by § 226.5(a)(1), which does not require segregation from other information. These disclosures may be integrated into the contract. In addition, the disclosure of conditions for certain actions described in § 226.5b(d)(4)(i) does not have to precede the other disclosures. Like the existing § 226.6 disclosures, the additional disclosures must be in a form the consumer can keep.

Section 226.9—Subsequent Disclosure Requirements

Section 226.9(c)—Change in terms

The Board is adding a new paragraph (3) to § 226.9(c) to require creditors to provide a notice to consumers if the creditor, under § 226.5b(f)(3)(vi), prohibits additional advances of credit or reduces the credit limit. Under § 226.9(c)(3), creditors have to mail or deliver a written notice of the action to each consumer who is affected. The notice may be provided within three business days after the time the action is taken, rather than in advance of the action. The creditor must notify the consumer of the action taken, and the reason such action has been taken (for example, due to reaching the rate cap under the plan). If the creditor requires the consumer to request reinstatement of the line, the notice shall also include a statement to that effect. (See the discussion under § 226.5b(f)(3)(vi) covering the creditor's duty with regard to reinstatement.)

Section 226.14—Determination of Annual Percentage Rate

Section 226.14(b)—Annual percentage rate for §§ 226.5a and 226.5b disclosures. for initial disclosures and for advertising purposes

Section 226.14(b) is modified by adding a reference to new § 226.5b. The introduction to § 226.5b provides that, throughout § 226.5b, the term annual percentage rate is the APR as determined under § 226.14(b). Section 226.14(b) is modified to reflect this provision.

Section 226.14(b) also is modified to refer generally to §§ 226.6 and 226.16, rather than specifically to §§ 226.6(a)(2) and 226.16(b)(2). These provisions are modified because the APR described in the new home equity rules (added to §§ 226.6(e) and 226.16(d)) also is

calculated in accordance with the rules in § 226.14(b).

Section 226.15—Right of Rescission

Section 226.15(a)—Consumer's right to rescind

Section 226.15(a)(3) of the regulation states that the consumer may exercise the right of rescission until midnight of the third business day following the opening of the plan, delivery of the notice of the right to rescind, or delivery of all "material disclosures," whichever occurs last. Footnote 36 to this section contains the definition of material disclosures. In the proposal, the Board requested comment on whether to add to the definition certain payment information provided under § 226.6(e). The Board is amending footnote 36 to provide that the payment terms required under § 226.6(e)(2) be treated as a "material disclosure" for purposes of the right of rescission. Including such payment terms in the definition of "material disclosures" is consistent with what constitutes material disclosures in the closed-end credit rescission provisions, and the statutory definition of material disclosures. In addition the Board believes that payment information is important for a consumer to know in order to decide whether to exercise the right of rescission. Neither the payment terms nor any other information given with the first set of disclosures at the time of application is a material disclosure for purposes of rescission.

Section 226.16—Advertising

Section 226.16(d)—Additional advertising requirements for home equity plans

Under § 226.16(d)(1), any reference to a payment term in a home equity advertisement for the draw period or any repayment period (including the length of the plan and any reference to how the minimum payments are determined and the timing of such payments) will "trigger" further disclosures, including loan fees, estimates of other fees that may be imposed, and, for variable-rate plans, the maximum rate that may be imposed under the plan.

Furthermore, if any of the "triggers" set forth in § 226.6 (a) or (b) or any payment information is stated affirmatively or negatively, further disclosures must be given. For example, if a creditor states "no annual fee" or "no points" in an advertisement, additional information must be provided.

Section 226.16(d)(2) provides that if an advertisement states a "discounted" APR or a "premium" APR it must state in equal prominence the APR derived by use of the fully-indexed value. Section 226.16(d)(3) provides that, if an advertisement contains a reference to any payment amount, it must state, if applicable, that the plan contains a balloon payment. (See footnote 10b accompanying § 226.5b(d)(5) for a discussion of when a balloon payment results.)

Under § 226.16(d)(4) of the regulation, if an advertisement states that any interest under the plan may be tax deductible, the advertisement must not be misleading about such deductibility. For example, an advertisement referring to deductibility would not be misleading if it includes a statement that the consumer should consult a tax advisor regarding the deductibility of interest.

Creditors are prohibited by § 226.16(d)(5) from referring to home equity plans as "free money," or from using other misleading terms. For example, an advertisement could not state "no closing costs" if consumers may be required to pay any closing costs, such as recordation fees.

Several commenters asked how this new section relates to the other advertising rules. Advertisements for home equity plans must comply with all provisions in § 226.16, including § 226.16(b), not solely the new § 226.16(d).

Several commenters asked whether an advertisement for a home equity plan would be required to provide information about any "closed-end" (repayment) phase in the ad. Even if an open-end home equity agreement provides for "conversion" to a repayment phase (during which further advances are not permitted), advertisements for such plans are governed exclusively by the requirements of § 226.16, and are not covered by the closed-end advertising rules under § 226.24. Thus, if a creditor states in an advertisement payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

(3) Effective Date

The statute provides that the act and regulations apply to: (1) Any agreement to open a plan which is entered into five months after the regulations become final; and (2) any application to open a plan which is distributed by or received by a creditor five months after regulations become final. Thus, if an application is given to a consumer on or after November 7, 1989, the effective date of the new rules, the § 226.5b disclosures and the brochure must be given to the consumer according to the normal rules. If an application given to the consumer before the effective date is received by the creditor on or after that date, the § 226.5b disclosures and the brochure must be given to the consumer but they may be provided within three business days of receipt of the application. If an application is received by the creditor prior to the effective date, none of the disclosures in § 226.5b or § 226.6(e) or the brochure need to be given to the consumer.

The substantive rules apply to all plans opened on or after the effective date, no matter when the application was provided to the consumer or received by the creditor.

Transition Rules

If a home equity plan is entered into prior to November 7, 1989, § 226.5b does not apply to that plan. Thus neither the substantive limitations nor the disclosure requirements apply to the plan. Furthermore, if an agreement is entered into prior to the effective date, and is renewed by the same consumer (with or without changes in terms) on or after the effective date, the renewed plan also is not subject to the new requirements. (Of course, creditors may have to provide a change in terms notice under § 226.9(c), if applicable.) However, if a line of credit not secured by a consumer's dwelling is entered into prior to the effective date and a security interest in a consumer's dwelling is added to the line on or after the effective date, the substantive provisions in § 226.5b(f)—but not the new disclosure rules—will apply to the plan from that point on.

(4) Disclosure Samples and Model Clauses

The Board is revising Appendix G of the regulation to incorporate disclosure samples and model clauses to assist creditors in preparing disclosures.

(A) *Sample forms.* Form G–14A illustrates a variable-rate plan with a 10-year draw period followed by a 5-year repayment period. The payments are based on a constant fraction of the outstanding balance so that, independent of rate changes, payments will vary each month. Accordingly, payments are stated as a range in the minimum payment example. In addition, one payment is shown each year in the historical example and the fact that payments would have varied each year is stated. The monthly payment in the historical example is the first payment that would have been due each year, based on the rate in effect for that year. (This assumption also has been used in

calculating the payments in Forms G–14B and G–14C.) The calculations for the disclosures, however, are done using the actual payment computation formula.

Form G–14B illustrates a significantly more complicated plan. Three payment options are available to the consumer during the draw period. Two of these are "interest-only" options and one involves the payment of interest and a fixed portion of the balance. In accord with the rules set forth in the discussion of payment terms under § 226.5b(d)(5), the form uses a representative example of the payment options within the "interest-only" category. Thus the minimum payment example, the "worst case" example and the historical example are based on the monthly interest-only payment option. This option, as well as the fixed portion of the balance option, are both illustrated in the same historical example.

In addition, form G–14B illustrates a plan with an initially discounted rate. Accordingly, the first rate in the historical example is discounted by a representative amount and the initial payments reflect the discount. Also, a different index is used during the repayment period from that used during the draw period, and the last five years of the historical example are based on the second index.

Finally, form G–14B illustrates the optional rule, described in the discussion of § 226.5b(d)(4), regarding the disclosure of possible creditor actions. Rather than just mentioning the possibility of termination, suspension of advances and reduction of the credit limit and indicating that more information is available, the form summarizes the provisions of §§ 226.5b(f)(2) and 226.5b(f)(3)(vi).

Form G–14C illustrates the disclosures that would be provided by a creditor who elected to provide disclosures illustrating the repayment phase of a line at the inception of the repayment phase rather than including them in the original § 226.5b disclosures given when the plan was opened.

(B) *Model clauses.* The Board has included a number of model clauses in Appendix G–15. In these clauses, language that may or may not be applicable is enclosed in brackets. Alternative phrases are enclosed in brackets and separated by slashes. Alternative clauses are separated by the italicized word "or."

(5) Tables of Certain Index Values

To assist creditors in constructing histories of various indices used in their home equity plans, the Board has prepared tables of values for commonly used indices for the years 1974 through 1989. The indices chosen represent those most frequently requested by commenters. January values are shown from 1975 through 1989, while July values are shown for 1974 through 1988 (since July values are not yet available for 1989). Earlier years in which index values are not available are marked "n.a."

Table 1 provides the values for United States Treasury securities adjusted to constant maturities of 1, 2, 3, and 5 years. Weekly average values are provided as of the first week ending in January and in July. Table 2 provides the January and July monthly average values for the Cost of Funds Ratio to 11th Federal Home Loan Bank District Institutions. Table 3 provides the values as of the last business day in January and July for the prime rate as published in the Wall Street Journal's Money Rates table. A single rate is shown except in cases where multiple rates were published. (Where a range of values are provided, creditors may base their disclosures on the high or low value, or an average depending on their method of figuring the rate.) Creditors need not use these tables in constructing their index histories. Moreover, the dates used in these tables were selected merely to provide index values at specific points within each year. Creditors may choose to use the applicable index values in these tables even if index values as of another date are used in their home equity plans.

TABLE 1—CONSTANT MATURITY YIELD ON UNITED STATES TREASURY SECURITIES

Year	1 Year	2 Year	3 Year	5 Year
Average for first week ending in January (percent)				
1975	7.29	n.a.	7.33	7.35
1976	6.18	n.a.	7.12	7.50
1977	5.02	5.53	5.83	6.24
1978	7.03	7.26	7.40	7.59
1979	10.51	9.93	9.58	9.30
1980	12.02	11.39	10.75	10.52
1981	13.86	13.00	12.81	12.54
1982	13.68	13.88	14.09	14.04
1983	8.62	9.35	9.65	10.04
1984	10.02	10.77	11.04	11.50
1985	9.19	10.05	10.58	11.16
1986	7.63	8.01	8.25	8.50
1987	5.97	6.36	6.54	6.79
1988	7.15	7.82	8.08	8.38
1989	9.17	9.28	9.30	9.28
Average for first week ending in July (percent)				
1974	9.04	n.a.	8.46	8.42
1975	6.92	n.a.	7.58	7.87
1976	6.46	7.01	7.27	7.58
1977	5.72	6.07	6.32	6.68
1978	8.34	8.45	8.51	8.50
1979	9.44	8.97	8.78	8.73
1980	8.51	8.94	9.15	9.47
1981	14.94	14.74	14.58	14.28
1982	14.41	14.75	14.81	14.73
1983	9.78	10.29	10.47	10.80
1984	12.17	13.12	13.38	13.67
1985	7.66	8.59	8.98	9.53
1986	6.36	6.78	6.99	7.21
1987	6.71	7.45	7.72	7.96
1988	7.52	8.04	8.21	8.46

TABLE 2—AVERAGE COST OF FUNDS RATIO TO 11TH FHLB DISTRICT INSTITUTIONS

Year	January (percent)	July (percent)
1974		n.a.
1975	n.a.	n.a.
1976	n.a.	n.a.
1977	n.a.	n.a.
1978	n.a.	n.a.
1979	n.a.	n.a.
1980	8.76	9.67
1981	10.45	11.85
1982	11.95	12.23
1983	10.46	9.68
1984	10.03	10.71
1985	10.22	9.37
1986	8.77	8.20
1987	7.40	7.28
1988	7.62	7.59
1989	8.13	

TABLE 3— PRIME RATE AS PUBLISHED IN THE WALL STREET JOURNAL

Year	January (percent)	July (percent)
1974		10.75
1975	9–9.5	7.5
1976	6.75	7–7.25
1977	6.25	6.5–6.75
1978	8	9
1979	11.5–11.75	11.75
1980	15.25	10.75–11
1981	19.5–20	20.5
1982	15.75	15.5
1983	11	10.5
1984	11	13
1985	10.5	9.5
1986	9.5	8
1987	7.5	8.25
1988	8.75	9.5
1989	10.5	

(6) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal

Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

(7) Text of Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z (12 CFR Part 226) as follows:

PART 226- -[AMENDED]

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

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2. Pub. L. No. 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100-86, 101 Stat. 552.

Subpart A—General

2. Section 226.1 is amended by revising paragraphs (b) and (d)(2) and adding paragraph (c)(3) to read as follows:

§ 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. * * * In addition, the regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling, and imposes limitations on home equity plans that are subject to the requirements of § 226.5b. The regulation does not govern charges for consumer credit.

(c) *Coverage.* * * *

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.

(d) *Organization.* * * *

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of §§ 226.5a and 226.5b, respectively.

* * * * *

Subpart B—Open-End Credit

3. Section 226.5 is amended by revising footnote 8 to read as follows:

[8] The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

3a. Section 226.5 is further amended by adding paragraphs (a)(4) and (b)(4) to read as follows:

§ 226.5—General disclosure requirements.

(a) *Form of disclosures.* * * *

(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).

(b) *Time of disclosures.* * * *

(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

* * * * *

4. Section 226.5a is amended by revising paragraph (a)(3) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) * * *

(3) *Exceptions.* This section does not apply to home equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

* * * * *

5. A new § 226.5b is added to read as follows:

§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 226.14(b).

(a) *Form of disclosures*—(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.[10a]

[10a] The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time.[10a]

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan, including:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be

determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result.[10b]

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate,[10c] showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate[10c] imposed under the plan and a statement that the rate does not include costs other than interest.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure published by the Board or a suitable substitute shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly

[10b] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

[10c] For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line;

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice; or

(G) The maximum annual percentage rate is reached.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.[10d]

* * * * *

6. Section 226.6 is amended by adding paragraph (e) to read as follows:

§ 226.6 Initial disclosure statement.

* * * * *

(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(2) The payment information described in § 226.5b(d)(5) (i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and 226.5b(d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12) (viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

* * * * *

7. Section 226.9 is amended by adding paragraph (c)(3) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms.*

* * * * *

(3) Notice for home equity plans. If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

* * * * *

8. Section 226.14 is amended by revising paragraph (b) to read as follows:

§ 226.14 Determination of annual percentage rate.

* * * * *

(b) *Annual percentage rate for sections 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, and 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

* * * * *

9. Section 226.15 is amended by revising footnote 36 to read as follows:

§ 226.15 Right of rescission.

(a) * * *

(3) * * *[36]

10. Section 226.16 is amended by adding paragraph (d) to read as follows:

§ 226.16 Advertising.

* * * * *

(d) *Additional requirements for home equity plans*—(1) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under § 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under section § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.[10b]

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home

[10d] If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

[36] The term "material disclosures" means the information that must be provided to satisfy the requirements in section 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in §226.5b(d)(5)(i) and (ii) that is required under § 226.6(e)(2).

equity plan as "free money" or contain a similarly misleading term.

* * * * *

11. Appendix G is amended by adding model forms and clauses G–14A, G–14B, G–14C, and G–15 to read as follows:

APPENDIX G—Open-End Model Forms and Clauses

* * * * *

G–14A Home Equity Sample
G–14B Home Equity Sample
G–14C Home Equity Sample (Repayment phase disclosed later)
G–15 Home Equity Model Clauses

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 1, 1989.

William W. Wiles,

Secretary of the Board.

Billing Code 6210–01–M

G-14A -- Home Equity Sample

IMPORTANT TERMS
of our
HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of $100 or 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120 monthly payments varying between $127.78 and $100.00 followed by 60 monthly payments varying between $187.06 and $118.08.

Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

- Application fee: $150 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance you can receive is $500. You must maintain an outstanding balance of at least $100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Information: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we will send you.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin * (%)		ANNUAL PERCENTAGE RATE (%)	Minimum Monthly Payment ($)
1974	12.00	2		14.00	144.44
1975	7.88	2		9.88	106.50
1976	7.00	2		9.00	100.00
1977	7.13	2		9.13	100.00
1978	9.41	2	*Draw Period*	11.41	105.47
1979	12.90	2		14.90	126.16
1980	12.23	2		14.23	117.53
1981	20.08	2		18.00**	138.07
1982	13.50	2		15.50	117.89
1983	11.00	2		13.00	100.00
1984	12.97	2		14.97	203.81
1985	9.50	2		11.50	170.18
1986	7.50	2	*Repayment Period*	9.50	149.78
1987	8.70	2		10.70	141.50
1988	10.00	2		12.00	130.55

* This is a margin we have used recently.
** This rate reflects the 18% rate cap.

G-14B -- Home Equity Sample

IMPORTANT TERMS
of our
HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of the terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the line.

- You do not meet the repayment terms.

- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.

- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.

- You are in default of a material obligation in the agreement.

- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

- The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). You can choose one of three payment options for the draw period:

- *Monthly interest-only payments.* Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.

- *Quarterly interest-only payments.* Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.

- *2% of the balance.* Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than $50, the minimum payment will equal $50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the "repayment period"). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or $50, whichever is greater.

Minimum Payment Examples: If you took a single $10,000 advance and the ANNUAL PERCENTAGE RATE was 9.52%:

· Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of $79.33, followed by 96 payments varying between $379.33 and $50 and one final payment of $10.75.

· Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between $279.33 and $50, followed by 7 payments of $50 and one final payment of $21.53.

Fees and Charges: To open and maintain a line of credit, you must pay us the following fees:

- Application fee: $100 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $50 during the first 3 years, $75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is $200.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Feature: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is "discounted" – it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of $10,000:

· Under the monthly interest-only payment option, the minimum monthly payment would be $150.

· Under the 2% of the balance payment option, the minimum monthly payment would be $350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $450. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the monthly payments for a single $10,000 credit advance would have changed based on changes in the indices over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

	Year	Index	Margin*	ANNUAL PERCENTAGE RATE	Monthly Interest-Only Payments	Monthly 2% of Balance Payments
		%	%	%	($)	($)
	1974	12.00	2	10.00**	83.33	283.33
	1975	7.88	2	9.88	82.33	221.55
	1976	7.00	2	9.00	75.00	169.34
	1977	7.13	2	9.13	76.08	133.41
Draw	1978	9.41	2	11.41	95.08	111.89
Period	1979	12.90	2	14.90	124.17	96.46
	1980	12.23	2	14.23	118.58	74.39
	1981	20.08	2	18.00***	150.00	64.13
	1982	13.50	2	15.50	129.17	50.00
	1983	11.00	2	13.00	108.33	50.00
	1984	12.17	2	14.17	418.08	50.00
Repayment	1985	7.66	2	9.66	264.01	
Period	1986	6.36	2	8.36	177.96	
	1987	6.71	2	8.71	124.45	
	1988	7.52	2	9.52	87.92	

* This is a margin we have used recently.
** This rate reflects a 4% "discount" we have used recently.
***This rate reflects the18% rate cap.

G-14C -- Home Equity Sample (Repayment phase disclosed later)

IMPORTANT TERMS of our HOME EQUITY PLAN

This disclosure contains important information about our Home Equity Plan. You should read it carefully and keep a copy for your records.

Security Interest: We have a mortgage in your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the plan.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

Minimum Payment Requirements: You must pay the balance on your account over 5 years. During that period, your payments will be due monthly. Your minimum monthly payment will equal 1/60th of the original outstanding balance on your line plus finance charges that have accrued on the remaining balance.

Minimum Payment Example: It would take 5 years to pay off a balance of $10,000 at an ANNUAL PERCENTAGE RATE of 12.5%. During that period, you would make 60 monthly payments varying between $270.83 and $168.40.

Fees: You must pay us an initial fee of $100 at the beginning of the repayment period.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable-Rate Information: The plan has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the highest prime rate published in the *Wall Street Journal* "Money Rates" table. To determine the annual percentage rate that will apply, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Example: If you had an initial balance of $10,000, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a starting balance of $10,000 would have changed based on changes in the index over the past 15 years. The index values are from the last business day in January of each year. While only one payment amount per year is shown, payments would have varied during each year. This table does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin* (%)	ANNUAL PERCENTAGE RATE (%)	Minimum Payment ($)
1975	9.50	2	11.50	262.50
1976	6.75	2	8.75	225.00
1977	6.25	2	8.25	207.92
1978	8.00	2	10.00	200.00
1979	11.75	2	13.75	189.58
1980	15.25	2	17.25	
1981	20.00	2	18.00 **	
1982	15.75	2	17.75	
1983	11.00	2	13.00	
1984	11.00	2	13.00	
1985	10.50	2	12.50	
1986	9.50	2	11.50	
1987	7.50	2	9.50	
1988	8.75	2	10.75	
1989	10.50	2	12.50	

* This is a margin we have used recently.
** This rate reflects the 18% rate cap.

G-15 -- Home Equity Model Clauses

(a) Retention of Information: This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

(b) Availability of Terms: To obtain the terms described below, you must submit your application before (*date*). However the (*description of terms*) are subject to change.

or

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

(c) Security Interest: We will take a [security interest in/mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

(d) Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment [, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit [; and (4) make specific changes that are set forth in your agreement with us].

If you ask, we will give you more specific information about when we can take these actions.

or

Possible Actions: We can terminate your account, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees] if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- The maximum annual percentage rate is reached.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

(e) Minimum Payment Requirements: The length of the [draw period/repayment period] is (*length*). Payments will be due (*frequency*). Your minimum payment will equal (*how payment determined*).

[The minimum payment will not reduce the principal that is outstanding on your line./The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single "balloon" payment.

(f) Minimum Payment Example: If you made only the minimum payments and took no other credit advances, it would take (*length of time*) to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of (*recent rate*). During that period, you would make (*number*) (*frequency*) payments of $___.

(g) Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

(*Description of fee*) [$___/__% of _____] (*When payable*)

(*Description of fee*) [$___/__% of _____] (*When payable*)

You also must pay certain fees to third parties. These fees generally total [$___/__% of _____/between $___ and $___]. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

(h) Minimum Draw and Balance Requirements: The minimum credit advance you can receive is $___. You must maintain an outstanding balance of at least $___.

(i) Negative Amortization: Under some circumstances, your payments will not cover the finance charges that accrue and "negative amortization" will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

(j) Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

(k) Other Products: If you ask, we will provide you with information on our other available home equity lines.

(l) Variable-Rate Feature: The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the (*identification of index*) and is [published in/available from] (*source of information*). To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for (*period*).]

Ask us for the current index value, margin, [discount,] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

(m) Rate Changes: The annual percentage rate can change (*frequency*). [The rate cannot increase by more than __ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply is __%./The ANNUAL PERCENTAGE RATE cannot increase by more than __ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

(n) Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of __% would be $___. This annual percentage rate could be reached (*when maximum rate could be reached*).

(o) Historical Example: The following table shows how the annual percentage rate and the minimum payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from (*when values are measured*). [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index	Margin	ANNUAL PERCENTAGE RATE	Minimum Payment
	(%)	(%)	(%)	($)
1975				
1976				
1977				
1978				
1979				
1980				
1981				
1982				
1983				
1984				
1985				
1986				
1987				
1988				
1989				

[FR Doc. 89-13507 Filed 6-8-89; 8:45 am]
BILLING CODE 6210-01-C

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4, Amdt 20]

RIN 3245-AB78

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The two interim final rules published on March 30, 1988, (53 FR 10242) are now promulgated as final. The first of these, adopted without change, permits a small concern assisted by a section 503 loan to its *alter ego* to lease out up to one third of newly acquired space. The second rule, also adopted without change, permits a small concern to contribute land to its 503 project, at appraisal value instead of at the lower of cost or market value, if such land was acquired more than two years before the filing of the 503 application. In addition, the proposed rules published on October 21, 1988 at 53 FR 41351 are promulgated as final with changes. The first such rule permits the 503 company board to vote on a loan or servicing proposal in the absence of a member with commercial lending experience, if such member has made a documented recommendation on such proposal. The second such rule permits the contribution by the small concern to its project of needed land without buildings, but with site improvements. The third and last such rule permits the transfer of a pending economic development project, from a development company facing suspension or revocation of its 503 Certification, to another development company in good standing.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653-6986.

SUPPLEMENTARY INFORMATION: The interim final rules published March 30, 1988 are now published as final without change. One comment was received. The comment praised the change allowing valuation of land purchased more than 2 years prior to the relevant application to be based on appraised market value.

On the proposed regulations published for comment on October 21, 1988, 3 comments were received. All three comments opposed limiting the borrower's contribution to the 503 company's injection. All three commenters opposed the provision prohibiting the value of the borrower's contribution to exceed either the amount of the 503 debenture or the value of the private (third-party) contribution to the project. The commenters point out that there are a variety of instances where it may be to the program's advantage to have the borrower's contribution exceed that of the other parties. These instances include single use facilities or situations where the collateral is inadequate and a greater borrower's equity would enhance the creditworthiness of the project. There are also instances where a larger project of significant economic importance to the community requires SBA assistance but the limitations on SBA's commitment to $750,000 prevents the SBA from supporting its full share of the total project. If the private sector lender could not or would not provide the balance, the borrower's additional contribution would make possible a beneficial project. Accordingly, the provision proposing to so limit the borrowers contribution has been deleted.

The second prohibition limited the borrower's contribution to cash or land, valued pursuant to § 108.503-5(d)(2). One of the commenters objected to limiting it to the value of the land only, without improvements. After considering the comment, SBA adopted the comment in the final rule which allows for the borrower's contribution of land and site improvements (e.g., utilities). In summary, the final rule allows real property to be contributed as all or part of the CDC injection, but the borrower contribution is limited to land and site improvements, without buildings.

Section 108.503-1(b)(2) is adopted as proposed. The provision makes clear that the board of directors of a 503 company may vote on a proposed loan approval or servicing action even if no person with commercial lending experience is present at the meeting, if such a person has made a documented recommendation concerning such proposed action.

Lastly, final rule § 108.503-15(e)(1), adopted as proposed, authorizes SBA to transfer an existing or a pending 503 financing from a development company which is under temporary or other sanction, to a 503 company in good standing.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that this rule, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy does not attain $100 million. In this regard, we estimate that the rule permitting increased leasing of newly acquired space will affect about 3% of the total annual loan volume, or $9 million. The rule permitting land held over two years to be valued by appraisal will affect at the most $12 million (4%) and the rule prohibiting the contribution of buildings by the small concern to its own project will affect no more than $5 million. The other rules, concerning the vote by the board of directors of a development company on loan and servicing actions, and the rule permitting the transfer of projects from development companies facing sanction, to development companies in good standing, have no or only negligible impact on the economy. Accordingly, we estimate the aggregate impact of these rules on the national economy not to exceed $26 million. Also, these rules do not result in a major increase in costs or price to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity or innovation.

For purposes of compliance with Executive Order 12612, SBA certifies that these rules do not warrant the preparation of a Federal Assessment.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the provisions of this rule will have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

1. *Need for and objective of the rule.* The first rule, promulgated without change from its interim final form, brings § 108.8(d) into line with another rule (§ 108.503-4(a)). Both rules now permit a small concern to lease out to others up to one-third of space newly acquired with the help of 503 assistance. The second rule permits land contributed to a 503 project by the small concern to be valued by appraisal if the land was acquired more than 2 years before the initial application to SBA. For a fuller explanation of these two rules, see 53 FR 10242 (March 30, 1988). The third proposed rule here promulgated, § 108.503-1(b)(2) would not have permitted an absentee ballot by the person whose vote is required for a loan approval or servicing action to control board action, a result which SBA did not intend. Under the new wording, the

board can proceed, whether the absentee vote is positive or negative.

The reasons for the fourth rule, § 108.503–10, are (1) that it was never SBA's intention to permit the 503 borrower to inject property other than cash into a project. The valuation of personal property and of buildings creates difficulties. Accordingly, the word "property" is qualified by the word "real" and such real property is subjected to the valuation rule, § 108.503–5(d), which applies to land. (2) The contribution by the small concern may include, or consist of, land with site improvements, valued pursuant to § 108.503–5(d). SBA limits the small concern's contribution, besides cash, to land only because the valuation of existing buildings owned by the borrower would give rise to controversy.

The purpose of the fifth rule is to permit the shift of an economic development project from a development company facing sanction, to another in good standing, in order to insulate a small business applicant from the consequences of such sanction (*e.g.*, SBA's refusal to guarantee the resulting debenture).

2. *Summary and SBA assessment of public comments.* The 3 critical comments, all concerned with a proposed limitation on the size of the small concern's contribution to its own project, have been discussed above.

3. *Alternatives to the rule.* The only alternative to the rule here promulgated is to leave these regulations unchanged, an option which conflicts with SBA's administrative experience.

The legal basis of these proposed rule changes is Section 503(a)(2) of the Small Business Investment Act, 15 U.S.C. 697(a)(2).

These regulations contain no reporting or record keeping requirements which have not been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Ch. 35).

There are no new reporting, recordkeeping and other compliance requirements inherent in these rules. There are no Federal rules which duplicate, overlap or conflict with these rules. There are no significant alternate means to accomplish the objectives of these rules.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out above, 13 CFR Part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100–590.

§ 108.8 [Amended]

2. The interim final rule amending 13 CFR 108.8(d) which was published at 53 FR 10244 on March 30, 1988 is adopted as a final rule without change.

3. Section 108.503–1(b)(2) is amended by revising the last sentence thereof to read as follows:

§ 108.503–1 Eligibility requirements for 503 companies.

* * * * *

(b) * * *

(2) * * * If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial lending experience, unless the 503 Company can document that such director or another person approved by SBA as possessing commercial lending experience has made a recommendation on such loan or servicing action.

* * * * *

§ 108.503–5 [Amended]

4. The interim final rule amending 13 CFR 108.503–5 which was published at 53 FR 10242 on March 30, 1988, is adopted as a final rule without change.

5. Section 108.503–10 is revised to read as follows:

§ 108.503–10 503 Company injection.

(a) *Contributions to 503 Company Injection.* The 503 Company shall be required to inject into each project an amount equal to at least ten percent (10%) of the project cost exclusive of administrative cost (see § 108.503–5 (a) and (b)). Subject to § 108.503–4(c)(4) and paragraph (b) of this section, such injection may come from any source and may consist of cash, or real property if the project requires such real estate. Any such contribution or loan to the 503 Company may not be conditioned on the granting of voting rights, stock options or any other actual or potential voting interest in the 503 Company or the Small Concern, but the 503 Company may issue shares of nonvoting stock in exchange therefor. The interest on such injection shall not exceed a rate which is legal and reasonable. Such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 503 Loan.

(b) *Contribution by borrower.* The Small Concern may contribute part or all of such injection. If the project involves new construction, the Small Concern may contribute, directly or indirectly, only cash or land with or without site improvements (*e.g.* grading, streets, parking lot, utilities, landscaping), valued pursuant to § 108.503–5(d)(2) of this part, if such land is needed for such construction. Without such need, the small concern may not contribute, directly or indirectly, real property, and in no event may the small concern contribute, directly or indirectly, land with buildings.

(c) *Contributions by others.* The injection into a project involving new construction may include, or consist of, needed real property if not contributed pursuant to paragraph (b) of this section. Such real property shall be valued pursuant to the same methods and requirements, and subject to the same limitations, as apply to land under § 108.503–5(d)(2).

6. Section 108.503–15 is amended by revising paragraph (e)(1) to read as follows:

§ 108.503–15 Oversight and evaluation; suspension and revocation.

* * * * *

(e) *Revocation, suspension and other corrective actions—(1) Corrective Actions.* SBA reserves the right to revoke the certification of any 503 Company, to suspend temporarily the eligibility of any 503 Company, or to require any other corrective action (including, but not limited to, the transfer of existing or pending financings to a 503 Company in good standing) for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operational requirements set forth in this part; but such action shall not invalidate any guarantee previously issued by SBA. Where a pending financing is completed pursuant to transfer, any deposit pursuant to § 108.503–6(b) of this part shall also be transferred. Other charges and fees shall be apportioned by SBA among the two 503 Companies in proportion to services performed.

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 loans).)

Dated: April 7, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–13588 Filed 6–8–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-36, Special Conditions No. 25-ANM-29]

Special Conditions: Airbus Industrie Model A320 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Industrie Model A320 series airplane. This airplane will have non-traditional computerized Airplane Flight Manual (AFM) performance presentation features when compared to the manner in which AFM performance is now presented in chart form in compliance with the transport category airplane airworthiness standards of the Federal Aviation Regulations (FAR). These special conditions contain the additional standards which the Administrator considers necessary to establish a level of AFM preparation and usage equivalent to that established by the FAR.

EFFECTIVE DATE: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Colin Fender, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2128.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1988, the FAA issued Type Certificate A28NM to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for type certification of their Model A320-111 and Model A320-211 series airplanes. Subsequently, Airbus requested a change to the A320 type design to include non-traditional computerized Airplane Flight Manual (AFM) performance presentation features.

The Model A320 series airplane is a short to medium-range, twin-turbofan, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight of 158,730 pounds, and a maximum operating altitude of 39,000 feet.

The manufacturer proposes to eliminate the traditional AFM takeoff performance charts and replace them with reference to a computer program, or programs, and corresponding data files which would yield the same information. The computer program proposal is ground-based and not related to onboard processing or uplinking. If the proposal is adopted, existing relevant regulations, e.g., § 25.1587(b) of the FAR, would not provide adequate standards, since the required takeoff performance information would not be in a directly usable form in the AFM itself.

Under the provisions of § 21.101 of the FAR, Airbus Industrie must show that the Model A320, as modified to incorporate the computerized AFM, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the A320 consists of Part 25 of the FAR, as amended by Amendments 25-1 through 25-56, and Special Conditions 25-ANM-23.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate standards for the Model A320 because of a novel or unusual AFM feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of AFM preparation and usage equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual AFM Presentation Features

The Model A320 series airplane will incorporate the following novel or unusual AFM features:

Even though operators of large transport category airplanes have used performance analyses programs to determine regulatory compliant performance, the approved AFM charts have been available to represent the official minimum certified performance level of the airplane, as required by regulation. The current process includes engineering review and approval of the charts themselves as part of the type certification process. The availability of the charts to airplane operators and FAA operations personnel for establishing the acceptability of alternate ground-based computer performance analyses has apparently been a satisfactory means of providing information concerning the minimum performance level of the airplane.

Airbus Industrie proposes elimination of the takeoff performance charts within the AFM, and instead proposes to show compliance with the intent of the applicable requirements of Part 25 concerning the AFM by cross-referencing (in the AFM) to equivalent results via certified performance computer programs and data files. Airbus Industrie states that, in fact, the results would be the exact digital images of the otherwise-provided AFM chart. The operators could generate equivalent "AFM charts" with appropriate interpolation/reading programs, in addition to running analysis or gross weight optimization programs.

Airbus Industrie intends at this time to still provide traditional enroute climb (driftdown) and landing performance charts in the AFM.

Discussion

In current operational practice, neither flightcrews nor dispatchers use the AFM on a day-to-day basis for determining limiting takeoff weights, field lengths, and speeds. Airline operations departments routinely reformat AFM source data into more usable schemes for specific airports, runways, etc. AFM charts are reviewed for accuracy and completeness, as part of the normal type certification process, prior to TC issuance. These data form the master source of performance data which are used by all parties to validate other data presentations. Federal Aviation Administration AFM master book libraries have been available to the public and other government agencies, such as NTSB and airport operators; therefore, the equivalent of current operational practice must continue if charts are to be removed from the A320 AFM.

Applicants who plan to implement computer programs and data files as a replacement for the performance charts in the AFM are expected to obtain approval from the FAA using the following process:

a. All initial-release, individual takeoff performance entities (for a particular airplane/engine combination) must be produced for the FAA in hard copy chart form (or table if appropriate) and included in a report. The report must be FAA approved prior to the AFM initial release in question, and will be used internally by the FAA to establish overall acceptability of the computerized presentation. This report will not be included in the FAA AFM "master book," nor will it be included as part of the public record. The "master

book" level of performance will be that which results from execution of the program and data files located in the AFM. Subsequent performance changes (e.g. same engine, but new rating) need not be produced in chart form, but the FAA certification office must have the capability to read and list the computerized performance modules referenced as AFM performance.

b. The report with hard-copy performance must have organization and identifiers to clearly relate specific charts to the performance determination process.

c. The report should present performance data with the same completeness, clarity, and legibility as typical AFM charts. Graphical presentation of performance data is the preferred format. Tabular presentations should be limited to simple relationships that do not require visualization to present relationships, trends, or important variations in parameters.

d. The applicant is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of the computer program.

e. The applicant's total performance presentation to the air carrier must be such to allow that carrier to comply with §§ 91.183(a)(5) and 121.141.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-89-1-NM for the Airbus Industrie Model A320 airplane was published in the **Federal Register** on March 10, 1989 (54 FR 10163). The following comments were received.

One commenter points out that in the background paragraph, the statement is made that "under the provisions of paragraph 21.101 of the FAR, Airbus Industrie must show that the Model A320, as modified to incorporate the computer program * * *." This commenter states that since the AFM has no interface with the airplane, the statement should read, "* * * the A320 AFM, as modified to incorporate the computer program * * *." Although the AFM may not be a physical part of the airplane, it is an integral part of the type design of the Model A320. Since it is the type design of the Model A320 that is being modified, and not the AFM per se, the commenter's proposed change is inappropriate.

Two commenters express concern over various items in paragraph a. of the discussion. Both commenters question the FAA's intent as to which medium would constitute the AFM "master book" and suggest a partial rewording for purposes of clarification. The FAA agrees with these commenters. Accordingly, paragraph a. has been rewritten to reflect use of the electronic medium as the "master book," and its inclusion in the public record.

One commenter notes the statement concerning tabular presentation of the data is vague and should be clarified. The FAA agrees, and this statement has been deleted from paragraph a., rewritten, and moved to paragraph c. where it is more appropriately located.

One commenter suggests paragraph a. of the discussion be revised to allow microfiche and microfilm as acceptable forms of hard copy on the grounds that tabular data could be voluminous. The FAA disagrees. Hard copy charts are only required for the initial release AFM for a particular airplane/engine combination. Volume is not a consideration.

One commenter suggests deletion of the last sentence of paragraph a. which states the FAA must have the capability to read and list program performance modules. This commenter believes that allowing access would also allow modification of the data, which would contradict the requirements of Special Condition 2j. The FAA disagrees. The terminology "performance modules," as used in this document, refers to a data base extraction of performance information for a specific configuration (flaps, gear, etc.), and not the data base itself. The FAA shares this commenter's concern for program security, but in this case the referenced statement applies only to the ability to print information from the associated files, rather than attempt alteration.

Another commenter suggests paragraph d. of the discussion be revised to specify inclusion of the program, and material related to its use, in the FAA approved AFM master book. The FAA agrees with identifying the computer program as the source of master book performance and has incorporated this definition in paragraph a. of the discussion.

One commenter suggests the addition of a reference to § 25.1583(h) of the FAR to Special Condition 2 to cross-reference additional performance requirements that presently exist in paper AFMs. The FAA agrees, and this reference has been added.

One commenter suggest the deletion of Special Condition 2b as it is irrelevant. The FAA disagrees. The intent of this special condition is to establish equivalency of electronic and paper AFM presentation media. If, for example, interpolation intervals were large, or computed field lengths were rounded off to the nearest 100 feet, program differences could be generated that would be outside the accuracy available with the paper AFM. This special condition assures that consideration will be given to maintaining the same level of accuracy and resolution presently available with paper presentations, and avoiding a degradation in result quality.

The same commenter suggests the deletion of Special Condition 2c, which requires two-way interrogation capability, as it is not a regulatory requirement. The FAA disagrees. This is an accepted capability in paper AFMs and would result in degradation of capability if it did not exist in the electronic presentation. Again, maintaining equivalence with the established utility of existing paper AFMs is the issue.

One commenter suggests clarification of Special Condition 2f by adding the words "approved limits of validity of performance data." The FAA concurs, and this change has been incorporated.

Another commenter suggests deletion of the requirement in Special Condition 2i that certain performance information be hard copy only. The FAA disagrees. Certain information (as listed) must remain accessible in hard copy form in the AFM. This does not prevent the ultimate digitization of these charts for operational use, but the FAA does not want the AFM to be devoid of these charts as a result of computerization.

Two commenters express concern over wording in Special Condition 2j. One commenter suggests changing "protected" to "adequately protected," and the other commented on the general inability to make any software 100 percent secure. The FAA does not agree with the addition of "adequately," as this makes the requirement vague and subjective. The FAA does agree with the concern that 100 percent security is unrealistic, but assumes that alteration protection will be provided to the maximum extent possible. An evaluation of program security will be made as part of the AFM approval process, and an assessment of its acceptability, or any required changes, will be made at that time.

One commenter suggests a revision to Special Condition 21 to add a reference to the computer hardware type. The FAA agrees, and has modified the wording accordingly.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**; however, as Airbus plans delivery of the subject airplane as configured to a U.S. operator in late May, the FAA finds that good cause

exists to make these special conditions effective upon issuance.

Conclusion: This action affects only certain novel or unusual AFM features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

1 The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

2. Replacement of Airplane Flight Manual (AFM) Takeoff Performance Charts with Reference to Equivalent Computer Programs and Data Files. In lieu of the AFM performance charts provided to comply with §§ 25.1583(h) and 25.1587(b) of the FAR, the following special conditions apply:

a. The system must provide the performance information which is required to be provided by the applicable provisions of Part 25 of the FAR concerning the content of Airplane Flight Manuals.

b. Interpolation, reading intervals, or round-off conditions must not result in any more significant variation than for current chart reading.

c. Two-way performance interrogation (ability to switch independent and dependent variables) must be provided as appropriate.

d. All notes and associated conditions must be consistently applied in performance calculations and clearly labeled on data file/analysis printouts.

e. Approved data must be clearly marked and segregated from unapproved (e.g., advisory) data.

f. Improper extrapolations or solutions outside of approved limits of validity of performance data must be precluded. A note must be added to the AFM performance section, where reference is made to computerized performance, to read essentially as follows: "The various gross weight, operational, and environmental limitations provided in the limitations section of the AFM take precedence over what otherwise may be listed as approved performance results from the computerized output."

g. Program performance output must be compatible with Configuration Deviation List (CDL) or Master Minimum Equipment List (MMEL) applications.

h. Suitable program usage documentation must be available to all users, including FAA certification and operations personnel.

i. Special performance charts such as thrust setting, stall speeds, stabilizer trim setting, and position error corrections must not be included in the computer-for-chart replacement process.

j. The program must be protected from inadvertent alteration, or deliberate alteration outside of an FAA-approved revision process.

k. All computerized performance software programs must be properly identified by a reference number which must be revised for each change in the data.

l. The program documentation must also identify the computer operating system and type of computer hardware for which the software is intended.

Issued in Seattle, Washington, on May 31, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13699 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-25]

Amendment to Control Zone, Fort Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds an arrival area extension to the control zone, Fort Pierce, Florida. The St. Lucie County International Airport serves as a major Customs and Immigration port-of-entry for general aviation aircraft entering the United States from the Bahamas and the Caribbean. The airport has been without a Standard Instrument Approach Procedure (SIAP) since the Vero Beach VORTAC was destroyed by fire in January 1989. A SIAP has been developed based on the Fort Pierce Nondirectional Radio Beacon (NDB). This action will provide additional controlled airspace for protection of Instrument Flight Rule (IFR) aircraft executing the new NDB SIAP to St. Lucie County International Airport.

DATES: *Effective date:* 0901 u.t.c., July 27, 1989.

Comments must be received on or before July 21, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-25, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves adding an arrival area extension to the Fort Pierce, Florida, control zone, this action will provide urgently needed controlled airspace necessary to restore IFR arrival procedures at the St. Lucie County International Airport, Fort Pierce, Florida. Due to lack of time and the urgent need to establish a new NDB SIAP and although this action was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the Fort Pierce, Florida, control zone. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an

immediate need for a regulation to amend the Fort Pierce, Florida, control zone. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB SIAP to the St. Lucie County International Airport. This rule will facilitate early restoration of the instrument operations at Fort Pierce which were disrupted when the Vero Beach, Florida, VORTAC was destroyed by fire in January 1989. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Pierce, Florida [Amended]

Following the statement in the existing description which reads, "* * * 8 miles southeast of the Vero Beach VORTAC" insert the phrase, "within 3.5 miles each side of the 301° bearing from the Fort Pierce NDB (latitude 27°29'22"N., longitude 80°22'12"W.), extending from the 5-mile radius area to 9.5 miles northwest of the NDB."

Issued in East Point, Georgia, on May 19, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-13700 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-24]

Amendment to Transition Area, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds an arrival area extension to that portion of the Vero Beach, Florida, transition area surrounding the St. Lucie County International Airport, Fort Pierce, Florida. The airport serves as a major customs and immigration port-of-entry for general aviation aircraft entering the U.S. from the Bahamas and the Caribbean. The airport has been without a Standard Instrument Approach Procedure (SIAP) since the Vero Beach VORTAC was destroyed by fire in January 1989. A SIAP has been developed based on the Fort Pierce Nondirectional Radio Beacon (NDB). This action will provide additional controlled airspace for protection of Instrument Flight Rule (IFR) aircraft executing the new NDB SIAP to the St. Lucie County International Airport.

DATES: *Effective Date:* 0901 u.t.c., July 27, 1989.

Comments must be received on or before July 21, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-24, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves adding an arrival area extension to the Vero Beach, Florida, transition area, this action will provide urgently need controlled airspace necessary to restore IFR arrival procedures at the St. Lucie County International Airport, Fort Pierce, Florida. Due to lack of time and the urgent need to establish the new NDB SIAP, and although this action was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the Vero Beach, Florida, transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the Vero Beach, Florida, transition area. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB SIAP to the St. Lucie County International Airport, Fort Pierce, Florida. This rule will facilitate early restoration of instrument operations at Fort Pierce, which were disrupted when the Vero Beach, Florida, VORTAC was destroyed by fire in January 1989. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 F 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vero Beach, Florida [Amended]

By deleting the last phrase which reads, "excluding the portion outside the continental limits of the United States." and adding the following statement: "within 3.5 miles each side of the 301° bearing from the Fort Pierce NDB (latitude 27°29'22" N., longitude 80°22'12" W.), extending from the 6.5-mile radius area to 10.5 miles northwest of the NDB."

Issued in East Point, Georgia, on May 19, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-13701 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 87N-0091]

Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reissuing the current good manufacturing practice regulations for blood and blood components (blood CGMP's) under the Medical Device Amendments of 1976. The agency is taking this action to enable enforcement of the blood CGMP's in the manufacture of unlicensed blood products that are device components or device raw materials. The products were subject to the blood CGMP's until the Medical Device Amendments of 1976 broadened the definition of a "device," with the inadvertent effect of removing these products from the applicability of these regulations.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on June 22, 1988 (53 FR 23414), FDA proposed to reissue the blood CGMP's (21 CFR Part 606) under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)) as these regulations apply to blood products that are device components or device raw materials. The blood CGMP's apply to all blood products other than those that are device components or device raw materials.

The blood CGMP's were intended to apply to all blood banks, transfusion facilities, plasmapheresis centers, compatibility testing establishments, and any other facility which collects, processes, or stores blood and blood components, regardless of whether the components are intended for (a) interstate or intrastate commerce or (b) in vitro or in vivo use.

Upon enactment of the Medical Device Amendments of 1976 to the act, the definition of the term "device" in section 201(h) of the act (21 U.S.C. 321(h)) was broadened to include several products, formerly regulated as "drugs." Among such products are human blood and blood components intended for further manufacture into in vitro diagnostics not subject to licensure under the Public Health Service Act (42 U.S.C. 262(d)). These products include blood, plasma, and serum which are intended for further manufacture into products such as clinical chemistry controls and control cells for automated cell counters now regulated as devices under the act.

In the **Federal Register** of June 22, 1988, FDA proposed to correct the current anomaly in which compliance with the blood CGMP's is not enforceable under the adulteration provisions in section 501(h) of the act (21 U.S.C. 351(h)) for unlicensed blood products that are device components or device raw materials, even though these requirements are necessary to ensure the safety of donors and the safety and effectiveness of manufactured medical device products derived from blood and blood components. FDA proposed to reissue, under section 520(f) of the act, the blood CGMP's as these regulations apply to blood products that are device components or device raw materials. Section 520(f) of the act is the statutory section that currently authorizes CGMP's for medical devices in 21 CFR Part 820. Pursuant to section 520(f) of the act, FDA's Device Good Manufacturing Practice Advisory Committee had an opportunity to comment on the proposed amendment at an open public hearing. The committee unanimously recommended that FDA reissue the blood CGMP's under section 520(f) of the act to apply to blood and blood components used as device components or raw materials for devices. A copy of the advisory committee's minutes of this meeting has been placed on file under the docket number identified in the brackets at the heading of this final rule and is available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

In response to the proposed rule of June 22, 1988, FDA received one letter of comment. The comment completely supported the proposed rule.

Accordingly, FDA is adopting the proposed rule without revision, and is reissuing the CGMP's for blood and blood components (21 CFR Part 606). Blood products that are device components or device raw materials excluded from the scope of the device CGMP's under § 820.1 are now subject to the blood CGMP's in Part 606. Violations of Part 606 involving such device components or raw materials are now subject to enforcement action under section 501(h) of the act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

Part 606 of this final rule contains 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 0910–0116.

Economic Assessment

The agency has examined the economic consequences of the final rule and has determined that it does not require either a regulatory impact analysis as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The final rule involves the reissuance of Part 606 of the regulations establishing CGMP's for manufacturers of blood and blood components under section 520(f) of the act. Thus, Part 606 applies to unlicensed blood products that are device components or device raw materials.

The agency believes that virtually all of the manufacturers of in vitro diagnostic products that would be subject to the final rule are already in compliance with the blood CGMP's in Part 606. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the authority citation for 21 CFR Part 606 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 520(f), 701 (21 U.S.C. 321, 351, 352, 355, 360, 360j(f), 371) and sec. 301 of Pub. L. 87–781; the Public Health Service Act (secs. 351 and 361) (42 U.S.C. 262 and 264).

Dated: May 17, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–13649 Filed 6–8–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R–89–1443; FR–2666]

Mortgage Insurance; Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under Section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 235 insurance programs has been lowered from 10.50 percent to 10.00 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage

insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum, except that where an application for commitment was received by the Secretary before June 5, 1989, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after June 5, 1989, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Date: June 2, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-13678 Filed 6-8-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 20]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS Peer Review Organization Program

AGENCY: Office of the Secretary, DoD.

ACTION: Correction to final rule.

SUMMARY: This document corrects the inadvertent deletion of a paragraph in the Final Rule on the CHAMPUS Peer Review Organization Program which was published on March 6, 1989 (54 FR 9202), and which supplemented the rules and procedures currently applicable to the CHAMPUS Peer Review Organization Program.

FOR FURTHER INFORMATION CONTACT: Mr. A. Chris Armijo, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045. Telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION: On March 6, 1989, a final rule was published in the **Federal Register** to implement rules and procedures currently applicable to the CHAMPUS Peer Review Program. In the preparation of that package, it was intended that section 199.4(f)(7) of 32 CFR Part 199 be deleted. Instead § 199.4(f)(6) was omitted and 199.4(f)(7) was retained.

The enclosed materials rectify the error by reinserting the original § 199.4(f)(6) and deleting § 199.4(f)(7) as was originally intended. This rule was written to correct the inadvertent errors in a previous publication and we, therefore, certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health Insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199 is amended to read as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by removing paragraph (f)(7) and adding paragraph (f)(6) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(6) *Amounts over CHAMPUS-determined allowable costs or charges.* It is the responsibility of the CHAMPUS fiscal intermediary to determine allowable costs for services and supplies provided by hospitals and other institutions and allowable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined allowable costs or charges are made in accordance with the provisions of Section 199.14. All CHAMPUS benefits, including calculation of the CHAMPUS or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined allowable costs or charges. The effect on the beneficiary when the billed cost or charge is over the CHAMPUS-determined allowable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary or submitted directly by the beneficiary on a nonparticipating basis and on whether the claim is for inpatient hospital services subject to the CHAMPUS DRG-based payment system. This provision applies to all classes of CHAMPUS beneficiaries.

Note: When the provider "forgives" or "waives" any beneficiary liability, such as amounts applicable to the annual fiscal year deductible for outpatient services or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this section, the CHAMPUS-determined allowable charge or cost allowance (whether payable to the CHAMPUS beneficiary or sponsor, or to a participating provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in § 199.14(a)(1) must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary. In the case of an institution or medical supplier, the claim must be signed by an official having

such authority. This signature certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and further has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as full payment for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized medical services or supplies.

(ii) *Nonparticipating providers.* Nonparticipating providers are those providers who do not agree on the CHAMPUS claim form to participate and thereby do not agree to accept the CHAMPUS-determined allowable costs or charges as the full charge. For otherwise covered services and supplies provided by such nonparticipating CHAMPUS providers, payment is made directly to the beneficiary or sponsor and the beneficiary is liable under applicable law for any amounts over the CHAMPUS-determined allowable costs or charges. CHAMPUS shall have no responsibility for any amounts over allowable costs or charges as determined by CHAMPUS.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 5, 1989.

[FR Doc. 89-13668 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-13]

Special Local Regulations; Budweiser Spirit of Detroit Trophy Race—Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Spirit of Detroit Trophy Race to be held on the Detroit River. This event will be held on 8, 9, 10, and 11 June 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 8 June 1989 and terminate on 11 June 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 13 February 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Budweiser Spirit of Detroit Trophy Race will be conducted on the Detroit River on 8, 9, 10 and 11 June 1989. This event will have an estimated 60 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

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). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the 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.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0913 to read as follows:

§ 100.35-0913 Budweiser Spirit of Detroit Trophy Race—Detroit River.

(a) *Regulated area:* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bounded on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage from 8:00 a.m. (local time) until 5:30 p.m. on 8, 9, 10, and 11 June 1989.

(2) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(5) The Patrol Commander may direct the anchoring, mooring, or movement of

any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(7) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(8) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective dates:* This section is effective from 8 a.m. (local time) on 8 June 1989 until 5:30 p.m. on 11 June 1989.

Dated: June 1, 1989.

D.H. Ramsden,

Capt., U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-13674 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 89-39]

1989 Harvard-Yale Regatta

AGENCY: Coast Guard; DOT.

ACTION: Notice of Implementation of Regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.101, for the Harvard-Yale Regatta between 4 p.m. and 8 p.m. on June 10, 1989. The regulations in 33 CFR 100.103 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations are effective from 4 p.m. until 8 p.m. on Saturday, June 10, 1989 and annually thereafter during the first or second Saturday of June or as specified in the Coast Guard Local Notice to Mariners and a **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Captain R.L. Blake, Chief Boating Safety Division (617) 223-8310.

SUPPLEMENTARY INFORMATION: The annual Harvard-Yale Regatta is a crew race event held on the Thames River in New London, Connecticut. It is sponsored by the Harvard-Yale Regatta Committee and is well known to the boaters and residents of that area. This year the event will take place between the hours of 4 p.m. and 8 p.m. on June 10, 1989 which is the second Saturday in June. If it becomes necessary to postpone the races due to inclement weather this event will be held on June 11, 1989 between the hours of 7:30 a.m. and 11:30 a.m.. In order to provide for the safety of spectators and participants, the Coast Guard will continue to restrict vessel movement in the race course area and to establish spectator anchorages for what is expected to be a large spectator fleet.

Drafting Information

The drafters of this notice are CAPT R.L. Blake, project officer, First Coast Guard District Boating Safety Division, and LT. J.B. Gately, project attorney, First Coast Guard District Legal Division.

Dated: May 30, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-13673 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: Because of recommendations adopted at the 14th consultative meeting, NSF is amending its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additional sites of special scientific interest in Antarctica. In addition, wording changes are being made to better clarify the relationship of the management plans for sites of special scientific interest and the management plans recommended at the consultative meetings.

EFFECTIVE DATE: This rule is effective June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Questions concerning this regulation should be addressed to Anton L. Inderbitzen, Polar Coordination and Information Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550, or by telephone on 202-357-7817.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on February 16, 1989 at 54 FR 7071-7072. The only comment received supported the proposed rule. Accordingly, the final rule is the same as set forth in the notice of proposed rule-making.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, 45 CFR Part 670 is amended as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.4(c) is revised to read as follows:

§ 670.4 Prohibited acts.

* * * * *

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter sites of special scientific interest, except sites of special scientific interest for which section 670.34 states no permit is required.

3. Section 670.34 is revised to read as follows:

670.34 Designation of sites of special scientific interest and management plans for those sites.

(a) The Director is required to designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting. The Director is also required to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the areas listed below are designated as sites of special scientific interest to be managed in accordance with the management plan recommended at the applicable consultative meeting and any subsequent amendments to that plan. The number of the recommendation, including any modifications made at subsequent consultative meetings, is included below after each site, as is the site number established at the

consultative meetings. If there are any variations or additional management measures required by the United States they shall also be included in the listing below. Any specific conditions or limitations included in permits issued under this regulation will be consistent with these plans. More detailed maps and descriptions of the sites and the complete management plans as recommended at the consultative meetings can be obtained from the National Science Foundation, Division of Polar Programs, Washington, DC 20550.

(b) The sites of special scientific interest are as follows:

(1) *Cape Royds, Ross Island:* Site No. 1 as described in Recommendation VIII–4 as revised by Recommendations X–6, XII–5 and XIII–9.

(2) *Arrival Heights, Hut Point Peninsula, Ross Island:* Site No. 2 as described in Recommendation VIII–4 as revised by Recommendations X–6, XII–5, XIII–7 and XIV–4. This site does not require an entry permit.

(3) *Barwick Valley, Victoria Land:* Site No. 3 as described in Recommendations VIII–4 as revised by Recommendations X–6, XII–5 and XIII–7.

(4) *Cape Crozier, Ross Island:* Site No. 4 as described in Recommendation VIII–4 as revised in Recommendations X–6, XII–5 and XIII–7.

(5) *Fildes Peninsula, King George Island, South Shetland Islands:* Site No. 5 as described in Recommendation VIII–4 as revised in Recommendations X–6, XII–5 and XIII–7.

(6) *Byers Peninsula, Livingston Island, South Shetland Islands:* Site No. 6 as described in Recommendation VIII–4 as revised in Recommendations X–6, XII–5 and XIII–7.

(7) *Haswell Island:* Site No. 7 as described in Recommendation VIII–4 as revised in Recommendations X–6, XII–5 and XIII–7.

(8) *Western Shore of Admiralty Bay, King George Island:* Site No. 8 as described in Recommendation X–5 as revised in Recommendations XII–5 and XIII–7.

(9) *Rothera Point, Adelaide Island:* Site No. 9 as described in Recommendation XIII–8.

(10) *Caughley Beach, Cape Bird, Ross Island:* Site No. 10 as described in Recommendation XIII–8.

(11) *Tramway Ridge, Mt. Erebus, Ross Island:* Site No. 11 as described in Recommendation XIII–8.

(12) *Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land:* Site No. 12 as described in Recommendation XIII–8.

(13) *Potter Peninsula, King George Island, South Shetland Islands:* Site No. 13 as described in Recommendation XIII–8.

(14) *Harmony Point, Nelson Island, South Shetland Islands:* Site No. 14 as described in Recommendation XIII–8.

(15) *Cierva Point and nearby islands, Danco Coast, Antarctic Peninsula:* Site No. 15 as described in Recommendation XIII–8.

(16) *Bailey Peninsula, Budd Coast, Wilkes Land:* Site No. 16 as described in Recommendation XIII–8.

(17) *Clark Peninsula, Budd Coast, Wilkes Land:* Site No. 17 as described in Recommendation XIII–8.

(18) *White Island, McMurdo Sound:* Site No. 18 as described in Recommendation XIII–8.

(19) *Linnaeus Terrace, Asgaard Range, Victoria Land:* Site No. 19 as described in Recommendation XIII–8.

(20) *Biscoe Point, Anvers Island, Palmer Archipelago:* Site No. 20 as described in Recommendation XIII–8.

(21) *Shores of Port Foster, Deception Island, South Shetland Islands:* Site No. 21 as described in Recommendation XIII–8.

(22) *Yukirdori Valley, Langhovde, Lützow-Holm Bay:* Site No. 22 as described in Recommendation XIV–5.

(23) *Svarthamaren, Muhlig-Hofmannfjella, Dronning Maud Land:* Site No. 23 as described in Recommendation XIV–5.

(24) *Summit of Mt. Melbourne, North Victoria Land:* Site No. 24 as described in Recommendation XIV–5.

(25) *Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land:* Site No. 25 as described in Recommendation XIV–5.

(26) *Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands:* Site No. 26 as described in Recommendation XIV–5.

(27) *Port Foster, Deception Island, South Shetland Islands:* Site No. 27 as described in Recommendation XIV–5.

(28) *South Bay, Doumer Island, Palmer Archipelago:* Site No. 28 as described in Recommendation XIV–5.

Date: May 26, 1989.

Erich Bloch,

Director.

[FR Doc. 89–13603 Filed 6–8–89; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 247 and 252

Department of Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels

AGENCY: Department of Defense (DoD).

ACTION: Interim rule (extension of comment period).

SUMMARY: The Defense Acquisition Regulatory Council published an interim rule with request for public comment on April 21, 1989, 54 FR 16111, to revise the Department of Defense Federal Acquisition Regulation Supplement (DFARS) Parts 247 and 252. The interim rule implemented the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631. The original date for submission of comments, May 22, 1989, has been extended to June 30, 1989, to accommodate the requests of interested parties.

DATE: Written comments on the interim rule should be submitted to the address shown below not later than June 30, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–47 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89–13653 Filed 6–8–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 24

[FHWA Docket No. 87–22]

RIN 2125–AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Technical Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document contains technical corrections to the final rule on uniform relocation assistance and real property acquisition that appeared at pages 8912 through 8950 in the **Federal Register** of March 2, 1989 (54 FR 8912) FR Doc. 89–4543. These technical

corrections are necessary to correct certain references and misspelled words of the final rule text.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. F.D. Luckow, Chief Program Requirements Division, Office of Right-of-Way, HRW-10, (202) 366-0116; or Mr. S. Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

In FR Doc. 89-4543, in the issue of Thursday, March 2, 1989, on pages 8912 through 8950, in the preamble and text of 49 CFR Part 24, the following corrections are as set forth below.

1. In the preamble on page 8914 under the subheading "Section 24.2 Definitions" in the first paragraph correct the reference "(§ 24.2)" to read "(§ 24.2(l))".

2. In the preamble on page 8920, under the subheading "Section 24.105 Acquisition of Tenant-owned Improvements," correct the reference "24.2(q)" to read as "24.2(s)" each time it appears.

§ 24.1 [Corrected]

3. In § 24.1(b), correct the word "personal" to read as "persons."

§ 24.2 [Corrected]

4. In 24.2, amend paragraph (a)(1) by correcting the words "as defined in paragraph (a)(2)" to read "as defined in paragraph (a)(4)" and amend paragraph (g)(2)(i) by correcting the reference "§ 24.403(e)" to read as "§ 24.403(d)."

§ 24.101 [Corrected]

5. In § 24.101, amend paragraph (a)(2) by capitalizing the word "Agency" the first time that it appears in the sentence.

§ 24.105 [Corrected]

6. In § 24.105, paragraphs (c) and (d)(2) are corrected by removing the capital letter from the word "property" and using the lower case.

§ 24.601 [Corrected]

7. In § 24.601, amend the word "Agency" by removing the capitalization and having it read as "agency".

§ 24.603 [Corrected]

8. In § 24.603(b), amend the word "Agency's" in the first sentence by removing the capitalization and having it read as "agency's".

Appendix A [Corrected]

9. Appendix A to Part 24 is amended by correcting the acronym "HU" to read as "HUD" in the fifth paragraph under the subheading "Section 24.2(d)(2) Definitions" on page 8946 of the **Federal Register**; by correcting the words "fund raising" to read as one word "fundraising" in the paragraph under the subheading "Section 24.306(d) Nonprofit organizations"; by correcting the words "3 points on $42,010.50" to read "3 points on $42,010.18" in the fourth paragraph under the subheading "Section 24.401(d) Increased mortgage interest costs"; and by correcting the words "by $42,010.18 = .83" to read "by $42,010.18 = .8331;" in the fifth paragraph under the subheading "Section 24.401(d) Increased mortgage interest costs".

Appendix B [Corrected]

10. Appendix B to Part 24 is amended by correcting the words "Fiscal Year" to read "fiscal year" in the second paragraph "Report period" under the subheading "General" and by correcting the reference "section 20; (a)" to read as "section 206(a)" each time it appears in the fourth paragraph "Lines 12 A and B" under the subheading "Part B. Relocation payments and expenses."

This document is issued under the authority of 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: June 1, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89-13641 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to trawl gear in the Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce is prohibiting further retention of sablefish by trawl vessels fishing in this district from 12:00 noon, Alaska Daylight Time (ADT), on June 6, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, a.d.t., on June 6, until midnight, Alaska Standard Time (a.s.t.), December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservantion and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000—800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. The TACs for target species and species groups are specified annually and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) restricts the trawl catch of sablefish in the Central Regulatory Area to 20 percent of the TAC. The 1989 TAC specified for sablefish TAC in the Central Regulatory Area is 11,700 mt (54 FR 6524, February 13, 1989); 20 percent of the TAC is 2,340 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

Sablefish are caught incidentally by vessels using trawl gear while fishing for other groundfish species. The Regional Director reports that 1,849 mt of sablefish have been harvested by catcher/processor vessels through May 20, 1989. Current daily catch rates by these vessels are as high as 28 mt per day. At this catch rate, the balance of the 2,340 mt allocated to trawl vessels will be harvested by 12:00 noon, a.d.t., June 6, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with trawl gear in the Central Regulatory Area effective 12:00 noon, a.d.t., June 6, 1989. After that date, any sablefish caught with trawl gear in the Central Regulatory Area must be treated as prohibited species and discarded at sea.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Central Regulatory Area and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to

the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until June 21, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 6, 1989.

David S. Crestin,

National Marine Fisheries Service, Acting Director, Office of Fishery Conservation and Management.

[FR Doc. 89-13742 Filed 6-6-89; 4:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 110
Friday, June 9, 1989

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS. No. 1212-89]

RIN 1115-AA30

INS Immigration User Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Section 205 of the Department of Justice Appropriation Act, 1987 (Pub. L. 99-591; enacted October 30, 1986), requires that at the end of each 2-year period, the first 2-year period being December 1, 1986, through November 30, 1988, the Attorney General, following a public rulemaking with opportunity for notice and comment, must submit a report to the Congress concerning the status of the Immigration User Fee Account (IUFA), and recommend any adjustment in the prescribed fee. This rulemaking publishes the status of the IUFA as of December 1, 1988, provides ample opportunity for public comment, and recommends that the fee remain unchanged at the current $5.00 level for the subsequent 2-year period.

DATES: Comments must be received on or before June 26, 1989.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-4705.

SUPPLEMENTARY INFORMATION: The INS has undertaken the required study of the Immigration User Fee (IUF) and IUFA. As of December 1, 1988, the status of the account is as follows:

FINANCIAL SUMMARY

[Dollar amounts in thousands]

	1987	1988
Revenue	$62,788	$96,643
Obligations	58,889	95,000
Surplus	3,899	1;643
Accumulated surplus	3,899	5,542

FUNDS UTILIZATION

[Dollar amounts in thousands]

	1987		1988	
	Amount	Percent	Amount	Percent
Inspections	$38,676	66	$61,652	65
Detention	5,388	9	11,043	11
Non-Immigrant systems	13,398	23	17,977	19
All other	1,427	2	4,328	5
Totals	$58,889	100	$95,000	100
Revenue	$ 62,788	.....	$ 96,643	.....
Percent of Funds Utilized	.....	94	.....	98

All Other includes:
Anti-Smuggling/Investigations
Intelligence
Administrative Services
Executive Direction
Training
Construction & Engineering
Legal Proceedings
Refugees and Overseas

POSITION SUMMARY

Program	1987	1988
Inspections	857	1,066
Detention & deportation	50	50
Refugees & overseas	0	0
Data & communications	6	11
Anti-smuggling	15	15
Investigations	0	15
Intelligence	0	0
Administrative services	5	12
Legal proceedings	15	16
Training	0	0
Construction & engineering	0	0
Executive direction & control	0	0
Total	948	1,185

Based upon our study which covered the period from December 1, 1986, through November 30, 1988, it is our recommendation that the IUF remain unchanged at the $5.00 level for the period December 1, 1988, through November 30, 1990. In compliance with 5 U.S.C. 605b, the Commissioner of INS certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 286

Aircraft, Immigration, Reporting and recordkeeping requirements, Vessels.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations would remain unchanged.

Dated: May 12, 1989.

Alan C. Nelson,

Commissioner.

[FR Doc. 89-13687 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-23]

Proposed Revision of Transition Area, Swainsboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Swainsboro, Georgia, transition area. The Swainsboro Very High Frequency Omnidirectional Range Station (VOR) is planned to be decommissioned, thus eliminating the need for the existing arrival area extension based on the VOR. A new standard instrument approach procedure (SIAP) has been developed predicated on the Emanuel County nondirectional radio beacon (NDB). This revision would increase the radius of the transition area to provide additional airspace protection for instrument flight rules (IFR) aircraft executing the new NDB SIAP, and for existing IFR aeronautical operations. Also, a minor correction would be made to the

geographic position coordinates of the Emanuel County Airport.

DATES: Comments must be received on or before: July 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, eonomic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Swainsboro, Georgia, transition area. The existing arrival area extension based on the Swainsboro VOR would be eliminated since the VOR is planned to be decommissioned. The radius of the transition area would be increased from 6.5 to 7.5 miles to afford airspace protection for IFR aircraft executing a recently developed SIAP based on the Emanuel County NDB, and for existing IFR aeronautical operations. Also, a minor correction would be made to the geographic position coordinates of the Emanuel County Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Swainsboro, Georgia [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Emanuel County Airport (Lat. 32°36'27"N., Long. 82°22'05"W.).

Issued in East Point, Georgia, on May 23, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-13702 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 89-7]

RIN 2125-AC07

Advance Construction of Federal-Aid Projects; Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise existing FHWA regulations relating to the advance construction of Federal-aid highway projects to implement the provisions mandated by section 113 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132). These new provisions provide States with additional flexibility in using advance construction procedures.

DATE: Written comments are due on or before August 8, 1989.

ADDRESS: Submit written, signed comments to: Federal Highway Administration, FHWA Docket No. 89-7, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET.

Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max I. Inman, Office of Fiscal Services, (202) 366–2853, or Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 113 of the STURAA amended 23 U.S.C. 115 relating to advance construction. Section 115 allows States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves that project. States may proceed with projects even though their available Federal funds have been exhausted and then request that Federal funds be made available at a later time. The STURAA made the following changes to Title 23, U.S.C.:

(a) Metropolitan planning, railway-highway crossings, hazard elimination, and highway planning and research funds were added to the list of funds eligible for advance construction approval.

(b) Primary projects were included in the special procedures previously applicable only to Interstate projects which allow States to proceed with an advance construction project without regard to fund balances and to be reimbursed for certain bond interest costs.

(c) A State may request advance construction of a project when it has used or demonstrates that it will use all obligation authority allocated to it.

(d) The limitation on the amount of approved advance construction applications was revised to allow increased use of the procedures.

In addition to incorporating these new requirements, the format of the proposed regulation is also being revised to improve the organization of the material. The following is a description of the specific changes being proposed for each section of the current regulation:

Section 630.701 Purpose

This section is revised to be more concise.

Section 630.702 Requirements and Conditions

This section is eliminated, but the provisions are incorporated in other new sections, i.e., Eligibility, Procedures, and Payment of Bond Interest.

Section 630.703 Programs

This section is eliminated, but the provisions are included in the new section, Procedures.

Section 630.704 Bond Proceeds Expended on Projects

The provisions of this section are included in the new section, Payment of Bond Interest.

Section 630.705 Approval Actions

This section is considered redundant and is eliminated. The general requirement to follow regular procedures is contained in the new section, Procedures.

Section 630.706 Project Agreements

This section is considered redundant and is eliminated.

Section 630.707 Construction

This section is considered redundant and is eliminated.

Section 630.708 Conversion from Advance Construction Status to Regular Federal-Aid Funded Status

The requirements of this section are included in the new section, Conversion to a Regular Federal-aid Project.

Section 630.709 Progress and Final Vouchers

The requirements of this section are included in the new section, Procedures.

Section 630.710 Cash Management

This section is removed to eliminate the reporting requirement.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This rulemaking action is being initiated in order to implement a statutory mandate. A regulatory evaluation is not required because of the ministerial nature of this action. The primary impact of this action will be to provide the States with additional flexibility in using the procedures.

Based on the information available to the FHWA at this preliminary stage of the rulemaking, it does not appear that this action will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

In consideration of the foregoing, FHWA proposes to amend Title 23, Code of Federal Regulations by revising Part 630, Subpart G as set forth below.

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

List of Subjects in 23 CFR Part 630

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

Issued on: June 1, 1989.

R. D. Morgan,

Executive Director.

PART 630—PRECONSTRUCTION PROCEDURES

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

Authority: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, and 320; 23 CFR 1.32; 49 CFR 1.48(b), unless otherwise noted.

2. Subpart G of Part 630 is revised to read as follows:

Subpart G—Advance Construction of Federal-Aid Projects

Sec.

Subpart G—Advance Construction of Federal-Aid Projects

§ 630.701 Purpose.

The purpose of this subpart is to prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State.

§ 630.703 Eligibility.

(a) The State highway agency (SHA) may proceed with a highway substitute, secondary, urban, metropolitan planning, railway-highway crossings, bridge replacement and rehabilitation, hazard elimination, or planning and research project in accordance with this subpart, provided the SHA:

(1) Has obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4)(H), 104(b)(2), 104(b)(6), 104(f), 130, 144, 152, or 307, as the case may be for the proposed project, or

(2) Has used all obligation authority distributed to it, or

(3) Demonstrates that it will use all obligation authority distributed to it.

(b) The SHA may proceed with a primary, Interstate, or Interstate resurfacing, restoration, rehabilitation, and reconstruction (4R) project authorized under 23 U.S.C. 104(b)(1) and 104(b)(5) in accordance with this subpart without regard to apportionment or obligation authority balances.

(c) Total advance construction authorizations within a funding category shall not exceed the limitation established in § 630.707.

§ 630.705 Procedures.

(a) An advance construction project shall meet the same requirements and be processed in the same manner as a regular Federal-aid project, except,

(1) FHWA authorization does not constitute a commitment of Federal funds, and

(2) FHWA shall not reimburse the State until the project is converted under § 630.709.

(b) Project numbers shall be identified by the letters "AC" preceding the regular project number prefix.

(c) If the SHA plans to claim bond interest costs under § 630.711, it shall include in its request for authorization the estimated federally participating bond interest cost.

(d) The SHA shall submit a final voucher to the FHWA upon completion of the project even though the project has not been converted. If the SHA is claiming bond interest costs under § 630.711, it shall certify on the final voucher that the bond proceeds were expended in the construction of the project and shall include a computation of the eligible interest costs.

§ 630.707 Limitation.

(a) Through September 30, 1990, the Federal share of the cost of advance construction projects within each funding category is limited to:

(1) The amount of unobligated funds apportioned or allocated to the State, plus,

(2) The State's expected apportionment of the existing authorizations, plus,

(3) An additional amount equal to the State's expected apportionment from the last year of authorization. This additional amount is not applicable to Interstate projects authorized under 23 U.S.C. 104(b)(5)(A).

(b) Beginning October 1, 1990, the limitation will be restricted to the amount specified in paragraph (a)(1) plus paragraph (a)(2) of this section.

§ 630.709 Conversion to a regular Federal-aid project.

(a) The SHA may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available.

(b) The FHWA's approval of the SHA's request shall result in the obligation of the Federal share of project costs.

(c) The SHA may then claim reimbursement for the Federal share of project costs incurred provided the project agreement has been executed. If the SHA has previously submitted a final voucher, the FHWA will process the voucher for payment.

§ 630.711 Payment of bond interest.

(a) For Interstate projects authorized by the FHWA after January 6, 1983, and for Interstate 4R and primary projects authorized by the FHWA after April 2, 1987, interest earned and payable on bonds issued by a State is an eligible cost of construction as follows:

(1) Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

(2) The amount of interest determined in paragraph (a)(1) of this section shall not exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization, to the actual cost of physical construction.

(b) For Interstate projects under physical construction on January 1, 1983, and converted to a regular Federal-aid project after January 1, 1983, bond interest is eligible in accordance with paragraph (a)(1) of this section. The restriction in paragraph (a)(2) of this section does not apply.

[FR Doc. 89-13642 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CCGD2-89-01]

Drawbridge Operation Regulations; Red River Waterway, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the operation of drawbridges on the Red River Waterway in Louisiana below Mile 283.1. A proposal to change the existing regulations is being made because the current requirements do not provide for the reasonable needs of navigation in conjunction with the opening of Lock and Dam No. 2 at Mile 75.0. A significant increase in the frequency and volume of traffic on the Red River Waterway for year-round use dictates the need for a more equitable regulation. The existing regulation requires that 48 hours advance notice be given to open the drawbridges. The proposed change would require that the draws of the bridges open with at least 8 hours advance notice except that highway bridges in Alexandria, Louisiana, need not be opened between the hours of 7:30 a.m.—8:30 a.m. and 4:00 p.m.—5:30 p.m. Monday through Friday.

DATE: Comments must be received on or before July 24, 1989.

ADDRESS: Comments should be mailed to Commander (ob), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398. The comments and other materials referenced in this notice will be available for inspection and copying at 1430 Olive Street, Room 400, St. Louis, MO 63103-2398. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 425-4607.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal.

The Commander, Second Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are B.J. Flahart, Assistant Chief, Bridge Branch, Project Officer, and Commander J.T. Orchard, District Legal Officer Project Attorney.

Discussion of Proposed Regulations

The Red River Waterway Project originated with the River and Harbors Act of August 13, 1968. The U.S. Army Corps of Engineers, Vicksburg District has opened Lock and Dam No. 2, Mile 75.0 providing year-round navigation. The establishment of aids to navigation has been completed by the Coast Guard marking the Red River Waterway at this time to Mile 140.0. The Corps of Engineers maintains an authorized project channel 9 feet deep by 200 feet wide. The opening of Lock No. 2 eliminated the seasonal use of the waterway based on fluctuation of water levels. Presently, all drawbridges on the Red River Waterway up to Mile 283.1 are required to open, provided 48 hours advance notice is given. This amount of time is considered excessive to accurately predict a towboat's estimated time of arrival. An 8 hour advance notice will provide a more realistic timeframe for Red River Waterway waterbourne traffic; the daily closed periods will prevent the highway bridges in Alexandria, Louisiana, from opening during commuter peak times.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will lessen the advance notice for opening bridges. The purpose of decreasing the advance notice requirements should reduce operating costs to the waterway industry caused by inaccurately predicted arrival times at bridges. The bridges requiring the greatest amount of time to open are scheduled for alteration as part of the waterway project. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that this rule, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.491 is revised to read as follows:

§ 117.491 Red River Waterway.

(a) The draws of all bridges from mile 66.0 through mile 283.1 (1967 mileage) shall open on signal if at least 8 hours notice is given, except the Fulton Street and Jackson Street Drawbridges in Alexandria, Louisiana, need not be opened between the hours of 7:30 a.m.—8:30 a.m. and 4:00 p.m.—5:30 p.m., Monday through Friday. The draws of the bridges need not be opened for a vessel that arrives at any of these bridges more than two hours after the time specified in the notice, unless a second notice of at least 8 hours is given.

(b) The draws of the bridges above mile 283.1 need not be opened for the passage of vessels.

Date: May 16, 1989.

William J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 89–13675 Filed 6–8–89; 8:45 am]
BILLING CODE 4910–14–M

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33 CFR Parts 126, 154, and 156

[CGD 86–034]

RIN 2115–AC29

Hazardous Materials Pollution Prevention

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering making changes to its proposed regulations for waterfront facilities which transfer oil or hazardous materials in bulk. These changes were recommended by a commenter to the notice of proposed rulemaking for hazardous materials pollution prevention published in the **Federal Register** on June 13, 1988. This supplemental proposal is intended to help simplify the administration and enforcement of the existing waterfront facility regulations by consolidating the Coast Guard's safety and pollution prevention requirements for bulk liquid terminals.

DATE: Comments must be received on or before July 24, 1989.

ADDRESSES: Comments must be submitted to the Commandant (G–LRA–2), Room 3600, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Executive Secretary, Marine Safety Council (G–LRA–2), Room 3600, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The Draft Economic Evaluation and Draft Environmental Assessment and Finding of No Significant Impact have been prepared and may also be inspected or copied at the Marine Safety Council at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Szigety, Office of Marine Safety, Security and Environmental Protection (G–MPS–3), Room 1108, (202) 267–0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this supplemental notice (CGD 86–034) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed postcard should be enclosed. The rules, as proposed, may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before further action is taken on the proposed rules. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice in the **Federal Register** if written requests for a public hearing are received from interested persons raising genuine issues and desiring to comment orally at a public hearing, and if it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Kenneth J.

Szigety, Project Manager, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion

One of the proposals made by the Coast Guard in the June 13, 1988 issue of the **Federal Register** (53 FR 22118) was to extend the application of the oil pollution prevention regulations in 33 CFR Parts 154 and 156 to waterfront facilities that transfer bulk liquid hazardous materials, including those intended for incineration at sea. Additionally, to eliminate the confusion that presently occurs from having requirements for transfer operations published in both Part 126 and Part 156 of Title 33, Code of Federal Regulations (CFR), it was proposed to publish the requirements for all bulk liquid transfer operations (other than for liquefied gases) in only Part 156. While eliminating this confusion, waterfront facilities that transfer oil or liquid hazardous materials in bulk would continue to be subject to the "safety" requirements of 33 CFR 126.15 (a)–(n). Based upon comments submitted on the June 13th proposal, the Coast Guard is considering a further consolidation of the requirements for waterfront facilities that transfer oil or liquid hazardous materials in bulk other than liquefied gases. This consolidation would entail duplicating and clarifying the safety requirements of § 126.15 (a)–(n), and including them as a new section, § 154.735. Thus, under proposed § 154.735 the facility operator would be required to ensure compliance with safety rules that are similar to those presently contained in 33 CFR 126.15, such as smoking restrictions, storage restrictions, welding and hot work restrictions, access limitations, and similar basic safety concerns.

In addition, a new requirement that no facility previously had to meet is being proposed. This proposal would require facilities that conduct tank cleaning or gas freeing operations on vessels carrying oily residues or mixtures to conduct these operations in accordance with the International Safety Guide for Oil Tankers and Terminals (ISGOTT) 3rd edition. The Coast Guard is proposing this requirement because there have been a number of explosions at facilities during these operations. The Coast Guard is not aware of any domestic safety standard addressing vessel tank cleaning and gas freeing operations and believes that following the ISGOTT procedures will reduce the likelihood of explosions during these operations. The Coast Guard is also considering establishing a similar requirement for facilities conducting tank cleaning or gas freeing operations on vessels carrying residues or mixtures of bulk hazardous materials other than oil. This requirement would incorporate appropriate sections of the upcoming revision of the Tanker Safety Guide (Chemicals), published by the International Chamber of Shipping. This incorporation by reference is not included in this proposal because the revision has not been published. If the revision is published and the relevant sections are considered acceptable by the Coast Guard while this proposal is being considered, the Coast Guard will publish a notice in the **Federal Register** proposing to incorporate this material. Comments on compliance costs and applicability of these proposed requirements are requested. Interested persons can contact the Project Manager as directed under **FOR FURTHER INFORMATION CONTACT** to review the proposed ISGOTT and Tanker Safety Guide (Chemicals) standards.

Failure to comply with the requirements in proposed § 154.735 could result in a suspension order by the OCMI or COTP to suspend operations, as proposed by § 156.112 in the June 13th notice. The title of Part 154 would have to be changed from the proposed title in the June 13th notice to reflect the fact that the new section will concern both "safety" and "pollution prevention" requirements. Regarding waterfront facilities that transfer oil or liquid hazardous materials in bulk, it is current Coast Guard policy to apply the safety requirements in Part 126 to only those facilities that transfer oil or hazardous materials which are flammable or combustible liquids. However, if the pollution prevention regulations in 33 CFR Parts 154 and 156 are extended to all liquid hazardous materials (many of which are not flammable or combustible) and if the proposed change in this supplemental notice is adopted, waterfront facilities which transfer only non-flammable or non-combustible liquid hazardous materials in bulk would be subject to safety requirements for the first time. The Coast Guard has been informed by industry sources that this group of facilities represents an insignificant portion of the total regulated industry.

If the new § 154.735 is added, § 154.100, Applicability, would be changed to indicate that Part 154 applies to each facility or marina capable of transferring, in bulk, to or from any vessel with a capacity of 250 barrels or more, oil or hazardous materials, other than liquefied gases, and that the safety requirements in § 154.735 apply to each facility or marina that transfers these products in bulk in any quantity or when the facility has storage tanks containing these products, mixtures that include these products, or their residues.

In addition, a revised section incorporating industry standards would be added for clarity, and supporting changes necessitated by the addition of § 154.735 would also be included.

This contemplated change from the notice of June 13, 1988 is primarily editorial in nature. However, since it would apply safety requirements to facilities not presently covered, the Coast Guard is reopening the comment period for an additional 45 days. The Coast Guard invites interested persons to comment on the original notice as changed by this supplemental notice.

Regulatory Evaluation

The draft Economic Evaluation was prepared in conjunction with the June 13th notice and can be inspected or copied as discussed in **ADDRESSES** above. Since the proposal in this supplemental notice would apply to relatively few, if any, additional facilities it is not expected to have any impact on this evaluation.

Regulatory Flexibility Act

The Coast Guard believes that this proposal would not have a significant economic impact on a substantial number of small entities. The Coast Guard has determined that a small entity is a business whose annual receipts do not exceed 1 million dollars. The Coast Guard does not have accurate information on the number of businesses in this category. Any person affected by the proposed regulations who believes that they qualify as a small entity or has information concerning the impact of this proposal on a small entity is requested to submit any pertinent information on the basis of their qualification and the anticipated impact.

Environmental Impact

The draft Environmental Assessment and Finding of No Significant Impact were prepared in conjunction with the June 13th notice and can be inspected or copied as discussed in **ADDRESSES** above. The substantive changes in this supplemental notice are not expected to have any impact on these evaluations.

Paperwork Reduction

No significant paperwork burden to either industry or the government is expected to result from this supplemental notice.

Federalism Statement

This supplemental notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed herein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 126

Explosive, Harbors, Hazardous substances, Reporting and record keeping requirements.

33 CFR Part 154

Oil and hazardous materials pollution, reporting and record keeping requirements.

33 CFR Part 156

Hazardous materials transportation, oil and hazardous materials pollution, reporting and record keeping requirements, water pollution.

In accordance with the preceding it is proposed to amend Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

PART 126—[AMENDED]

The authority citation for Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 126.05 [Amended]

1. By amending § 126.05 (a) by removing the words "any flammable or combustible liquid in bulk, except methane, (46 CFR Parts 30–38)" and by inserting after the words "49 CFR Part 172.101" the words "and those carried as bulk liquids other than the cargoes listed in § 126.10(d)".

§ 126.07 [Amended]

2. By amending § 126.07 by adding after the semi-colon in paragraph (a) the word "or", by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b).

PART 154—[AMENDED]

3. The authority citation for Part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

4. By revising the heading of Part 154 to read as follows:

PART 154—WATERFRONT FACILITIES TRANSFERRING OIL AND HAZARDOUS MATERIALS IN BULK

5. By revising § 154.100 to read as follows:

§ 154.100 Applicability.

This part applies to each facility or marina that transfers, in bulk, to or from any vessel with a capacity of 250 barrrels or more, oil or any material, other than liquefied gases, determined to be hazardous under 46 CFR 153.40 (a), (b), (c), or (e), except that § 154.735 applies to each facility or marina that—

(a) Transfers in bulk any quantity of these products; or

(b) Has storage tanks containing these products, mixtures that include these products, or their residues.

Note: A storage tank that is not gas free and safe for entry is considered to have residues of these products or mixtures of these products.

6. By revising § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section. notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part are:

American National Standards Institute (ANSI)
1430 Broadway, New York, New York 10018
ANSI B16.5 Steel Pipe Flanges and Flange Fittings 1981 ..... 154.500
ANSI B16.24 Brass or Bronze Pipe Flanges 1978 ..... 154.500
ANSI B31.3 Chemical Plant and Petroleum Refinery Piping 1987 .... 154.510

National Fire Protection Association (NFPA)
Batterymarch Park, Quincy, MA 02269
National Electrical Code, 1987 ..... 154.735

Oil Companies International Marine Forum (OCIMF)
6th Floor, Portland House, Stag Place, London SWIE 5BH
International Safety Guide for Oil Tankers and Terminals, Third Edition 1988 ..... 154.735

7. By adding a new section, § 154.735, to read as follows:

§ 154.735 Safety requirements.

Each facility operator shall ensure that—

(a) Access to the waterfront facility by firefighting personnel, fire trucks, or other emergency personnel is not impeded;

(b) Supplies classified as dangerous by 49 CFR Parts 170–179 are kept—

(1) Only in quantities needed for the operation or maintenance of the waterfront facility; and

(2) In storage compartments;

(c) Heating equipment has sufficient clearance to prevent unsafe heating of any nearby combustible materials;

(d) A sufficient number of Coast Guard approved fire extinguishers are in place throughout the waterfront facility and maintained to be ready for fighting small, localized fires;

(e) The location of each hydrant, standpipe, hose station, fire extinguisher, and fire alarm box is—

(1) Conspicuously marked; and

(2) Accessible;

(f) Each piece of protective equipment is ready to operate;

(g) "No smoking signs" are posted in unauthorized smoking areas;

(h) Trucks and other motor vehicles are operating or parked only in designated locations;

(i) All rubbish is kept in receptacles;

(j) All equipment with internal combustion engines used on the waterfront facility.

(1) Does not constitute a fire hazard; and

(2) Has Coast Guard approved fire extinguishers unless the waterfront facility meets 33 CFR 154.310(b)(16);

(k) Spark arresters are provided on chimneys or appliances if they—

(1) Use solid fuel; or

(2) Are located where sparks constitute a hazard to any nearby combustible material;

(l) Welding or hot work is not initiated unless a permit is obtained from the COTP;

(m) Gasoline or other fuel is not stored on a pier or wharf;

(n) Any equipment having an internal combustion engine is not refueled on a pier or wharf;

(o) There are no open fires or open flame lamps;

(p) Existing electric wiring is maintained in a safe condition to prevent fires;

(q) Electric wiring and electric equipment installed after June 9, 1989 meet the National Electrical Code;

(r) Electrical equipment, fittings, and devices used after June 9, 1989 show approval for that use by—

(1) Underwriters Laboratories;

(2) Factory Mutual Research Corporation; or

(3) Canadian Standards Association;

(s) Any tank cleaning or gas freeing operations conducted by the facility on vessels carrying oily residues or mixtures are conducted in accordance with sections 8.1–8.3 and 8.5 of the International Safety Guide for Oil Tankers and Terminals; and

(t) Guards are stationed to prevent unlawful access to the facility.

PART 156—[AMENDED]

8. The authority citation for Part 156 is revised to read as follows:

Authority: Subpart A is issued under 33 U.S.C. 1231; 49 CFR 1.46. Subpart B is issued under 46 U.S.C. 3715 (b); 49 CFR 1.46.

9. By revising the heading of Subpart A to read as follows:

Subpart A—Oil and Hazardous Material Transfer Operations

10. By revising 156.112(c) to read as follows:

156.112 Suspension order

* * * * *

(c) Includes a statement of each condition requiring correction to—

(1) Prevent the discharge of oil or hazardous material; or

(2) Comply with the requirements contained in § 154.735 of this chapter.

* * * * *

March 22, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–13544 Filed 6–8–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 89–114; FCC 89–152]

DID Answer Supervision

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to amend Part 68 of its rules to require answer supervision for direct-inward-dialing (DID) calls to stations to the telephone company network through a private branch exchange (PBX) or similar system. These rule modifications are being made to ensure that PBXs and PBX-like customer premises equipment cause no harm to the public switched network.

DATES: Comments must be received on or before July 24, 1989 and reply comments on or before August 8, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert James, Common Carrier Bureau (202) 634–1831.

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 89–114 adopted by the Commission on May 11, 1989, and released June 1, 1989. The full text of the item may be examined in the Commission's Dockets Branch, Room 230, 1919 M Street., NW., Washington, DC, during regular business hours or purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M St., NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

American Telephone and Telegraph Company (AT&T) seeks amendment of Part 68 of the rules to include standards for Direct Inward Dialing (DID) calls. AT&T alleges that the proposed rule amendment is necessary to assure that customers placing DID calls to stations behind (connected to) private branch exchanges (PBXs) and other customer premises equipment (CPE) are properly billed. According to AT&T, after it implemented new toll fraud detecting procedures it discovered many cases where PBXs are failing to return an answer supervision signal to telephone company equipment to indicate that DID calls have been completed. As a result of this failure, it alleges, telephone companies are wrongfully denied tens of millions of dollars or revenue each year. It asserts the problem can be ameliorated by its proposal.

AT&T explains that § 68.314 of the rules, Billing Protection, currently addresses the traditional network configuration, *i.e.*, where the local exchange carrier central office powers the called station. Under this scheme, a special signal, called answer supervision, is returned to the central office when the called party lifts the telephone handset. (Lifting the handset closes the circuit between the caller and the central office and triggers the carrier's billing equipment.) For DID calls, however, the PBX is between the central office and the called station. The PBX provides continuous power to the central office and also powers the stations behind it. In this case, the PBX must provide an artifical signal to the central office to initiate billing. Current industry standards, *e.g.*, EIA Standard RS–464, section 4.1.3.7.1.1, establish the convention that PBXs reverse battery, *i.e.*, change the electrical polarity of the voltage on the line, to alert the central office that a call has been answered. But, AT&T explains, today's PBXs are software-controlled and many are programmed not to return proper answer supervision.

According to AT&T, the purpose of Part 68 is "to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto." *See* § 68.1 The definition of harms includes "malfunction of telephone company billing equipment." *See* § 68.3(g). The prevalence of PBXs that do not return answer supervision, AT&T claims, creates a network harm by causing malfunction of central office billing equipment. AT&T further states that "[t]elephone company tariffs offer facilities for the transmission of communications between customers * * *. Failure to pay for any such communication violates the Communications Act and telephone company tariffs." AT&T Petition, p. 6. CPE that fails to return answer supervision abets violation, it asserts.

Industry PBX signalling standards and billing enforcement tariffs have been ineffective, AT&T contends, and the distribution of CPE which does not return the proper signalling must be deterred. To remedy the problem, AT&T requests that the Commission amend § 68.314 to require answer supervision on DID calls which are (1) answered by the called DID station, (2) answered by an attandant, (3) routed to a recorded announcement, (4) routed to a dailing prompt or (5) routed back to the public switched network by the PBX. It also requests that the Commission amend the

rules to require units manufactured for sale one year after the effective date of the rule to be programmed to return answer supervision and be programmed so that they cannot be readily altered by customers. Finally, AT&T proposes that (1) manufacturers of embedded equipment, within three months of the new rule's adoption, either reregister their equipment or file an affidavit with the Commission certifying that it complies with the proposal; (2) manufacturers and suppliers notify all customers owning PBXs which do not return answer supervision or which can be programmed not to return a signal that they must program their equipment to comply with the rule; (3) telephone companies may notify customers that their equipment is not in compliance with the rule; and (4) discontinue equipment installed prior to the effective date of the rule that is not reprogrammable need not return answer supervision on calls answered by the announcement, "this is not a working number." The Commission is asked to maintain a list of this equipment.

While those supporting AT&T's petition offer essentially the same reasons AT&T provides, their support is limited or conditional. All commenters seem to feel the compliance program as proposd by AT&T for embedded equipment poses too great a burden. Some commenters propose that the rule amendment be applied prospectively only. Those opposing the petition, particularly as to embedded equipment, note, among other things, that AT&T fails to include any documentation of the number of DID lines behind PBXs, what percentage of toll calls—by volume, dollar amount, or duration—flow through these lines, or the number of DID lines that return answser supervision as against those that do not. They also say AT&T does not offer any analysis of the costs its proposal is likely to impose. Others argue that industry standards and "marketplace" forces are adequate protection. AT&T disagrees, arguing industry standards are unenforceable and that "marketplace forces" encourage use of equipment that can evade toll charges.

All commenting parties acknowledge that the problem of some CPE not returning proper answer supervision exists. There is only disagreement as to the extent of the problem and the most economical and effective way of addressing it. The matter of billing protection is an integral component of Part 68 and the problem presented is the type intended to be addressed by § 68.314. Costs of detecting fraud, in addition to the revenue lost, must be recovered from ratepayers.

To issue an NPRM supporting AT&T's entire proposal, including the embedded equipment re-registration/compliance program, appears unnecessarily burdensome, and would elicit the same kinds of criticisms already on record, *e.g.*, AT&T's failure to provide specific data to support Commission intervention with regard to embedded equipment. Notification, retrofitting and other requirements AT&T proposes to place on manufacturers and others would be burdensome and potentially costly to manufacturers, carriers and users. AT&T does not discuss what impact its proposal would have on manufacturers and suppliers of embedded equipment that may be used in a manner that avoids toll charges. In view of the potential implementation costs of this approach, including Commission oversight and processing expenses, and the absence of a consensus supporting it from the commenters or clearly identified benefits from AT&T, it is recommended that this aspect of the proposal be rejected. Although it is recommended that this option be rejected, the NPRM does request commenters to file cost and statistical data related to calls to embedded equipment in order that a further assessment of this aspect of AT&T's proposal may be conducted.

An alternative—to proceed with an NPRM recommending a prospective registration requirement applicable to new equipment only—appears to be a more reasonable approach. The proposed rule would require all PBX-like devices manufactured after a year following the rule's effective date to be programmed to contain essentially tamper-proof means of assuring that answer supervision for DID calls is returned to the serving central office. PBXs manufactured before that one-year date but not yet installed in a customer's premises would have six additional months to comply. All other PBXs installed must comply with the new requirement, *i.e.*, be registered anew. This kind of "grandfather-register only date" program has been successfully applied in Part 68 for the registration of terminal equipment, PBXs, key telephone systems attached to the public switched network and private line services. *See* § 68.2. This alternative proposes to solve the problem prospectively, minimizing disruption. Equipment manufacturers would have adequate lead time to develop means to comply with the new rule requirement. In the long run, the proposed requirement should help to save milions of dollars of unpaid telephone charges, assuring that ratepayers do not subsidize users of faulty equipment. As to embedded PBXs, it appears that currently implemented toll fraud detection schemes should be relied upon to address existing problems. With the continuing growth of PBX sales, the proposed rule for new equipment in combination with toll fraud detection efforts should resolve the DID answer supervision problem over time. This option would accomplish that goal at minimal cost to all.

Our proposal is not expected to impose any additional burdens on manufacturers or suppliers, because they are already under an obligation to register their customer premises equipment.

In accordance with 5 U.S.C. 603(a), the Federal Communications Commission concludes that the proposed rules will not have a significant adverse economic impact on small entities.

Comments on the proposed rules are sought.

List of Subjects in 47 CFR Part 68

Billing protection.

Legal Basis

This NPRM seeking to amend Part 68 of the Commission's rules is issued pursuant to authority contained in sections 1, 4(i), 4(j), 201–205, 215, 218, 303(r), 313 and 412 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act.

Federal Communications Commission.

William Caton,
Acting Secretary.

[FR Doc. 89–13748, Filed 6–8–89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[Docket No. 89–35]

Definition of a Cable System; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; correction.

SUMMARY: This notice corrects the filing dates previously prescribed in the Notice of Proposed Rule Making, 54 FR 14253 (April 10, 1989) for comments and replies to be submitted in the FCC's proposed rulemaking concerning the definition of a cable television system.

This also corrects the docket number to MM Docket No. 89-35.

DATES: Comments must be submitted on or before June 9, 1989, and reply comments on or before July 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Video Services Division, Mass Media Bureau, (202) 632-7480.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13749 Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 89-45]

Amendment of Part 90 of the Commission's Rules To Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending reply comment period.

SUMMARY: The Chief, Private Radio Bureau has adopted an Order extending the time period in which to file reply comments to the Notice of Proposed Rule Making in this proceeding. The new reply comment date is July 5, 1989. This action is responsive to requests for extension of the reply comment date filed by two parties, who require additional time to review the large volume of intitial comments to the subject Notice.

DATE: Reply comments due July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Rosalind Allen, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The summary of the Notice of Proposed Rule Making in this proceeding was printed in the **Federal Register** on April 7, 1989, at 54 FR 14109.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-13747, Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 110
Friday, June 9, 1989

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

Animal and Plant Health Inspection Service

[Docket No. 89-095]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Hebicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Stuttgart, Arkansas. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-034-12.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulation article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulation article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Montsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Stuttgart, Arkansas.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measurable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to delivery the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into

the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 1 acre) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done at Washington, DC, this 5th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–13737 Filed 6–8–89; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Timber Management Entries Into the French Creek/Patrick Butte Roadless Area, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for proposed timber management entries into the French Creek/Patrick Butte roadless area, New Meadows and McCall Ranger Districts, Payette National Forest, Idaho. The proposal would construct roads and harvest timber within that portion of the roadless area which the Forest Plan allocates to timber management.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

The Forest Service is holding two public scoping meetings to gather comments from the public on what issues the EIS should address. The first is Tuesday, June 13 at 7:00 p.m. in the new Smokejumpers Base conference room, Mission Road, McCall, Idaho. The second is Thursday, June 15 at 7:00 p.m. in the Hall of Mirrors, 700 West State Street, Boise, Idaho. The meetings will cover both the French Creek/Patrick Butte roadless area EIS and the Rapid River roadless area EIS which is being prepared concurrently. Forest Service officials will explain the proposed actions and planning process, and accept public input on the issues.

DATE: Comments on the scope of the analysis must be received by July 10, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Pete Walker, EIS Team Leader, Payette National Forest, P.O. Box 1062, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Pete Walker, phone 208 634–8151.

SUPPLEMENTARY INFORMATION: The Payette National Foret Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the French Creek/Patrick Butte roadless area. The Plan allocates a portion of the area to timber management and assigns it to Management Areas 10, 11, and 12. Several timber sales are being proposed, including the Fourmile, Hazard Heliocopter, Freight Landing, French Creek, and Jenkins Timber Sales. The Fourmile sale would be the first entry into the roadless area.

As well as Forest-wide direction, the Plan gives specific direction for this management area. It requires integrated protection of multiple resources including recreation, range, soil and water, wildlife, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignments. The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted scoping on the some of these proposed sales during planning efforts begun previously. Public responses to this planning and input from Forest Service specialists have identified issues and concerns that fall into these categories:

- Economics
- Grazing
- Timber
- Watershed and fish
- Wilderness potential, roadless character, and recreation
- Wildlife

The second major opportunity for public input is the DEIS.The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1990. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments are invited.

The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the **Federal Register**. It is important that those interested in the management of the French Creek/Patrick Butte roadless area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in September, 1990. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Date: June 1, 1989.

Phil Gilman,

Branch Chief, Planning, Programming, and Information.

[FR Doc. 89-13774 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing and the Federal Onshore Oil and Gas Leasing Reform Act of 1987; Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands; Colorado and Kansas; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) to analyze and disclose the expected environmental impacts, including possible cumulative effects, when consenting or not consenting to issuance of oil and gas leases on the Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands. Notice of Intent to prepare an EIS was published in the **Federal Register** (Vol. 53, No. 249, 12/28/89). The public was asked to submit written comments and suggestions on the scope of the analysis. The EIS has been expanded to include analysis and disclosure of expected environmental impacts, including possible cumulative impacts on split estate lands where the minerals are federally owned and the surface estate is owned or managed by parties other than the Forest Service, where such lands are within the administrative boundaries of the Pike and San Isabel National Forests and Comanche National Grassland, Colorado, and within the administrative boundary of theCimarron National Grassland, Kansas. The analysis and the EIS will be used for a final decision to lease or not lease these lands. Accordingly, the scoping period is being extended to July 17, 1989 to allow the public, interested and affected parties, other agencies and industry to submit written comments and suggestions regarding the scope of the analysis on the expanded area to be covered in the EIS.

DATE: Comments and suggestions on the scope of the analysis now must be received on or before July 17, 1989.

ADDRESS: Send written comments or suggestions on the scope of the analysis to Jack Weissling, Forest Supervisor, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006.

FOR FURTHER INFORMATION CONTACT: Direct comments on the proposed action and the environmental impact statement should be made to Dan Bishop, Forest Engineer and Minerals Staff Officer, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006 [(719) 545-8737].

The Forest Supervisor, Pike and San Isabel National Forests, Comanche and Cimarron National Grasslands is the responsible official.

Jack Weissling,

Forest Supervisor.

[FR Doc. 89-13708 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Timber Management Entries Into the Rapid River Roadless Area, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service revises its notice of intent published in the **Federal Register** of April 28, 1988 regarding an environmental impact statement (EIS) for proposed development of the Rapid River roadless area, Idaho. The EIS will be completed under a new schedule beginning with a scoping process to identify issues and concerns. Public comment already received in the previous scoping process will be considered in the new scoping.

The Forest Service will prepare an environmental impact statement (EIS) for proposed timber management entries into the Rapid River roadless area, New Meadows and Council Ranger Districts, Payette National Forest, Idaho. The proposal would construct roadless and harvest timber within that portion of the Rapid River roadless area which the Forest Plan allocates to timber management. That area is outside the Rapid River drainage.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

The Forest Service is holding two public scoping meetings to gather comments from the public on what issues the EIS should address. The first is Tuesday June 13 at 7:00 pm in the new Smokejumpers Base conference room, Mission Road, McCall, Idaho. The second is Thursday June 15 at 7:00 pm in the Hall of Mirrors, 700 West State Street, Boise, Idaho. The meetings will cover both the Rapid River roadless area EIS and the French Creek/Patrick Butte roadless area EIS which is being prepared concurrently. Forest Service officials will explain the proposed actions and planning process, and accept public input on the issues.

DATE: Comments on the scope of the analysis must be received by July 10, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Pete Walker, EIS Team Leader, Payette National Forest, P.O. Box 1062, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Pete Walker, phone 208 634-8151.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Rapid River roadless area. The Plan allocates a portion of the area outside the Rapid River drainage to timber management and assigns it to Management Area #11. Two timber sales are being proposed, the Lockwood and the North Round Valley sales. The Lockwood sale would be the first entry into the roadless area.

As well as Forest-wide direction, the Plan gives specific direction for this management area. It requires integrated protection of multiple resources including recreation, range, soil and water, wildlife, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignments.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted scoping on the Lockwood Timber Sale during planning efforts begun previously. Public responses to this planning and input from Forest Service specialists have identified issues and concerns that fall into these categories:

- Economics
- Grazing
- Timber
- Watershed and fish
- Wilderness potential, roadless character, and recreation
- Wildlife

The second major opportunity for public input is the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1990. EPA will then publish a notice of availability of the DEIS in the Federal Register. Public comments are invited.

The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the Federal Register. It is important that those interested in the management of the Rapid River roadless area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in September, 1990. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. The decision will be subject to appeal under 36 CFR 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Date: June 1, 1989.

Phil Gilman,

Branch Chief, Planning, Programming, and Information.

[FR Doc. 89-13775 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Castle Rock Analysis Area, Six Rivers National Forest; Trinity County, CA; Intent To Prepare an Environmental Impact Statement

The Six Rivers Natonal Forest will prepare an environmental impact statement for timber management and road construction within the Castle Rock Compartment. This compartment is located along the east side of the South Fork Trinity River, approximately 14 air miles southeast of Willow Creek, California, in sections 32 and 33, T.5N., R.6E., and sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, and 17, T.4N., R.6E., Humboldt Base Meridian. The analysis area is located on the Lower Trinity Ranger District within Trinity County.

The EIS will evaluate the environmental effects of timber management and road construction on visual quality along the South Fork Trinity River, long-term resource management, water quality, wildlife habitat, roadless area characteristics and other affected resources. Of the 8,231 acres which are included within the analysis area, approximately 750 acres will be considered for timber management.

A range of alternatives will be considered. One of these will be "No Action." Tentatively, the maximum harvest area proposed will not exceed 360 acres. Other alternatives will consider various combinations of harvest units and road construction that will emphasize timber, wildlife, visual resource values and retention of roadless characteristics. No clearcutting will be proposed under any of the alternatives.

We invite other Federal agencies, state and local agencies and interested individuals to participate in the project. The draft EIS should be completed by August 15, 1989, and the Final EIS by November 15, 1989. If approved, development of sales would begin immediately thereafter.

No public meetings are planned. Written comments and questions are welcome and should be received by July 15, 1989. They should be directed to Larry Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68. Willow Creek, CA, 95573. The phone number is 916-629-2118.

Jan R. Seils,

Deputy Forest Supervisor.

Date: June 2, 1989.

[FR Doc. 89-13656 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A-21-88; Order No. 434]

Approval for Rice Export Blending/Processing Activity, Foreign-Trade Zone 149, Brazoria County, TX (Freeport P.O.E.)

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The request of the Brazos River Harbor Navigation District, grantee of FTZ 149, Brazoria County, Texas, on behalf of American Rice, Inc. (ARI), which owns and operates a rice milling and marketing facility within the approved zone area, for authority to blend/process domestic and foreign rice under zone procedures for export is approved subject to the following conditions:

1. Authority for this activity shall expire on July 1, 1992, unless the FTZ Board is notified by the U.S. Customs Service on or before that date that the Customs control system for the operation has been successfully implemented.
2. ARI shall comply with U.S. phytosanitary requirements for rice of foreign origin, as well as the phytosanitary requirements of the countries receiving the blended rice.
3. ARI shall label bags or containers that include foreign rice blended with U.S. rice as follows: "Rice produced in the United States blended with foreign rice."

4. Formal Customs entry shall be made prior to the blending or processing of any foreign rice which is to enter the U.S. market.

This authority is granted subject to all other conditions in Board Order 385 (53 FR 26096, 7/11/88), which authorized establishment of the foreign-trade zone.

Signed at Washington, DC, this 31st day of May, 1989.

Foreign-Trade Zones Board.

Lisa B. Barry,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest: John J. Da Ponte, Jr., *Executive Secretary.*

[FR Doc. 89-13651 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumpting or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than June 30, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping duty proceeding	Period
BELGIUM: Sugar (A-423-077)	06/01/88-05/31/89
CANADA: Oil Country Tubular Goods (A-122-506)	06/01/88-05/31/89
CANADA: Red Raspberries (A-122-401)	06/01/88-05/31/89
FRANCE: Large Power Transformers (A-427-030)	06/01/88-05/31/89
FRANCE: Sugar (A-427-078)	06/01/88-05/31/89
THE HUNGARIAN PEOPLE'S REPUBLIC: Tapered Roller Bearing and Parts Thereof, Finished and Unfinished (A-437-601)	06/01/88-05/31/89
ITALY: Large Power Transformers (A-475-031)	06/01/88-05/31/89
ITALY: Rayon Staple Fiber (A-475-079)	06/01/88-05/31/89
JAPAN: Butadine Acrylonitrile Copolymer Synthetic Rubber (A-588-706)	02/12/88-05/31/89
JAPAN: Fishnetting of Man-Made Fibers (A-588-029)	06/01/88-05/31/89
JAPAN: Forklift Trucks (A-588-703)	11/24/87-05/31/89
JAPAN: Large Power Transformers (A-588-032)	06/01/88-05/31/89
JAPAN: 64K DRAMS (A-588-503)	06/01/88-05/31/89
MEXICO: Elemental Sulphur (A-201-034)	06/01/88-05/31/89
ROMANIA: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-485-602)	06/01/88-05/31/89
SWEDEN: Stainless Steel Plate (A-401-040)	06/01/88-05/31/89
TAIWAN: Carbon Steel Plate (A-583-080)	06/01/88-05/31/89
TAIWAN: Fireplace Mesh Panels (A-583-003)	06/01/88-05/31/89
TAIWAN: Oil Country Tubular Goods (A-583-505)	06/01/88-05/31/89
TAIWAN: Polyvinyl Chloride Sheet and Film (A-583-081)	06/01/88-05/31/89
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-570-601)	06/01/88-05/31/89
THE FEDERAL REPUBLIC OF GERMANY: Barium Carbonate (A-428-061)	06/01/88-05/31/89
THE FEDERAL REPUBLIC OF GERMANY: Sugar (A-428-082)	06/01/88-05/31/89

Countervailing duty proceeding	Period
CANADA: Oil Country Tubular Goods (C-122-505)	01/01/88-12/31/88
MEXICO: Carbon Black (C-201-012)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1989.

If the Department does not receive by June 30, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: May 31, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-13652 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-2A001."

The Office of Export Trading Company Affairs has received the following application for a second amendment to Export Trade Certificate of Review #87-00001, which was issued on April 10, 1987 (52 FR 12578, April 17, 1987), and previously amended on March 25, 1988 (53 FR 10267, March 30, 1988).

Summary of the Application

Applicant: American Film Marketing Association ("AFMA"), 10000 Washington Boulevard; Suite S266, Culver City, California 90232. Contact: Jerald A. Jacobs, legal counsel. Telephone: 202/223-4400.

Application No.: 87-2A001.

Date Deemed Submitted: May 31, 1989.

AFMA seeks to amend its Certificate to:

1. Add each of the following companies (but not their controlling entities) as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Angelika Films, Inc., New York, NY; Bandcompany, Los Angeles, CA; Cinetrust Entertainment Corp., Los Angeles, CA; Esquire Films, Inc., Burbank, CA; Film & Television Company, Beverly Hills, CA; Filmstar, Inc., Los Angeles, CA; Golden Harvest/Golden Communications, Beverly Hills, CA (controlling entity: Golden Communications); International Film Exchange, New York, NY; Morgan Creek International, Los Angeles, CA (controlling entity: Morgan Creek Film Productions, Inc.); Odyssey/Cinecom Int'l., Los Angeles, CA (controlling entity: Odyssey Entertainment Ltd.); Premiere Film Marketing, Beverly Hills, CA; Silver Star Film Corp., Los Angeles, CA; Sugar Entertainment Inc., Encino, CA; Tom Parker Motion Pictures, Tarzana, CA; and Vidmark Entertainment, Santa Monica, CA;

2. Delete each of the following companies as a "Member" of the Certificate: Globe Export Company; and Vista Organization Partnership.

3. Change the listing of the company name of the following two current "Members" as follows: change Cannon International, Inc. to Pathe Films N.V.; and F/M Entertainment Int'l. Inc./The Norkat Company to The Norkat Co. Ltd.

Date: June 2, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13643 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

June 1, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-922,616 (4,826,765) Yeast Strains Genetically Engineered to Produce Wheat Gluten Proteins

SN 7-055,265 (4,829,091) Process for the Preparation of Ketones and Novel Insecticides Produced Therefrom

Department of Health and Human Services

SN 6-479,182 (4,525,787) N-Heterocyclic Retinoic Acid Analogues

SN 6-727,919 (4,824,986) Metal Chelate Protein Conjugate

SN 6-867,027 (4,829,000) Reconstituted Basement Membrane Complex with Biological Activity

SN 7-044,021 (4,827,125) Confocal Scanning Laser Microscope Having No Moving Parts

SN 7-266,038 Probe to identify Enteroinvasive E. Coli and Shigella Species

SN 7-308,864 Process for the Purification of a 69,000 Da Outer Membrane Protein of Bordetella Pertussis

SN 7-324,664 Nucleotide and Amino Acid Sequences of the Four Variable Domains of Major Outer Membrane Proteins of Chelamydia Trachomatis

SN 7-351,502 Method of Treatment of Hepatitis

SN 7-351,519 Method of Treatment of Hepatitis

Department of the Air Force

SN 6-749,335 (4,821,671) Captive Volume Device as a Safe Life Monitor

SN 6-882,059 (4,815,855) Interferometric Load Sensor and Strain Gage
SN 6-922,642 (4,815,339) Antenna Shaft Positioning Device
SN 7-035,425 (4,821,982) Brain O2 Reverse Limiter For High Performance Aircraft
SN 7-066,154 (4,815,283) Afterburner Flamholder Construction
SN 7-095,000 (4,815,276) Borescope Plug
SN 7-107,184 (4,815,315) Process for Assessing the Effect of Propellant Strain on Propellant Burn Rate
SN 7-121,493 (4,819,496) Six Degrees of Freedom Micromanipulator
SN 7-122,153 (4,815,933) Nozzle Flange Attachment and Sealing Arrangement
SN 7-123,626 (4,815,314) Particulate Mass Measuring Apparatus
SN 7-124,640 (4,819,340) Compact Focal Plane Precision Positioning Device and Method
SN 7-128,839 (4,820,360) Method for Developing Ultrafine Microstructures in Titanium Alloy
SN 7-136,255 (4,817,854) Led Soldering Method Utilizing a PT Migration Barrier
SN 7-137,308 (4,815,799) Infrared Crystaline Spatial Light Modular
SN 7-150,677 (4,822,432) Method to Produce Titanium Metal Matrix Coposites with Improved Fracture and Creep Resistance
SN 7-171,494 Radiation-Induced Substrate Photo-Current Compensation Apparatus
SN 7-280,607 Static Periodic Field Device for Free Electron Laser
SN 7-285,900 Single Narrow Pulse Peak Detector Apparatus
SN 7-323,577 Improved Search Detection Apparatus

Department of the Army

SN 7-335,649 Superconducing Shielded PYX PPM Stacks

[FR Doc. 89-13715 Filed 6-8-89; 8:45 am]
BILLING CODE 3510-04-M

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 3:15 p.m. and adjourn at 9:00 p.m. on Tuesday, June 27, 1989, in the Joint Free Public Library of Morris and Morris Township, 1 Miller Road, Morristown, NJ 07967. The Committee will convene a forum on student segregation and racial isolation within schools and classrooms in the Morris School District. Invited speakers will address issues of equal educational opportunity, compensatory education, special education, tracking, and ability grouping. Invited are Dr. Saul Cooperman, commissioner, New Jersey Department of Education, the Honorable David V. Manahan, Mayor of Morristown, Dr. William D. McIvor, superintendent, Morristown public schools, and Ms. Reno O. Smith, president, NAACP Morris County Chapter. The Committee will also receive staff reports on the status of the agency and advisory committees and conduct program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Stephen H. Balch or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division 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, June 2, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-13707, Filed 6-8-89; 8:45 am]
BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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).

The current limit for Category 611 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

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.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns 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 the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 12, 1989, the directive of December 6, 1988 is amended further to increase to 4,530,339 square meters [1] the limit for man-made fiber textile products in Category 611, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13644 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

June 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbang Phan, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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).

A copy of the current bilateral textile agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972; as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period which begins on July 1, 1989 and extends through June 30, 1990, in excess of the following levels of restraints:

Category	Twelve-month restraint limit
237	180,200 dozen.
331/631	1,674,800 dozen pairs.
333/633	33,920 dozen.
334	238,500 dozen.
335/835	174,900 dozen.
336	80,560 dozen.
338/339	795,000 dozen of which not more than 662,500 dozen shall be in shirts other than T-shirts and tank tops (Categories 338-S/339-S).[1]
340	625,400 dozen of which not more than 212,000 dozen shall be in shirts made from fabrics of two or more colors in the warp and/or the filling (Category 340/Y).[2]
341	625,400 dozen of which not more than 265,000 dozen shall be in shirts and blouses made from fabric of two or more colors in the warp and/or the filling (Category 341-Y).[3]
342/642/842	413,400 dozen.
345/845	107,060 dozen.
347/348/847	826,800 dozen.
350/650	74,200 dozen.
351/651	174,938 dozen.
352/652	848,000 dozen.
359-C/659-C[4]	721,212 kilograms.
363	7,685,000 numbers.
369-D[5]	576,970 kilograms.
369-S[6]	480,808 kilograms.
434	3,030 dozen.
435	6,565 dozen.
442	13,815 dozen.
445/446	95,950 dozen.
448	6,060 dozen.
634	159,000 dozen.
635	233,200 dozen.
636/836	181,260 dozen.
638/639/838	545,900 dozen.
640	132,500 dozen.
641	625,400 dozen.
644	318,000 numbers.
645/646	127,200 dozen.
647/648	657,200 dozen.

[1] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[2] In Category 340-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060.

[3] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.1510, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

[5] In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

[6] In Category 369-S, only HTS number 6307.10.2005.

Imports charged to these category limits for the period June 1, 1988 through June 30, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13645 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of a Request for Bilateral Consultations with the Government of Thailand on Certain Silk Blend and Other Vegetable Fiber Textile Products

June 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

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); Article 3 of the Arrangement Regarding International Trade in Textiles.

On May 26, 1989, the Government of the United States requested consultations with the Government of Thailand regarding trousers, breeches and shorts of silk blend and other vegetable fibers in Category 847, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Thailand, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 847, produced or manufactured in Thailand and exported during the twelve-month period which began on May 26, 1989 and extends through May 25, 1990, at a level of 101,346 dozen.

A summary market statement concerning Category 847 follows that notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 847, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 847. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement; Vegetable Fiber, Other than Cotton, and Silk-Blend Trousers, Slacks and Shorts

(Category 847)

Thailand, May 1989

Summary and Conclusions

U.S. imports of vegetable fiber, other than cotton, and silk-blend trousers, slacks and shorts (Category 847) from Thailand reached 133,438 dozen during the year ending March 1989, more than 12 times the 10,580 dozen imported a year earlier. During the first three months of 1989 imports of Category 847 from Thailand reached 100,066 dozen, 11 times the 8,879 dozen importing during the same period in 1988, and more than double Thailand's imports for all of 1988.

Virtually all of the imports of trousers, slacks and shorts in Category 847 are of vegetable fiber, other than cotton, and compete directly with domestically produced cotton trousers, slacks and shorts (Category 347/348). The U.S. market for cotton trousers, slacks and shorts (Category 347/348) is being disrupted by imports. The sharp and substantial increase of Category 847 imports in conjunction with imports of Category 347/348 from Thailand is causing market disruption.

Import Penetration and Market Share

U.S. production of cotton trousers, slacks, and shorts (Category 347/348) fell 15 percent in 1988 to its lowest level in 13 years. The ratio of imports to production in Category 347/348 increased to 84 percent in 1988. The share of the cotton trousers, slacks, and shorts market held by domestic manufacturers dropped to 54 percent in 1988. Imports of Category 847 are exacerbating the disruption.

U.S. imports of vegetable fiber, other than cotton, and silk-blend trousers, slacks and shorts (Category 847)—adjusted for 1987 overshipments—increased 38 percent from 1,653,741 dozen in 1987 to 2,287,800 dozen in 1988. When imports of the directly competitive Category 847 are included in the market analysis, the import to production ratio jumps to 92 percent and the domestic manufacturers' share of the market falls to 52 percent.

Duty-Paid Value and U.S. Producers Price

Approximately 92 percent of Category 847 imports from Thailand during 1988 entered under HTS numbers: 6203.49.3060 men's and boys' shorts other than 70 percent or more by weight silk or silk waste, and 6204.69.9040—women's and girls' trousers breeches and shorts subject to other than cotton, wool or man-made fiber restraints. These trousers entered the U.S. at duty-paid landed values below U.S. producers' prices for directly competing cotton garments.

[FR Doc. 89-13696 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

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

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by

workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 7, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 14130) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Dressing, First Aid, Field, Camouflaged
6510-00-159-4883

Dressing, First Aid, Field, White
6510-00-083-5573

Services

Janitorial/Custodial
U.S. Army Reserve Center, 2501 Ford Road, Bristol, Pennsylvania

Janitorial/Custodial
U.S. Army Reserve Center, 2838-98 Woodhaven Road, Philadelphia, Pennsylvania

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-13717 Filed 6-8-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

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

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 10, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

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

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Medical Packet, Individual Survival Kit, Airman's
6545-00-231-9421

Pin, Tent, Metal
8340-00-985-7461

Services

Administrative Services
Department of Transportation, Library and Distribution Services, 400 7th Street SW., Washington, DC

Janitorial/Custodial
U.S. Courthouse, Ford and Walker Streets, Augusta, Georgia

Janitorial/Custodial
Washington National Records Center Complex, Suitland and Silver Hill Roads, Suitland, Maryland.

Beverely L. Milkman,
Executive Director.

[FR Doc. 89-13718 Filed 6-8-89; 8:45 am]
BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 89-5-CRA]

Adjustment of Cable Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal has received a petition from the Community Antenna Television Association (CATA) requesting the Tribunal to eliminate the syndicated exclusivity surcharge on the cable royalty rates paid by cable systems. CATA has petitioned the Tribunal in response to action taken by the FCC reinstituting its syndicated exclusivity blackout rules. The Tribunal is requesting comment on CATA's petition.

DATE: Comments are due July 24, 1989.

ADDRESS: An original and five copies of the comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On May 26, 1989, the Community Antenna Television Association (CATA), a trade association which represents cable television owners and operators in the United States, filed a petition with the Copyright Royalty Tribunal. The petition asks the Tribunal to initiate a cable royalty rate adjustment proceeding to eliminate the syndicated exclusivity surcharge which some cable operators pay in addition to their basic royalty rate.

The reason given by CATA is that since the Tribunal instituted the syndicated exclusivity surcharge to adjust for the loss of blackout protection for copyright owners that occurred when the FCC deleted its syndicated program exclusivity protection rules, there is no longer any need for the surcharge now that the FCC has reinstituted those rules.

CATA has also requested that the Tribunal waive § 301.63 of its rules to allow for earlier consideration of the petition than the ninety day waiting period provided by that rule.

The Tribunal has recently amended § 301.63 so that it no longer provides that the Tribunal must wait ninety days before considering a rate adjustment petition. It now says that the Tribunal may wait ninety days. Therefore, no waiver of § 301.63 is necessary.

The purpose of § 301.63 is to allow a period in which the Tribunal can promote settlement, and/or ascertain who supports or opposes the petition and plan the most efficient disposition of the petition. Consequently, this notice is being issued to ask for comments on the petition. The comments should include:

1. Whether CATA has a significant interest in the cable rate.
2. Whether the commenter supports or opposes the petition.
3. Whether the commenter intends to participate in a hearing, if a hearing is necessary.
4. Whether the commenter knows of settlement talks that have taken place on this rate request, or whether future settlement talks are likely to take place.
5. Whether an oral hearing is necessary, or whether the petition can be best handled by written pleadings.
6. If a hearing is required, when the best scheduling of the hearing would be.
7. Whether, in light of the fact that the new blackout protection will also affect stations which are paid for by cable systems at the 3.75% rate, the proposed rate adjustment should also apply to the 3.75% rate.
8. To what extent the pending appeal of the FCC's action should affect the Tribunal's disposition of CATA's petition.
9. Any other comments the commenter deems appropriate.

Copies of CATA's petition are on file with the Tribunal, and are available from the Tribunal upon request.

Mario F. Aguero,

Acting Chairman.

Dated: June 6, 1989.

[FR Doc. 89-13697 Filed 6-8-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense 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).

Title, Applicable Form and Applicable OMB Control Number: Application for Membership in Military Affiliate Radio System (MARS), DD Form 630 and OMB Control Number 0704-0013.

Type of Request: Extension.

Average Burden Hours/minutes per response: 375 hours.

Frequency of Response: As required.

Number of Respondents: 1,000.

Annual Burden Hours: 375 hours.

Annual Responses: 1,000.

Needs and Uses: 1. The information is necessary to assess the applicant's qualifications to meet membership criteria outlined in Naval Telecommunications Procedures Manual NTP 8(A) (U.S. Navy-Marine Corps Military Affiliate Radio System (MARS) Communications Instructions).

2. Information is provided by amateur radio operators interested in joining Navy-Marine Corps MARS. The information gathered is used by MARS officials to certify eligibility for membership.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Required to become a MARS member.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 5, 1989.

[FR Doc. 89-13669 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Brilliant Pebbles; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Brilliant Pebbles scheduled for May 30-31, 1989 as published in the **Federal Register** (Vol. 54, No. 93, Page 21092-21093, Tuesday, May 16, 1989, FR Doc. 89-11637) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 5, 1989.

[FR Doc. 89-13670 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on National Space Launch Strategy; Meeting

ACTION: Change in date of advisory committee notice.

SUMMARY: The meeting of the Defense Science Board 1989 Summer Study on National Space Launch Strategy scheduled for June 7-8, 1989 as published in the **Federal Register** (Vol. 54, No. 68, Page 14377, Tuesday, April 11, 1989, FR Doc. 89-8512) will be held on June 6-7, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 5, 1989.

[FR Doc. 89-13671 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearings; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by the Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (the Board) between July 28, 1988, and May 26, 1989. The Chairman has prepared a summary of each appeal to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: The Honorable Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 3053, FOB-6), Washington, DC 20202-3724. Telephone: (202) 732-1754.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education (the Secretary),

and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds and cease and desist actions for most grant programs administered by the Department of Education (the Department). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most Department-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures are set forth in 34 CFR Part 78.

Applications Accepted

Appeal of the State of Idaho

Docket No. 15(279)88; ACN: 10-73001.

The State appealed a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed the vocational rehabilitation program conducted during fiscal year 1983, 1984 and 1985.

The Assistant Secretary determined that the State improperly used a journal voucher process to measure maintenance of efforts, resulting in the supplanting of Federal funds.

The Department seeks a refund of $376,538. The State disputes all liability.

Appeal of the State of Florida

Docket No. 16(280)88, ACN: 04-72583.

The State appealed a final letter of determination issued by Grants and Contracts Service (GCS). The underlying audit reviewed the vocational rehabilitation program conducted between July 1, 1985 and June 30, 1986.

GCS disallowed expenditures because of the State's failure to provide evidence that services were approved or actually rendered to clients entitled to receive service. GCS also determined that the State failed to reconcile client service expenditures, known as SAMAS, with the State agency's Client Information System.

The Department seeks a refund of $518. The State disputes all liability and objects to the non-monetary finding regarding reconciliation of the client eligibility reporting system which could result in the potential liability of $800,000.

Appeal of the State of Washington,

Docket No. 20(284)88, ACN: 10-73081.

The State appealed a final letter of determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed programs conducted under Part B of the Education of the Handicapped Act (EHA-B) during fiscal years 1983, 1984 and 1985.

As relevant, the Assistant Secretary concluded that the combined State and Local Educational Agency expenditures for fiscal years 1983 and 1985 violated the non-supplanting provisions of EHA-B.

The Department seeks a refund of $218,618. The State disputes all liability.

Appeal of Wyoming State Council on Vocational Education

Docket No. 25(289)88, ACN: 08-70501.

The Wyoming State Council (WSC) appealed a final letter of determination issued by the Assistant Secretary for Vocational and Audit Education. The underlying audit reviewed the vocational education programs conducted between January 1, 1983 and December 31, 1986.

The Assistant Secretary sustained the auditors' findings and disallowed specific costs for lunches, dinners and travel expenses as improper charges to vocational educational programs.

The Department seeks a refund of $9,431. WSC diputes all liability.

Appeal of the State of New Hampshire

Docket No. 28(292)88, ACN: 01-62017.

The State appealed a final letter of determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed the various Federal assisted education programs conducted by the State during fiscal year 1985.

The Assistant Secretary sustained the auditors' findings and concluded that the State failed to maintain appropriate time and attendance records for employees in the various programs.

The Department seeks a refund of $161,000. The State disputes all liability.

Appeal of the Florida State Department of Education

Docket No. 29 (293) 88, ACN: 04-73010

The State appealed a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education and the Assistant Secretary for Elementary and Secondary Education. The Assistant Secretary for Vocational and Adult Education has been designated as the primary action official within the Department. The underlying audit reviewed Federally assisted education programs conducted by the State during the fiscal year ending June 30, 1985.

As relevant, the Assistant Secretaries sustained the auditors' findings and disallowed specific costs for the alleged failure to maintain adequate time distribution records reflecting the period of time attributable to Federal and non-Federal programs.

The Department seeks a refund of $256,976. The State disputes all liability.

Appeal of the State of Washington

Docket No. 32 (296) 88, ACN: 10-73081

The State appealed a final letter of determination issued by Grants and Contracts Service (GCS), the Assistant Secretary for Vocational and Adult Education and the Assistant Secretary for Elementary and Secondary Education. GCS has been designated as the primary action office within the Department. The underlying audit reviewed Federally assisted programs conducted by the State between July 1, 1984 and June 30, 1985.

GSC determined that salary charges were not supported by appropriate time distribution records, and indirect costs were unallowable because of the absence of a "negotiated predetermined fixed" indirect cost rate.

The Department seeks a refund of $1,908,825. The State disputes all liability.

Appeal of the Florida State Department of Education

Docket No. 33 (297) 88, ACN: 04-72583

The State appealed a final letter of determination issued by Grants and Contracts Service GCS), the Assistant Secretary for Elementary and Secondary Education and the Assistant State for Vocational and Adult Education. The underlying audit reviewed Federally assisted education programs conducted during the fiscal year ending June 30, 1986.

The Assistant Secretaries and GCS sustained the auditors' findings and disallowed specific salary expenditures for the alleged failure to maintain appropriate time distribution records.

The Department seeks a refund of $249,770. The State disputes $235,905, noting that the remaining $13,821 in dispute pertains to the Office of Postsecondary Education and is not subject to the jurisdiction of the Education Appeal Board.

Appeal of the California State Department of Education

Docket No. 34 (298) 88, ACN: 09-70600

The California State Department of Education (CSDE) appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed programs conducted under Chapter 2 of the Education Consolidation and Improvement Act for the period July 1983 through June 1986.

The Assistant State sustained the auditors' findings and concluded that CSDE supplanted program funds during the subject period.

The Department seeks a refund of $4,191,740. The State disputes all liability.

Appeal of the State of New York

Docket No. 35 (299) 88, ACN: 02-50509

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit examined various aspects of the New York City Board of Education's high school project funded under Chapter 1 of the Education Consolidation and Improvement Act for the period between October 1, 1982 through September 30, 1986.

The Assistant Secretary sustained the auditors' findings and disallowed salary costs, related fringe benefits and indirect costs as improperly charged against the program during fiscal year 1984.

The Department seeks a refund of $229,879. The State disputes all liability.

Appeal of St. Paul Public Schools

Docket No. 37 (301) 88, ACN: 05-80300

St. Paul Public Schools appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed expenditures made under the formula grant program of Part A of the Indian Education Act for the period between July 1, 1987 and June 30, 1988.

The Assistant Secretary modified the auditors' findings regarding the actual pupil count, concluding that St. Paul Public Schools failed to maintain adequate documentation which would support the purported pupil populations. The Department seeks a refund of $27,903. St. Paul Public Schools disputes all liability.

Appeal of Belcourt School District #7 (ND)

Docket No. 38 (302) 88, ACN: 08-82016

Belcourt School District #7 (District) appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education and Grants and Contracts Service (GCS). The underlying audit reviewed programs conducted under Title IV of the Indian Education Act between July 1, 1984 and June 30, 1986.

The Assistant Secretary and GCS sustained the auditors' findings and concluded that the District exceeded the approved rate for indirect costs.

The Department seeks a refund of $6,341. The District disputes all liability.

Intervention

Regulations in 34 CFR 78.43 provide that an interested person, group, or agency may file an application to the Board Chairman to intervene in an appeal before the Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to the specific issues raised in the appeal. If application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to the Board Chairman at the address provided above.

(20 U.S.C. 1234)

Dated: June 5, 1989.

Michelle Easton,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

(Catalog of Federal Domestic Assistance No. not applicable)

[FR Doc. 89-13730 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or managment and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 10, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW. Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-534.
3. 1902-0057.
4. Application for Production-Related Costs.
5. Extension.

6. On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 200 respondents.
10. 75 responses.
11. 1 hour per response.
12. 75 hours (total).
13. The Commission needs the information in order to review producer claims for the recovery of certain production-related costs which first sellers incur after gas is produced at the wellhead and which are not included in NGPA price categories.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, June 2, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-13786 Filed 6-8-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-5316-001 et al.]

Texaco Producing Inc., et al.; Applications for Termination or Amendment of Certificates[1]

June 6, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 20, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5316-001 D 4-28-89	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	El Paso Natural Gas Company, Blanco Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
G-5317-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, Blanco P.C. Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
G-10849-001 D 5-8-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Houston, TX 75221.	Tennessee Gas Pipeline Company, Piedre Lumbre Field, Duval County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
G-16134-004 D 5-03-89	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	Assigned 11-9-88 to Taylor-McIlhenny Operating Co., Inc.
G-17548-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, Aztec Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI60-604-000 D 5-05-89	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	El Paso Natural Gas Company, Spraberry Trend Area Field, Midland County, Texas.	Assigned 3-23-89 to Parker and Parsley Petroleum Company.
CI61-1206-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI63-648-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI77-71-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI78-616-003 D 5-5-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Millman Area, Eddy County, New Mexico.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI87-473-001 D 4-28-89	Texaco Producing Inc	El Paso Natural Gas Company, San Juan Basin Field, La Plata County, Colorado.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI89-390-000 (G-18053) D 4-26-89.	Mobil Oil Exploration & Producing Southeast Inc., 12450 Greenspoint, Drive, Houston, TX 77060.	Transcontinental Gas Pipe Line Corporation, Vacherie Field, St. James Parish, Louisiana.	Assigned 1-1-88 to Vintage Petroleum, Inc.
CI89-393-000 (CI78-606) D 4-28-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Millman Field, Eddy County, New Mexico.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI89-408-000 (CI64-793) D 4-28-89.	Texaco Producing Inc	Colorado Interstate Gas Company, Mocaine Field, Beaver County, Oklahoma.	Assigned 11-3-88 to Meridian Oil Production Inc.
CI89-414-000 (CI83-407-000) D 5-9-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Southwest Pheasant Field, Matagorda County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
CI89-415-000 (G-2922) D 5-8-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Seelingson Field Unit, Jim Wells County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
CI89-416-000 (G-4288) D 5-8-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Seelingson Field Unit, Jim Wells County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.

Filing Code A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial succession.

[FR Doc. 89-13754 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-48-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that ANR Pipeline Company ("ANR"), on May 26, 1989, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 1, 1989.

Substitute Third Revised Sheet No. 80A
(Alternate Substitute Third Revised Sheet No. 80A)
Original Sheet No. 80B

ANR states that the purpose of this filing is to revise its purchased gas adjustment clause to allow for demand deferrals to be collected and/or returned through a demand surcharge, pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission ("Commission") Order dated April 27, 1989, in Docket Nos. TA89-1-48-000 and 001.

ANR states that these tariff sheets reflect a change from a 2-part demand rate to a one-part demand rate, which was proposed in ANR's May 1, 1989 rate filing at Docket No. RP89-161-000. In the event that rates contained in that proceeding are suspended beyond the proposed June 1, 1989 effective date, ANR has submitted an alternate tariff sheet which sets forth proposed tariff changes under ANR's existing rate structure.

ANR states that copies of the filing were served upon all of its jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13755 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-135-002]

Arkla Energy Resources, a Division of Arkla, Inc; Compliance Filing

June 5, 1989.

Take notice that on May 30, 1989, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed certain revised tariff sheets. AER states that these tariff sheets are being submitted in compliance with the Commission's April 28, 1989 order in this proceeding, which accepted, subject to certain conditions, AER's March 31, 1989 filing providing for the recovery of 50 percent of certain settlement costs pursuant to § 2.104 of the Commission's regulations.

AER states that the revised tariff sheets bear a June 1, 1989 effective date reflecting AER's acceptance on May 18, 1989 of a blanket certificate of public convenience and necessity in Docket No. CP88-820-000. AER states that its tariff sheets have been revised to provide that costs associated with claims in litigation as of March 31, 1989 will only be included in AER's amortization upon the effectiveness of additional tariff sheets providing for the recovery of such costs. The tariff sheets have also been revised to make clear that such costs shall not include any penalties or punitive damages awarded against AER. Finally, AER states that its tariff sheets have been revised to provide for the computation of carrying charges utilizing the rates prescribed by the Commission from time to time under § 154.67(c)(2)(iii)(4) of the regulations.

AER's filing includes a list identifying all claims in litigation as of March 31, 1989. AER states that, with the addition of this list, the documentation supporting AER's filing is complete.

Any person desiring to protest AER's filing should file a 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 Regulations. All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13756 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-124-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on May 30, 1989, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's April 28, 1989, order in this proceeding, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute First Revised Sheet Nos. 39 and 161
Substitute Fourth Revised Sheet No. 32
Substitute Seventh Revised Sheet No. 31
Substitute Eighth Revised Sheet No. 31

CNG states that this filing is made to comply with Ordering Paragraphs (D), (E) and (H) of the Commission's April 28th order which accepted and suspended, subject to refund and conditions, CNG's Order No. 500 filing made on March 31, 1989. In a separate filing also made on this date, CNG filed with the Commission certain documents and data requested by the Commission in its April 28th order.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13757 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-181-000 and TM89-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

June 5, 1989

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 30, 1989, tendered for filing the following proposed changes to its FERC

Gas Tariff, Original Volume No. 1, to be effective June 1, 1989:

Twenty-first Revised Sheet No. 16B
Eleventh Revised Sheet No. 16B1
Eleventh Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187 and TM89-3-21 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation pursuant to a filing made on April 21, 1989 which was accepted by the Federal Energy Regulatory Commission's (Commission) order issued on May 19, 1989 in Docket No. RP89-150, (ii) Texas Gas Transmission Corporation pursuant to a filing made on March 31, 1989 which was accepted by Commission's order issued on April 28, 1989 in Docket No. RP89-119, (iii) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on March 31, 1989 in Docket No. RP89-122 which was accepted by Commission order date April 28, 1989, (iv) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on April 10, 1989 in Docket No. RP88-68-011 which was accepted by Commission order dated May 2, 1989, and (v) Panhandle Eastern Pipe Line Company pursuant to a filing made on April 17, 1989 in Docket No. TM89-4-28 (formerly RP88-240 and RP89-10) which was accepted by Commission order dated May 17, 1989.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187-000 and TM89-3-21.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1989. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13758 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-132-004 and TA89-1-33-001]

El Paso Natural Gas Co.; Compliance Tariff Filing

June 5, 1989.

Take notice that on May 26, 1989, El Paso Natural Gas Company ("El Paso"), filed pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (A)(6) of the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP88-184-000, RP88-184-001 and TA88-1-33-000, certain tariff sheets for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that in response to ordering paragraph (A)(6) of the Commission's order issued April 28, 1989 at Docket No. RP89-132-000, *et al.*, El Paso revised those PGA rates tendered in its Annual Adjustment on May 1, 1989 at Docket No. TA89-1-33-000 scheduled to go into effect on July 1, 1989. As more fully set forth in said Annual Adjustment, El Paso tendered primary and alternative tariff sheets. With respect to the primary tariff sheets, El Paso did not incorporate a Surcharge Adjustment and requested an extension of the waiver granted October 1, 1988 at Docket No. TQ89-1-33-000, *et al.*, to suspend collection of El Paso's Account 191 balance. The alternative tariff sheets were filed in the event that the Commission denies El Paso's request for waiver and institutes a Surcharge Adjustment.

El Paso states that in the primary tariff sheets, it has eliminated reformation and/or settlement costs attributable to the Order No. 500 recovery mechanism from its Account 191 balance which is to be direct billed to El Paso's customers upon implementation of a Gas Inventory Charge. El Paso states that the primary tariff sheets are filed with the Commission in order to incorporate a revised throughput surcharge and an Order No. 500 special surcharge. In the event the Commission denies El Paso's request for waiver and accepts for filing El Paso's alternative tariff sheets which include a Surcharge Adjustment, El Paso tendered revised tariff sheets, which reflect a Surcharge Adjustment of $4.3694 per dth after the elimination of costs attributable to the Order No. 500 recovery mechanism. The revised Surcharge Adjustment is $3.5301 per dth less than the Surcharge Adjustment included in El Paso's May 1, 1989 Annual Adjustment. Said alternative tariff sheets also incorporate the revised throughput surcharge and the Order No. 500 special surcharge.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted to the extent necessary, so as to permit the tendered tariff sheets to become effective, in lieu of their previously tendered counterparts, on July 1, 1989, the same date as requested in El Paso's Annual Adjustment at Docket No. TA89-1-33-000.

Copies of the filing were served upon all parties of record in Docket Nos. RP89-132-000, RP88-184-000, and TA89-1-000 and, otherwise upon all interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a 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 protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-13759 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-132-001]

El Paso Natural Gas Co.; Supplement to Compliance Filing

June 5, 1989.

Take notice that on May 26, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory

Commission's ("Commission") Regulations Under the Natural Gas Act, Substitute Sixth Revised Sheet No. 100–A for inclusion in its FERC Gas Tariff, First Revised Volume No. 1, to supplement the compliance filing made by El Paso on May 12, 1989 in Docket No. RP89–132–003, *et al.*, in compliance with the Commission's order issued April 28, 1989 at Docket Nos. RP89–132–000, RP88–184–000, RP88–184–001 and TA88–1–33–000.

Subsequent to such filing, El Paso states that it observed that the statement of rates for Rate Schedule IS–1 was inadvertently omitted from the May 12, 1989 compliance filing. Accordingly El Paso is supplementing its May 12, 1989 compliance filing by tendering Substitute Sixth Revised Sheet No. 100–A which incorporates the changes required in the Commission's April 28, 1989 order.

El Paso states it requested waiver of all applicable Commission Regulations as necessary to supplement the May 12, 1989 filing. Further, El Paso requested, pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of 154.22 of the Commission's Regulations be granted, to the extent necessary to permit the tendered tariff sheet to become effective May 1, 1989, the same date as authorized in the Commission's April 28, 1989 order.

Copies of the filing were upon all parties of record in Docket Nos. RP89–132–000, RP88–184–000 and TA88–1–33–000 and, otherwise, upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a 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 protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–13760 Filed 6–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–7–4–000]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

June 5, 1989.

Taken notice that on May 30, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Nineteenth Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, effectiveness on May 1, 1989.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states the CNG filed changes in its rates in Docket No. RP89–124–000 to pass through to its customers buyout and buydown costs paid to producers under the provisions of Order No. 500. According to Granite State, CNG's filing increased the Injection Charge in its Rate Schedule GSS by $0.0033 which Granite State has tracked in the revised Injection Charge in its Rate Schedule GSS on Nineteenth Revised Sheet No. 8.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commission of the State of Maine, Massachusetts and New Hampshire.

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, NW., 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 June 12, 1989. 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,

Secretary.

[FR Doc. 89–13761 Filed 6–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–27–001]

North Penn Gas Co.; Compliance Filing

June 5, 1989.

Take notice that on May 24, 1989, North Penn Gas Company (North Penn) filed certain revised tariff sheets to its FERC Gas Tariff.

North Penn states that this filing makes the adjustments and includes the backup material as required by the Commission's May 1, 1989 order.

North Penn states that copies of this filing are being mailed to each of its jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before June 12, 1989. 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,

Secretary.

[FR Doc. 89–13766 Filed 6–8–89; 8:45]

BILLING CODE 6717–01–M

[Docket Nos. RP88–174–003, RP88–195–004]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 30, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Substitute Second Revised Sheet No. 161

This tariff sheet was filed in compliance with the Commission's April 28, 1989 letter order in Docket Nos. RP88–174–001 and RP 88–195–002. Northern Border requests that Sheet No. 161 be effective on January 1, 1989 consistent with the effective date of the Interim Settlement approved in the Commission's March 16 order. Copies of this filing have been sent to all Rate

Schedule IT-1 Shippers and parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.11, 385.214). All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-13762 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-002]

Northern Border Pipeline Co.; Filing

June 5, 1989.

Take notice that on May 26, 1989, Northern Border Pipeline Company (Northern Border) filed and moved to effectuate First Revised Sheet No. 104 and Second Revised Sheet No. 111 to its FERC Gas Tariff, Original Volume 1, to be effective June 1, 1989.

Northern Border states that on December 30, 1988, the Commission issued an order accepting and suspending the filed tariff sheets for the maximum allowable period of five months to take effect on June 1, 1989, subject to refund from that date. Accordingly, the effective date of these tariff sheets is June 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13763 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-182-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on May 30, 1989, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) the following tariff sheets:

Second Revised Sheet No. 52c
Second Revised Sheet No. 52c.2a
Second Revised Sheet No. 52c.10
Second Revised Sheet No. 52f
Third Revised Sheet No. 52f.3
Third Revised Sheet No. 52f.4
Second Revised Sheet No. 52f.12
First Revised Sheet No. 52f.15

Northern proposes modification on the above listed sheets in its Transportation Rate Schedules FT-1 and IT-1 in accordance with suggestions offered by the Commission in and Order issued April 10, 1989 in Docket No. RP89-23-001.

In addition to the foregoing, Northern is proposing to modify its transportation Rate Schedules in two respects.

First, in section 1, *"Availability"*, of Rate Schedules FT-1 and It-1, Northern is proposing to modify the provision which requires an amendment to the transportation service agreement to establish a transportation rate that is lower than the maximum rate.

Secondly, Northern is proposing that decreases in the daily transportation quantity be effectuated by an amendment to the respective Transportation Service Agreement.

The Company states that copies of the filing having been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will 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,

Secretary.

[FR Doc. 89-13764 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-136-003]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on May 30, 1989, tendered for filing proposed changes to its FERC Gas Tariff.

Northern states that this filing is being submitted pursuant to the terms and conditions set forth in the Commission's order issued on April 28, 1989 in the above proceeding. An effective date of May 1, 1989 has been requested for this filing.

Northern further states that copies of this filing were served upon Northern's customers, parties to this proceeding and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13765 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2411-000]

Henry A. Panasci, Jr.; Filing

June 5, 1989.

Take notice that on May 18, 1989, Henry A. Panasci, Jr. tendered for filing an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Position	Corporation	Classification
Director	Niagara Mohawk Power Corporation.	Public Utility.
Director	Unity Mutual Life Insurance Company.	Other Corporation.

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, 385.214). All such motions or protests should be filed on or before June 19, 1989. 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,

Secretary.

[FR Doc. 89-13767 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-134-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-C.16
First Substitute Original Sheet No. 3-C.17
First Substitute Original Sheet No. 3-C.18
First Substitute Third Revised Sheet No. 43-12
Second Revised Sheet No. 43-13

The effective date of these revised tariff sheets in May 1, 1989.

Panhandle states that on March 31, 1989 Panhandle filed tariff sheets to establish charges to recover 50% of its take-or-pay buyout and buydown costs in accordance with the provisions of Order No. 500. That filing included additional take-or-pay settlement costs not recovered in Docket Nos. RP88-241 and RP89-9.

Panhandle further states that on April 28, 1989 the Commission issued an order accepting the tariff sheets subject to refund and conditions. Panhandle also states that the revised tariff sheets and materials submitted herein satisfy the requirements of the Commission's Order dated April 28, 1989.

Copies of the filing were sent to all of Panhandle's jurisdictional customers and interested state commissions, as well as the parties of the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13768 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-120-002]

Questar Pipeline Co.; Tariff Filing

June 5, 1989.

Take notice the Questar Pipeline Company (Quesar Pipeline) on May 30, 1989, tendered for filing and acceptance the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1

Substitute Twentieth Revised Sheet No. 12
Alternate Substitute Twentieth Revised Sheet No. 12
Substitute Second Revised Sheet No. 17
Substitute Original Sheet No. 17-A
Substitute Original Sheet No. 17-B
Alternate Substitute Original Sheet No. 17-B

Original Volume No. 1-A

Ninth Revised Sheet No. 5
Alternate Ninth Revised Sheet No. 5
First Revised Sheet No. 5-A
Second Revised Sheet No. 20
Second Revised Sheet No. 43
Second Revised Sheet No. 67
Third Revised Sheet No. 79
Original Sheet No. 114-B
Alternate Original & Original Sheet No. 114-C
Substitute Third Revised Sheet No. 117
Third Revised Sheet No. 132

Original Volume No. 3

Twelfth Revised Sheet No. 8
Alternate Twelfth Revised Sheet No. 8

Questar Pipeline states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with ordering paragraph (A) of the Commission's April 28, 1989, order issued in Docket No. RP89-120-000.

Questar Pipeline requests an effective date of May 1, 1989, and states it has provided a copy of this filing to all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13769 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-93-003]

Sabine Pipe Line Co.; Filing

June 5, 1989.

Take notice that on May 26, 1989, Sabine Pipe Line Company (Sabine) filed Third Revised Sheet No. 204 and First Revised Sheet No. 205E to its FERC Cas Tariff, First Revised Volume 1, to be effective April 1, 1989.

Sabine states that it is filing these tariff sheets to correctly indicate the effective date as April 1, 1989, as requested by the Commission Staff. Sabine had previously submitted these proposed tariff sheets on May 9, 1989, indicating an effective date of May 10, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13770 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-129-001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 26, 1989, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheet to its FERC Gas Tariff Original Volume No. 1:

First Substitute Fourth Revised Sheet No. 21-0

The effective date of this revised sheet is May 1, 1989.

Trunkline states that the proposed tariff sheet is being filed in compliance with the Commission's April 28, 1989 Order in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13771 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-114-002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that Trunkline Gas Company (Trunkline), on May 30, 1989 tendered for filing the following proposed changes in its FERC Gas Tariff, Original Volume No. 1:

First Substitute Eleventh Revised Sheet No. 3-A.1
First Substitute Original Sheet No. 9-JA
First Substitute Original Sheet No. 9-JB
First Substitute Original Sheet No. 9-JC
First Substitute Original Sheet No. 9-JF
First Substitute Original Sheet No. 9-JG
First Substitute Original Sheet No. 9-JN
First Substitute Original Sheet No. 9-JP

The proposed effective date of these revised tariff sheets is May 1, 1989.

Trunkline states that these revised tariff sheets are being refiled in accordance with Ordering Paragraph (C) and the Commission's Order issued April 27, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state agencies.

Any person desiring to protest said filing should file a 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 protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13772 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-140-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 30, 1989, Williams Natural Gas Company (WNG) submitted the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Substitute Revised Eleventh Revised Sheet No. 6
Second Revised Original Sheet No. 6E
Revised Substitute Tenth Revised Sheet No. 7
Second Revised Third Revised Sheet Nos. 31 and 38
Second Revised Original Sheet Nos. 113-115

WNG states that these tariff sheets are filed in compliance with Commission order issued April 28, 1989 in Docket No. RP89-140-000 and 001.

WNG states that it made revisions to its tariff language and reduced the settlement costs by $2.2 million after computing the 25% to be absorbed by WNG to comply with Paragraph (C).

WNG states that it is submitting supporting documentation in compliance with Paragraph (D) and a list of all contracts in litigation on March 31, 1989 in compliance with Ordering Paragraph (E).

WNG states that pursuant to Art. 29.2(b) of the General Terms and Conditions, it has included an additional $4,380.00 in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by the Company.

WNG states that that proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and the sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 12, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13773 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3600-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review. The submission describes the nature of the information collection and its expected cost and burden.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Request for Information on CFC/Halon Substitutes (EPA ICR # 1434.02). This is a one-time collection.

Abstract: This action requests chemical data from manufacturers of chemicals and aqueous cleaners that can be substituted for fully halogenated CFCs and halons. EPA will use the information to help assess environmental risks associated with the use and disposal of these products.

Burden Statement: The estimated public burden for this collection of information is 8 hours per response.

Respondents: Manufacturers of substitutes for fully halogenated CFCs and halons.

Estimated No. of Respondents: 59.

Estimated Total Burden on Respondents: 472 hours.

Frequency of Collection: One time only.

Expedited Review: The request for expedited review is made under the Paperwork Reduction Act (5 CFR, 1320.18). The Office of Air and Radiation is requesting information under authority of section 114 of the Clean Air Act. The requested data is needed to assist Agency staff in assessing the health and safety hazards associated with substitutes for fully halogenated CFCs and halons. EPA has contacted affected manufacturers and has discussed Agency plans for collecting the needed information. This fact combined with the need to prepare technical assessments for review by the international community later this summer, demands expedited review under the Paperwork Reduction Act. The Agency has requested OMB clearance by June 14, 1989.

Date: June 6, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

Letter to Manufacturers of Aqueous Cleaners

Dear:

The U.S. Environmental Protection Agency (EPA) is developing additional background information on aqueous cleaners for use in possible further regulation of chlorofluorocarbon (CFC)-based solvents under section 157(b) of the Clean Air Act (CAA). That section authorizes EPA to regulate, as needed, to protect stratospheric ozone, taking into account the feasibility and cost of such regulation. Fully halogenated CFCs, like CFC-113, have been found to endanger stratospheric ozone, and EPA has promulgated limits on future production and consumption of these CFCs. (*See* 53 FR 30566 notice). The Agency is still considering the need to target certain uses of CFCs, including the use of CFC-113 as a solvent, for further regulation. (*See* 53 FR 30604). In this context, EPA needs information on likely substitutes for CFC-113, so that it may assess the cost and feasibility of further regulating that substance. As the Agency noted in the ANPRM, aqueous and terpene cleaners are likely to replace up to 50% of the CFC-113 currently used in electronics precision and metal cleaning. EPA is therefore requesting that producers of aqueous cleaners provide the information specified in the enclosure.

The Agency requests this information under Section 114 of the CAA, which gives EPA authority to secure information, even confidential business information, needed to carry out the provisions of the Act, including section 157(b). You may assert a claim of business confidentiality for any of the information which you submit by clearly marking that information as "confidential". Such information will be treated in accordance with the EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will only be disclosed if EPA determines that the information is not entitled to confidential treatment. Procedures to be used for making confidentiality determinations, substantive criteria to be used in such determinations, and special rules governing information obtained under Section 114 are set forth in 40 CFR Part 2. You must assert any claim of confidentiality at the time you submit this information. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you (40 CFR 2.203).

EPA intends to utilize the services of ICF Incorporated, under contract number 68-02-460, to provide technical assistance and support for EPA's evaluation of the data requested here. This contractor will be designed as the authorized representative of the Agency and will be provided the information submitted in response to this request, including any information claimed to be confidential. Disclosure of this information to the contractor is necessary for the performance of this contract. As the authorized representative, this contractor will be subject to the provisions of 40 CFR 2.301 (h). You may include in your submission any comments concerning such disclosure of confidential business information to ICF Incorporated. No disclosure of confidential information will be made sooner than 10 days after your receipt of this notice.

I would appreciate your providing a response to this letter no later than July 15, 1989. If you have specific questions on the information that is required under this request please call Karla Perri, Senior Policy Analysts, Division of Global Change, at (202) 475-7496.

I have attached an enclosure with an explanation and list of the specific information that EPA is requesting from you.

Sincerely,

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

Enclosure

cc: Office of General Counsel

Enclosure

As a party to the Montreal Protocol on Substances that Deplete the Ozone Layer, the U.S. recognizes that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. EPA is determined to protect the ozone layer by participating in the equitable control of total global emissions of substances that deplete the ozone layer.

In previous notices published in the **Federal Register**, the Agency issued a final rule implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol; 53 FR 30566, August 12, 1988), and an Advance Notice of Proposed Rulemaking (ANPRM) on possible further efforts to protect stratospheric ozone (53 FR 30604, August 12, 1988). Currently, the Montreal Protocol and the EPA regulation require a 50 percent phased-in reduction in the production and consumption of specified fully-halogenated CFCs by 1998, and a freeze at 1986 levels of specified halons beginning in 1992. On March 3, 1989, however, President Bush announced that the United States would support a 100% phase-out of all fully-halogenated CFCs and halons by the year 2000, providing safe substitutes are available. This announcement makes imperative the need to find a replacement for all of the fully-halogenated CFCs and halons sooner then these rules indicate.

In the ANPRM EPA stated that it expects 50 percent of the CFC–113 currently used for electronics and metal cleaning to be replaced with aqueous and terpene solutions. EPA wants to evaluate the human health or environmental risks that these alternative solutions may pose. Therefore, the Agency is requesting confidential business data for every aqueous cleaner you produce, which can replace CFC–113 and any other chlorinated solvent used for electronics, precision, and general metal cleaning uses.

EPA is under extremely short deadlines in trying to addresss these human health and environmental concerns. The Agency appreciates that you have other priorities. Nevertheless, the EPA asks that you comply with the deadline of June 15, 1989, as requested in this letter. Please return this information to: Karla Perri, Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW, ANR–445, Washington, DC 20460.

Specific Information Requested

Please number your responses so that they correspond with each of the question listed below.

1. Company name, name of company official responding to this letter, title of that official, telephone number and address of that official.

2. How many plants do you have that produce aqueous cleaners? Where are they located (address)?

3. List the specific names of every aqueous cleaner you produce that can replace CFC–113 and any other chlorinated solvent used for electronics, precision, and in general metal cleaning or degreasing.

4. List the product formulation of *each* of these aqueous cleaners (i.e., list the percent composition of *all* chemicals present in the product). In addition, please include MSDSs and product specification sheets for *each* cleaner.

5. What are the primary, secondary, and other uses of your solution? What percent of the total production is used in each of these?

6. What are the costs of cleaning with your products including equipment, installation, and operating costs?

7. Please provide production estimates (pounds) for each of the terpene cleaners that you manufacture from 1983 to 1998 (include annual production levels for 1983 to 1988 and projected production level for 1989 to 1998).

8. Please give specific production projections for each of these products for the years 1989 through 1998.

9. Have you carried out or do plan to carry out any human health and environmental tests on any or all of the ingredients and solutions you have listed. Please provide any information, official or internal pertaining to these tests. Please tell us if you know of someone else who is planning to or has conducted these tests.

10. How do you recommend that your customers treat or dispose of the waste product from your solution? If your company makes a general statement like "please dispose of or treat according to local, state and federal regulations," please explain whether you could provide detailed instructions on propoer disposál or treatment.

11. Can waste from each use of your cleaners.

(1) Be directly discharged into a body of water?

(2) Be pretreated and then discharged into a body of water?

(3) Be sent to a Publically Owned Treatment Works (POTW)?

(4) Be pretreated, sent to a POTW, and then discharged?

12. In addition to the aqueous cleaning waste, what additional trace metals or elements are dicharged by processes using your aqueous cleaners. State the type of process and the trace metals being discharged.

13. If your customers pre-treat or dispose of waste from these aqueous solutions how much does it cost per year? Please provide EPA with a general cost breakdown, (e.g. transportation, treatment method, energy etc.)

14. In addition to the amounts of cleaner being disposed of, what specific trace metals or elements do you release into waterways?

15. Are you following any specific EPA guidelines for effluent discharges?

16. Do you currently have an EPA permit to discharge or pretreat?

17. If there is anything else you would like EPA to know about your products that may be useful in ascertaining whether there are any human health or environmental impacts associated with these ingredients please send that as well.

Letter to Manufacturers, Processors, or Importers, of CFC's, Halons, and CFC and Halon Substitutes

^F1^

Dear ^F2^: The U.S. Environmental Protection Agency (EPA) is developing additional background information on CFCs and halons, and chemicals that are currently being tested as substitutes for chlorofluorocarbons (CFCs) for use in possible further regulation of these chemicals. The information requested is being collected under section 157(b) of the Clean Air Act (CAA). That section authorizes EPA to regulate, as needed, to protect stratospheric ozone, taking into account the feasibility and cost of such regulation. Fully halogenated CFCs and halons have been found to endanger stratospheric ozone, and EPA has promulgated limits on the future production and consumption of these chemicals. (*See* 53 FR 30566 notice).

EPA needs production, prices and health and safety data on fully-halogenated CFCs and halons and on the substitutes for CFCs. The substitutes for which EPA is currently requesting data are as follows:

Chemical	CAS No.
1349(a) 1,1,1,2-tetrafluoroethane	811-97-2
123 2,2-chloro-1,1,1-trifluoroethane	306-83-2
133(a) 2-chloro-1,1,1-trifluroethane	75-88-7
132(b) 1,2-dichloro-1,1-difluoroethane.	1649-08-7
141(b) 1,1-dichloro-1-fluoroethane	1717-00-6
124 2-chloro-1,1,1,2-tetrafluoroethane.	354-25-6
125 Pentafluoroethane	354-33-6

The fully-halogenated CFCs and halons on which EPA is collecting data are as follows: CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, and halons 1211, 1301, and 2402.

The Agency requests this information under section 114 of the Clean Air Act, which gives EPA authority to secure information, even confidential business information, needed to carry out the provisions of the Act, including section 157(b). You may assert a claim of business confidentiality for any of the information which you submit by clearly marking that information as "confidential". Such information will be treated in accordance with the EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will only be disclosed if EPA determines that the information is not entitled to confidential treatment. Procedures to be used for making confidentiality determinations, substantive criteria to be used in such determinations, and special rules governing information obtained under section 114 are set forth in 40 CFR Part 2. You must assert any claim of confidentiality at the time you submit this information. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you (40 CFR 2.203).

EPA intends to utilize the services of ICF Incorporated, under contract number 68–02–460, to provide technical

assistance and support for EPA's evaluation of the data requested here.

This contractor will be designated as the authorized representative of the Agency and will be provided the information submitted in response to this request, including any information claimed to be confidential. Disclosure of this information to the contractor is necessary for the performance of this contract. As the authorized representative, this contractor will be subject to the provisions of 40 CFR 2.301 (h). You may include in your submission any comments concerning such disclosure of confidential business information to ICF Incorporated. No disclosure of confidential information will be made sooner than 10 days after your receipt of this notice.

I would appreciate your providing a response to this letter no later than July 15, 1989. If you have specific questions on the information that is required under this request please call Karla Perri, Senior Policy Analyst, Division of Global Change, at (202) 475–7496.

I have attached an enclosure with an explanation and list of the specific information that EPA is requesting from you.

Sincerely,

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

Enclosure

cc: Office of General Counsel

Enclosure

As a party to the Montreal Protocol on Substances that Deplete the Ozone Layer, the U.S. recognizes that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. EPA is determined to protect the ozone layer by participating in the equitable control of total global emissions of substances that deplete the ozone layer.

In previous notices published in the **Federal Register**, the Agency issued a final rule implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol; 53 FR 30566, August 12, 1988), and an Advance Notice of Proposed Rulemaking (ANPRM) on possible further efforts to protect stratospheric ozone (53 FR 30604, August 12, 1988). Currently, the Montreal Protocol and the EPA regulation require a 50 percent phased-in reduction in the production and consumption of specified fully-halogenated CFCs by 1988, and a freeze at 1986 levels of specified halons beginning in 1992. On March 3, 1989, however, President Bush announced that the United States would support a 100% phase-out of all fully-halogenated CFCs and halons by the year 2000, providing safe substitutes are available. This announcement makes imperative the need to find a replacement for all of the fully-halogenated CFC's and halons sooner than these rules indicate.

EPA wants to evaluate the human health or environmental risks that these alternative chemicals may present. In addition, the Agency is requesting data on prices and production for the CFCs and halons that are scheduled to be phased out. Please fill in the attached form, and answer the additional questions listed on the attachment.

EPA is under extremely short deadlines in trying to address these human health and environmental concerns. The Agency appreciates that you have other priorities. Nevertheless, the EPA asks that you comply with the deadline of July 15, 1989, as requested in this letter.

Please return this information to: Karla Perri, Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., AIR–445, Washington, DC 20460.

Specific Information Requested

Please completely fill in the attached form and answer the questions listed below. Please number your responses so that they correspond with each of the questions listed below.

1. Which chemical do you manufacture of the CFCs, halons, and substitutes listed in the attached letter; what is the product formulation of each of these chemicals (i.e., list the percent composition of all chemicals present in the product). In addition, please include MSDSs and product specification sheets for each.

2. What are the (anticipated and actual) primary, secondary, and other uses of this chemical?

3. Please provide actual production figures for each of these chemicals that you manufactured in 1986, 1987, 1988 and 1989. Please present this data by total quantity produced for each year plus total revenues for each chemical.

4. If you produce any or all of the CFCs and halons listed, please list projected production and revenue figures for 1990–1998.

5. Please provide copies and lists of any and all unpublished health and safety studies that are completed or ongoing, initiated or planned, as defined at 40 CFR Part 716 on the substances listed, or on any other substance that could be used as alternatives to CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115.

6. Please provide the preliminary assessment information as requested above and set forth at 40 CFR 716.28 for each of these products. Attached is the form on which you should put that information. Please complete a separate form for each chemical.

7. If there is anything else you would like EPA to know about your products that may be useful in ascertaining whether there are any human health or environmental impacts associated with these ingredients, please send that as well.

[FR Doc. 89–13725 Filed 6–8–89; 8:45 am]
BILLING CODE 6560–50–M

[FRL–3600–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740).

DATE: Comments must be submitted on or before July 10, 1989.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: State Revolving Fund Report to Congress Questionnaire (EPA ICR # 1390). This is a new collection.

Abstract: States will be asked to voluntarily provide information via questionnaire to EPA on the status of their State Revolving Fund programs. EPA will use this information to prepare a one-time report to Congress as required in section 516(g) of the Clean Water Act.

Burden Statement: The estimated public reporting burden for this collection of information is 26 hours per respondent, per year. This estimate includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the questionnaire.

Respondents: States.

Estimated No. of Respondents: 39.

Estimated Total Annual Burden on Respondents: 1,014 hours.

Frequency of Collection: One-time only. To obtain a copy of the ICR package, contact Sandy Farmer on (202) 382–2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0168.02; NPDES Requirements for Approved State Programs; was approved 5/10/89; OMB # 2040–0057; expires 5/31/92.

EPA ICR # 0226.05; Application for Permit to Discharge Wastewater and Associated Regulations; was approved 5/10/89; OMB # 2040–0086; expires 5/31/92.

EPA ICR # 1460; Pharmaceutical Industry Survey (Phase I: Screener Questionnaire); was approved 5/11/89; OMB # 2040–0124; expires 9/30/90.

EPA ICR # 0029.04; Modification/Variance for Permit to Discharge Wastewater and Associated Regulations; was approved 5/11/89; OMB # 2040–0068; expires 5/31/92.

EPA ICR # 0138; State Concurrence and 301(H) Waiver from Secondary Treatment Requirement for POTW'S; was approved 5/12/89; OMB # 2040–0088; expires 5/31/92.

EPA ICR # 1396.02; National Residential Radon Survey; was approved 5/22/89; OMB # 2060–0173; expires 1/31/91.

Date: June 2, 1989

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–13787 Filed 6–8–89; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3599-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 22, 1989 through May 26, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Envionmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D–AFS–L67022–ID, Rating LO, Lightning Peak Open Pit Mine Development, Plan of Operation Approval, Payette National Forest, Krassel Ranger District, Valley County, ID.

SUMMARY: EPA has no objections to the preferred alternative as long as the final EIS commits to the mitigation and monitoring presented in the draft EIS.

ERP No. D–BLM–K67021–CA, Rating EC2, Castle Mountain Open Pit Heap Leach Gold Mine Project, Construction and Operation, Permit Approval, San Bernardino County, CA.

SUMMARY: EPA expressed environmental concerns due to project related ground water withdrawals, inadequate documentation of air quality and water quality impacts and mitigation, lack of detail on reclamation, and incompatibility with the East Mojave National Scenic Area, Wilderness Study Areas, and areas of critical environmental concern. EPA also expressed concerns because the draft EIS did not examine all reasonable alternatives.

ERP No. D–IBR–K28010–CA, Rating EU3, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA.

SUMMARY: EPA found that the water contracting proposal could adversely affect already-stressed environmental resources such as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU–3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

ERP No. D–IBR–K28011–CA, Rating EU3, Sacramento River Water Service Area Contracting Program; Water Supply Project for Municipal and Industrial, Wildlife Rufuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Solano, Colusa and Solano Counties, CA.

SUMMARY: EPA found that the water contracting proposal could adversely affect already-stressed environmental resources such as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU–3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

ERP No. D–IBR–K28012–CA, Rating EU3, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Rufuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos., CA

SUMMARY: EPA found that the water contracting proposal could result in unsatisfactory environmental impacts to the already stressed environment in such areas as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU–3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

Final EISs

ERP No. F-FHW-L40163-WA, I-5 Widening, Main Street Interchange to I-205, Funding and 404 Permit, Clark County, WA.

SUMMARY: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: June 6, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-13789 Filed 6-8-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3599-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements; Filed May 29, 1989 Through June 2, 1989; Pursuant to 40 CFR 1506.9.

EIS No. 890145, DSuppl, AFS, AK, Alaska Pulp Long-Term Timber Sale/ Road Construction, Phase II 1981-86 and 1986-89 Operating Plan Amendments, Meed-Bay, Freshwater-Whitestone, Corner Bay, and Kuia Island Analysis Areas, Tongass National Forest, AK, Due: July 24, 1989, Contact: James Pierce (907) 586-8871.

EIS No. 890146, DSuppl, FHW, NB, Van Dorn Street Connection, NB-2/9th and 10th Street to US-77/West Bypass, Additional Alternatives Analysis, Funding, City of Lincoln, Lancaster County, NB, Due: July 24, 1989, Contact: Phillip Barnes (402) 437-5521.

EIS No. 890147, Draft, FHW, WI, US 18/ 151 Improvement, CTH-G to CTH-PD, City of Verona, Dane County, WI, Due: July 31, 1989, Contact: James Wenning (608) 264-5966.

EIS No. 890148, Draft, BOP, MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegany County, MD, Due: July 24, 1989, Contact: William Patrick (202) 272-6871. Published FR 6-2-89—Review period reestablished.

Dated: June 6, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-13788 Filed 6-8-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3599-3]

Availability of U.S. EPA's Decisions Pursuant to Section 304(1) of the Clean Water Act and Opportunity To Petition

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Notice.

SUMMARY: Notice of availability of decisions with regard to approving and disapproving lists of waters, point sources, and pollutants and individual control strategies for the States of California, Nevada, Hawaii, and for the Territories of Guam, American Samoa and the Northern Mariana Islands, and Notice of Opportunity for Public Comment and Petition.

ADDRESS: The U.S. EPA's decisions with regard to approving and disapproving the list of waters, point sources, and pollutants and the individual control strategies are available for public review and comment upon request at the following location. Comments and petitions are also mailed to the following address. Environmental Protection Agency, Region IX, Water Quality Branch (W-3), 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Concerning the States and territories listed below.

California: Doug Eberhardt (W-3-2); telephone (415) 974-8327

Nevada and Hawaii: Jacques Landy (W-3-2); (415) 974-8294

Guam, American Samoa and Northern Mariana Islands: Norman L. Lovelace (E-4); (415) 974-7431

at the San Francisco address given above.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act (CWS) as amended by the Water Quality Act of 1987 requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each point sources.

The deadline for submitting lists of waters, point sources, amounts of pollutants and the individual control strategies by each State to the U.S. EPA was February 4, 1989.

The administrative record containing the U.S. EPA's documentation on its decisions of approval and disapproval of submittals from the States of California, Hawaii, and Nevada, and from Guam, American Samoa, and the Northern Mariana Islands, is on file and may be inspected at the U.S. EPA, Region IX office between the hours of 9 a.m. to 4 p.m., Monday through Friday except holidays. To make arrangements to examine the administrative record, contact the persons named above.

Section 304(1) allows any person to submit to the U.S. EPA a petition to add waters to one or more of the three lists of waters, submitted by a State or territories under EPA administration. Petitions are due by October 13, 1989 and should be addressed to Harry Seraydarian, Director, Water Management Division, U.S. EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.

A copy of the petition should also be sent to the contact person who is named above. The petition should identify and describe the water with sufficient detail so that the U.S. EPA is able to determine the location and boundaries of the water.

The petition must also identify the list or lists for which the petitioner believes the water qualifies, and the petition must explain why the water satisfies the criteria for the list or lists.

Following the close of the comment and petition period, the Director of the Water Management Division will consider all petitions and comments received and will provide a written response to the comments and petitions no later than June 4, 1990. This response to comments and petitions will be made available to the public in the same manner as today's notice.

Dated: June 5, 1989.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 89-13724 Filed 6-8-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 30, 1989.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0139

Title: Request for Approval of Proposed Amateur Radio Antenna and Notification of Action

Form No.: FCC 854

The approval on form FCC 854 has been extended through 4/30/92. The

May 1986 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13744 Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 31, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None

Title: Section 68.5, Waivers (Application for Waiver of Hearing Aid Compatibility Requirement)

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 10 responses; 30 hours; 3 hours each

Needs and Uses: Telephone manufacturers seeking a waiver of 47 CFR 68.4 which requires that certain telephones be hearing aid compatible must demonstrate that compliance with the rule is technologically infeasible or too costly. The information is used by Commission staff to determine whether to grant or dismiss the request.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13745 Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989: The counties of Anderson, Grayson, Gregg, Harrison, Henderson, Hill, Jack, Panola, Wise, and Young for Individual Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 89-13719 Filed 6-8-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2439R
Name: P.A.C. Transport, Inc.
Address: 743 Bradfield, Houston, TX 77060
Date Revoked: April 5, 1989.
Reason: Surrendered license voluntarily

License Number: 3006
Name: Trax Cargo (U.S.A.), Ltd.
Address: 188 Lake Street, Rouses Point, NY 12979
Date Revoked: April 23, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 1882
Name: New England Household International Division of New England Household Moving & Storage, Inc.
Address: 241 West Central Street, Natick, MA 01760
Date Revoked: April 26, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 2531
Name: George Thielen dba G.T. International
Address: P.O. Box 38489, Denver, CO 80238
Date Revoked: May 3, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 2066
Name: Charles Augustus Hanson dba Hanson Forwarding Co.
Address: 143 Meridian St., East Boston, MA 02128
Date Revoked: May 4, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2286
Name: Donald W. Mosley dba Mosley Forwarders
Address: 404 N. Sibley, P.O. Box 23817, Metairie, LA 70003
Date Revoked: May 6, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 3193
Name: Transit Cargo Corporation
Address: 8282 NW. 14th Street, Miami, FL 33126
Date Revoked: May 10, 1989
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-13723 Filed 6-8-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banknorth Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Banknorth Group, Inc.*, Burlington, Vermont; to merge with Banknorth Group, Inc., Burlington, Vermont, and thereby indirectly acquire First Vermont Bank and Trust Company, Brattleboro, Vermont; Franklin-Lamoile Bank, St. Albans, Vermont; and Howard Bancorp, Burlington, Vermont, and thereby indirectly acquire The Howard Bank, National Association, Burlington, Vermont; Woodstock National Bank, Woodstock, Vermont; and Granite Savings Bank and Trust Company, Barre, Vermont.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to acquire 24.9 percent of the voting shares of First Commercial Bank of Philadelphia, Philadelphia, Pennsylvania, a *de novo* bank.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pinnacle Banc Group, Inc.*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of SBH Corp., Silvis, Illinois, and thereby indirectly acquire Bank of Silvis, Silvis, Illinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Teton Bancshares, Inc.*, Fairfield, Montana; to acquire 19.94 percent of the voting shares of Choteau Bancorporation, Inc., Choteau, Montana, and thereby indirectly acquire The Citizens State Bank of Choteau, Choteau, Montana.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13680 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

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 June 21, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Financial Corporation Employee Stock Ownership Plan Trust*, Terre Haute, Indiana; to acquire an additional 8.29 percent of the voting shares of First Financial Corporation, Terre Haute, Indiana, for a total of 18.08 percent and thereby indirectly acquire Terre Haute First National Bank, Terre Haute, Indiana; First State Bank, Poland, Indiana; First Citizens State Bank of Newport, Newport, Indiana; and First Farmers State Bank, Sullivan, Indiana.

2. *Roger L. Sigert*, Plymouth, Wisconsin; to acquire an additional 1.59 percent of the voting shares of Eastern Wisconsin Bancshares, Howards Grove, Wisconsin, for a total of 15.26 percent as the result of a stock redemption, and thereby indirectly acquire State Bank of Howards Grove, Howards Grove, Wisconsin.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jim E. Johnson*, Sandra L. Johnson, Michael W. Johnson, and Mitchell W. Johnson, Fairfield, Montana; to each acquire 19.94 percent of the voting shares of Choteau Bancorporation, Inc., Choteau, Montana, and thereby indirectly acquire The Citizens State Bank of Choteau, Choteau, Montana.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Richard C. Civerolo*, Gallup, New Mexico; to acquire an additional 2.63 percent for a total of 4.65 percent; D&D Enterprises, Albuquerque, New Mexico, to acquire an additional 2.21 percent for a total of 2.48; Basilio and Oliva DiGregorio, Gallup, New Mexico, to acquire an additional 2.42 percent for a total of 4.44 percent; George A. DuBois, Albuquerque, New Mexico, to acquire 0.34 percent; Dubois, Caffrey, Cooksey, Bischoff and Dickerson, P.A., Profit Sharing Plan, Albuquerque, New Mexico, to acquire an additional 3.67 percent for a total of 7.72 percent; William T. Fietz, Albuquerque, New Mexico, to acquire an additional 6.43 percent for a total of 9.46 percent; GAD Enterprises, Inc., Albuquerque, New Mexico to acquire 0.52 percent; Donald R. Holmes, individually and as trustee, Albuquerque, New Mexico, to acquire an additional 2.42 percent for a total of 4.44 percent; Steven P. Jackson, Albuquerque, New Mexico, to acquire an additional 1.79 percent for a total of 3.35 percent; Dennis Jontz, Albuquerque, New Mexico, to acquire 0.71 percent; Western Bank Employee Stock Ownership Plan, Albuquerque, New Mexico, to acquire an additional 1.90 percent for a total of 11.48 percent; Charles W. Williams, Albuquerque, New Mexico, to acquire an additional 2.42 percent for a total of 5.45 percent; William P. Gralow, Albuquerque, New Mexico, to acquire 0.71 percent; Dave Wintermute, Trustee, Albuquerque, New Mexico, to acquire an additional 3.15 percent for a total of 4.16 percent; Wayne Wolf, Albuquerque, New Mexico, to acquire 1.47 percent; Wayne Wolf, Trustee of Sarah Blue Trust, Albuquerque, New Mexico, to acquire 2.42 percent; ZHMC, Inc., Albuquerque, New Mexico, to acquire 5.06 percent of Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joseph S. Bracewell*, Washington, DC; to acquire 3.10 percent of the voting shares of First University Corporation, Houston, Texas, and thereby indirectly acquire West University Bank, N.A., Houston, Texas.

2. *William D. Vaughan*, Paris, Texas; to acquire 10.75 percent; William B.

Vaughan, Paris, Texas, to acquire 3.23 percent; Earl D. Bellamy, Paris, Texas, to acquire 33.94 percent; J.W. Harrison, Paris, Texas, to acquire 3.23 percent; W.W. "Chip" Harper, Paris, Texas, to acquire 3.23 percent; David W. Glass, Paris, Texas, to acquire 10.75 percent; and Curtis Fendley, Paris, Texas, to acquire 5.38 percent of the voting shares of Executive Bancshares, Inc., Paris, Texas, and thereby indirectly acquire First National Bank of Paris, Paris, Texas.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13681 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

First Interstate Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The 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 indicated for that application 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.

Comments regarding this application must be received not later than June 23, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to indirectly acquire 100 percent of the voting shares of Alex Brown Financial Group, Sacramento, California, and thereby indirectly acquire Bank of Alex Brown, Sacramento, California, and Meridian National Bank, Concord, California. In connection with this application, First Interstate Bank of California, Los Angeles, California, has applied to become a bank holding company by acquiring all of the voting shares of Alex Brown Financial Group. Immediately after the acquisition, Alex Brown Financial Group will be dissolved and liquidated into First Interstate Bank of California, all of the shares of Meridian National Bank will be transferred to First Interstate Bancorp, and Bank of Alex Brown will merge into First Interstate Bank of California.

Board of Governors of the Federal Reserve System, June 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13682 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Merchants National Corp.; 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to engage *de novo* in issuing travelers checks pursuant to § 225.25(b)(12) of the Board's Regulation Y. This activity will be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13683 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp. Los Angeles, CA; Proposal To Engage in Private Placement of All Types of Securities, Combined Investment Advisory and Securities Brokerage Activities, and Various Other Financial Advisory and Real Estate Related Activities

Security Pacific Corporation, Los Angeles, California ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire Burns Fry Hoare Govett, Inc., New York, New York ("Company"), and for Company to engage in certain securities, financial advisory, and real estate related activities, some of which have not been previously approved by the Board in the manner proposed by Applicant.

Company would conduct the proposed activities on a nationwide basis. Company is currently a subsidiary of Security Pacific National Bank, Los Angeles, California, and would become a direct subsidiary of Security Pacific Corporation.

Applicant proposes that Company would engage in the following activities within the limitations previously approved by the Board:

(1) Securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15));

(2) Investment or financial advice as permitted by § 225.25(b)(4) (iii) and (iv) of Regulation Y (12 CFR 225.25(b)(4) (iii) and (iv));

(3) Underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act as

permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16));

(4) Acting as an intermediary in arranging commercial real estate equity financing, providing portfolio investment advice with respect to real estate and providing real estate appraisals, pursuant to § 225.25 (b)(14), (b)(4), and (b)(13), respectively, of Regulation Y (12 CFR 225.25 (b)(14), (b)(4), and (b)(13));

(5) Providing advice for unaffiliated institutional customers in connection with merger, acquisition, divestiture and financing transactions, and valuations and fairness opinions in connection with merger, acquisition and similar transactions, as approved in *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988); and *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); and

(6) Providing financial advice to the Canadian federal, provincial and municipal governments, such as with respect to the issuance of their securities in the United States as approved in *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988).

Applicant also proposes to engage in the following activities through Company:

(1) Securities brokerage services in combination with investment advisory services to institutional customers and Company's employees ("full-service brokerage"); and

(2) Acting as agent for issuers and holders of securities of all types with respect to the placement of such securities with a limited number of financially sophisticated institutions and individuals:

(a) Making recommendations regarding the terms and timing of an issue or resale of securities;

(b) Assisting in the preparation of memoranda which describe the proposed terms of the issue or resale and the issuer of the securities being placed or sold;

(c) Contacting a limited number of financially sophisticated institutions and individuals to determine their interest in purchasing such securities, and arranging any such purchases;

(d) Gathering prospective investors' comments for the client;

(e) Arranging meetings and negotiations between the client and prospective investors; and

(f) Assisting in negotiations.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to conduct its full-service brokerage and private placement activities in accordance with most of the limitations set forth in previous Board Orders approving these activities for a number of bank holding companies. *See, e.g., Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988) ("*Bankers Trust*"); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988); and *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987). However, Applicant has proposed certain modifications to the limitations set forth in previous Board Orders.

Regarding the full-service brokerage activity, Applicant proposes to expand the definition of institutional customers set forth in *Bankers Trust* to include: credit unions; small business investment companies; Canadian and United States government entities; and corporations, partnerships, proprietorships, organizations and institutional entities with assets exceeding $1 million that do not regularly invest in the types of securities as to which investment advice is given or that do not regularly engage in transactions in securities.

Applicant's proposed private placement activities differ from prior Board approvals under the Bank Holding Company Act in the following respects. First, Company would privately place all types of securities. Second, Company would provide such services to individuals who meet the standards of an accredited investor within the Securities and Exchange Commission's Regulation D (17 CFR 230.501–230. 506). Third, Company's nonbank affiliates (excluding Company's securities underwriting affiliate, Security Pacific Securities Inc., Los Angeles, California) may provide letters of credit or other credit enhancements to support securities placed by Company, subject to the conditions that (i) such letter of credit or other arrangement be extended on an arm's length basis and be subjected to the extender's normal credit review process, and (ii) the extender regularly extends letters of credit or provides other arrangements to persons who do not use Company's private placement services and the extender provides terms no more favorable to persons who use such services than to persons who do not. Fourth, Company's foreign securities affiliates may purchase for their own account securities placed by Company. Fifth, Company and its affiliates may purchase securities privately placed by Company for accounts (except for accounts managed by trust departments) they advise or for which they have investment discretion, subject to the operational commitments of the full-service brokerage activity.

In addition, officers of Company's bank affiliates may be directors of Company, but such officers would not exercise any responsibility for customer interfaces or credit decisions in any lending activity involving any entity which at the time is a customer of Company for private placement, merger and acquisition or related advisory services, or involving any entity whose securities Company is at the time recommending purchase or sale. Company's officers and employees would not serve as officers or employees of Company's bank affiliates.

Applicant believes that its proposed acquisition of Company will benefit the public by permitting Company to continue as a competitor in the full-service brokerage, financial advisory and private placement markets. Additionally, Applicant believes that the expansion of services offered by Company will increase competition in these areas and provide greater convenience for Company's customers. Applicant submits that the proposal will not result in adverse effects such as unsound banking practices or conflicts of interest.

Applicant also contends that the proposed placement activities would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 3228 (1987). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" securities.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments 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 July 7, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of

Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

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, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13686 Filed 6-8-9; 8:45 am]

BILLING CODE 6210-01-M

Society for Savings Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reerve Bank indicated for the application or the offices of the Board of Governors not later than June 29, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Society for Savings Bancorp, Inc.,* Hartford, Connecticut; to acquire CADRE, Inc., Avon, Connecticut, and thereby engage in providing emergency back-up data processing facilities to CADRE's shareholders, and the provision of computer electronic data processing, bookkeeping, statistical and other sources to other entities, to the extent that CARDE's processing resources are not used by its shareholders pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.,* Philadelphia, Pennsylvania; to acquire Shawmut Credit Corp., Boston, Massachusetts, and thereby engage in commercial finance lending pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohhio 44101:

1. *National City Corporation,* Cleveland, Ohio; to acquire Shawmut Mortgage Corporation, Miamisburg, Ohio, and thereby engage in mortgage banking activities including servicing, originating, and purchasing and selling mortgage loans, purchasing and selling mortgage servicing rights, and making construction loans pursuant to § 225.25(b)(1); and selling credit insurance only on mortgage loans it originates pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13684 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

The Summit Bancorporation, et al; Formations of; Acquisitions by; and Mergers of Bank Holding Co.

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 June 30, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation,* Summit, New Jersey; to acquire 9.9 percent of the voting shares of Central Jersey Bancorp, Freehold Township, New Jersey, and thereby indirectly acquire Central Jersey Bank & Trust, Freehold, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Tampa Bancorporation of Florida, Inc.,* Tampa, Florida; to become a bank holding company by acquiring 68 percent of the voting shares of Regency Bank of Tampa, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13685 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages

submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the Federal Register submission for FSA:

(For a copy of the proposed rules below, call the FSA Reports Clearance Officer on 202 252-5598.) Request for approval of a new submittal, Criteria for Determining Rebuttable Presumption of Mandatory Support Guidelines. Section 103 of Pub. L. 100-485 requires all States to establish criteria for rebuttable presumption in proceedings for the award of child support. The criteria will be used to determine whether the use of the guidelines is unjust or inappropriate. Respondents will be state agencies involved in child support activities. *Number of Respondents:* 54, *Frequency of Response:* One time only, *Average Burden per Response:* 20 hours, *Estimated Total (one time) Burden:* 1,080. *OMB Desk Clearance Officer:* Justin Kopca.

Consideration will be given to comments and suggestons received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: May 30, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-13485 Filed 6-8-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89E-0131]

Determination of Regulatory Review Period for Purposes of Patent Extension; CYGRO®; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice of its determination of the regulatory review period for purposes of patent extension for CYGRO® (maduramicin ammonium) that appeared in the Federal Register of May 16, 1989 (54 FR 21128). The notice stated that the testing phase of the regulatory period for animal drugs "begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective * * *." It should have stated that it "begins on the earlier date when either a major health or environmental effects test was initiated * * *." The words "health or" were omitted from that statement in the notice. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-11652, appearing at page 21128 in the Federal Register of Tuesday, May 16, 1989, the following correction is made: On page 21128, in the third column, in the first complete paragraph, in line 5, add the words "health or" to the end of that line.

Dated: June 2, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-13650 Filed 6-8-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1989:

Name: National Advisory Committee on Rural Health, Health Care Financing Work Group.

Date and Time: June 20, 1989, 4:00 p.m.

Place: Office of Rural Health Policy, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Work Group is concerned with financing issues related to rural health care delivery.

Agenda: This meeting will be conducted through a telephone conference call. The Work Group members will discuss recommendations presented at the Third Meeting of the National Advisory Committee on Rural Health.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835. Persons interested in attending any portion of the discussion should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Date: June 6, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-13692 Filed 6-8-89; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance.

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 19, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Modified Benefit Formula Questionnaire-Employer—New—The information collected on the form SSA-50 is used by the Social Security Administration to verify or disprove a claimant's allegation that he or she is eligible for a pension based on noncovered employment after 1956. The form also shows whether or not the claimant was eligible for that pension prior to 1985. The respondents are people who are first eligible after 1985 for both Social Security benefits and a pension from noncovered employment.

Number of Respondents: 90,000

Frequency of Response: 1

Average Burden Per Response: 17 minutes

Estimated Annual Burden: 25,000 hours

2. Application For Supplemental Security Income—0960-0444—The information collected on the form SSA-8001 is used by the Social Security

Administration to determine eligibility for Supplemental Security Income payments. The respondents are applicants who need to establish nondisability eligibility, only.

Number of Respondents: 760,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 126,667 hours

3. Cessation or Continuance of Disability or Blindness and Transmittal—0960–0442—The information collected on the form SSA–833 is used by the Social Security Administration to determine whether individuals receiving title II disability benefits continue to be unable to engage in substantial gainful activity and are still eligible for benefits. The respondents are State disability determination services.

Number of Respondents: 54
Frequency of Response: 5,555
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 150,000 hours

4. Disability Determination and Transmittal—0960–0437—The information collected on form SSA–831 is used by the Social Security Administration (SSA) to document the State agency's determination as to whether an individual applying for disability benefits is entitled to those benefits on the basis of his or her alleged disability. It is also used for program management and evaluation. The respondents are State agency employees who perform disability determination services for SSA.

Number of Respondents: 50
Frequency of Response: 56,000
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 700,000 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 2, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–13608 Filed 6–8–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–09–4212–17]

California: Emergency Area Closure; Riverside County, CA

Emergency Area Closure

The following Order, affecting Lots 18, 19, 20, and 21 of section 23, T. 4s., R. 4 W., San Bernardino Meridian, was issued on May 2, 1989.

I have determined that current use of this area is posing a threat to the health, safety, comfort, and property of the public. This problem is the result of people living in unauthorized sub-standard housing and with the unauthorized disposal of household, commercial, and industrial waste. In order to rectify this situation, I hereby order the above cited public land closed to entry pursuant to 43 CFR 8364.1.

This closure order shall remain in effect for a period of eighteen (18) months commencing on May 2, 1989. Persons exempt from this order shall include law enforcement personnel, fire fighting personnel actively engaged in fighting a fire, and those with specific authorization.

Any person who fails to comply with this CLOSURE ORDER may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 89–13658 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–40–M

[ID–030–4212–13]

Intent To Prepare a Planning Amendment to the Big Desert Management Framework Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Big Desert Management Framework Plan.

SUMMARY: The following described public land in Bingham County, Idaho will be examined for possible disposal by exchange under Section 206 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 2 N., R. 33E.,
Sec. 3 All
Sec. 4 Lot 1, 2, 3, & 4 S1/2NE1/4, SE1/4NW1/4, NE1/4SW1/4, SE1/4
Sec. 8 S1/2S1/2
Sec. 17 All
Sec. 18 All
Sec. 19 All
Sec. 20 All
Sec. 29 All
Sec. 30 All
Sec. 31 All
Sec. 32 All
T. 1 N., R. 33 E.,
Sec. 5 All
Sec. 6 All
Total Selected Public Lands, 7,549.35 Acres

If these lands are found to be suitable for disposal, the United States will acquire by exchange the following described private land of equal value from the State of Idaho:

Boise Meridian, Idaho

T. 1 N., R. 29 E.,
Sec. 36 All
T. 1 N., R. 30 E.,
Sec. 16 All
T. 5 N., R. 26 E.,
Sec. 36 Lots 1–10, N1/2NE1/4, NE1/4NW1/4, NE¼SW¼,N½SE¼
T. 9 N., R. 25 E.,
Sec. 16 All
T. 1 S., R. 30 E.,
Sec. 16, 36 All
T. 2 S., R. 31 E.,
Sec. 36 All
T. 2 S., R. 32 E.,
Sec. 16 All
T. 3 S., R. 28 E.,
Sec. 16 All
T. 3 S., R. 30 E.,
Sec. 16 All
T. 4 S., R. 28 E.,
Sec. 16 All
T. 5 S., R. 28 E.,
Sec. 16 All
Total Offered State Lands 7,690.86 Acres

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to LeRoy Cook, Big Butte Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

May 30, 1989.

Sandra K. Courtney,

Acting District Manager.

[FR Doc. 89–13710 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–06–M

[ID–010–09–4320–02]

Boise District Grazing Advisory Board Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Grazing Advisory Board and the Boise District Advisory Council will conduct a joint field tour of the Cascade Resource Area on Thursday, July 6, 1989. The tour will focus on issues and projects that resulted from massive wildfires that struck the area in 1986.

DATES: The tour will begin at 8:00 a.m. on Thursday, July 6, 1989. It will leave from the Boise District Office.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise BLM District, 208–334–9661.

J. David Brunner,

District Manager.

[FR Doc. 89–13659 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–040–09–4410–02]

Meeting of the Safford District Advisory Council; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Wednesday, July 19, 1989 at 10:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th St., Safford, Arizona 85546.

FOR FURTHER INFORMATION: Cindy Alvarez, Planning and Environmental Coordinator, Safford District, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items:

1. Introduction of new members to the Advisory Council.
2. Nomination and election of Chairperson and Vice Chairperson.
3. Briefing on District Resource Management Plan (RMP).
4. Management update and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:00 and 2:00 p.m. or may file written statements for consideration by the Council. Anyone wishing to make an oral statement must contact the BLM Safford District Manager by July 18, 1989. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date: May 31, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89–13660 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–32–M

[CA–020–09–4050–90]

Notice of Susanville District Advisory Council Meeting, California

AGENCY: Bureau of Land Management, Interior, Susanville District Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council, in accordance with Pub. L. 94–579 (FLPMA), that a meeting of the Susanville District Advisory Council has been scheduled for Thursday, June 29, 1989. The meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall St., Susanville, CA. 96130, and end at 4 p.m. The agenda will include discussion of the Council's wilderness recommendations, Recreation 2000, an update on the East Lassen Deer Herd, and an update on the Eagle Lake Basin Management Plan. The meeting is open to the public, and interested persons may make oral statements or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA, 96130, by June 23, 1989. Depending on the number of persons wishing to speak, a time limit may be imposed.

For further information, contact: Jeff Fontana, (916) 257–5381.

C. Rex Cleary,

District Manager.

[FR Doc. 89–13661 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–40–M

[UT 080–09–4830–12]

Utah Vernal District Advisory Council; Tour and Business Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Vernal District Advisory Council has scheduled a tour and business meeting for Friday, July 14, 1989.

The purposes of the tour is to provide Council Members an on-the-ground look at District management concerns and practices and to receive the Council's input concerning the same.

Business meeting agenda items are as follows:

- Election of Chairperson and Vice Chairperson.
- The Green River Corridor Cooperative Management.
- Riparian Management in Browns Park.
- Land Exchanges.
- John Jarvie Historical Site Management.
- Big Game Wildlife Studies in Browns Park.
- Prescribed Burns, Actions, and Policy.
- District Recreation Program.
- Items at Large from the Council.

The meeting and associated tour activities are open to the public; however, the public would need to make their own travel and food arrangements.

Any person wishing to address the Advisory Council concerning District issues may do so by contacting District Manager David E. Little prior to Wednesday, July 12, 1989.

Tour activities will commence at 7:30 a.m. on July 14, 1989, at the Vernal District Office located at 170 South 500 East, Vernal, Utah. The Council will visit appropriate sites enroute to Browns Park, and have lunch at the John Jarvie Historical site. They will then drive to Little Hole and float the Green River back to the Jarvie Ranch where they will have supper and a brief business meeting prior to returning to the District office.

In the event of severe, inclement weather, the District Manager may opt to cancel part or all activities and reschedule the event.

For further information, phone R. Ray Tate, Advisory Council Coordinator, at (801) 789–1362.

Date: June 1, 1989.

David E. Little,

Vernal District Manager.

[FR Doc. 89–13662 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–09–4111–15; CACA 6590]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease CACA 6590 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1989, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre

and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Date: June 2, 1989.

Fred O'Ferrall,

Chief, Leasable Minerals Section.

[FR Doc. 89-13663 Filed 6-8-89; 8:45 am]

BILLING CODE 3210-40-M

[NV-930-09-4212-14; N-39873]

Battle Mountain District Shoshone-Eureka Resource Area; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of Federal lands in Lander County, Nevada.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this Notice.

Mount Diablo Meridian

T. 24 N., R. 41 E.,
Sec. 9, NE¼SE¼.

A parcel of land containing 40.00 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

J.P. Bowers has asked to buy this land to augment the farming operation he and his brothers own in Antelope Valley, Nevada. The sale is consistent with the Shoshone-Eureka Resource Management Plan. No conflicts with State or local land use plans have been identified. The subject lands are within the Cottonwood grazing allotment and grazing permittees will be sent the required two-year grazing notices prior to sale.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the sale offer will constitute an application for conveyance of those mineral interests. A nonrefundable fee of $50 will be required from purchaser for purchase of the mineral interests.

The patent, when issued, will be subject to all valid existing rights and will contain the following reservation to the United States;

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date Signed: June 1, 1989.

Thomas H. Jury,

Acting District Manager.

[FR Doc. 89-13664 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-14; N-48553]

Realty Action; Battle Mountain District, Tonopah Resource Area, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of Federal Land in Nye County, NV.

SUMMARY: In response to a request from Kathleen A. Hill, the following described Federal lands have been identified as suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

T. 2 N., R. 42 E.,
Sec. 1, lots 16, 18 and 19

A parcel of land containing 28.40 acres.

This is an isolated parcel of Federal land within Tonopah. Ms. Hill is the adiacent landowner and holds the mining claims which encumber the parcel. These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local planning have been identified.

The lands are within the Ralston Grazing Allotment. The permittee is hereby notified that this sale may effect his AUMs.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale.

Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Segregation

Upon publication of this Notice in the **Federal Register** the above-described Federal lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 98920. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date signed: May 19, 1989.

James D. Currivan,

District Manager, Battle Mountain District.

[FR Doc. 89-13709 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-09-4214-10; GP9-237; OR-36826]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 76.46 acres of public lands out of Federal ownership. This action will also open 159.14 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon, 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 76.46 acres of lands in Lane County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 3 E.,
Sec. 32, Government lots 13 and 14; SAVE AND EXCEPT those tracts conveyed to Lane County, Oregon, for South McKenzie road (Goodpasture Road) by Deed recorded August 25, 1958, Recorder's Reception No. 46588, and for the Goodpasture connector by Deed dated May 19, 1982, Recorder's Reception No. 82-14764, Lane County, Oregon Deed Records.

T. 17 S., R. 3 E.,
Sec. 5, SW¼NE¼ and Government lots 2 and 3; SAVE AND EXCEPT that tract conveyed to Lane County, Oregon, for South McKenize Road (Goodpasture Road) by Deed recorded August 25, 1958, Recorder's Reception No. 46588, Lane County, Oregon Deed Records.

The areas described aggregate after making the aforesaid exceptions, approximately 159.14 acres in Lane County.

At 8:30 a.m., on July 17, 1989, the above described lands will be open to operation of the public lands laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 17, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on July 17, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes betwen rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 17, 1989, the above described lands will be open to applications and offers under the mineral leasing laws.

Robert E. Mollohan,

Acting Chief, Branch of Lands, and Minerals Operations.

Dated: June 1, 1989.

[FR Doc. 89-13665 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-33-M

[U-58162; UT-040-09-4212-14]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as SLM, Utah, T. 43 S., R. 4.5 W., section 31, Lots 1 & 2 (containing 79.8 acres), is proposed for direct sale to Charles and Carol Compas at the appraised fair market value of $15,500.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of this sale is to dispose of public land that is difficult and uneconomical to manage by a governmental agency.

DATES: Comments will be accepted on or before July 24, 1989. The salé will be held no less than 60 days from the first date of publication of this notice.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab Utah 84741, (801) 644-2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights, including a 66 foot wide county road right-of-way crossing the southeast corner of the 79.80 acre tract, and a 2.5 acre right-of-way for a water diversion and dike structure.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any objections, this Realty Notice will become the final determination of the Department of the Interior.

Date: May 31, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-13666 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Moratorium on Importation of Raw and Worked Ivory From all Ivory Producing and Intermediary Nations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Effective immediately, the United States establishes a moratorium on importation of raw and worked African elephant ivory from all ivory producing and intermediary nations. This action is being taken under authority of sections 2202(a) and 2202(b) of the African Elephant Conservation Act, which require the Department of the Interior to establish moratoria on ivory trade with all nations which cannot meet its criteria for continuation of trade with the United States. Despite the existence of an Ivory Trade Control System set up by the parties to the Convention on International Trade in Endangered Species (CITES), most ivory is traded outside of the system and illegal and excessive taking of elephants is now taking place at unsustainable levels. Ivory producing nations are currently unable to effectively control taking of elephants, and intermediary nations cannot ensure that all ivory trade originates from legal sources. In October 1989, the 102 parties to CITES will decide whether to end all commerical trade in African elephant ivory, as recently proposed by the United States and a number of African nations. Import of legally taken sport hunted trophies will not be affected by this action.

DATES: The effective date of the moratoria established by this notice is June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, or Mr. Frank McGilvrey, African Elephant Coordinator, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22204-3507 (telephone 703/358-2093).

SUPPLEMENTARY INFORMATION:

Background

The African elephant (*Loxodonta africana*) is protected by the provisions of an international treaty and two U.S. domestic laws. Internationally, in 1977 the African elephant was listed on Appendix II to the convention on International Trade in Endangered Species (CITES). Under provisions of this listing and subsequent resolutions adopted by the CITES party nations, commercial trade in African elephant ivory is allowed, subject to regulation by a system of export permits and an Ivory Control System administered by the CITES Secretariat. (The Asian elephant, *Elephas maximas,* is listed on CITES Appendix I and as endangered under the U.S. Endangered Species Act, prohibiting all commercial trade in its ivory).

Since 1978 the African elephant has been listed as a threatened species under the endangered Species Act of 1973 (16 U.S.C. 1531–1543). Trade in African elephant ivory is allowed by a special rule promulgated under the authority of section 4(d) of the Act and codified at 50 CFR 17.40(e). The principal conditions applied by the special rule to imports are that the ivory must originate in a CITES party country, must be imported from a CITES party country, and must be imported from a CITES party country, and must be accompanied by proper CITES export permits and documentation. On 5 May 1989, the Service issued a rulemaking proposal (54 FR 19416) to revise the special rule to conform to the requirements of the African Elephant Conservation Act, which are discusseed later in this notice. On 9 May 1989, the Service found pursuant to section 4(b)(3)(A) of the Act that a petition submitted in February 1989 presents substantial evidence that reclassification of the African elephants to endangered status may be warranted, but that the status of the species was not so precarious so as to require emergency reclassification to endangered status under section 4(b)(7) of the Act. The Service has initiated a status review of the species and must issue a finding by February 1990 as to whether reclassification to endangered status is in fact warranted.

The newest U.S. domestic measure, signed into law on 7 October 1988, is the African Elephant Conservation Act (the Elephant Act), which was Title II of the Endangered Species Act Amendments of 1988 (16 U.S.C. 4201 *et seq.*). The goal of the Elephant Act is for the United States to help perpetuate healthy populations of the African elephant by supporting conservation programs and ending its participation in illegal or excessive ivory harvest and trade. In order to implement the latter requirement, the Service has undertaken three major actions. These are:

(1) On 27 December 1988 (53 FR 52242), in compliance with sections 2202 (a) and (b) of the Elephant Act, the Service placed a moratorium on all ivory imports into the United States from nations which are not parties to CITES.

(2) On 24 February 1989 (54 FR 8008), in response to information contained in a petition from the World Wildlife Fund and information obtained from other sources, the Service placed a moratorium on all ivory imports into the United States from the nation of Somalia under provisions of sections 2202 (a) and (b) of the Elephant Act.

(3) On 3 February 1989 (54 FR 5553), in compliance with section 2201(b) of the Elephant Act, the Service announced initiation of a review of the elephant conservation and protection programs of all ivory producing nations (defined by the Act as those African nations within which is located any part of the range of a population of African elephants). The comment period for this review closed on 5 June 1989. The Act contains five criteria on which this review is to be based:

(A) The country is a party to CITES and adheres to the CITES Ivory Trade Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

Simultaneously, in letters to each of the 33 ivory producing nations, the Assistant Secretary for Fish and Wildlife and Parks requested comments on their ability to comply with these criteria and adequately conserve the species. The letters also explained that section 2202(a) of the Act requires the Service to establish a moratorium on all ivory imports into the United States from any nation immediately upon finding that the country cannot meet all of the criteria of section 2201(b)(1). The letter noted that many of the nations addressed have already prohibited legal ivory exports, and that a moratorium by the Service would serve to bolster their laws in that case. It went on to state that the Service would assume that any nation which did not respond to the notice was requesting the Service to place a moratorium on ivory imports into the United States.

In the same 3 February 1989 **Federal Register** notice, the Service also requested information from interested parties on ivory trading practices of intermediary nations (defined by the Act as nations which export raw or worked ivory originating in another country), in order to determine whether there are intermediary nations which:

1. Are not parties to CITES;
2. Do not adhere to the CITES Ivory Control System;
3. Import raw ivory from countries which are not ivory producers;
4. Import raw or worked ivory form countries not party to CITES;
5. Import raw or worked ivory originating in an ivory producing country that was taken or exported in violation of the laws of that ivory producing country;
6. Substantially increases its exports of raw or worked ivory form a country that is subject to a moratorium; or
7. Imports raw or worked ivory form a country subject to a moratorium, after the first three months of that moratorium, unless the ivory is imported by a vessel during the first six months of the moratorium and is accompanied by shipping documents showing it was exported before establishment of the moratorium.

A finding that a country fails to meet any one of these criteria requires the Service to impose an immediate moratorium on ivory imports, in accordance with seciton 2202(b) of the Elephant Act.

At the time of publication of this notice, the Service already had on hand substantial information regarding general difficulties with control of the ivory trade. At a CITES African Elephant Working Group meeting in Nairobi, Kenya, in November 1988, the Service and other representatives in attendance received presentations from experts on the ivory trade and its effects on elephant populations. These presentations indicated that the volume of ivory trade taking place within the CITES system represents only a small fraction of the total ivory trade, and that

this total now greatly exceeds the annual sustainable harvest of ivory. Many ivory movements between African nations also were reportedly not being recorded within the CITES system, making it virtually impossible to track the original source of ivory shipments or the amount of ivory leaving source nations. The February 1989 petition to the Service for reclassification of the elephant to endangered status under the Endangered Species Act likewise presented information indicating that the ivory trade had become excessive and perhaps out of control.

Subsequent to publication of the 3 February 1989 notice, two additional significant events have occurred which have a major effect on the reviews. First, on 12 May 1989, proposals for changes in the listing of species on Appendix I and Appendix II of CITES were due to the CITES Secretariat for consideration at the October, 1989, CITES Conference of the Parties. Due to the failure of international efforts to control illegal trade in African elephant ivory and the resulting deteriorating status of wild populations of the species, at least seven African nations have called for a halt to the commercial ivory trade. Four of these nations, including Tanzania, Kenya, Gambia, and Somalia, have submitted formal proposals that the African elephant be reclassified to CITES Appendix I, which would end all international commercial trade in ivory and other elephant products. On 12 May 1989 the Department of the Interior submitted a similar United States proposal to the CITES Secretariat recommending reclassification of the African elephant to Appendix I and thus an end to the commercial trade.

These Appendix I proposals confirm and expand upon information available regarding failure of international ivory trade control efforts. The proposal from Tanzania, for example, notes the large worldwide volumes of illegal ivory trade and trade with non-CITES nations, as well as the amount of undocumented raw ivory trade between some African nations. It also presents statistics for 1987 (the most recent year for which such statistics are available) showing that the CITES registered legal ivory trade of 154 metric tons was only 20% of the total estimated world trade of 771 tons. Moreover, the Tanzanian proposal cites work by an ivory trade expert and contractor to the CITES Secretariat that most of the "official" ivory in trade is now seized contraband—i.e. ivory from illegal and excessive taking of elephants. It goes on to reference work by a noted population biologist to conclude that "the unauthorized offtake presently far exceeds the species' maximum sustainable yield, i.e., CITES is in fact facilitating the continuing unsustainable offtake of elephants by allowing for very large amounts of ivory from poached elephants to enter the legal international trade."

Secondly, on 1 June 1989, the Ivory Trade Review (Ivory Group), a consortium of wildlife conservation groups which have been participating in a cooperative study of the ivory trade, released a public statement on its findings. The study was commissioned by the African Elephant and Rhino Specialist Group of the International Union for the Conservation of Nature and Natural Resources, was funded by Wildlife Conservation International (a division of the New York Zoological Society), the World Wildlife Fund, and the Service, and was carried out in collaboration with Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC), the CITES Secretariat, and the African Wildlife Foundation.

The Ivory Group's statement presents further evidence of the chaotic, uncontrolled conditions of the international ivory trade today. For example, it found that poaching has become so prevalent that "the legal (i.e. government controlled) and the illegal trades have become virtually indistinguishable" and that "exploitation of elephants to supply ivory, as currently practiced throughout most of the continent (of Africa) is quite unsustainable." The Ivory Group also points out that recent proposals for Appendix I status for the species will lead to a rapid rise in the price of ivory and very likely to "unprecedented poaching efforts". Thus its findings that illegal and legal trade can no longer be distinguished even by the most conscientious of governments, and that ivory harvests are unsustainable, will likely become even more critical factors over the next few months. For these reasons, the Group not only concluded that it would support proposals for CITES Appendix I status, but also recommended an immediate, voluntary ban on all ivory trade until the October meeting of the CITES Conference of the Parties, in order to help prevent an increasing slaughter of elephants this summer.

Review of Ivory Producing Nations

The Service has taken into the account both of these new developments in the course of its review of the adequacy of ivory producing nations to meet the criteria of the Act, in conjunction with all other available information. Specifically, the Service notes that:

(1) Most of the ivory producing nations have such low elephant populations that they have determined that no sustainable harvest is possible and have requested no ivory export quota in 1989. No imports of ivory from these nations into the United States would be permissible.

(2) As noted in the Ivory Group's findings, there is now likely no sustainable harvest of elephants throughout most of Africa, even among nations which have CITES export quotas, due to the rapidly declining populations. Many nations which sincerely desire to effectively manage their elephant populations nevertheless lack the resources to adequately assess population levels and determine scientific harvest rates. Furthermore, any harvest of elephants may now represent a lack of effective control of taking, because of recent, drastic population declines for the species as a whole. The extensive ivory movements among African nations undocumented by the CITES system make it even more difficult to determine the amount of harvest being allowed within some nations.

(3) Among the nations which have ivory export quotas, the Service has also found that most now have significant poaching problems. Even those nations which have made diligent efforts to control poaching are finding that the high price of ivory and increasingly well-organized efforts of the poachers and middlemen, often from outside their national borders, make it impossible for them to control the illegal take with currently available resources. Furthermore, there is a great likelihood that the increasing price of ivory over the next few months, as warned by the Ivory Group, may lead to an even greater gap between available resources and those needed to overcome poaching problems. Under these new conditions the indistinguishability of legal and illegal ivory will become an even more critical problem, and the proportion of illegal ivory in trade will almost certainly increase even more from the 80% estimate of 1987.

Based on these considerations, the Service has determined that no ivory producing nation is able to comply with all of the criteria of section 2201(b)(1) of the Act. Furthermore, the Service has determined that the particular criterion 2201(b)(1)(C), effective control and monitoring of take, cannot be complied with by any ivory producing nation under the current chaotic condition of the ivory trade. Accordingly, as required

by section 2202(a) of the Act, the Service hereby imposes an immediate moratorium on all African elephant ivory imports from all ivory producing nations.

Review of Intermediary Nations

Many of the factors discussed above regarding ivory-producing nations have a significant bearing on the ability of intermediary nations to comply with the criteria of section 2202(b) of the Act. The Service has taken all available information into account in reaching the following findings:

(1) The Service's review of the ivory trading practices of all major intermediary nations which are parties to CITES has indicated that every one of these nations has engaged in import of raw ivory from other intermediary nations, a criterion for establishment of a moratorium under section 2202(b)(3). This is a pervasive practice among all of the major intermediary nations which they have not stopped, despite numerous communications from the Service, and which in many cases they apparently cannot stop if they are continue to deal in ivory at all under current market conditions.

(2) In addition, due to the virtual impossibility of distinguishing legal from illegal ivory (as described in the preceding discussion for ivory producing nations), it is also no longer possible for any intermediary nation to ensure that it is not importing raw or worked ivory from an ivory producer in violation of the laws of the ivory producer. In such cases, it is also impossible for intermediary nations to ensure that they are not importing ivory which originated in nation which is not a party to CITES or for which a moratorium on ivory imports into the United States has already been established. The Service notes that the United States itself, as an intermediary nation, would be subject to some of these same difficulties regarding the origin of ivory imports into this country.

Based on these considerations, the Service has determined that under current chaotic conditions no intermediary nation is able to comply with all of the criteria of section 2202(b) of the Elephant Act. Furthermore, the Service has determined that specific criterion 2202(b)(3), avoidance of import of raw or worked ivory taken in violation of the laws of the ivory producer, cannot be complied with by *any* intermediary nation. Accordingly, as required by section 2202(b) of the Act, the Service hereby imposes an immediate moratorium on imports of African elephant ivory from all intermediary nations.

Relationship of Elephant Act Moratorium to CITES Actions

The Service is taking this action in order to implement the requirements of the Elephant Act and in hopes of contributing to a reduction, rather than an increase, in demand for African elephant ivory between now and the CITES Conference of the Parties in October, 1989. At that time, the 102 CITES parties will determine what action should be taken with regard to the pending proposals for Appendix I status. Results of this meeting will be taken into account in deciding whether changes are necessary regarding the moratoria now placed on ivory imports under the Elephant Act.

Relationship of Elephant Act Moratoria to the Endangered Species Act

As noted previously in this notice, on 5 May 1989 (54 FR 19416), the Service published a proposed revision to the existing special rule for the African elephant, which was adopted under the authority of the Endangered Species Act and is codified at 50 CFR 17.40(e). As specifically indicated in that proposed rulemaking, however, the proposal does not serve to delay the effectiveness of the Elephant Act. It is rather intended to conform the provisions of the existing special rule to the terms of the new law. Section 2302 of the Elephant Act specifically provides that the authority of the Department of the Interior under the Elephant Act is in addition to, and shall not affect, the authority of the Department under the Endangered Species Act. Consistent with this additional authority, the Service has already imposed moratoria on all countries not party to CITES (53 FR 52241, 27 December 1988) and on the nation of Somalia (54 FR 8008, 24 February 1989). As indicated above, additional moratoria are now being imposed on all imports from ivory producing and intermediary nations, effective immediately. These actions will be taken into account as the Service continues its review of the proposed amendment to the African elephant special rule under the Endangered Species Act.

Sport-Hunted Trophies

Section 2202(e) of the Elephant Act makes a specific exception allowing import of legally taken sport-hunted trophies into the United States, from all countries which have CITES ivory export quotas, even if these countries are otherwise subject to a moratorium on ivory imports. Legal sport hunting is effectively controlled by the nations which permit it and has not been found to be contributing to the African elephant's decline. On the contrary, it contributes substantial revenues to the wildlife management programs of these nations. On 20 March 1989 (54 FR 11449) the Service published a notice detailing the countries which have duly established quotas and from which legally taken sport-hunted trophies may be imported.

The Service will update this notice as additional quotas are established by the CITES Secretariat and will continue to accept import of legally taken sport-hunged trophies from all nations which have such a quota. The Service will also continue to review sport hunting take of elephants to ensure that it has not become a factor contributing to the species' decline.

The primary author of this rule is Marshall P. Jones, Chief, Office of Management Authority, U.S. Department of Interior, Fish and Wildlife Service.

Dated: June 7, 1989.

Susan Reece Lamson,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-13911 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Aplomado Falcon for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for northern aplomado falcon. These falcons historically occurred from Trans-Pecos, Texas, southern New Mexico, and southeastern Arizona southward into Central America. The plan calls for reestablishing aplomado falcon populations in portions of the U.S. historic range. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 10, 1989 to be considered by the Service.

ADDRESSES: Written comments and materials regarding the plan should be addressed to Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM, 87103. The plan is available for public inspection, by appointment, during normal business hours at the Regional Office of U.S. Fish and Wildlife Service, 500 Gold Avenue

SW., Room 4000, Albuquerque, NM (505/766-3972 or FTS 474-3972); at the headquarters of Laguna Atascosa National Wildlife Refuge located 18 miles off Highway 106 east of Buena Vista road, northeast of Harlingen, Texas (512/748-3607); and the Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 W. Thomas Road, Suite 6, Phoenix, Arizona (602/261-4720 or FTS 261-4720).

FOR FURTHER INFORMATION CONTACT: Dr. James Lewis at the Regional Office of U.S. Fish and Wildlife Service (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting the species, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan.

This plan discusses the northern aplomado falcon (*Falco femoralis septentrionalis*), an endangered species that, by the late 1950's, had disappeared from its historic range in the United States. These falcons inhabited desert grasslands and coastal prairies of Trans-Pecos, Texas, southern New Mexico, and southeastern Arizona and still occupy areas in Mexico and Central America. The plan discusses the bird's taxonomy, status, distribution, natural history, causes of population decline, research needs, and strategies for recovery. Recovery actions will include protection of habitat and hacking programs to reintroduce the birds.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered before approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 1, 1989.

James A. Young,

Acting Regional Director.

[FR Doc. 89-13657 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Migratory Bird Regulations Committee Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee will meet to review preliminary information on the status of waterfowl on the breeding grounds and the status of other migratory birds in 1989.

DATE: June 20, 21, and 22, 1989.

ADDRESS: The meetings on June 20 and June 22 will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC. The meeting on June 21 will be held in Conference Room #2 of the American Institute of Architects Building.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (703) 358-1714.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on June 20 at 8:30 a.m. and on June 22 at about 2 p.m. in the Board Room of the American Institute of Architects Building, and on June 21 at 8:30 a.m. in Conference Room #2 of the American Institute Architects Building.

The meeting on June 20 is to receive and consider staff reports on the 1989 status of migratory birds and to discuss and develop recommendations for 1989-90 early season hunting regulations to be presented at the public hearing to be held in Washington, DC on June 22 at 9 a.m. The reports will include preliminary waterfowl breeding population estimates, pond indexes, and other information on habitat conditions on the breeding grounds. The status of other migratory birds will be reviewed as is usual at the early season regulations meeting. The primary purpose of opening the meeting to the Consultants and others is to provide all interested parties with preliminary information about the impact of continuing drought conditions on prairie and parklands breeding habitats. Additional information and a more complete assessment of 1989 conditions will be presented to the Committee at the regularly scheduled waterfowl status meeting to be held in Denver, Colorado on July 25, 1989.

The June 21 meeting is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The June 22 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, this meeting will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: May 30, 1989.

Maryanne Bach,

Acting Assistant Secretary for Fish and, Wildlife and Parks.

[FR Doc. 89-13694 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service, Office of Migratory Bird Management, will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1989 fall flight forecast for ducks. The Service Regulations Committee will meet August 1 and 2 to develop 1989-90 waterfowl hunting regulations recommendations

for presentation at the August 3 public hearing to be held in Washington, DC, and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1989–90 waterfowl hunting regulations frameworks.

DATES: Waterfowl Status Meeting, July 25, 1989; Service Regulations Committee Meetings, August 1, 2, and 3, 1989.

ADDRESSES: The Waterfowl Status Meeting will be held at the Denver Sheraton-Airport Hotel, 3535 Quebec Street, in Denver, Colorado. The Service Regulations Committee Meetings on August 1, 2, and 3, 1989, will be held in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634—Arlington Square, Department of the Interior, Washington, DC 20240, telephone (703) 358–1714.

SUPPLEMENTARY INFORMATION: On July 25 at 8:30 a.m. at the Denver Sheraton-Airport Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The U.S. Fish and Wildlife Service, Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on August 1 and 2 at 8:30 a.m. and August 3 at about 2 p.m. in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.). The meeting on August 1 is to review discussions that occurred at the flyway council meetings and to discuss and develop recommendations for 1989–90 waterfowl hunting regulations to be presented at the public hearing to be held in Washington, DC on August 3 at 9 a.m. The meeting on August 2 is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The August 3 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, the meetings of August 1 and 3 will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Date: May 12, 1989.

Susan R. Lamson,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–13695 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Yosemite National Park, CA; Development Concept Plan for South Entrance and Mariposa Grove; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, Yosemite National Park is preparing an Environmental Impact Statement to assess the potential impacts of the proposed Development Concept Plan (DCP) for the South Entrance and Mariposa Grove areas of the park. The DCP proposal will provide for (1) relocation of the South Entrance Station on Highway 41 and enlargement of the parking lot; (2) relocation of the Mariposa Grove access road and staging area out of the Lower Mariposa Grove; (3) improvements in the utilities system including underground electrical service to the new area; and (4) restoration of the Lower Mariposa Grove after the relocation is completed. The proposed location of the new staging area visitor parking would require the use of a small portion of legislated wilderness but the relocation creates the opportunity to add to wilderness from the area vacated. Accordingly, wilderness boundary adjustments would be required and the provisions of 16 U.S.C. 1132(e) would be followed for such action. Alternatives to be assessed include no action and other locations for the Mariposa Grove access road and staging area.

The DCP proposals are in accord with the intent of the Yosemite General Management Plan (GMP) for the area. However, further research of the natural resource protection and visitor needs of the area since adoption of the GMP in 1980 has resulted in alterations in location and nature of the proposed improvements from those shown in the GMP. The draft DCP and environmental statement will address the reasons for those changes.

Persons wishing to comment or having questions on the proposed DCP for the South Entrance and Mariposa Grove area should address any comments or questions to: Superintendent, Yosemite National Park, P.O. 577, Yosemite, CA 95389. Comments directed to scoping of the DCP and the environmental statement should be received no later than 60 days from the date of publication of this notice.

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft environmental statement is expected to be released for public review in early 1990, and the final environmental statement and Record of Decision expected to be completed approximately six months after that time.

Lewis Albert,

Regional Director, Western Region.

Date: June 1, 1989.

[FR Doc. 89–13741 Filed 6–8–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act notice is hereby given of the Ninety-Fourth Meeting of the Board for International Food and Agricultural Development (BIFAD) on June 15 and June 16, 1989.

The purposes of the Meeting are: (a) Budget Panel Report, (b) Modification of the Guidelines for CRSP Projects, (c) Institutional Sustainability Project Proposal, (d) Agricultural Study Task Forces, (e) Report of Joint Panel on Sustainable Agriculture, (f) Special Program on African Agricultural Research, (g) Pond Dynamics CRSP Report, and (h) Fisheries and Stock Assessment CRSP Report.

Both the June 15 and June 16, 1989, Meeting will be held in the Department of State, Room 1105, 2201 C Street, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board

and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA-18, Washington, DC 20523, or telephone him on (703) 235-8929.

Dated: May 31, 1989.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 89-13647 Filed 6-8-89; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-435 (Preliminary)]

Certain Steel Pails From Mexico; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-435 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of steel pails,[1] provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 17, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobililty impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on May 31, 1989, by the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ, the individual members of that committee, and two non-member steel pail producers.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than (7) days after publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 20, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than June 16, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each collectively be allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before June 22, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 26, 1989. Such additional comments must be

[1] For purposes of this investigation, steel pails are defined as cylindrical containers of steel (excluding stainless steel) of 1 to 7 gallons (3.8 to 26.6 liters) in volume (capacity), with a diameter of 11 inches (279 millimeters) or greater and a wall thickness of 29-22 gauge steel (.292-.683 millimeters), presented empty.

limited to comments on business proprietary information received on or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 5, 1989.

[FR Doc. 89-13688 Filed 6-8-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-C-30175]

St. Johnsbury Trucking Co., Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by St. Johnsbury Trucking Company, Inc. (St. Johnsbury), a motor carrier, for institution of a declaratory order proceeding. St. Johnsbury asks the Commission to determine that the transportation of property between points in Pennsylvania, through its Pennsauken, NJ terminal, is in interstate commerce.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by June 26, 1989. A list of interested parties will then be compiled and served. St. Johnsbury will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to St. Johnsbury's representative. St. Johnsbury will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments, referring to No. MC-C-30157, to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to St. Johnsbury's representative:

Karl Morell, 1025 Thomas Jefferson Street NW, Suite 700, East Lobby, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Sam S. Taylor, (202) 275-7181

or

Richard B. Felder, (202) 275-7691

[TDD for hearing impaired: (202) 275-7691.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services: (202) 275-1721.]

Decided: June 5, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13783 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 55, Sub-No. 72]

Composition of the Motor Carrier Board

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is changing the composition of the Motor Carrier Board, an employee board established under 49 CFR 1011.6(i). The Board now consists of 3 attorneys designated on a rotating basis from a 12-member pool of attorneys. In the future this Board will consist of the paralegals and supervisory paralegals employed in the Office of Proceedings' Motor Section. Determination of matters within the Board's jurisdiction will be based on the votes of one paralegal and one supervisory paralegal. In the event of a tie vote, the vote of a second supervisory paralegal will be secured to break the tie.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Under 49 CFR 1011.6(i), the Commission has delegated to an employee board the less substantive matters involving pre-publication of motor carrier licensing applications, small carrier transfer applications, temporary authority applications related to finance proceedings, applications for certificates of registration by foreign motor carriers and foreign motor private carriers, and applications that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits, relating to: (a) The transfer of property brokers' licenses and changes in control of brokers, and (b) the transfer of Certificates of Registration and rights to operate pending determination of applications for Certificates of Registration. The Board has consisted of 3 members chosen on a rotating basis from a 12-member pool of attorneys approved annually by the Commission (*see* 49 FR 31070, August 3, 1984).

By this notice, the Commission is exercising its authority under 49 U.S.C. 10304 and 10305 to abolish the 12-attorney pool and rotating 3-member boards, and is replacing them with a permanent board comprised of all of the paralegals and supervisory paralegals employed in the Office of Procedings' Motor Section. Determination of matters within the Board's jurisdiction will be based on the votes of one paralegal and one supervisory paralegal from the permanent Board. In cases where a paralegal and a supervisory paralegal do not agree, the vote of a second supervisory paralegal will break the tie.

Our decision to change the composition of the employee board acknowledges that the work of the Board is predominantly routine in nature. In the nearly 5 years since the Board was created, the paralegals and supervisory paralegals have assisted the Board in performing its function and have demonstrated their thorough understanding of the matters within the Board's jurisdiction. A more efficient use of personnel will result from this change in the composition of the Board.

Because the members of the Motor Carrier Board rotated approximately every 3 months, the membership was periodically announced in the *ICC Register*. Our decision to replace the 3-attorney rotating board with a permanent board comprised of Motor Section paralegals and supervisory paralegals eliminates the need for future announcements of Board membership.

Since this change in Motor Carrier Baord membership affects internal Commission procedures only, it is issued in 49 CFR Part 1011.6(i) final form and public comment is not required. *See* 5 U.S.C. 553(b)(A).

This section doeds not affect significantly the quality of the human environment or the conservation of energy resources.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10304-10305.

Decided: May 26, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice

Chairman Simmons dissented with a separate expression. Commissioner Lamboley dissented.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13784 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-14; Sub-No. 6X]

Northwestern Pacific Railroad, Co.—Discontinuance Exemption—Operations in Marin County, CA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 9.95-mile line of railroad between milepost 25.821 at or near Ignacio, CA and milepost 15.71 at or near San Rafael, CA, in Marin County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with 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 filling of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately potects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 9, 1989 (unless stayed pending reconsideration). 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 July 19, 1989. Petitions for reconsideration must be filed by July 29, 1989, 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: John MacDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

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 discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13635 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

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[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* Exemption of Out-of-Service Rail Lines, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

JUDICIAL CONFERENCE OF THE UNITED STATES

Judicial Conference Committee on Rules of Practice and Procedure; Meeting

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure to consider proposed amendments submitted by the Advisory Committees under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on July 17 and 18, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held at the Barat House, Boston College Law School, 885 Centre Street, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: June 2, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-13743 Filed 6-8-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Comprehensive Environmental Response, Compensation and Liability Act; Correction

AGENCY: Department of Justice.

ACTION: Partial consent decree; correction.

SUMMARY: The Department of Justice (DOJ) is correcting an error in the Notice of Lodging of Consent Decree in *United States et al.*, v. *Aerojet-General Corp., et al.*, which appeared in the **Federal Register** on September 15, 1988. [53 FR 35925]

FOR FURTHER INFORMATION CONTACT: Jerry Schwartz, U.S. Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington, DC 20530, (202) 633-4059.

SUPPLEMENTARY INFORMATION: On September 15, 1988, DOJ published in the **Federal Register** a notice of lodging of a proposed partial consent decree ("Decree") in *United States et al.*, v. *Aerojet-General Corp., et al.*, Nos. CIVS-86-0063 and CIVS-86-0064. The next to last sentence in the second paragraph of the notice states that "Aerojet must also pay the State of California $2.4 million as reimbursement of past costs and $2.0 million for civil monetary penalties." This sentence should be corrected to read as follows: "Aerojet must also pay the State of California $2.4 million as reimbursement of past costs and $2.0 million for civil monetary claims." This correction is necessary to conform the notice of

lodging with the description of the payment set forth in the Decree.

Correction

The next to the last sentence in the second paragraph of the notice in the above-referenced action is amended by deleting the word "penalties" and by adding the word "claims" after the word "monetary" and before the period.

Dated: June 1, 1989.

Donald A. Carr,

Acting Assistant Attorney General.

[FR Doc. 89-13776 Filed 6-9-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; American Standard, Inc., et al.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States v. American Standard, Inc., et al.* was filed in the United States District Court for the Western District of Arkansas on May 26, 1989, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to sections 104, 106 and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located southeast of Fort Smith, Sebastian County, Arkansas, known as the "Industrial Waste Control Site." The complaint alleged, among other things, that the defendants are persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the industrial waste control Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendants agree to fund and implement a remedy at the Industrial Waste Control Site which includes excavation and offsite disposal of buried liquid-filled drums, installation of a slurry wall and french drain system, stabilization of contaminated soil and debris, construction of a multi-layer cap and long-term monitoring of groundwater in the vicinity of the Site. The consent decree also calls for the defendant to pay the United States the sum of $1,750,000.00 in reimbursement of government response costs incurred through September 30, 1988, and in settlement of the United States' anticipated future response and oversight costs related to the remedial action to be undertaken at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. American Standard, Inc.*, D.J. Ref. 90-11-2-193.

The proposed current decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Carlos Zequeira, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120.

United States Attorney's Office

Contact: Assistant United States Attorney, U.S. Post Office & Courthouse Building, 6th & Rogers, Fort Smith, Arkansas 72901, (501) 785-2442.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $7.10 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13713 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 26, 1989 a proposed Consent Decree in *United States* v. *Armour Fresh Meats Co. and Con Agra, Inc.*, Civil Action No. 86-1433, was lodged with the United States District Court for the District of Idaho. The Complaint sought penalties and injunctive relief against Armour Fresh Meats Co. and its parent corporation, Con Agra, Inc. ("defendants"), under section 209 of the Clean Water Act, 33 U.S.C. 1319. for their recurring violations of the terms and conditions of their National Pollutant Discharge Elimination System ("NPDES") permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act the terms and conditions of the NPDES permit, and imposes a civil penalty of $150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Armour Fresh Meats Co., and Con Agra, Inc.*, D.J. Ref. 90-5-1-1-2730.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 342 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13712 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Atlantic Richfield Co.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department

of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed in *United States* v. *Atlantic Richfield Company* in the United States District Court for the Northern District of Oklahoma on *May 30, 1989* and, simultaneously, a consent decree between the United States, State of Oklahoma and Atlantic Richfield Company was lodged with the court. This consent decree settles the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, for an injunction to abate an imminent and substantial endangerment to the public health, welfare or the environment because of an actual or threatened release of hazardous substances from a facility and for the recovery of response costs incurred by the United States with respect to the facility located in Sand Springs, Oklahoma, and known as the "Sand Springs Site." The complaint alleged, among other things, that the defendant as an owner/operator of the facility at the time of disposal of hazardous substances at the Site and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendant agrees to fund and implement a stabilization/solidification remedy involving the Source Control Operable Unit at the Site. The consent decree does not address remedial action associated with the Groundwater and Soils Operable Unit, nor does it resolve the claims of the United States relative to such work. The consent decree also calls for the defendant to reimburse the United States for $1,710,872.80 in past government response costs incurred through August 30, 1987, and to reimburse the United States for all of its response and oversight costs related to the remedial action incurred after August 30, 1987.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Atlantic Richfield Company*, D.J. Ref. 90-11-2-275.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Regional VI

Contact: Bruce Jones, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120.

United States Attorney's Office

Contact: Nancy Blevins, Assistant United States Attorney, U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103, (918) 581-7463.

Copies of the proposed partial consent decree may also be examined at the Enviromental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $7.90 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13714 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Macclenny

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 25, 1989, a proposed consent decree in *United States v. City of Macclenny and the State of Florida*, Civil Action No. 89-454-CIV-J-14, was lodged with the United States District Court for the Middle District of Florida. The Complaint filed by the United States alleged that the City had violated the Clean Water Act by discharging pollutants to navigable waters without a valid permit issued pursuant to the National Pollutant Discharge Elimination System, and by failing to comply with the construction schedule and other requirements of Administrative Order No. 85-290 issued by EPA on August 20, 1985 and amended April 7, 1986. The complaint sought injunctive relief to require the City to comply with the Clean Water Act and civil penalties for past violations. The decree requires the City to achieve compliance with the Clean Water Act by complying with the final effluent limits of its NPDES permit by no later than September 1, 1989. In addition, the City must comply with interim effluent limitations and must perform monitoring and reporting activities. Defendant must also pay a civil penalty for past violations of $13,900.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States* v. *City of Macclenny and State of Florida*, D.J. Ref. 90-5-2-1-3206.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW, Washington, DC. A copy of the proposed consent decree may be obtained in person from the above Department of Justice address or by mail from the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States* v. *City of Macclenny and State of Florida*, D.J. Ref. 90-5-2-1-3206, and enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13777 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; McFarland Wrecking Corp., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 16, 1989, a Consent Decree in *United States* v. *McFarland Wrecking Corporation and Charles and Emma Frye Free Public Art Museum*, Civil Action No. 88-168R, was lodged with the United States District Court for the Western District of

Washington. The complaint filed by the United States alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emissions Standards for Hazardous Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M. The Consent Decree requires the defendants to pay a civil penalty of $15,000 and enjoins the defendants from future violations of the Clean Air Act and the asbestos NESHAP.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *McFarland Wrecking Corporation and Charles and Emma Frye Free Public Art Museum,* D.J. Ref. No. 90–5–2–1–1189.

The Consent Decree may be examined at the Office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, Seattle, Washington 98101; at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101: and the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–13711 Filed 6–8–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act; Solar Turbines

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 16, 1989 a proposed consent decree in *United States v. Solar Turbines, Incorporated* Civil Action No. 89–0739–E(CM) was lodged with the United States District Court for the Southern District of California. The Complaint filed by the United States alleged that defendant Solar Turbines, Incorporated violated the emissions limitations for volatile organic compounds ("VOCs") contained in the federally-approved California State Implementation Plan ("SIP"), which is federally enforceable under Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. 7413. The complaint sought injunctive relief and the imposition of a civil penalty for defendant's past violations of these emission limitations. The consent decree, which would settle the case, will require defendant to maintain its previously achieved compliance with the VOC limitations and to pay a civil penalty in the amount of $49,787, for past violations

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. Solar Turbines, Incorporated,* D.J. Ref. 90–5–2–1–1183.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Southern District of California, 5–N–19 U.S. Courthouse, 940 Front Street, San Diego 92189, at the Region IX office of the Environmental Portection Agency, 215 Freemont Street, San Francisco, California 94105; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. Solar Turbines, Incorporate,* D.J. Ref. 90–5–2–1–1183, and enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–13778 Filed 6–8–89; 8:45]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 31, 1989, a proposed consent decree in *United States of America* v. *Union Oil Company of California, d/b/a Unocal,* Civ No. 89–B–962, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Union Oil Company of California ("Unocal") for violations of the Clean Air Act. The complaint filed by the United States alleges that defendant violated the New Source Performance Standards ("NSPS") regulations at its facility in Parachute, Colorado.

The proposed consent decree enjoins defendant from violating the NSPS regulations in the future. The proposed consent decree also requires defendant to pay a civil penalty of $25,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044, and should refer to *United States of America* v. *Union Oil Company of California, d/b/a Unocal,* DOJ Ref. 90–5–2–1–1298.

The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1200 Federal Office Building, 1961 Stout Street, Denver, Colorado, 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street—Suite 500, Denver, Colorado, 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person, or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 89–13779 Filed 6–8–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on May 31, 1989, a proposed Consent

Decree in *United States* v. *Wausau Chemical Company, et al.*, Case No. 87-C-919-C, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree provides for reimbursement to the United States of $390,000 in response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site through January 5, 1985.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wausau Chemical Company*, D.J. reference #90-11-2-286.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-13780 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-17]

Robert's Cape Coral Pharmacy; Grant of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roberts Cape Coral Pharmacy (Respondent), proposing to revoke DEA Certificate of Registration, AR7370694, and to deny any pending applications for renewal of that registration. The statutory basis for the issuance of the Show Cause Order was that the pharmacy's continued registration with DEA would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Stanley Spiegel, owner of the pharmacy, timely requested a hearing which was held in Miami, Florida on April 15, 1988. The Government called two witnesses, and proffered ten exhibits into evidence. Mr. Spiegel, assisted by counsel, testified on his own behalf but offered no exhibits into evidence. Both parties filed proposed findings of fact and conclusions of law. On December 15, 1988, the Administrative Law Judge recommended that Respondent retain its DEA Certificate of Registration and that any pending applications for renewal be granted.

The Administrator has reviewed the entire file together with the judge's recommendation and makes the following findings: An audit of Respondent conducted by Florida state investigators in September 1983, revealed a shortage of Vicodin, a Schedule III controlled substance. On July 9, 1984, Mr. Spiegel was convicted of unlawfully dispensing a prescription drug in the Lee County Circuit Court for the State of Florida. According to Florida procedure, adjudication of guilt was withheld and Mr. Spiegel was placed on probation for five years. The probation was terminated after two years.

It appears from the record that Mr. Spiegel has successfully completed his probationary period and fulfilled all the conditions placed on him. Likewise there have been no recurring violations by the pharmacy since 1983. The Administrator therefore finds that it would be unduly harsh to revoke Respondent's registration in light of its rehabilitation.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR7370694, not be revoked, and that any outstanding applications for renewal of those registrations be granted.

This order is effective June 9, 1989.

John C. Lawn,

Administrator.

Dated: June 2, 1989.

[FR Doc. 89-13654 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-10]

Scott Pyper Wallace, M.D.; Partial Revocation of Registration

On December 22, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Scott Pyper Wallace, M.D. (Respondent) of Provo, Utah, proposing to revoke his DEA Certificate of Registration, AW1642431, and deny his application for renewal of that registration executed on April 15, 1986. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest in that: (1) he prescribed narcotic controlled substances to individuals for treatment of their narcotic dependence without being registered to do so; (2) he prescribed Schedule II and III controlled substances during a six-month period when his Utah Controlled Substances License for Schedules II and III was suspended; and (3) his Utah Controlled Substances License for Schedules II and III was again suspended on March 31, 1987.

Respondent, through counsel, requested a hearing in a letter dated January 25, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Salt Lake City, Utah on June 21, 1988. On November 10, 1988, the Administrative Law Judge issued her opinion and recommended ruling. On December 2, 1988, counsel for the Government filed exceptions to the Administrative Law Judge's opinion, and on December 6, 1988, Respondent's counsel filed a response to the Government's exceptions. On December 12, 1988, Judge Bittner transmitted a record of these proceedings, including the aforementioned exceptions and response, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a general family practitioner who has been in private practice since 1954. In February 1985, an investigator with the Utah Department of Business Regulation initiated an investigation concerning Respondent's prescribing practices with Schedule II and III controlled substances. The investigator specifically noted three individuals who received substantial quantities of controlled substances from

Respondent over lengthy periods of time. Respondent wrote prescriptions for Dolophine, a Schedule II narcotic, on a regular basis from September 24, 1984, through February 4, 1985, for one individual. Respondent knew that this individual was dependent on narcotics and testified at the hearing that he was trying to "wean" this individual from narcotics. Respondent was not registered by DEA as a narcotic treatment program, and was, therefore, not authorized to write prescriptions for narcotics for a narcotic dependent person in order to treat such dependency.

The Administrative Law Judge also found that Respondent prescribed large amounts of Percocet, a Schedule II narcotic, and Valium, a Schedule IV controlled substance, to an individual from March 1984 through February 1985. Respondent indicated that although he knew this individual had medical problems, she was addicted to these substances. To a third individual Respondent prescribed various controlled substances for weight control from 1980 through March of 1985, on at least a monthly basis. A physician who reviewed this individual's medical record at the State's request, indicated that Respondent prescribed these drugs long after they ceased to be effective, and that Respondent had not put this individual on any type of supervised weight-loss program.

The Utah Division of Registration of the Department of Business Regulation proposed the revocation of Respondent's license to practice medicine in April 1985. Following a hearing before the Utah Physicians Licensing Board, Respondent's license to prescribe Schedule II and III controlled substances in the State of Utah was suspended for six months, from August 5, 1985, until February 5, 1986. The Board found that Respondent had prescribed controlled substances to an individual knowing he was an addict, prescribed controlled substances to an individual in an excessive quantity, and that Respondent had prescribed controlled substances to an individual in excess of the amount necessary to treat her conditions.

Investigators for the Utah Department of Business Regulation discovered that Respondent had written at least 20 prescriptions for Schedule II and III controlled substances during the time that the Schedule II and III portion of his Utah license was suspended. At the DEA hearing, Respondent testified that he mistakenly believed the suspension only applied to situations involving prescriptions for treatment for drug addiction. In response to these activities, Respondent and the Utah Division of Registration entered into a stipulation suspending Respondent's authority to handle Schedule II and III controlled substances for six months beginning on March 31, 1987. Respondent was required to apply for reinstatement of those privileges. Respondent has not applied for reinstatement of his Schedule II and III privileges in Utah, and is, therefore, not currently authorized to handle Schedule II and III controlled substances in the State of Utah.

The Administrative Law Judge found that since March 1986, Respondent has complied with the restrictions on his prescribing authority. She further found that in the past, Respondent demonstrated carelessness and lack of responsibility in his handling of controlled substances, but that Respondent recognizes his past mistakes and that he can be trusted with a registration limited to Schedules IV and V. The Administrative Law Judge recommended that Respondent's DEA Certificate of Registration in Schedules II and III be revoked, and that his pending application for renewal of DEA Certificate of Registration, AW1642431, be granted for Schedules IV and V only. The Administrator adopts the opinion and recommended ruling of the Administrative Law Judge. Based upon Respondent's lack of authorization to handle controlled substances in Schedules II and III in the State of Utah and Respondent's past conduct with respect to the prescribing of controlled substances in those schedules, Respondent's DEA registration in Schedules II and III must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100 (b), hereby orders that the Schedule II and III portion of DEA Certificate of Registration, AW1642431, previously issued to Scott Pyper Wallace, M.D., be, and it hereby is, revoked. Respondent's application for renewal of DEA Certificate of Registration, AW1642431, is hereby granted for Schedules IV and V and shall be restricted to only those schedules.

This order is effective July 10, 1989.

John C. Lawn,

Administrator.

Dated: June 2, 1989.

[FR Doc. 89-13691 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-09-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 and the average hours per respondent.

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

Occupational Safety and Health Administration

Occupational Exposures to Hazardous Chemicals in Laboratories

On occasion

Businesses or other for-profit; and small businesses or organizations 34,214 respondents; 455,564 response; 37 minutes per responses; 0 forms

Information collection	Burden hours
(1) Employee Exposure Determination	8,223
(2) Employee Notification of Exposure	5,483
(3) Chemical Hygiene Plan	90,502
(4) Employee Information & Training	47,360
(5) Medical Consult. & Exams	37,962
(6) Information Provided to Physician	4,079
(7) Physician's Written Opinion	4,079
(8) Carcinogen Provisions	65,349
(9) Hazard Identification	0
(10) Use of Respirators	0
(11) Medical & Monitoring Records	18,448
(12) Access (Employees & Rep.) to Records	2,358
(13) Access (OSHA Inspectors) to Records	1

This regulation requires laboratories to train their workers on hazardous chemicals used in the lab, conduct exposure monitoring and medical surveillance as needed as well as develop a Chemical Hygiene Plan.

Revision

Employment and Training Administration, Unemployment Insurance Quality Control Program, 1205-0245; ET Handbook No. 395, Weekly, State or local governments, 52 respondents; 141,525 total hours; 3 hours and 20 mins. per response.

The Unemployment Insurance Quality Control program audits a sample of individual effectiveness of State agencies. The Quality Control program will reduce errors, save money, and assure benefit payment integrity.

Extension

Occupational Safety and Health Administration;

Report of Injuries to employees operating mechanical power presses, Business and other for profit; Small businesses or organizations 191 respondents; 57 burden hours; 0.3 average burden hours per response; 0 forms;

OSHA is required to conduct an ongoing analysis of mechanical power press injuries to monitor the effectiveness of the standard and to evaluate causes of injuries to determine the need for revisions. This analysis cannot be made without collecting information on power press accidents.

Signed at Washington, DC this 5th day of June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-13734 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-26-M

Employment Standards Administration, Wage and Hour Divison

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with the applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia.....
DC89-1 (Jan. 6, 1989)..... pp. 78-79, 81

Maryland:
MD89-2 (Jan. 6, 1989)..... pp. 418-419
MD89-11 (Jan. 6, 1989)..... pp. 440-441
MD89-16 (Jan. 6, 1989)..... p. 454

MD89-17 (Jan. 6, 1989)..... p. 456
New York:
NY89-2 (Jan. 6, 1989)..... pp. 684-685
pp. 688, 690
NY89-3 (Jan. 6, 1989)..... pp. 702, 705
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Pennsylvania:
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PA89-4 (Jan. 6, 1989)..... p. 870
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p. 921
PA89-11 (Jan. 6, 1989)..... p. 938
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PA89-20 (Jan. 6, 1989)..... pp. 984-985
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VA89-5 (Jan. 6, 1989)..... p.1134
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Ohio:
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pp. 793-796
OH89-3 (Jan. 6, 1989..... p. 810
OH89-28 (Jan. 6, 1989)..... pp. 864-867
pp. 812-814
Wisconsin,
WI89-1 (Jan. 6, 1989)..... p. 1138
Volume III
None.....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2 day of June 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-13529 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-21,790]

Baker Hughes, CAC Division, Oklahoma City, OK; Negative Determination on Remand

Pursuant to a remand by the U.S. Court of International Trade, dated May 3, 1989, in *Former Employees of Baker Hughes, CAC Division.* v. *Secretary of Labor* (USCIT 89-02-00096) the Department makes the following negative determination on remand for workers of the CAC Division of Baker Hughes, Oklahoma City, Oklahoma.

The Department's initial denial was based on the fact that U.S. imports of oilfield pumps are negligible. The record, however, did not contain sufficient data to support the Department's determination.

The Department requested the remand to include additional findings of U.S. imports of oilfield pumps. The new findings show negligible imports of oilfield pumps and support the Department's negative determination.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of the CAC Division of Baker Hughes, Oklahoma City, Oklahoma.

Signed at Washington, DC, this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 89-13735 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,713 et al.]

Dixilyn-Field Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA-W-21,713, Houston, Texas, TA-W-21,713A, Lafayette, Louisiana, TA-W-21,713B, All Other Locations in Texas, TA-W-21,713C, All Locations in Wyoming, TA-W-21,713D, All Locations in Idaho.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of Dixilyn-Field Drilling Company, Houston, Texas.

An amended certification was issued on February 23, 1989 applicable to all workers of the subject firm in Houston, Texas and in Lafayette, Louisiana.

Based on an inquiry from the Idaho State agency, the Department obtained new information from the company showing worker separations in Idaho, Wyoming and in other locations in Texas. The notice, therefore, is amended by including the Dixilyn-Field workers in the States of Idaho, Wyoming and all other locations in Texas except Houston, where workers were certified previously.

The amended notice applicable to TA-W-21,713 is hereby issued as follows:

"All workers of Dixilyn-Field Drilling Company, Houston, Texas and in all other locations in Texas; Lafayette, Louisiana; all locations in Idaho and all locations in Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before August 30, 1987 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 30th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13732 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,356, TA-W-22,356A, TA-W-22,356B]

Honeywell Bull Phoenix Operations et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona. The Certification was amended on April 26, 1989 to include all workers of Honeywell Bull, U.S. Marketing, Sales & Services Division in Phoenix, Arizona.

Based on new information from the company, the Department, on its own motion expanded the investigation to include the Los Angeles Development

Center (LADC) of Honeywell Bull, Inc., in Los Angeles, California.

New investigation findings show that worker separations at Honeywell Bull's LADC unit in Los Angeles, California are directly attributable to the Phoenix operations. The notice, therefore, is amended by including all workers at Honeywell Bull LADC, Los Angeles, California.

The amended notice applicable to TA-W-22,356 is hereby issued as follows:

"All workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona; Honeywell Bull's U.S. Marketing Sales & Services Division, Phoenix, Arizona and Honeywell Bull's Los Angeles Development Center (LADC), Los Angeles, California who became totally or partially separated from employment on or after November 26, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13733 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 318]

Fitkin Petroleum Corp.; Oklahoma City, OK; Notice of Negative Determination of Reopening

On May 22, 1989, the Department on its own motion, reopened its investigation for workers of Fitkin Petroleum Corporation, Oklahoma City, Oklahoma. The initial investigation was terminated on February 15, 1989 because the petition did not meet the definition of "group" according to Section 90.1 of the Rules and Regulations for administering the Trade Act. The termination notice was published in the **Federal Register** on March 3, 1989 (54 FR 9096).

The company provided additional evidence showing that it meets the definition of "group" and requested the investigation to be reopened.

The investigation found on reopening that Fitkin Petroleum is an oil and gas producer with gas accounting for the preponderant share of sales and production in 1987 and 1988.

The retroactive provisions of Section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who were engaged in the production of crude oil or gas if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

Other findings on reopening show that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. None of the respondents of the Department's survey of Fitkin Petroleum's customers reported import purchases of natural gas in the first 11 months of 1988 compared to the same period in 1987.

Conclusion

After careful review, on reopening, I determine that all workers of Fitkin Petroleum Corporation, Oklahoma City, Oklahoma are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. on this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13736 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Meeting of DOE/NSF Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: June 26, 1989 from 8:30 am to 6:30 pm; June 27, 1989 from 8:30 am to 3:30 pm.

Place: Main Conference Room, Indiana University Cyclotron Facility, 2401 Milo B. Sampson Lane, Bloomington, Indiana.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

Monday, June 26

—Charge to NSAC for Long Range Plan Preparation
—Reports from Nuclear Physics National Users Facilities
—Nuclear Physics University Laboratory Programs
—Development of Long Range Plan Workshop Agenda.

Tuesday, June 27

—Reports from NSF and DOE: Status of Programs
—Status Reports from NSAC Long Range Plan Working Groups
—Discussion of Long Range Plan Procedures and Issues
—Other Business and Public Comment.

June 5, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-13672 Filed 6-8-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-315]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-58 issued to the Indiana Michigan Power Company, the licensee, for operation of the Donald C. Cook Nuclear Plant, Unit No. 1, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the D.C. Cook Nuclear Plant, Unit No. 1 Technical Specifications to allow operation of the primary coolant system under reduced temperature and pressure (RTP) conditions. The proposed RTP program will reduce the amount of stress corrosion cracking of steam generator U-tubes similar to that observed on the Unit 2 steam generators.

The proposed amendment is in accordance with the licensee's application for amendment dated October 14, 1988 as supplemented by a letter dated December 30, 1988, and June 5, 1989.

The Need for the Proposed Action

The proposed change by the licensee reduces the amount of stress corrosion cracking of steam generator U-tubes; therefore, reduces the propensity for primary to secondary leaks due to cracking of steam generator U-tubes. Additionally, the proposed RTP program is expected to increase the life of the Unit 1 steam generators significantly.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The staff

concludes that the safety consideration associated with operation at the proposed reduced temperatures and pressures would not adversely affect plant safety. The proposed changes have no adverse effect on the probability or consequences of any accident previously analyzed. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual 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 amendment involves systems within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plan effluents and has 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 and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 19, 1989 (54 FR 15851). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the 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 the environmental impacts but 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 Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons with exception to clarify certain portions of the licensee's proposal.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license 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 October 14, as supplemented by letter dated December 30, 1988, and June 5, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 6th day of June.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13875 Filed 6-8-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al.; Exemption

I.

Florida Power Corporation, et al. (FPC, the licensee) are the holders of Facility Operating License No. DPR-72, which authorizes operation of Crystal River Unit 3 (CR-3, the facility) at a steady-state power levels not in excess of 2544 megawatts thermal. The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor (PWR) located at the licensee's site in Citrus County, Florida.

II.

10 CFR Part 50, Appendix A, General Design Criterion-4 (GDC-4) requires that structures, systems, and components important to safety be designed to accommodate the effects of postulated accidents. The structures, systems and components are required to be appropriately protected against dynamic effects, including missiles, pipe whipping, and discharging fluids that may result from equipment failures. At the time of licensing CR-3, the criteria employed by the licensee to analyze the effects of high energy line breaks (HELB) outside containment were consistent with the staff's position as contained in the AEC letter dated December 22, 1972 from A. Giambusso. However, the licensee reported recently that modifications involving safety-related equipment outside containment installed since that time were made without adequate consideration of HELB criteria.

III.

The licensee promptly embarked on a comprehensive program to identify all break locations and safety-related systems and equipment which must function to mitigate the effects of HELB events to ensure safe shutdown of the plant, and to protect such equipment as necessary. FPC also performed an evaluation to show that continued operation of the facility while the identified deficiencies are being corrected does not constitute a threat to the health and safety of the public. The facility has been shut down for unrelated reasons during much of the time since identification of the HELB problem.

By letter dated December 16, 1988, as supplemented by letter dated May 24, 1989, the licensee requested a temporary exemption from the requirements of GDC-4 with respect to consideration of the environmental and dynamic effects of HELB. The licensee requested that the exemption remain in effect until all actions, including hardware modifications, have been completed. Because FPC's program may include areas accessible only during shutdown, this was originally expected to occur no later than restart from Refuel 8, then scheduled during the fall of 1991. The staff considered this proposed exemption period to be excessive, and continued discussions with the licensee indicated that elements of its proposed schedule could be completed earlier. In its letter of May 24, 1989, the licensee stated that completion in 1990 is anticipated. The first major schedule milestone, submittal of revised licensing and design basis criteria, was completed on March 31, 1989, on schedule. In addition, refueling outages have been delayed 6 months, so that the next fueling outages will start approximately March 1990 (Refuel 7) and March 1992 (Refuel 8), rather than September 1989 and September 1991, as previously anticipated. The licensee has committed to review the program and schedules to determine what portion of the high energy piping can be protected during near-term plant operation in order to maximize full protection of safety systems at the earliest possible time. It is believed that actions to protect most, if not all, systems important to safety

against the effects of HELB can be completed by the end of Refuel 7.

There is reasonable assurance that the proposed exemption will present no undue risk to public health and safety because:

—The likelihood of a HELB not previously analyzed and protected against in an area which could affect redundant safety systems required to mitigate that break is low. The licensee has reviewed the piping system stress analyses and has determined that the postulated terminal end break locations are not highly stressed and that breaks at these locations are low probability events. In addition, the contribution of seismic loads to the potential for HELBs appears to be overstated because of the location of the facility in a seismically inactive area. Further, although new components (primarily potential targets) have been added, they are generally in areas where other principal safety system components are located which were analyzed as targets during original plant licensing, and therefore many potential HELB interactions with the new components are likely to have been adequately treated by features of the original design. With regard to the main feedwater system, the licensee's program in response to Bulletin 87–01, Thinning of Pipe Walls in Nuclear Power Plants, reduces the probability of an HELB in this system. Also, the auxiliary steam line in the Auxiliary Building has been closed until permanent resolution of the HELB problem, leaving relatively few potential break locations in the Auxiliary Building.

—Due to imposition of other criteria, such as electrical separation and 10 CFR Part 50, Appendix R, Fire Protection, there is a reduced likelihood that one HELB can cause loss of safety function by impacting multiple trains of safety equipment. Additional confidence in the survivability of equipment required for reactor coolant system inventory control and the ability to shut down safety exists due to the previously postulated loss of the makeup function in each of 11 fire zones used during the 10 CFR Part 50, Appendix R review. Safe shutdown was demonstrated in each case, and since the effects of pipe breaks are more localized than those caused by a fire, the Appendix R analyses probably bound the HELB accident. The licensee also concluded that none of the identified breaks would prevent the makeup system from performing its inventory control function. Decay heat can be removed using either the emergency feedwater (EFW) system or high pressure injection (HPI) system. FPC has determined that no HELB event in the Intermediate Building can affect HPI, and that no HELB in the Auxiliary Building will affect EFW. Therefore, in the unlikely event of an HELB, removal of decay heat could be accomplished. Additionally, since most plant modifications adding HELB targets were associated with the addition of automatic capability, the original manual capability to initiate safety functions should, in general, remain protected against an HELB. Finally, plant procedures and operator training regarding identification of leaks and compensatory measures in the event of an HELB will help in avoiding HELBs and if one should occur, in mitigating its effects.

This case involves special circumstances as set forth in 10 CFR 50.12(a)(v). This exemption "would provide only temporary relief from the applicable regulations" (GDC–4). The exemption is requested for a specific time period, after which the facility would be in conformance with the requirements of GDC–4. Therefore, the proposed exemption would provide only temporary relief until the license can permanently resolve identified deficiencies.

Since identification of the problem to the NRC, FPC has made good faith efforts to assure complete and expedited conformance to GDC–4. The licensee mounted a significant effort to identify all possible HELB targets. A complete program was defined to resolve the problem and the first important milestone has been completed. This action, preparation of pipe rupture analysis criteria, represents a significant effort to define HELB criteria to improve plant safety and reduce personnel exposure. The commitment to early protection of the maximum amount of safety equipment, as discussed above, is further evidence of FPC's good faith efforts.

IV

Based on the above, and on review of the licensee's submittals to date, the NRC staff concludes that: (1) The probability of an HELB which could affect public health and safety is low, and (2) in the event of an HELB, it is likely that no loss of safety function would occur and that the facility could be safely shut down. Therefore, the NRC staff finds the proposed exemption (with revised expiration date) from certain requirements of GDC–4 to Appendix A of 10 CFR Part 50 to be acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption would provide only temporary relief from the applicable regulation and that FPC has made good faith effort to comply with the regulation.

Therefore, the Commission hereby approves the following exemption: The facility may operate without conforming to the requirements of GDC–4 with respect to the environmental and dynamic effects of HELB. This exemption shall expire by the end of Refuel 7, currently scheduled to begin in March 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (June 5, 1989, 54 FR 24057).

For further details with respect to this action, see the licensee's request dated December 16, 1988 and its submittal dated March 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 5th day of June 1989.

[FR Doc. 89–13721 Filed 6–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co. Donald C. Cook Nuclear Plant, Units 1 and 2; Denial of Request for Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by the Indiana Michigan Power Company for an amendment to Facility Operating License Nos. DPR–58 and DPR–74, issued to the Indiana Michigan Power Company (the licensee), for the operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 (the facilities), located in Berrien County, Michigan.

The proposed amendments would provide upgraded Technical

Specifications (TSs) to promote diesel generator reliability as a result of Generic Letter 84–15. Additionally, changes in the AC and DC distribution systems are to provide standardization between Unit 1 and 2. The licensee's application for the amendments was dated January 16, 1987, and supplemented on June 25, September 28, and November 25, 1987, October 31, 1988, and January 24, March 23, and April 6, 1989. Notice of consideration of issuance of these amendments was published in the **Federal Register** on February 26, 1987 (52 FR 5857), July 29, 1987 (52 FR 28380), and December 30, 1987 (52 FR 49227).

The proposed amendments, in part, would delete several Technical Specifications (TSs) which determine the operability of the emergency load sequencing and timing circuits and provide detection of diesel generator interdependence in TSs 4.8.1.1.2.c.2 (Unit 2), 4.8.1.1.2.b.6 (Unit 1), and 4.8.1.1.2.d (Unit 2), respectively. The Commission has determined that inclusion of these TSs is necessary to provide assurance of the availability of the safety functions provided by the diesel generators and, therefore, shall not be deleted. Another proposed change to the TSs denied was the increase in time from 72 hours to 168 hours for restoration of an inoperable diesel generator.

All other provisions of the amendment request have been approved by Amendment Nos. 125 and 112 dated May 31, 1989. Notice of Issuance of Amendment Nos. 125 and 112 will be published in the Commission's biweekly **Federal Register** notice.

Indiana Michigan Power Company was notified of the Commission's denial of the proposed TSs changes by letter dated May 31, 1989.

By June 30, 1989, the licensee may request a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated January 16, 1987, and supplemented on June 25, September 28, and November 25, 1987, October 31, 1988 and January 24, March 23, and April 6, 1989, and (2) the Commission's letter to Indiana Michigan Power Company dated May 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of item (2) may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–13720 Filed 6–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–112]

University of Oklahoma (AGN 211P Nuclear Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated October 24, 1988, as supplemented, the University of Oklahoma (licensee) requested authorization to dismantle the AGN 211P Nuclear Reactor, Facility License No. R–53, located in Norman, Oklahoma, and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Proposed Issuance of Orders Authorizing Disposition of Component Parts, and Terminating Facility License" was published in the **Federal Register** on December 13, 1988 (53 FR 50144). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact, dated May 26, 1989, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby ordered to dismantle the reactor facility and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R–53.

For further details with respect to this action, see: (1) The licensee's application for authorization to dismantle the facility and dispose of component parts, dated October 25, 1988, as supplemented, (2) the Commission's related Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 5th day of June 1989.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects. Office of Nuclear Reactor Regulation.

[FR Doc. 89–13722 Filed 6–8–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/State of Alabama Department of Human Resources

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/State of Alabama Department of Human Resources.

SUMMARY: The Postal Service plans to participate as the matching agency in a computer matching program (1) to identify any postal employees who are receiving benefits to which they are not entitled under the public assistance or child support programs administered by the State of Alabama, (2) to identify any postal employees who owe delinquent debts to the State of Alabama, primarily as a result of being a former recipient of the food stamp public assistance programs, and (3) to identify any postal employees who owe child support obligations. This match will compare the Postal Service's Payroll System File with the State of Alabama's files of (a) Aid to Dependent Children (ADC) benefit recipients, (b) child support obligees, and (c) delinquent debtors.

DATE: The match is expected to begin in July 1989.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 10670, Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office, (202) 268-5161.

SUPPLEMENTARY INFORMATION: The USPS has agreed to assist the Office of Fraud/Abuse and Overpayments, State of Alabama Department of Human Resources (AL-DHR), in its efforts to identify current postal employees who owe child support obligations; are receiving public assistance benefits through the State of Alabama to which they are not entitled; or owe monies to the State of Alabama, primarily as former recipients of the above listed benefit programs. The AL-DHR has investigatory responsibility for these public assistance programs which are administered by the State of Alabama. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Alabama Department of Human Resources (AL-DHS).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the AL-DHS will submit to the USPS a computer tape of the names and social security account numbers (SSANs) from AL-DHS' files of (1) Aid to Dependent Children (ADC) benefit recipients, (2) child support obligees, and (3) delinquent debtors, primarily former recipients of the food stamp public assistance programs. The USPS will match that tape against its payroll system file (USPS 050.020, Finance Records—Payroll System). The purpose of this match is to identify any postal employees who are receiving benefits to which they are not entitled under these public assistance programs, to identify any postal employees who owe delinquent debts to the State of Alabama and Federal Government under programs administered by the State of Alabama, and to identify any postal employees who have failed to fulfill child support obligations so that those obligations may be enforced. USPS will disclose to the Office of Fraud/Abuse & Overpayments of the AL-DHS the following information about any resultant "hits": Name, SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/benefit or obligee information will be verified by the AL-DHS. Subsequent actions concerning benefit program recipients may include the reduction, suspension, or termination of benefit payments; to collection of oustanding debts owed for past benefit overpayments; and other appropriate action against those employees fraudulently receiving benefits, but only after the individual has been afforded due process. Subsequent actions to collect outstanding debts owed by those employees for delinquent child support obligations may include enforcement of standing court orders, service of legal process when a court order has not been issued, or other appropriate action. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter may be referred for Federal or State prosecution. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use Nos. 28 and No. 32 in USPS 050.020, Finance Records—Payroll System, most recently published in 53 FR 25025 of July 1, 1988.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in July 1989 and end no later than January 1991.

d. *Security:* The USPS personnel who perform the match will (1) have the only USPS access to the AL-DHR computer tape, (2) use it for the sole purpose of the match as officially stated and for no other purpose, and (3) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the AL-DHR will be used by authorized AL-DHR personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching program will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will neither retain nor copy the tape provided by AL-DHR and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-13640 Filed 6-8-89; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[34-26886; DTC-89-09]

Depository Trust Company; Filing of Proposed Rule Change Relating to Establishing an Interface with NSCC's Fund/SERV Service

June 2, 1989.

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 25, 1989, the Depository

Trust Company 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 Depository Trust Company ("DTC") is filing herewith a proposed rule change providing for an interface with National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification (Fund/SERV) service.

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 purpose for the proposed rule change is to provide DTC Participants who are not direct members of NSCC with access to NSCC's Fund/SERV service.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in trade securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC proposed plans to expand mutual funds services for its Participants in a memorandum issued March 13, 1989, to Participants, mutual funds, and mutual funds processing agents. The memorandum followed discussion papers on the subject issued by DTC in April and September 1988. Since that time, a user advisory committee—formed to assist DTC in developing interfaces with NSCC's Fund/SERV and Networking services—has closely examined DTC's proposal. Committee members include representatives from DTC, its bank and broker Participants, NSCC, Bank Depository User Group, New York Clearing House Association, Investment Company Institute, and load and non-load mutual funds.

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 (1) 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 Room, 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 File No. SR-DTC-89-9 and should be submitted by June 30, 1989. For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13751 Filed 6-8-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26887; File No. SR-MSE-89-2]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Filing of Proposed Rule Change To Establish a Secondary Trading Session for the Execution of Transactions in Portfolios of Securities

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on April 28, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] Amendment No. 1, submitted by the Midwest on May 31, 1989, deletes changes to Article XX, Rule 12 and Article XXI, Rules 2, 3, 4, 8, 9, 12 and 13 as proposed in the Exchange's original filing submitted on April 28, 1989. Amendment No. 1 also adds an interpretation, to be set forth in Article VIII, Rule 9 of the Midwest's Rules, that clarifies the application of the Exchange's off-board trading restrictions to member transactions in securities listed or admitted to unlisted trading privileges on the Exchange.

[1] Concurrent with its April 28, 1989 filing, Midwest filed with the Commission's Division of Market Regulation ("Division") a proposed transaction reporting plan pursuant to Commission Rules 11A3-1 and 19b-4, 17 CFR 240.11A3-1, 240.19b-4. Additionally, Midwest has stated that it intends to submit an application to the Division for the granting of unlisted trading privileges pursuant to section 12(f) of the Act, 15 U.S.C. 781(f). *See* letter from J. Craig Long, Vice President and General Counsel, Midwest Stock Exchange to Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission, dated April 27, 1989.

Also concurrent with its April 28, 1989 filing, Midwest filed a separate request with the Division seeking alternatively either no-action relief or an exemption under Commission Rule 10a-1, 17 CFR 240.10a-1, the so-called "short sale rule". *See* letter from J. Craig Long, Vice President and General Counsel, Midwest Stock Exchange to Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission, dated April 27, 1989.

where the member acts as principal or agent on any organized exchange in any foreign country, or over-the-counter in any foreign country, outside of the trading hours of the Exchange's Primary Trading Session. 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

Midwest is proposing to establish a Secondary Trading Session to be conducted from 3:30 p.m. to 5:00 p.m., Central Time, for the purpose of permitting the execution of transactions in portfolios of securities. The rules governing the Secondary Trading Session are set forth in a new Article XXXV of Midwest's Bylaws. However, conforming and other technical changes are made in Midwest's existing rules.

The Secondary Trading Session is limited to transactions in "Portfolios" of "Eligible Securities," as those terms are defined in Article XXXV, Rule 2. All Portfolio transactions will be executed through the System maintained by Midwest. The Midwest floor will not be open during the Secondary Trading Session.

Members may enter unmatched bids or offers in accordance with Article XXXV, Rule 6 or matched bids and offers in accordance with Article XXXV, Rule 7. When matched orders are entered, the System will first search all open orders to determine whether there is an order in the System for the same Portfolio at the same or a better place. If there is such a quotation, the cross will not be permitted and a message to that effect will be sent to the member attempting to effect the transaction. If there is no better quotation, the matched bid and offer will be executed, provided the transaction price is within the applicable pricing parameters, as prescribed in Article XXXV, Rule 9.

Pursuant to Article XXXV, Rule 4, only orders for Portfolios may be executed during the Secondary Trading Session. No other orders for the purchase or sale of securities will be accepted for execution. Further, the rule provides that any orders for the purchase or sale of securities entered in the Primary Trading Session that remain open at the close will be held open for execution during the next Primary Trading Session. Thus, there will be no interaction between individual securities orders left open on Midwest during its Primary Trading Session and Portfolio executions during the Secondary Trading Session.

II. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regualtory 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 section (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 rules Midwest is proposing would implement a Secondary Trading Session to be conducted from 3:30 p.m. to 5:00 p.m., Central Time. The Secondary Trading Session will permit the efficient execution of transactions in portfolios of securities subject to the regulatory oversight of Midwest and the Securities and Exchange Commission.

The Secondary Trade Session is designed to address some of the effects of New York Stock Exchange ("NYSE") Rule 390, which generally prohibits an NYSE member, or any broker or dealer affiliated with an NYSE member, from effecting any transaction in an NYSE listed security as a principal in the over-the-counter market or from acting as agent for both parties in an over-the-counter transaction. Because these prohibitions are not applicable with respect to transactions effected in any foreign country outside of NYSE trading hours, many brokers for large institutional investors in portfolios of securities that desire to execute transactions based on the closing prices of securities on the NYSE effect such transactions off-shore, usually in London.

This procedure is unsatisfactory from several viewpoints. First, these transactions take place without the benefit of SEC or exchange oversight and without the regulatory protections afforded participants in U.S. security markets. In addition, such transactions are not reported to the public or even to the SEC. Thus, issuers, the investing public and the regulatory agencies responsible for the oversight of the markets are deprived of important information regarding trading activity in various securities.

The Secondary Trading Session will permit broker-dealers to rapidly execute transactions in portfolios through an automated Portfolio Trading System ("System") maintained by Midwest and will require disclosure to the public of necessary trade information. In addition, Midwest will maintain a complete audit trail of all transactions effectuated in the The Secondary Trading Session, permitting the SEC, Midwest and other regulators for the first time to understand and monitor the after-hours institutional market.

As discussed above, there will be no interaction between individual securities offers left open on Midwest during the Primary Trading Session and Portfolio executions during the Secondary Trading Session. This aspect of the System is a necessary consequence of the limited trading environment being supported during the Secondary Trading Session. The System is not designed or intended to be an after-hours automated execution system for individual securities and small groups of securities. At the present time, Midwest is not prepared to advocate an entirely electronic trading mechanism for these types of orders, which can benefit from open outcry or widespread dissemination of firm quotations reflecting buying and selling interest.

Integration of orders from the Primary Trading Session into the Secondary Trading Session would also require fundamental changes in the way open limit orders are handled. Brokers which do not want their customers' orders to be executed after hours would have to mark those orders of withdraw them prior to the close of the Primary Trading Session. Customers would be faced with the decision whether to obtain and after-hours execution or wait until the opening of the Primery Trading Session the following day when there could be an even greater price movement.

Finally, the price allocation process makes the entire notion of order interaction somewhat specious. Under the rules, individual stock prices have the potential to be set arbitrarily so long as they are within the applicable pricing parameters set forth in Article XXXV, Rule 9. Therefore, it seems inappropriate to initiate order executions based on that price. Similary, if individual stock orders could interact with Portfolios, brokers would have the incentive to change their individual stock price allocation in order to avoid this result.

For all of the foregoing reasons, Midwest believes that the implementation of the Secondary Trading Session is consistent with the Act. More specifically, Midwest believes that the proposed Secondary Trading Session is consistent with section 6(b)(5) of the Act because it will promote just

and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. Midwest also believes that the proposed Secondary Trading Session is generally consistent with Section 11A of the Act because it will facilitate the development of a national market system and the processing of securities information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Rule Change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or other.

The Exchange has neither solicited nor received any comments on the Proposed Rule Change.

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 addressing 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 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 filings 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 June 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13752 Filed 6-8-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1107]

Notice Convening an Accountability Review Board on the Murder of the Chief of the Army Division, Joint U.S. Military Assistance Group, in Manila

Pursuant to section 301 of the Omnibus Diplomatic and Antiterrorism Act of 1986 (22 U.S.C. 4831 et seq.), I have determined that the April 21, 1989 murder in Manila of Col. James N. Rowe, USA, Chief of the Army Division of the Joint U.S. Military Assistance Group in the Philippines, involves loss of life related to a United States Government mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and circumstances of the loss of life in Manila and to report to me such findings and recommendations as the Board deems appropriate, in keeping with the attached mandate.

I have appointed Mr. Kenneth W. Dam as Chairperson of the Board. He will be assisted by Mr. Jay P. Moffat, Lt. Gen. Philip C. Gast, USAF (Ret.), Mr. John Cosenza, and Mr. Gordon K. Dibble. Mr. Moffat will also act as the Executive Secretary. The members bring to their deliberations extensive experience and distinguished backgrounds in government service and private life.

I have asked the Board to submit its findings and recommendations to me within sixty days of its first meeting, unless the Chairperson determines that additional time is needed. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information related to the Board's examination of this incident should contact the Board promptly on 647-1800. The offices of the Accountability Review Board are in Room 2426A of the Department of State.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89-13781 Filed 6-8-89; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1108; Delegation of Authority No. 177]

Delegation of Authority to the Deputy Secretary of State

By virtue of the authority vested in me as Secretary of State, including section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), I hereby delegate to the Deputy Secretary of State the functions vested in the Secretary of State by Title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (100 State. 859; 22 U.S.C. 4831).

Unless otherwise directed, the Deputy Secretary of State may not redelegate this authority.

Date: June 1, 1989.

James A. Baker III,

Secretary of State.

[FR Doc. 89-13782 Filed 6-8-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 2, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46314

Date Filed: May 30, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 27, 1989.

Description: Application of Flagship America, Inc. d/b/a/ North American Airlines pursuant to Section 401 of the Act and Subpart Q of the Rules of

Practice applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled and charter air transportation of persons, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory of possession of the Untied States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 46321

Date Filed: June 2, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 1989.
Description: Application of Private Jet Expeditions, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Economic Regulations applies for an amendment to the certificate of public convenience and necessity issued by Order 89-4-14 to provide scheduled and charter air transportation services of persons, property and mail in interstate and overseas transportation between any point or points in the United States, its territories or possessions.

Docket No. 42997

Date Filed: June 1, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1989.
Description: Amendment No. 2 to the Application of Florida West Airlines, Inc. further amends paragraph 3 and 4 of the initial application and Amendment No. 1 thereto so that they read as follows:

3. Florida West holds certificates authorized in scheduled domestic service (Order 84-3-8) worldwide charter authority (Order 84-1-10), and exemptions authorizing scheduled service transportation of property and mail between Miami and many points in Latin America (Orders 88-25 and 89-2-40).

4. Florida West requests the Department to issue a certificate under Section 401 of the Act authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Costa Rica, Honduras, El Salvador, Panama, Colombia, Ecuador, Chile, Paraguay, Bolivia, Surinam, the Dominican Republic, Haiti, Trinidad & Tobago, Grenada, Aruba, the Netherlands Antilles, Uruguay, Guyana, Barbados, Belize, St. Maarten/St. Martin, Guadeloupe, Martinique, the United Kingdom (property only), the Netherlands, Belgium, Luxembourg, and West Germany, on the other.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-13698 Filed 6-8-89; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-23]

Petition for Exemption; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking, provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain peritions previously received, and corrections. The purpose of this notice is to improve the puablic's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 24, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25728, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washingtin, DC, on June 5, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25728
Petitioner: Trans World Airlines, Inc.
Regulations Affected: 14 CFR Part 121, Appendix H
Description of Relief Sought: To allow petitioner to upgrade L-1011 flight engineers to L-1011 seconds in command in a Phase II simulator without receiving any training or checking in the actual airplane.

[FR Doc. 89-13703 Filed 6-8-89; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-89-24]

Petitions for Exemption; Summary and Dispositions

AGENCY: Federal Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 29, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washingtin, DC, on June 5, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25195
Petitioner: Loral Systems Group
Sections of the FAR Affected: 14 CFR 45.27(b)
Description of Relief Sought: To extend Exemption No. 4861 that allows petitioner to place the nationality and registration marks (N-numbers) on the outboard surface of each propulsion duct (engine nacelle) on its GZ22 airship.

Docket No.: 25887
Petitioner: Empire Airlines
Regulations Affected: 14 CFR 135.111
Description of Relief Sought: To allow petitioner to operate specially equipped Cessna 208 cargo aircraft in single-pilot Category II operations. The Cessna 208 is certificated for single-engine, single-pilot operations.

Docket No.: 17067
Petitioner: MacAvia International Corporation
Regulations Affected: 14 CFR 91.27(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4790 that allows petitioner to conduct ferry flights of its owned or operated four-engine McDonnell Douglas DC–6 aircraft with one engine inoperative when the aircraft is operated under contract with the U.S. Forest Service for forest fire control. *Grant, May 26, 1989, Exemption No. 4790A*

Docket No.: 23771
Petitioner: Cessna Aircraft Company
Sections of the FAR Affected: 14 CFR 91.213 and 91.31
Description of Relief Sought/ Disposition: To extend Exemption No. 4050, as amended, that allows operators of Cessna Citation Models 550, S550, 552, and 560 to operate these airplanes without a second-in-command pilot, subject to certain conditions and limitations. The amendment to Exemption No. 4050, as amended, would rescind several conditions. *Grant, May 19, 1989, Exemption No. 4050E*

Docket Nos.: 25008 and 25524
Petitioner: Courtney Y. Bennett, et al., and John H. Baker, et al.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To allow petitioners to continue to serve as pilots in Part 121 air carrier operations after reaching their 60th birthday. *DENIAL, May 26, 1989, Exemption No. 5052*

Docket No.: 25103
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend Exemption No. 4803 that allows petitioner to use on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft certain engines, components, and spare parts that have been manufactured, overhauled, repaired, tested, or inspected by persons outside the United States who do not hold U.S. airman certificates. *GRANT, May 9, 1989, Exemption No. 4803A*

Docket Nos.: 25125 and 25126
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(a)(1) and (5) and (b)(5) and (7)
Description of Relief Sought/ Disposition: To extend Exemption No. 4821 that allows petitioner to operate airplanes in extended overwater operations with one long-range navigation system (LRNS) and one high-frequency (HF) communication system within certain named areas subject to certain conditions and limitations. *GRANT, May 26, 1989, Exemption No. 4821A*

Docket No.: 25173
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To extend exemption No. 4798 that allows the original equipment manufacturers and foreign repair stations certificated by the Civil Air Authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of the petitioner's F–27/FH–227 aircraft. *GRANT, May 9, 1989, Exemption No. 4798A*

Docket No.: 25749
Petitioner: SkyDance Skydiving
Sections of the FAR Affected: 14 CFR 91.15(a)(2) and 105.43(a)(2)
Description of Relief Sought/ Disposition: To allow foreign nationals to participate in petitioner's parachuting events from March 1, 1989, to February 28, 1991, without having to comply with parachute equipment and packing requirements. *DENIAL, May 18, 1989, Exemption No. 5049*

Docket No.: 25791
Petitioner: Braniff, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(1), (2), (3), and (6); 121.411(b); and 121.413(b) and (c)
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualfied pilot flight and simulator instructors from Fokker Aircraft for the purpose of training petitioner's initial cadre of pilots in the Fokker 100 (F100) type airplane in Amsterdam, Holland, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *GRANT, May 26, 1989, Exemption No. 5053*

Docket No.: 25807
Petitioner: Joseph R. Hlavach
Regulations Affected: 14 CFR 121.411(a)(6)
Description of Relief Sought/ Disposition: To allow petitioner to serve as a simulator flight engineer check airman without holding a third class medical certificate. *DENIAL, May 23, 1989, Exemption No. 5050*

Docket No.: 25830
Petitioner: Metro Express, Inc., dba Eastern Metro Express
Sections of the FAR Affected: 14 CFR 135.225(e)(1)
Description of Relief Sought/ Disposition: To allow petitioner's pilots to operate its British Aerospace 3101 Jestream (BAe 3101) aircraft from Myrtle Beach Air Force Base, S.C. (MBAFB), using takeoff visibility minimums, subject to the approval of the appropriate military authority, that are less than 1 mile and are equal to or greater than the landing visibility minimums established for this field. *PARTIAL GRANT, May 30, 1989, Exemption No. 5054*

Docket No.: 25862
Petitioner: Cessna Aircraft Company
Sections of the FAR Affected: 14 CFR 47.69(b)
Description of Relief Sought/ Disposition: To allow petitioner to use its Dealer's Aircraft Registration Certificates outside the United States for demonstrating, testing, selling, and marketing of its aircraft. *GRANT, May 2, 1989, Exemption No. 5042*

[FR Doc. 89–13704 Filed 6–8–89; 8:45 am]
BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of air traffic procedures advisory committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures

Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 11, at 9 a.m., through July 14, 1989, at 12 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 222 W. 7th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from July 11, at 9 a.m., through July 14, 1989, at 12 p.m., at the Federal Aviation Administration, 222 W. 7th Avenue, Anchorage, Alaska. The agenda for this meeting is as follows: A continuation of the committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 7, 1989. The next quarterly meeting of the FAA ATPAC is planned to be held from October 23 through October 27, 1989, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 1, 1989.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 89-13705 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Gem, Payette, Washington and Adams Counties, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Gem, Payette, Washington and Adams County, Idaho.

FOR FURTHER INFORMATION CONTACT: Robert Clour, Assistant Division Administrator, Federal Highway Administration, 3010 West State Street, Boise, Idaho 83703, telephone: (208) 334-1843; or Charles Rountree, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707-1129, telephone (208) 334-8484.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Idaho Transportation Department will prepare an Environmental Impact Statement on a proposed new highway location between the City of Emmett and the community of Mesa, Idaho. The proposed highway would be approximately 54 miles long and provide two travel lanes.

The new highway is considered necessary to relieve current and projected traffic congestion on State Highway 55 and U.S. Highway 95. Alternatives under consideration include (1) taking no action, (2) various location options within the study corridor, (3) improvements to existing highways, and (4) other alternatives determined appropriate as a result of scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process will consist of a series of public meetings and a formal scoping meeting for involved or interested government agencies and private organizations. In addition, a location hearing will be held. Public notice will be posted as to the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning their proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 2, 1989.

Jack T. Coe,

Division Administrator, Boise, Idaho.

[FR Doc. 89-13667 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-2-M

National Highway Traffic Safety Administration

[Docket No. IP89-03; Notice 2]

Volvo Cars of North America; Receipt of Petition for Determination of Inconsequential Noncompliance; Correction

This notice corrects a notice of receipt of a petition from Volvo Cars of North America for determination of inconsequential noncompliance with a Federal Motor Vehicle Safety Standard. On May 30, 1989, NHTSA published notice of a receipt of a petition from Volvo. This notice appeared starting at page 23009 of the **Federal Register** (54 FR 23009), and requested comment on Volvo's petition for exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims*, on the basis that it is inconsequential as it relates to motor vehicle safety.

The notice inadvertently omitted a closing date for comments on the petition. Notice is hereby given that the comment closing date on the above petition, (FR Doc. 89-12726) is July 10, 1989.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on June 2, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-13706 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Revised System of Records

AGENCY: Internal Revenue Service; Treasury.

ACTION: Notice of revision to Privacy Act system of records, 60.001, assault and threat investigation files.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Internal Revenue Service, Assistant Commissioner (Inspection), is publishing a notice of a proposed revision of the system of records 60.001, Assault and Threat Investigation Files, Inspection. The purpose of this modification is to include as potentially dangerous taxpayers (PDTs), persons who are active members in tax protest groups which advocate violence against Internal Revenue Service employees.

DATES: Comments must be received no later than July 10, 1989. The proposed revision will be effective August 8, 1989, unless IRS receives comments on the revision which would result in a contrary determination.

ADDRESSES: Please submit comments to: Internal Revenue Service, Assistant Commissioner (Inspection), Attn: Disclosure Officer I:IS:OA, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments received will be available for inspection at the same address from 9:00 a.m. to 4:00 p.m., Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Harwell, Disclosure Officer, Assistant Commissioner (Inspection), 1111 Constitution Avenue, NW., Room 6017, Washington, DC 20224, Telephone: (202) 566-3967. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This system of records presently includes individuals attempting to interfere with the administration of Internal Revenue laws through threats, assaults or forcible interference of any officer or employee while discharging the official duties of his position. Also included are individuals classified as potentially dangerous taxpayers, based on verifiable evidence or information which falls within six (6) established criteria.

The revision to this system of records is the expansion of the subtitle "Categories of Individuals Covered by the System" to include a seventh (7th) criterion to identify individuals who attempt to interfere with the administration of Internal Revenue laws. These individuals are referred to as potentially dangerous taxpayers (PDTs). The system revision will read as follows: (7) Persons who are active members in chapters of tax protest groups that advocate violence against IRS employees.

From FY 1981 to the present, there has been a 50% increase in assault/threat cases where the assailant is a member of a militant and/or tax protest organization.

The proposed membership criterion for designating PDTs survives the most rigid test of constitutionality. Protecting IRS employees in the course of their tax administration duties from serious bodily harm is certainly a substantial state interest which would justify infringement of taxpayers' rights of association and speech. Moreover, infringement of these taxpayers' constitutional rights is slight. The Service's designation of a taxpayer as a PDT has no bearing on the ultimate determination of that taxpayer's liability under the Internal Revenue laws. The PDT designation does nothing to regulate or otherwise affect the taxpayer's behavior. Rather, the designation of a taxpayer as a PDT merely affects the Service's behavior with respect to that taxpayer.

The Supreme Court has implied the freedom of association into the First Amendment, as being both intertwined with and as a necessary safeguard to, the freedoms of speech and assembly. The right of association, like the right of speech, is not absolute. Government regulation that serves a substantial or compelling and legitimate state interest may indirectly infringe upon the right of association. The Court adjudged the constitutionality of such regulation by weighing the gravity of the state interest against the degree of constitutional infringement. Once a substantial state interest is established, the Constitution tolerates significant infringement.

Association with an identified PDT or membership in a group, some of whose members advocate violent protest against tax laws, is not of itself sufficient for inclusion in the classification of PDT. Before an individual can be classified as a PDT because of group membership, there must be a reasonable indication that an individual is an active member of a chapter or group which advocates violence or commits violent acts against Service employees.

The Internal Security Division, which falls under the control of the Assistant Commissioner (Inspection), is authorized to investigate attempts to interfere with the administration of the tax laws through threats and assaults, and to protect employees who may be the subject of an assault. Inspection is permitted to obtain information that concerns individuals involved in efforts to disrupt tax administration, is directly tax related, or involves potential assaults and threats against Service employees. Information which identifies active members of tax protest groups which advocate violence against IRS employees may be obtained from the law enforcement community and authorized information-gathering activities.

The system notice was published in its entirety most recently in the **Federal Register** Vol. 53, page 6436, March 1, 1988.

Dated: June 2, 1989.

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

Treasury/IRS 60.001

SYSTEM NAME:

Assault and Threat Investigation Files, Inspection—Treasury/IRS.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of the change: Remove the "and" following the semicolon at the end of item (5), remove the period at the end of item (6) and substitute a semicolon followed by an "and", and add the following new category of individuals:

* * * * *

(7) persons who are active members in tax protest groups that advocate violence against IRS employees.

* * * * *

[FR Doc. 89-13693 Filed 6-8-89; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and Hong Kong, China, Malaysia and Singapore and to strengthen the ties which unite our societies. The information collection

involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities," announced in the **Federal Register** February 9, 1989.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Cantonese-Speaking Asian Journalists Program

Summary

The Office of Private Sector Programs of the United States Information Agency requests proposals for a three-week issues-oriented program for 10 Cantonese-speaking editors and reporters from local print organizations in Hong Kong; Guangzhou, the Peoples Republic of China; Singapore; and Malaysia. Selected by USIA representatives, this program is scheduled for September of 1989 and will focus on multi-lateral trade issues and business/economic reporting.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than 30 days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest.

Office of Private Sector Program, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs, Cantonese-Speaking Journalists Project), United States Information Agency, 301 4th St. SW, Washington, DC 20547.

Date: May 17, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-13689 Filed 6-8-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 110
Friday, June 9, 1989

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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 14, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding administration of the Federal Reserve's Contingency Processing Center at Culpeper, Virginia.
2. Proposed 1990 Federal Reserve Bank budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13826 Filed 6-7-89; 9:50 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 14, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System. (This item originally announced for a closed meeting on June 12, 1989.)
2. Proposed relocation and renovation of a data center within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13827 Filed 6-7-89; 9:50 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 1:37 p.m., Tuesday, June 6, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS CONSIDERED:

1. Merger under section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
2. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-13886 Filed 6-7-89; 12:57 pm]

BILLING CODE 7535-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, June 15, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Appeal of the Denial of a Field of Membership Amendment by Marine Corps West Federal Credit Union, Camp Pendleton, CA.
6. NCUA Long Range Plan.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, June 15, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Proposed Field of Membership Expansion by a FCU. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under section 208 of the FCU Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Appeals of Denial of Insurance Coverage. Closed pursuant to exemptions (6), (8), (9)(B), and (10).
6. Proposed Changes to Delegations of Authority. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-13887 Filed 6-7-89; 12:57 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 24286 June 6, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 1, 1989.

CHANGES IN THE MEETING: Additional item/meeting.

The following item will be considered at a closed meeting on Wednesday, June 7, 1989, at 2:30 p.m.

Settlement of injunctive action.

The following item will be considered at a closed meeting on Thursday, June 8, 1989, following the 9:30 a.m. open meeting.

Reorganization proceedings.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

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: Karen Burgess at (202) 272-2200.

Jonathan G. Katz,

Secretary.

June 5, 1989.

[FR Doc. 89-13873 Filed 6-7-89; 12:57 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 110
Friday, June 9, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 DEFENSE

48 CFR Part 232

Department of Defense Federal Acquisition Regulation Supplement; DFARS Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

Correction

In proposed rule document 89-12268 beginning on page 22338 in the issue of Tuesday, May 23, 1989 make the following correction:

232.502-4 [Corrected]

On page 22338, in the third column, in 232.502-4 (S-75), in the fifth line, "small" should read "shall".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F-0118]

Indirect Food Additives, Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 89-12155 beginning on page 21938 in the issue of Monday, May 22, 1989, make the following correction:

On page 21938, in the third column, under "*E. 2,6-Pyridinedicarboxylic Acid*", in the third paragraph, in the first and second lines, "(21 CFR 1271.1(h))" should read "(21 CFR 171.1(h))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin and Salinomycin

Correction

In rule document 89-12154 beginning on page 21939 in the issue of Monday, May 22, 1989, make the following correction:

On page 21939, in the 3rd column, in the 16th line, "paragraph (b)(3)(xiii)" should read "paragraph (b)(1)(xiii)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0132]

Plascon-Gary, Inc.; Revocation of U.S. License No. 1020

Correction

In notice document 89-12153 beginning on page 22018 in the issue of Monday, May 22, 1989, make the following correction:

On page 22018, in the 3rd column, in the 28th and 29th lines, "(21 CFR 6060.160(e))" should read "(21 CFR 606.160(e))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0153]

Steridyne Laboratories, Inc.; Premarket Approval of DYNASOL®

Correction

In notice document 89-12157 appearing on page 22020 in the issue of Monday, May 22, 1989, make the following correction:

In the third column, in the second complete paragraph, in the third line, "520(d)" should read "520(h)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Surface Mining Reclamation and Enforcement

25 CFR Part 200

30 CFR Part 750

RIN 1029-AB04

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands

Correction

In rule document 89-12062 beginning on page 22182 in the issue of Monday, May 22, 1989, make the following corrections:

1. On page 22182, in the first column, the heading of the document was inaccurate and should appear as set forth above.

2. On the same page, in the same column, under **SUMMARY**, in the ninth line, "Those" should read "These".

3. On the same page, in the third column, under "*A. General Comments*" in the first paragraph, in the fifth line, "rules" should read "rule".

4. On page 22184, in the 2nd column, in the 2nd complete paragraph, in the 18th line, "Clarifying the OSMRE" should read "Clarifying that OSMRE".

5. On the same page, in the third column, in the third paragraph, in the fifth line, "case" should read "cases".

6. On page 22185, in the 1st column, in the 1st complete paragraph, in the 14th line, "(D.C. Cir. 1958)" should read "(D.C. Cir. 1985)".

7. On the same page, in the 3rd column, in the 2nd complete paragraph, in the 22nd line, "boundaries. including" should read "boundaries, including".

8. On page 22188, in the second column, under **List of Subjects**, in the fourth line "*30 CFR 750*" should read "*30 CFR Part 750*"; and in the fifth line, "Indian-lands" should read "Indians-lands".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Office of Munitions Control

[Public Notice 1109]

Suspension of Munitions Exports to PRC

Correction

In notice document 89-13716 appearing on page 24539 in the issue of Wednesday, June 7 1989, make the following correction:

In the third column, in the file line at the end of the document, "8:45 am" should read "12:14 pm"

BILLING CODE 1505-01-D

Federal Register

Friday
June 9, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3568-3]

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposal would add Subpart Dc to 40 CFR Part 60. Subpart Dc would apply standards limiting emissions of sulfur dioxide (SO_2), particulate matter (PM), and nitrogen oxides (NO_x) to new, modified, or reconstructed small industrial-commercial-institutional steam generating units with a maximum design capacity of 29 MW (100 million Btu/hour) heat input or less, but greater than or equal to 2.9 MW (10 million Btu/hour) heat input.

The proposed standards implement section 111 of the Clear Air Act (CAA) and are based on the determination that emissions from small industrial-commercial-institutional steam generating units cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require new modified, and reconstructed small industrial-commercial-institutional steam generating units to control emissions to the level achievable by the best demonstrated technological system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before August 17, 1989.

Public Hearing. If anyone requests to speak at a public hearing by July 10, 1989, a public hearing will be held on July 17, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held. Assistance will be available for persons with hearing impairments.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by July 10, 1989.

Incorporation by Reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the Federal Register as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Room M-1500, first floor, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: Docket Number A-86-02.

Public Hearing. If anyone requests a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Documents. The background information documents (BID's) for the proposed standards consist of eight documents. See **SUPPLEMENTARY INFORMATION** for a listing of these documents. Persons wishing to review the BID's should contact their respective trade, professional, or environmental organization.

Docket. Docket Number A-86-02, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M-1500, first floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland ((919) 541-5265) or Mr. Fred Porter ((919) 541-5251), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information Documents

The BID's for the proposed standards consist of eight documents as follows:

1. Overview of the Regulatory Baseline, Technical Basis, and Alternative Control Levels for Particulate Matter (PM) Emission Standards for Small Steam Generating Units (EPA-450/3-89-11, May 1989).
2. Overview of the Regulatory Baseline, Technical Basis, and Alternative Control Levels for Sulfur Dioxide (SO_2) Emission Standards for Small Steam Generating Units (EPA-450/3-89-12, May 1989).
3. Overview of the Regulatory Baseline, Technical Basis, and Alternative Control Levels for Nitrogen Oxides (NO_x) Emission Standards for Small Steam Generating Units (EPA-450/3-89-13, May 1989).
4. Model Boiler Cost Analysis for Controlling Sulfur Dioxide (SO_2) Emissions from Small Steam Generating Units (EPA-450/3-89-14, May 1989).
5. Model Boiler Cost Analysis for Controlling Particulate Matter (PM) Emissions From Small Steam Generating Units (EPA-450/3-89-15, May 1989).
6. Model Boiler Cost Analysis for Controlling Nitrogen Oxides (NO_x) Emissions from Small Steam Generating Units (EPA-450/3-89/16, May 1989).
7. Projected Impacts of Alternative New Source Performance Standards for Small Industrial-Commercial-Institutional Fossil Fuel-Fired Boilers (EPA-450/3-89-17, May 1989).
8. Projected Impacts of Alternative Particulate Matter New Source Performance Standards for Industrial-Commercial-Institutional Nonfossil Fuel-Fired Steam Generating Units (EPA-450/3-89-18, May 1989).

These reports are being provided at no cost to interested trade, professional, and environmental organizations upon request. However, because of the number of volumes involved and the associated printing and distribution costs, only a limited number of sets were printed. The reports are being provided to these organizations with the understanding that they allow members access to their document sets. Persons wishing to review the BID's should contact their respective organization. If the organization does not have a BID's, a set will be provided to the organization for the use of their membership.

Preamble Outline

I. Introduction

A. New Source Performance Standards—General

New source performance standards (NSPS, or standards) implement section 111 of the CAA. The NSPS are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions (i.e., sources whose construction, reconstruction, or modification begins after a standard for them is proposed). An NSPS requires these sources to control emissions to the level achievable by the best system of continuous emission reduction, considering costs and other impacts.

B. NSPS Decision Scheme

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.

2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standards will control.

3. Best system of continuous emission reduction—the technology on which the standards will be based, i.e.,

application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. (Section 111(a)(1))

4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

5. Emission points to be regulated—within the affected facility, the specific physical location emitting pollutants (e.g., vents, stacks, and equipment leaks).

6. Format for the standards—the form in which the standards are expressed, i.e., as a percent reduction in emissions, as pollutant concentrations (emission limits), as fuel specifications, or as equipment standards.

7. Actual standards—based on what the best demonstrated technology (BDT) can achieve, the maximum permissible emissions.

Note: In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.

8. Other possible considerations—in addition, NSPS often include: standards for visible emissions, modification/reconstruction considerations, monitoring requirements, performance test methods, and reporting and recordkeeping requirements.

C. Overview of This Preamble

This preamble will:

1. Summarize the important features of this NSPS by discussing the conclusions reached with respect to each of the elements in the decision scheme.

2. Present a rationale for each of the decisions in the decision scheme.

3. Describe the environmental, energy, and economic impacts of this NSPS.

4. Discuss administrative requirements relevant to this action.

II. Summary of the Standards

A. Source Category To Be Regulated

The proposed standards would apply to industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less but greater than or equal to 2.9 MW (10 million Btu/hour). Industrial-commercial-institutional steam generating units include any devices, regardless of application, that combust fuel to produce steam or to heat water or any other heat transfer medium, including units that are part of a cogeneration system or combined cycle system.

B. Pollutants To Be Regulated

Emissions of SO_2, PM, and NO_x would be regulated under the proposed standards.

C. Best Demonstrated Technology

The determination of BDT reflects EPA's consideration of a wide variety of factors. These factors include the feasibility and availability of technologies, the costs of control, and energy and environmental effects.

The proposed standards for SO_2 are based on a percent reduction requirement for coal-fired units greater than 22 MW (75 million Btu/hour) heat input capacity which operate at annual capacity factors above 55 percent (0.55) and the use of low sulfur coal for all other coal-fired units in this source category. The proposed standards for SO_2 are also based on the use of very low sulfur oil capable of meeting an emission limit of 215 ng/J (0.50 lb/million Btu) for oil-fired units. The EPA is proposing to conclude that these emission limits and percent reduction requirements represent the BDT's for reducing emission of SO_2 from small coal- and oil-fired steam generating units.

The proposed standards for PM are based on the use of: fabric filters or electrostatic precipitators (ESP's) for reducing PM emissions from small coal-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater; wet scrubbers and ESP's for reducing PM emissions from small wood-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater; and very low sulfur oil capable of meeting an SO_2 emission limit of 215 ng/J (0.50 lb/million Btu) heat input for reducing PM emissions from small oil-fired units. The EPA is proposing to conclude that these emission limits represent BDT's for reducing PM emissions from small coal-, wood-, and oil-fired steam generating units.

D. Format of the Standards

The proposed standards for SO_2 establish a percent reduction requirement for certain coal-fired units and an emission limit for coal- and oil-fired units. Emissions would be calculated as nanograms of pollutant per joule (ng/J) of heat input or pounds of pollutant per million Btu (lb/million Btu) heat input supplied by the fuel. As an alternative to meeting the SO_2 emission limit for oil, a fuel sulfur content specification is proposed. The proposed standards for PM and NO_x establish emission limits, which are also calculated on a ng/J or lb/million Btu heat input basis. The proposed standards for PM also include a percent opacity limit.

E. Actual Standards

1. Particulate Matter

The proposed standards for PM would establish an emission limit of 22 ng/J (0.05 lb/million Btu) heat input for coal-

fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater. An emission limit of 43 ng/J (0.10 lb/million Btu) heat input would be established under the proposed standards for wood-fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater. All coal-, oil-, and wood-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater would be subject to an opacity limit of 20 percent (0.2).

2. Sulfur Dioxide

The proposed standards for SO_2 would require all small coal-fired industrial-commercial-institutional steam generating units greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor for coal of greater than 55 percent (0.55) to meet a 90 percent SO_2 emission reduction requirement and an SO_2 emission limit of 520 ng/J (1.2 lb/million Btu) heat input. All other coal-fired units in this source category would be required to meet only an SO_2 emission limit of 520 ng/J (1.2 lb/million Btu) heat input. Small oil-fired steam generating units would be required to meet an SO_2 emission limit of 215 ng/J (0.50 lb/million Btu) heat input. Alternatively, small oil-fired steam generating units could comply with the SO_2 emission limit by firing oil with a sulfur content of less than 0.5 weight percent.

3. Nitrogen Oxides

The proposed standards for NO_x would establish an emission limit of 430 ng/J (1.0 lb/million Btu) heat input of all small coal-, oil-, and natural gas-fired industrial-commercial-institutional steam generating units with a heat input capacity of 2.9 MW (10 million Btu/hour) or greater.

F. Performance Testing and Monitoring Requirements

The proposed SO_2 standards for small coal-fired steam generating units would require either use of a continuous emission monitoring system (CEMS), Reference Method 6B, or daily fuel sampling for sulfur content. Compliance with the standards would be determined on a continuous 30-day rolling average basis using the CEMS, Method 6B, or daily fuel sampling and analysis results to calculate SO_2 emission for 30 consecutive steam generating unit operating days. Calculations to determine compliance would be made in accordance with Reference Method 19. For units subject to the percent reduction requirement, SO_2 emissions at the outlet of the control device must be measured by a CEMS or Method 6B.

Compliance with the SO_2 standard for residual oil-fired units would be determined by use of a CEMS, Method 6B, or by fuel sampling and analysis. Compliance with the SO_2 emission limit would be determined on a continuous 30-day rolling average basis. Calculations to determine compliance would be made in accordance with Reference Method 19.

As mentioned, a residual oil-fired unit may demonstrate compliance through the use of fuel sampling and analysis. One method of fuel sampling would be to take daily as-fired fuel samples at the inlet of the steam generating unit and have them analyzed. However, the owner or operator of a residual oil-fired steam generating unit may also take and analyze a sample from the oil storage tank for each steam generating unit subject to the standard after each new shipment of oil is received and before any amount of oil is combusted. Results of the fuel analysis would be used as the daily value when computing 30-day rolling averages of SO_2 emissions until the next fuel shipment is received. Upon receipt of a new shipment, a new sample from the oil supply tank would be taken and analyzed, and then used as the new daily average. It is assumed that the oil in the tank is thoroughly mixed during filling; therefore, a sample taken from the tank after filling would accurately represent the sulfur content of the oil in the tank.

Performance tests to determine compliance with the PM emission limits would be conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17. Reference Method 3 would be used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity standard. Continuous opacity monitoring would be required for all small coal-, oil-, and wood-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater.

G. Reporting and Recordkeeping

The proposed standards would require owners or operators of all affected facilities to submit a notification of the intent to initiate operation of a new, modified, or reconstructed small steam generating unit. In addition, a report of the results of an initial performance and opacity test would be required for coal-, oil-, and wood-fired units to demonstrate initial compliance with the SO_2, PM, and opacity standards, as applicable.

Quarterly reports of the fuel sampling and analysis, Method 6B, or CEMS results would be required for coal- and residual oil-fired units under the proposed SO_2 standards. Records of all data, including the results of emission tests, fuel sampling and analysis results, Method 6B data, and CEMS data must be maintained for 2 years and made available for inspection by enforcement personnel.

The proposed SO_2 standards would require owners or operators of distillate oil-fired units to submit a quarterly report of fuels fired from these units. The report must include a certified statement signed by the owner of the unit that all oil combusted in the unit since the previous report complied with the American Society for Testing and Materials (ASTM) specifications for distillate oil. Owners or operators must maintain shipping receipts for 2 years to show that they have purchased distillate oil meeting ASTM specifications. The proposed PM standards would require owners or operators to submit quarterly excess emission reports for coal-, oil-, and wood-fired units. If no excess emissions occur in a particular quarter, then a semiannual report would be required stating that no excess emissions occurred during the reporting period.

H. Request for Comments

The Administrator will welcome comments on all aspects of the proposed standards, including economic and technological issues, proposed test methods, and monitoring requirements. All comments received will be considered in the development and selection of final standards. However, EPA specifically requests comment on three issues raised during development of the proposed standards which warrant special consideration and are discussed below.

Each issue involves a determination of the best system of continuous emission reduction taking into account the cost of achieving such emission reduction and the "reasonableness" of the proposed standards in terms of cost effectiveness (the cost to a small steam generating unit of complying with the proposed regulation divided by the emission reduction). Specific comment is requested from all interested parties including State agencies, Federal agencies, environmental groups, industry trade associations, and individual citizens.

1. Percent Reduction Requirement

As stated previously, the proposed standards limiting SO_2 emissions from

small coal-fired steam generating units would require a 90 percent reduction in SO_2 emissions from units with heat input capacities greater than 22 MW (75 million Btu/hour) that operate at annual capacity factors greater than 55 percent. The resulting cost effectiveness ranges from $3,100/Mg to $3,600/Mg ($2,800/ton to $3,300/ton) for individual steam generating units. These cost-effectiveness values are on the high end of the cost effectiveness range imposed by past NSPS for SO_2 control (i.e., up to $3,000/ton). Therefore, the Administrator specifically requests comment on this portion of the proposed standards.

In this case, the only alternative would be to eliminate the percent reduction requirement from the standards and establish an emission limit of 520 ng/J (1.2 lb/million Btu) heat input. Past NSPS for steam generating units have provided relief from percent reduction requirements where the impacts of requiring percent reduction were considered unreasonable. The cost effectiveness of this alternative would range from $600/Mg to $2,100/Mg ($500/ton to $1,900/ton) for individual units.

2. Coal PM Standard

As stated earlier, the proposed standards limiting PM emissions from small steam generating units would establish an emission limit of 22 ng/J (0.05 lb/million Btu) heat input for coal-fired units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater. The resulting cost effectiveness ranges from about $2,800/Mg to $7,200/Mg ($2,500/ton to $6,600/ton) for individual units. As stated below under "Selection of Best System of Particulate Matter Emission Reduction", these cost effectiveness values are high compared to the cost effectiveness imposed by past NSPS for PM control (i.e., up to $3,000/ton). However, the affected facilities will be predominantly located in urban areas, and the particulate matter emissions will be mostly PM_{10}, have toxic characteristics, and be released through short stacks. Fabric filters/ESP's are clearly demonstrated technologies that provide the best emission reduction potential of any PM control device, and the economic impact of their use is negligible. As with the percent reduction requirement, the Administrator specifically requests comment on the proposed conclusion that fabric filters/ESP's represent best demonstrated technology for small coal-fired steam generating units.

Three regulatory alternatives were examined during development of the proposed standards. There are an infinite number of alternatives that could have been examined, which could have included combinations of various control technologies with different size cutoffs and capacity factor cutoffs. For example, one alternative could have been an emission limit of 22 ng/J (0.05 lb/million Btu) heat input for coal-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater which operate at annual capacity factors of 55 percent or more, and an emission limit of 130 ng/J (0.30 lb/million Btu) heat input for coal-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater which operate at annual capacity factors below 55 percent. The resulting cost effectiveness of this alternative would range from $1,800/Mg to $3,600/Mg ($1,600/ton to $3,200/ton) for individual units. This alternative results in cost effectiveness values closer to those imposed by past NSPS for PM control, but would permit the use of less effective control technologies (double mechanical collectors) on certain units.

3. Wood PM Standard

As stated earlier, the proposed standards limiting PM emissions from small steam generating units would establish an emission limit of 43 ng/J (0.1 lb/million Btu) heat input for wood-fired units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater. The resulting cost effectiveness ranges from about $6,000/Mg to $18,000/Mg ($5,400/ton to $16,000/ton) for individual units. As stated below under "Selection of Best System of Particulate Matter Emission Reduction", these cost effectiveness values are high compared to the cost effectiveness imposed by past NSPS for PM control (i.e., up to $3,000/ton). As with the percent reduction requirement and the coal PM standard, the Administrator specifically requests comment on the proposed conclusion that wet scrubbers/ESP's represent best demonstrated technology for small wood-fired steam generating units.

Three regulatory alternatives were examined during development of the proposed standards. As with coal, there are an infinite number of alternatives that could have been examined, which could have included combinations of various control technologies with different size cutoffs and capacity factor cutoffs. For example, one alternative could have been an emission limit of 130 ng/J (0.30 lb/million Btu) heat input for all wood-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater. The resulting cost effectiveness of this alternative would range from $900/Mg to $2,900/Mg ($800/ton to $2,600/ton) for individual units. This alternative results in cost effectiveness values closer to those imposed by past NSPS for PM control, but would be based on the use of double mechanical collectors (a less effective control technology) for small wood-fired units.

III. Impacts of the Standards

A. Air

Compared to SO_2 emission levels as currently controlled by a typical State Implementation Plan (SIP), the proposed standards would reduce emissions of SO_2 from a small industrial-commercial-institutional steam generating unit by about 70 to 80 percent, depending on the steam generating unit size and the type of fuel fired.

The proposed standards would reduce emissions of PM from a small industrial-commercial-institutional steam generating unit by about 80 to 90 percent, depending on the steam generating unit size and the type of fuel fired.

In the fifth year after this NSPS becomes applicable, nationwide emissions of SO_2 would be decreased by about 34,000 megagrams per year (Mg/year) or about 37,000 tons per year (tons/year) compared with projected emission levels under the regulatory baseline. Nationwide emissions of PM would be decreased by about 3,100 Mg/year (3,400 tons/year) compared with projected emission levels under the regulatory baseline.

B. Water and Solid Waste

Under the proposed standards, no significant water pollution impacts are projected, and the projected impacts on solid waste generation are small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques. Therefore, no adverse water pollution or solid waste impacts are anticipated as a result of the proposed standards.

C. Energy

The proposed standards will not result in significant impacts on national fuel use markets. Some fuel switching from coal and residual oil to natural gas or distillate oil may occur, but the impact of any fuel switching on coal, oil, and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from the proposed standards would be small.

D. Control Costs

1. Typical Steam Generating Unit Costs

Under the proposed standards, the capital cost of a small coal-fired steam generating unit would increase by about 11 percent over the costs at the regulatory baseline. The magnitude of the increase would depend on steam generating unit size and type. Annualized costs for a small coal-fired steam generating unit would increase by approximately 6 percent over the costs at the regulatory baseline, depending on unit size and coal type. For a small oil-fired steam generating unit, the capital cost would increase by about 3 percent and annualized costs would increase by about 19 percent over the costs at the regulatory baseline, depending on unit size and oil type. For a small wood-fired steam generating unit, the capital cost would increase by about 19 percent and annualized costs would increase by about 10 percent over the costs at the regulatory baseline, depending on unit size and type.

2. Nationwide Costs

In the fifth year of applicability of the proposed standards, the nationwide annualized costs for small steam generating units would increase by about $38 million.

E. Economic Effects

The economic effects of the proposed standards are considered negligible. For most of the six major industry groups analyzed, product prices under the "worse case" would increase by less than 1 percent. For the most steam intensive industries, product prices under the "worst case" are projected to increase by 2.8 percent. National product price impacts would be significantly less. Most commercial-institutional facilities would not be affected by the proposed standards because of the size of the steam generating unit and fuels fired at these facilities. Of the commercial-institutional facilities with steam generating units subject to the proposed SO_2 and PM standards, costs of services would generally increase by less than 0.5 percent. For the most steam intensive commercial facility, costs of services are projected to increase by 1.3 percent. Rental rates for office buildings that are affected by the proposed standards would increase by less than 1 percent.

IV. Rationale for the Standards

A. Selection of Source Category

On August 21, 1979, a priority list for development of additional NSPS was published in accordance with sections 111(b)(1)(A) and 111(f)(1) of the CAA (44 FR 49222). This list identified 59 major stationary source categories that were judged to contribute significantly to air pollution that could reasonably be expected to endanger public health or welfare. Fossil fuel-fired steam generating units ranked eleventh on this priority list of sources for which NSPS would be established in the future.

Of the 10 sources ranked above fossil fuel-fired steam generating units on the priority list, 9 were major sources of volatile organic compound (VOC) emissions. Because many areas have not attained the national ambient air quality standard (NAAQS) for ozone, major sources of VOC emissions were accorded a very high priority. Fossil fuel-fired industrial steam generating units were the highest ranked source of PM and SO_2 emissions when the priority list was published.

An amendment to the priority list was promulgated on November 25, 1986, that expanded the source category of industrial fossil fuel-fired steam generating units to cover all steam generating units, including both fossil fuel-fired and nonfossil fuel-fired steam generating units, as well as steam generating units used in commercial and institutional applications (51 FR 42796). Consistent with that amendment to the priority list, these proposed standards include both fossil fuel- and wood-fired small industrial, commercial, and institutional steam generating units.

Fossil fuel- and wood-fired steam generating units are significant sources of emissions of PM (including PM_{10}, which is PM with mean diameters smaller than 10 microns), SO_2, and NO_X. In particular, the expected construction of numerous new small steam generating units as a result of industrial, commercial, and institutional sector growth is expected to result in an increase in emissions of these pollutants.

National ambient air quality standards have been established for SO_2, PM_{10}, and NO_X because of their known adverse effects on public health and welfare. Impacts of these pollutants have been documented in criteria documents prepared under Section 108 of the CAA. These effects are a major basis for concluding that emissions from small steam generating units constitute a potential danger to public health and welfare. Also significant is the fact that many new small steam generating units will be located in urban areas where a large population may be exposed to the emissions.

B. Selection of Affected Facilities

This rulemaking focused on industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less. Steam generating units are defined as devices, regardless of application, that combust fuel to produce steam or to heat water or any other heat transfer medium. This definition includes units that are part of a cogeneration or a combined cycle system, but does not include process heaters. A process heater is defined as a device that is primarily used to heat a material to promote a chemical reaction in which the material participates as a reactant or catalyst.

The population of steam generating units in the size range of 29 MW (100 million Btu/hour) heat input or less can be subdivided into two distinct segments: commercial-institutional and industrial units. Commercial-institutional units include those units located at offices and apartments, shopping centers, hospitals, laundries, hotels, elementary and secondary schools, colleges and universities, and other nonindustrial facilities. Commercial-institutional units are predominantly found in the size range below about 8.7 MW (30 million Btu/hour) heat input capacity. Industrial units include those units that provide steam for manufacturing and other production facilities. Industrial units are predominantly found in the size range above 8.7 MW (30 million Btu/hour) heat input capacity.

The commercial-institutional segment can be further subdivided into two principal groups. Above about 2.9 MW (10 million Btu/hour) heat input capacity, most commercial-institutional units serve major hospitals, large colleges and universities, large hotels, large commercial laundries, and other large commercial-institutional facilities. Below about 2.9 MW (10 million Btu/hour) heat input capacity, the majority of commercial-institutional units serve elementary and secondary schools, shopping centers, office buildings, and other smaller commercial-institutional facilities.

Consequently, the small industrial-commercial-institutional steam generating unit population is composed of units falling into one of three major size ranges. Units between 8.7 and 29 MW (30 and 100 million Btu/hour) heat input capacity are used primarily in industrial facilities. Units between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity are used primarily at larger commercial-institutional facilities

and some industrial facilities. Units below 2.9 MW (10 million Btu/hour) heat input capacity are used almost exclusively at smaller commercial-institutional facilities.

In addition to differences in end use application, the predominant type of steam generating unit varies according to these three major size ranges. In the industrial segment [above about 8.7 MW (30 million Btu/hour) heat input capacity], watertube units predominate. In the population segment of larger commercial-institutional units [between about 8.7 MW (30 million Btu/hour) and 2.9 MW (10 million Btu/hour) heat input capacity], both watertube and firetube units are found. In the small commercial-institutional population segment [below about 2.9 MW (10 million Btu/hour) heat input capacity], firetube and cast-iron designs predominate. Each of these unit types has noticeably different design and emission characteristics.

Fuel use patterns also vary according to the three major size ranges in the small steam generating unit population. Natural gas and distillate oil tend to be the predominant fuels combusted in commercial-institutional units below 2.9 MW (10 million Btu/hour) heat input, whereas residual oil is an important fuel in industrial and larger commercial-institutional units. Also, to the extent that coal is used as a fuel in the small steam generating unit population, it is generally used in industrial units above 8.7 MWS (30 million Btu/hour) in size.

Because of the different applications, types of units, and fuels fired in the three major size ranges of the small steam generating unit population, the potential emissions reductions for each size range will vary. The major pollutants emitted from steam generating units are SO_2, PM, and NO_x. The actual amount of these pollutants emitted from each individual unit will vary according to size range. For instance, potential SO_2 emission reductions from a typical steam generating unit smaller than 2.9 MW (10 million Btu/hour) heat input capacity would be negligible; potential SO_2 emission reductions from a typical unit between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity would be about 70 Mg/year (80 tons/year); and potential SO_2 emission reductions from a typical unit between 8.7 and 29 MW (30 and 100 million Btu/hour) heat input capacity would be about 450 Mg/year (500 tons/year).

As with SO_2, emissions of PM from this source category also vary by size range. For example, potential PM emission reductions from a typical steam generating unit smaller than 2.9 MW (10 million Btu/hour) heat input capacity would be negligible. Potential PM emission reductions from a typical unit between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity would be about 2.7 Mg/year (3.0 tons/year). Potential PM emissions reductions from a typical unit above 8.7 MW (30 million Btu/hour) heat input capacity would be approximately 90 Mg/year (100 tons/year). The same pattern is evident with emissions of NO_x.

The preceding discussion generalizes the fuel use, unit type, and emission characteristics of small steam generating units. Other size ranges could have been selected and may, in some cases, be appropriate. The EPA solicits comments on whether the size ranges chosen will accurately represent the small steam generating units subject to the NSPS.

This comparison demonstrates that the greatest potential emission reductions are achievable from units in the largest size ranges (i.e., industrial and large commercial-institutional units) and that the potential emission reductions achievable from units in the smallest size range (i.e., small commercial-institutional units) are extremely small. Considerable administrative and enforcement resources, however, would be needed to apply standards to these small steam generating units because of the large number of units in the smallest size range. For example, an estimated 14,000 new units below 2.9 MW (10 million Btu/hour) in size are projected to be built through the fifth year after proposal, compared to about 1,300 units in the size range between 2.9 and 8.7 MW (10 and 30 million Btu/hour) in size, and about 500 units between 8.7 and 29 MW (30 and 100 million Btu/hour) in size.

Thus, even though a larger number of units is found in the smallest size range, a much greater emission reduction per unit would be gained by focusing the NSPS on industrial and large commercial-institutional units. Very little emission reduction would be gained by regulating a steam generating unit in the smallest size range, and substantial agency resources would be needed to review, monitor, and enforce the NSPS.

In addition to the extra burden on regulatory agencies, owners or operators of these smaller sized units would have the extra burden of dealing with these new national regulations. As stated previously, most of the smaller commercial-institutional units [i.e., those with heat input capacities less than 2.9 MW (10 million Btu/hour)] are located in places such as public schools or churches. Because these facilities usually employ part-time or volunteer operators rather than full-time personnel, the testing and reporting requirements needed to demonstrate compliance with the standards would be much more difficult for small commercial-institutional establishments to meet. For example, it would be difficult and burdensome for personnel at an elementary school, church, or small apartment building to collect and analyze samples of fuels fired and submit reports on a regular basis to the respective enforcement agency.

Because of the extra burden required of both the unit owner/operator and regulatory agency personnel, and the small emission reductions involved, regulation of units in the smallest size range is not considered reasonable. Consequently, a lower size cutoff of 2.9 MW (10 million Btu/hour) heat input capacity was selected for determining applicability with the proposed regulations.

C. Selection of Best System of Nitrogen Oxides Emission Reduction

Because of the relatively small emission reductions and the relatively high costs associated with NO_x controls on small steam generating units, NO_x standards for small steam generating units are considered unreasonable. For example, a recent report by the South Coast Air Quality Management District regarding NO_x standards for small steam generating units located in southern California cited cost-effectiveness levels of $6,600/Mg ($6,000/ton). These cost-effectiveness levels are generally considered unreasonable for national NO_x standards. Consequently, to evaluate the reasonableness of NO_x standards for small steam generating units, a screening-type cost analysis was undertaken to estimate the cost effectiveness of NO_x control technologies available for setting national standards limiting NO_x emissions from small steam generating units.

Several control technologies are available to control NO_x emissions from small steam generating units: low excess air (LEA), flue gas recirculation (FGR), staged combustion (SC), thermal de-NO_x, and selective catalytic reduction (SCR). With LEA, the combustion air flow is reduced to near the minimum amount needed for complete combustion. In an FGR system, a portion of the flue gas is recycled from the stack to the burner windbox. Upon entering the windbox, the flue gas is mixed with the combustion air prior to being fed to

the burner or the grate. In one type of SC system, conventional burners are used to introduce the fuel and a portion of the combustion air (called primary air) into the steam generating unit. The remaining combustion air (secondary air) is introduced approximately one-third of the distance down the furnace through overfire air (OFA) ports. Alternatively, SC can be carried out in the burner rather than through the use of OFA ports. In thermal de-NO_x, ammonia (NH_3) is injected into the upper combustion chamber (convection section) of the combustor at a specified temperature window to reduce NO_x to nitrogen gas (N_2). In SCR, NH_3 injected into the flue gas downstream of the combustion chamber mixes with the NO_x contained in the flue gas and passes through a catalyst bed.

Of these control technologies, thermal de-NO_x was not considered further because the required temperature/residence time window generally cannot be achieved by units in the small steam generating unit size range. Selective catalytic reduction also was not considered further because the catalysts used in this technique are very expensive.

Low excess air, SC, and FGR are applicable to small steam generating units and could serve as the basis for national standards limiting NO_x emissions from such units. Low excess air has the potential for reducing NO_x emissions by about 20 percent, and FGR and SC have the potential for reducing emissions by about 50 percent.

The current data available on NO_x emissions from these three control techniques applied to small steam generating units are quite limited and very scattered. Conclusions regarding performance of these technologies cannot be drawn, and therefore, standards cannot be developed based on the existing data. Nevertheless, assumptions were made regarding the performance capabilities and costs of these technologies to determine whether the cost impacts of establishing NO_x standards for small steam generating units would be reasonable.

For the three NO_x control technologies examined, the costs for NO_x control were estimated for small steam generating units combusting natural gas, distillate oil, residual oil, and coal. For a typical 15 MW (50 million Btu/hour) heat input capacity unit operating at a capacity factor of 55 percent (0.55), costs were calculated for uncontrolled units and units equipped with LEA, FGR, and SC. Approximations of baseline and controlled NO_x emission levels were used to estimate the cost effectiveness of applying LEA, FGR, or SC controls to these units.

The resulting cost-effectiveness levels for LEA ranged from $3,300/Mg ($3,000/ton) to $33,000/Mg ($30,000/ton), and the resulting cost-effectiveness levels for FGR and SC were in excess of $3,300/Mg ($3,000/ton). For this analysis of FGR and SC, NO_x emission reductions were assumed to be 70 percent over baseline, which is in the same range cited in the above-mentioned California report. These emission reduction projections, which are quite high, tend to overstate the actual achievable reductions so that the true cost-effectiveness values for FGR/SC on small steam generating units are expected to be higher.

Some costs were not included in these analyses, such as the cost of employing a full-time, highly trained steam generating unit operator, who may not be present at all facilities. Due to the sophistication of the technologies, the operation of NO_x controls requires full-time, skilled operators. Since no cost for the operator was included, the actual cost effectiveness of NO_x control on small steam generating units could be higher, and the performance capabilities of the technologies as well as the achievable emission reductions could be overestimated.

As mentioned earlier, there are some areas of the country that have acute air quality problems. In these areas, NO_x controls may well be considered necessary and reasonable even at higher cost-effectiveness levels. However, the estimated cost-effectiveness levels associated with NO_x standards for small steam generating units, discussed above, are considered unreasonable for national NO_x standards.

However, EPA is under Court order to issue "* * * proposed small boiler NSPS for particulate matter, nitrous oxides, and sulfur dioxide by June 1, 1989 * * *" (*Sierra Club vs Reilly*, D.D.C. N. 84-0325). While the Court's decision recognized EPA's discretion in determining which pollutants from a source category to regulate, the specific language of the Order could be interpreted to mean that EPA *must* propose NO_x standards. As stated above, EPA considers national NO_x standards based upon readily available combustion modification techniques or add-on control technologies to be unreasonable for small steam generating units. However, to avoid the possibility that EPA would be in violation of the letter of the Court order, a NO_x standard of 430 ng/J (1.0 lb/million Btu) heat input is proposed in today's notice for affected facilities combusting coal, oil, natural gas, or mixtures of these fuels with any other fuels. The NO_x standard would be established at a level that can be met by all small steam generating units. For this reason, no source testing or monitoring would be required. The EPA will consider comments on the appropriateness of this standard for NO_x and specifically solicits comment on the appropriateness of applying the NO_x control techniques described above to this source category. As with the proposed SO_2 standards and PM standards, any unit which has commenced construction after today's proposal date must meet whatever final NO_x standard is promulgated.

D. Selection of Best System of Particulate Matter Emission Reduction

1. Natural Gas-Fired Small Steam Generating Units

The uncontrolled PM emissions from the combustion of natural gas in small steam generating units are very low. Uncontrolled PM emission levels of less than 9 ng/J (0.02 lb/million Btu) heat input are typical of natural gas-fired steam generating units. Because of these low uncontrolled PM emission levels, the applicatioon of any type of PM control technology to small natural gas-fired steam generating units would impose significant costs for no benefit. Consequently, the use of any conventional PM control technology to reduce PM emissions from small natural gas-fired steam generating units is considered unreasonable and no further consideration has been given to the development of standards to limit PM emissions from these units.

2. Oil-Fired Small Steam Generating Units

The SIP PM emission limits for small oil-fired units range from 130 to 190 ng/J (0.30 to 0.45 lb/million Btu) heat input, depending on unit size. These emission limits can generally be met when firing high sulfur oil with no add-on controls based on the correlation between fuel oil sulfur content and emissions of PM from oil combustion presented in the manual, "Compilation of Air Pollutant Emission Factors" (AP-42). This correlation, which is based on data from over 100 steam generating units, indicates that PM emissions from fuel oils having a sulfur content of 1,290 ng/J (3.0 lb/million Btu) heat input would be about 95 ng PM/J (0.22 lb/million Btu) heat input.

This correlation between PM emissions and oil sulfur content indicates that reductions in PM emissions are a secondary benefit

associated with reducing emissions of SO_2 through the combustion of low sulfur oils. As a result, the proposed standards limiting SO_2 emissions from oil combustion, which are based on the use of very low sulfur oil, also achieve reductions in PM emissions.

Based on the data from AP–42, firing very low sulfur oil with a sulfur content of 215 ng/J (0.50 lb/million Btu) heat input or less will reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less. Thus, firing very low sulfur oil to comply with the SO_2 standard discussed below can be expected to reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less.

Flue gas desulfurization (FGD) systems are also capable of reducing PM emissions from oil-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less. As a result, if a small oil-fired steam generating unit were to fire a high sulfur oil and use an FGD system to comply with the proposed SO_2 standard, this system would also reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input.

Use of add-on PM controls was considered for limiting emissions from small oil-fired units beyond levels achievable either from combusting very low sulfur oil or from using FGD systems if combusting high sulfur oil. Fabric filters were not considered because fly ash from oil combustion is sticky, making these control systems ineffective on oil-fired units in general. Mechanical collectors also were not considered because they are ineffective in collecting the small particle sizes of PM characteristic of oil combustion.

Electrostatic precipitators have been used to control PM emissions from some oil-fired units. Although few data are available, these data indicate that an ESP can reduce PM emissions to 22 ng/J (0.05 lb/million Btu) heat input or less. The cost effectiveness of this additional emission reduction from 43 ng/J (0.10 lb/million Btu) to 22 ng/J (0.05 lb/million Btu), however, is estimated to be over $110,000/Mg ($100,000/ton), which is considerd unreasonable.

The proposed SO_2 standards would reduce PM emissions from oil-fired units by requiring the use of oils with a very low sulfur content that result in PM emissions of less than 43 ng/J (0.10 lb/million Btu) heat input or, if a high sulfur oil is fired, the use of an FGD system that will also reduce PM emissions to less than 43 ng/J (0.10 lb/million Btu) heat input. Any additional PM control on these units is considered unreasonable. Therefore, no PM emission limit is proposed for oil-fired units.

Although combustion of very low sulfur oil results in low PM emissions, it is possible through incomplete combustion for PM emissions to increase. Incomplete combustion can result from poor maintenance or improper operation. In both cases, incomplete combustion is easily identified by increased opacity at the stack, and if the opacity exceeds 20 percent this is a clear indication of incomplete combustion. For this reason, an opacity limit of 20 percent is proposed to allow identification of, and appropriate enforcement action to be taken regarding, oil-fired units operating with incomplete combustion.

3. Coal-Fired Small Steam Generating Units

Coal PM Emissions and Control Techniques. Unlike PM emissions from oil combustion, PM emissions from coal combustion cannot be correlated to fuel sulfur content. Consequently, limiting SO_2 emissions from coal combustion through the use of low sulfur coal will have little, if any, effect on PM emissions. Therefore, the proposed SO_2 standard for small coal-fired steam generating units achieves little, if any, reduction in PM emissions from these units.

The SIP emission limits for PM emissions from small coal-fired units range from 140 to 200 ng/J (0.33 to 0.46 lb/million Btu) heat input, depending on steam generating unit size. The PM control system historically used to meet these SIP emission limits is a single mechanical collector.

Mechanical collection is a well-established technology using centrifugal separation to remove particles from a gas stream. Mechanical collectors have been widely used for years to control PM emissions from steam generating units firing coal. More recently, they have been used as flue gas precleaning devices located upstream of more efficient PM control devices. Therefore, the regulatory baseline for PM emissions from small coal-fired units was based on the performance of a single mechanical collector.

The emission control techniques evaluated for limiting PM emissions from small coal-fired steam generating units include double mechanical collectors (DMC's), sidestream separators, wet FGD systems (wet scrubbers), fabric filters, and ESP's.

Double Mechanical Collectors. Most mechanical collectors consist of multiple small cyclone collectors connected in a parallel arrangement (multitube cyclone). A variation of this technology consists of two mechanical collectors connected in series. This latter configuration is referred to as a DMC. This arrangement typically achieves lower PM emission levels than a single mechanical collector.

To assess the performance of DMC's on coal-fired units, PM emissions data from nine sites were reviewed. The units ranged in heat input capacity from 15 to 60 MW (60 to 206 million Btu/hour) and were operated at 33 to 100 percent of full load during the tests. In all the tests, PM emissions were less than 130 ng/J (0.30 lb/million Btu). Therefore, DMC's are considered a demonstrated control technique for reducing PM emissions to 130 ng/J (0.30 lb/million Btu) heat input or less on coal-fired units.

Although DMC's will reduce PM emissions from coal combustion, mechanical collectors in general are relatively ineffective for collecting PM_{10}. As particle size approaches PM_{10}, the control efficiency of mechanical collection systems drops sharply. Data from AP–42 indicate that the PM_{10} removal efficiency of mechanical collection systems on coal-fired units is less than 40 percent. Consequently, a large amount of the PM emitted from coal-fired units operating with DMC's is PM_{10}. These smaller particle sizes are in the inhalable range and have a greater potential for adverse health impacts.

Sidestream Separators. A sidestream separator is a mechanical collector from which a slipstream or "sidestream" of flue gas is routed to a small fabric filter. In most cases, about 20 percent of the total flue gas volume passes through the fabric filter, although in some cases it may approach 50 percent of the total gas stream.

Data were available for eight spreader stoker units ranging in heat input capacity from 9 to 29 MW (31 to 100 million Btu/hour) and retrofitted with sidestream separators. The units operated at loads ranging from 68 to 108 percent of full capacity under relatively constant load conditions. The percentage of total flow sent to the fabric filter varied from 15 to 51 percent. Particulate matter emissions in all tests were less than 86 ng/J (0.20 lb/million Btu). Sidestream separators, therefore, are considered a demonstrated control technique for reducing PM emissions from small coal-fired units to 86 ng/J (0.20 lb/million Btu) or less.

The available PM_{10} emission control performance data for sidestream separators applied to stoker steam generating units firing coal indicate an improvement in performance in comparison to mechanical collectors. The limited data available indicate sidestream separators remove approximately 70 to 80 percent of PM_{10}.

In addition, sidestream separators can be operated with a constant air flow rate through the fabric filter, thereby increasing the ratio of gas through the baghouse to total gas flow at reduced load and partially offsetting any deterioration in mechanical collector performance at reduced load. Over the full operating range, sidestream separators represent a method of improving mechanical collector performance; however, the mechanical collector component of a sidestream separator must be well maintained to ensure low overall emission rates. The small fabric filter used in the sidestream separator arrangement cannot offset poor performance of an inadequately maintained mechanical collector.

Wet Scrubbers or Wet FGD Systems. A wet scrubber system uses an aqueous stream to remove PM from a gas stream. The available emissions data for wet scrubbers consisted of data for three wet scrubbers servicing coal-fired spreader stoker units. The units ranged from 37 to 69 MW (125 to 236 million Btu/hour) heat input capacity and were operated at loads ranging from 73 to 92 percent of full load during the tests.

All three wet scrubbers were dual-alkali FGD systems designed with venturi devices for combined PM and SO_2 control and were preceded by mechanical collectors. Particulate matter emissions in all tests were less than or equal to 43 ng/J (0.10 lb/million Btu) heat input. Because unit size has little effect on wet scrubber operation, wet scrubbers are considered a demonstrated control technique for reducing PM emissions from small coal-fired units to 43 ng/J (0.10 lb/million Btu) heat input or less.

Fabric Filters. Fabric filters have been used on an increasing number of steam generating units in recent years. A fabric filtration system directs particle-laden flue gas through a number of fabric bags where the particles collect as a filter cake on the base surface. Data are available for five coal-fired spreader stoker units and two FBC units equipped with fabric filters. The units ranged in heat input capacity from 13 to 59 MW (48 to 208 million Btu/hour) and were operated at loads ranging from 71 to 100 percent of full capacity.

Fabric filters reduced PM emissions from each of the seven units to less than 22 ng/J (0.05 lb/million Btu) heat input. These data indicate that fabric filter performance is not affected by unit design or size. Thus, fabric filters are considered a demonstrated control technique for reducing PM emissions from small coal-fired steam generating units to 22 ng/J (0.05 lb/million Btu) heat input or less.

Fabric filters have also been shown to be one of the most efficient PM control techniques in controlling small particles, achieving more than 99 percent removal efficiency for PM_{10}. Fabric filters have been shown to be one of the most versatile high-efficiency PM emission control technologies and can readily be applied to steam generating units firing a wide range of coals.

Electrostatic Precipitators. Electrostatic precipitators remove PM from steam generating unit flue gases by electrically charging the suspended particles and precipitating them onto a collection plate or tube. Data were available for ESP's on coal-fired units ranging from 27 to 110 MW (92 to 375 million Btu/hour) in heat input capacity. All tests resulted in PM emissions of less than 22 ng/J (0.05 lb/million Btu) heat input.

All but one of the emission tests were conducted on units firing coals with sulfur contents of 1.0 weight percent sulfur or less. A larger collection area is generally required to achieve a given PM collection efficiency on low sulfur coal-fired units than on high sulfur coal-fired units. Thus, the above controlled emission levels would be achievable on units firing high sulfur coal with collection areas equal to or less than the collection areas for low sulfur coal. Therefore, ESP's are considered a demonstrated control technique for reducing PM emissions from coal-fired units to 22 ng/J (0.05 lb/million Btu) heat input or less.

The performance of ESP's is superior to mechanical collectors and sidestream separators, especially with respect to control of smaller particles. Tests of two coal-fired steam generators, for example, showed ESP's to have removal efficiencies of 99 percent for PM_{10}.

Analysis of Control Options. An emission rate of 130 ng/J (0.30 lb/million Btu) heat input was selected as Control Option A for standards limiting PM emissions from small coal-fired units. This option was based on the use of a DMC. Emission rates of 86 ng/J (0./20 lb/million Btu) heat input and 43 ng/J (0.10 lb/million Btu) heat input were selected as Control Options B and C, respectively. Control Option B was based on the use of a sidestream separator and Control Option C was based on the use of a wet scrubber. Finally, an emission rate of 22 ng/J (0.05 lb/million Btu) was selected as Control Option D. This option was based on the use of an ESP or a fabric filter. A summary of the control options for limiting PM emissions from coal-fired units is presented in Table 1.

TABLE 1.—PM CONTROL OPTIONS FOR SMALL COAL-FIRED UNITS

Control option	PM emission level ng/J (lb/million Btu)	Basis [a]
Control Option A	130 (0.30)	DMC.
Control Option B	86 (0.20)	SSS.
Control Option C	43 (0.10)	WS.
Control Option D	22 (0.05)	FF or ESP.

[a] DMC=Double mechanical collector.
SSS=Sidestream separator.
WS=Wet flue gas desulfurization system.
FF=Fabric filter.
ESP=Electrostatic precipitator.

The costs associated with standards based on each of these control options were estimated for typical coal-fired units. For each control option, however, the least cost control system was used in estimating the costs associated with standards based on that control option.

For a typical 15 MW (50 million Btu/hour) heat input capacity unit operating at 55 percent (0.55) capacity factor, DMC's were the least cost option to meet standards based on Control Option A, sidestream separators were the least cost option to meet standards based on Control Option B, and fabric filters were the least cost option to meet standards based on Control Options C and D.

The potential impacts on capital and annualized costs of standards based on these options for this typical unit were also evaluated. Standards based on Control Option A would increase capital costs by 2.3 percent over the regulatory baseline, and standards based on Control Option B would increase capital costs by 3.7 percent over the baseline cost level. Standards based on Control Option C or D would increase capital costs by 11 percent over the regulatory baseline.

Standards based on Control Option A (DMC) would increase annualized costs by 2 percent over the regulatory baseline and standards based on Control Option B (sidestream separator) would increase annualized costs by about 5 percent. Standards based on Control Option C or D (fabric filters) would increase annualized costs by about 6 percent over the regulatory baseline.

The cost-effectiveness levels associated with these control options were also evaluated. Standards based on Control Option A have a cost effectiveness of $1,400/Mg ($1,200/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A is $5,400/Mg ($4,900/ton). The incremental cost effectiveness of standards based on

Control Options C and D over Control Option B is $2,300/Mg ($2,100/ton), and the incremental cost effectiveness of standards based on Control Options C and D over Control Option A is $3,600/Mg ($3,300/ton).

Because the incremental cost effectiveness of standards based on Control Options C and D is lower than that for standards based on Control Option B, Control Option B is considered an "inferior" option and was not considered further. Similarly, because Control Options C and D are effectively the same option (fabric filters are less expensive than wet scrubbers and, at the same time, achieve lower PM emissions), Control Option C was also not considered further. Therefore, only Control Options A and D were used to develop regulatory alternatives for further analysis.

Analysis of Regulatory Alternatives. As mentioned previously, EPA has subdivided the small steam generating unit population into two distinct segments: commercial-institutional and industrial. The coal-fired units in these segments differ in both design and use. Whereas coal-fired units in the industrial segment are located in manufacturing and other production facilities, the commercial-institutional segment includes units located at hospitals, colleges and universities, and elementary and secondary schools. In general, commercial-institutional facilities are found in the size range below 8.7 MW (30 million Btu/hour) heat input capacity, whereas industrial units are found above this size.

Consequently, regulatory alternatives applying standards limiting PM emissions from small coal-fired steam generating units of 2.9 MW (10 million Btu/hour) heat input capacity or larger, and from small coal-fired steam generating units of 8.7 MW (30 million Btu/hour) heat input capacity or larger, were evaluated for their potential impacts. Applying standards only to small coal-fired steam generating units of 8.7 MW (30 million Btu/hour) heat input capacity or larger effectively serves to focus the regulation on most industrial units and only the largest commercial-institutional units.

Regulatory Alternative I was based on Control Option A (i.e., a DMC) for all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger. Regulatory Alternative II was based on Control Option D (i.e., a fabric filter or an ESP) for all units of 8.7 MW (30 million Btu/hour) or larger, whereas Regulatory Alternative III was based on Control Option D for all units of 2.9 MW (10 million Btu/hour) or larger. A summary of the regulatory alternatives for coal-fired units is presented in Table 2.

TABLE 2.—PM REGULATORY ALTERNATIVES FOR SMALL COAL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	PM emission level ng/J (lb/million Btu)	Basis *
I	>8.7 (30)	130 (0.30)	Control Option A.
II	>8.7 (30)	22 (0.05)	Control Option D.
III	>2.9 (10)	22 (0.05)	Control Option D.

* Control Option A: Double mechanical collector.
Control Option D: Electrostatic precipitator or fabric filter.

Some 105 small coal-fired steam generating units between 2.9 MW (10 million Btu/hour) and 29 MW (100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 20 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

National PM emission reductions from coal are estimated to be 500 Mg/year (600 tons/year) for standards based on Regulatory Alternative I; 900 Mg/year (1,000 tons/year) for standards based on Regulatory Alternative II; and 1,700 Mg/year (1,900 tons/year) for standards based on Regulatory Alternative III.

Solid wastes associated with PM standards for coal-fired units would result from the disposal of the PM captured by the control devices. However, in the absence of standards, steam generating units already generate a significant amount of solid waste in the form of ash. Compared to the regulatory baseline, solid waste generation would increase by about 1 percent, 2 percent, and 4 percent for standards based on Regulatory Alternatives I, II, and III, respectively. These projected impacts on solid waste generation are considered small. In addition, the wastes generated by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques without leading to adverse environmental impacts. No water pollution impacts are projected for any of these regulatory alternatives because they are all based on dry control techniques.

There would be no significant impacts on national fuel use markets from standards based on any of the regulatory alternatives. Some fuel switching may occur, but the impact of any fuel switching from coal would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives would be small.

Compared to the regulatory baseline, national annualized costs associated with PM standards for small coal-fired units are projected to increase by about $970,000/year for standards based on Regulatory Alternative I, about $3.2 million/year for standards based on Regulatory Alternative II, and about $10 million/year for standards based on Regulatory Alternative III.

The national incremental cost effectiveness of standards based on Regulatory Alternative I over the regulatory baseline is projected to be $2,000/Mg ($1,800/ton). The national incremental cost effectiveness of standards based on Regulatory Alternative II over I is projected to be $5,300/Mg ($4,800/ton). The national incremental cost effectiveness of standards based on Regulatory Alternative III over II is projected to be $9,000/Mg ($8,100/ton).

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from $900/Mg to $4,200/Mg ($800/ton to $3,800/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from $2,800/Mg to $7,200/Mg ($2,500/ton to $6,600/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from $2,800/Mg to $14,000/Mg ($2,500/ton to $13,000/ton).

Although the cost effectiveness of standards based on Regulatory Alternative II or III is relatively high, these regulatory alternatives reflect the use of the most effective PM emission control technologies available (i.e., fabric filters or ESP's). These control technologies have been used widely on

all sizes and types of steam generating units within the industrial segment of the small steam generating unit population and frequently serve as the basis for State emission limitations applicable to small coal-fired units. Furthermore, fabric filters are used as standard equipment on almost all fluidized bed combustion (FBC) units, and as the use of FBC technology becomes more widespread, fabric filters will become even more prevalent in the small steam generating unit size category.

In addition to providing effective control of total PM emissions, standards based on Regulatory Alternative II or III would be very effective in controlling emissions of PM_{10}. Particulate matter emissions from coal combustion contain considerable amounts of PM_{10}. Because PM_{10} emissions are in the inhalable size range, they can pose significant adverse health consequences. Health risks posed by inhalable particulates are affected by both the penetration and the deposition of particles in various regions of the respiratory tract, and by biological responses to the deposited materials. Particles smaller than 10 microns in diameter can reach the deepest portion of the lung, the alveolar region. Clearance of deposited materials from this region through normal breathing can take months to years. Possible responses to the deposited particles include reduced lung function, damage to lung tissues, increased susceptibility to infection, and aggravation or potentiation of cardiopulmonary diseases.

Standards based on Regulatory Alternative II or III also represent the most effective control systems for controlling trace metals and other compounds from coal combustion that are considered toxic to humans. Trace metals in coal include arsenic, beryllium, cadmium, cooper, chromium, manganese, mercury, and nickel. Certain trace metals are found in greater concentrations in the PM_{10} size range. Because of their effectiveness in controlling fine particulates, fabric filters and ESP's are considered the most effective technologies for controlling trace metal emissions from small coal-fired steam generating units.

The EPA solicits comments on how trace metals and PM_{10} should be considered in the analysis. The EPA also requests comment on how the proposed NSPS should interact with the existing new source review (NSR) program, prevention of significant deterioration (PSD) program, and national ambient air quality standards (NAAQS) for particulate matter.

Standards established under section III of the Act are part of the National Air Toxics Strategy adopted in 1985. Consequently, selection of Regulatory Alternative II or III (i.e., fabric filters or ESP's) as the basis of standards for small coal-fired steam generating units would further the policy objective contained in that strategy of reducing toxic compound emissions, including trace metal emissions.

The national incremental cost effectiveness associated with standards based on Regulatory Alternative III [i.e., units of 2.9 MW (10 million Btu/hour) heat input capacity or larger] is significantly higher than the national incremental cost effectiveness associated with standards based on Regulatory Alternative II [i.e., units of 8.7 MW (30 million Btu/hour) heat input capacity or larger]. In addition, as mentioned previously, the potential burden imposed by standards differs significantly by population segment. This occurs because steam generating units smaller than 8.7 MW (30 million Btu/hour) heat input capacity are primarily commercial-institutional units. Operators at commercial-institutional facilities are more likely to work part-time or have other duties in addition to operating the steam generating unit. As a result, these operators frequently have little or no training or skills in terms of operating sophisticated emission control equipment such as fabric filters or ESP's. At industrial facilities, on the other hand, operators are employed full-time and generally have been provided the training necessary to run the systems effectively. Commercial-institutional facilities are also more likely to have a higher operator turnover rate than industrial facilities due to the lower pay for operators at commercial-institutional facilities.

In light of the higher cost-effectiveness of standards based on Regulatory Alternative III over Regulatory Alternative II and the significant burden standards based on Regulatory Alternative III would place on small commercial-institutional unit owners and operators, Regulatory Alternative III is considered unreasonable.

4. Wood-Fired Small Steam Generating Units.

Wood PM Emissions and Control Techniques. The SIP emission limits for PM emissions from small wood-fired steam generating units range from 160 to 170 ng/J (0.37 to 0.40 lb/million Btu) heat input, depending on unit size. The PM control system typically used to meet these limits is a single mechanical collector. Therefore, the regulatory baseline for PM emissions from small wood-fired units was based on the performance of a single mechanical collector.

The emission control techniques evaluated for limiting PM emissions from small wood-fired steam generating units included DMC's, wet scrubbers, and ESP's. Fabric filters were not evaluated because of the potential fire hazard associated with the use of a fabric filter on wood-fired units.

Double Mechanical Collectors. As discussed previously, DMC's consist of two single mechanical collectors connected in series. Based on available data, DMC's are considered a demonstrated control technique for reducing PM emissions to 130 ng/J (0.30 lb/million Btu) heat input or less on wood-fired units.

Wet Scrubbers. As mentioned above, a wet scrubber system uses an aqueous stream to remove PM from a gas stream. Based on available data on wood-fired units, wet scrubbers are considered a demonstrated emission control technique for reducing PM emissions from wood-fired units to less than 43 ng/J (0.10 lb/million Btu) heat input.

Electrostatic Precipitators. As discussed above, ESP's remove PM from steam generating unit flue gases by electrically charging the suspended particles and precipitating them onto a collection plate. Based on available data for ESP's on wood-fired units, ESP's are considered a demonstrated technology for reducing PM emissions from wood-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less.

Analysis of Control Options. An emission rate of 130 ng/J (0.30 lb/million Btu) heat input was selected as Control Option A for standards limiting PM emissions from small wood-fired units. This option was based on the use of a DMC. An emission rate of 43 ng/J (0.10 lb/million Btu) heat input was selected as Control Option B. This option was based on the use of a wet scrubber or an ESP. A summary of the control options for limiting PM emissions from wood-fired units is presented in Table 3.

TABLE 3.—PM CONTROL OPTIONS FOR SMALL WOOD-FIRED UNITS

Control option	PM emission level ng/J (lb/million Btu)	Basis [a]
Control option A	130 (0.30)	DMC.
Control option B	43 (0.10)	WS or ESP.

[a] DMC=Double mechanical collector.
ESP=Electrostatic precipitator.
WS=Wet flue gas desulfurization system.

The potential impacts on capital and annualized costs of standards based on these options were evaluated for a typical 15 MW (50 million Btu/hour) heat input capacity wood-fired steam generating unit operating at 55 percent (0.55) capacity factor. Standards based on Control Option A (DMC) would increase capital costs by 2.7 percent over the regulatory baseline, and standards based on Control Option B (wet scrubber or ESP) would increase capital costs by 19 percent over the regulatory baseline.

Standards based on Control Option A would increase annualized costs by 2.4 percent over the regulatory baseline, and standards based on Control Option B would increase annualized costs by 10 percent over the regulatory baseline. In calculating the annualized costs for the typical unit, the cost of the lowest cost coal was used to represent the cost of wood.

The cost effectiveness associated with standards based on each of these control options was also evaluated for a typical wood-fired unit. The incremental cost effectiveness of standards based on Control Option A compared to the regulatory baseline for a typical unit is $1,400/Mg ($1,300/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A for a typical unit is $7,200/Mg ($6,600/ton).

Analysis of Regulatory Alternatives. The potential national impacts of standards based on three regulatory alternatives were examined. Regulatory Alternative I would apply standards based on Control Option A (i.e., a DMC) to all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger. Regulatory Alternative II would apply standards based on Control Option B (i.e., a wet scrubber or an ESP) to all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger, whereas Regulatory Alternative III would apply such standards to all units of 2.9 MW (10 million Btu/hour) heat input capacity or larger. A summary of the regulatory alternatives for small wood-fired steam generating units is presented in Table 4.

TABLE 4.—PM REGULATORY ALTERNATIVES FOR SMALL WOOD-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	PM emission level ng/J (lb/million Btu)	Basis [a]
I	>8.7 (30)	130 (0.30)	Control option A.
II	>8.7 (30)	43 (0.10)	Control option B.
III	>2.9 (10)	43 (0.10)	Control option B.

[a] Control Option A=Double mechanical collector.
Control Option B=Wet Scrubber or electrostatic precipitator.

Some 55 small wood-fired steam generating units between 2.9 MW (10 million Btu/hour) and 29 MW (100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal of standards. Of these units, approximately 30 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

National PM emissions from wood are expected to be reduced by 1,000 Mg/year (1,100 tons/year) if standards are based on Regulatory Alternative I, 1,700 Mg/year (1,800 tons/year) for standards based on Regulatory Alternative II, and 2,200 Mg/year (2,400 tons/year) for standards based on Regulatory Alternative III.

As stated previously, steam generating units generate a large amount of solid waste in the absence of standards. Solid wastes associated with PM standards for wood-fired units are projected to increase by about 3 percent over the regulatory baseline for standards based on Regulatory Alternative I, about 5 percent for standards based on Regulatory Alternative II, and about 6 percent for standards based on Regulatory Alternative III. These projected impacts on solid waste generation are considered small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques without leading to any adverse environmental impacts. No significant water pollution impacts are projected for any of these regulatory alternatives.

Significant impacts on national fuel use markets would not result from standards based on any of the regulatory alternatives. Some fuel switching may occur, but the impacts of any fuel switching from wood would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives would be small.

National annualized costs associated with PM standards for small wood-fired steam generating units are estimated to increase by $1.4 million/year over the regulatory baseline for standards based on Regulatory Alternative I, $6.2 million/year over the regulatory baseline for standards based on Regulatory Alternative II, and $9.4 million/year over the regulatory baseline for standards based on Regulatory Alternative III.

For standards based on Regulatory Alternative I, the national cost effectiveness of the PM standards applied to small wood-fired steam generating units would be $1,400/Mg ($1,300/ton) over the regulatory baseline. The national incremental cost effectiveness of standards based on Regulatory Alternative II would be $7,100/Mg ($6,500/ton) compared to standards based on Regulatory Alternative I, and the national incremental cost effectiveness of standards based on Regulatory Alternative III would be $9,400/Mg ($8,600/ton) compared to standards based on Regulatory Alternative II.

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from $900/Mg to $4,300/Mg ($800/ton to $3,900/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from $6,000/Mg to $18,000/Mg ($5,400/ton to $16,000/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from $6,000/Mg to $28,000/Mg ($5,400/ton to $25,000/ton).

The national incremental cost effectiveness of standards based on Regulatory Alternative II or III is relatively high. These regulatory alternatives, however, reflect the use of the most effective PM emission control technologies available (i.e., ESP's or wet scrubbers). Standards based on these alternatives would not only result in greater overall PM emission reduction, but would also result in much greater control of PM_{10} emissions. Standards based on Regulatory Alternatives II and

III would also result in reductions in emissions of polycyclic organic matter (POM), a carcinogenic substance that is emitted from small wood-fired steam generating units.

In addition, the control techniques that serve as the basis for Regulatory Alternatives II and III have also been used widely for control of emissions from small wood-fired steam generating units, and these control techniques frequently serve as the basis for State emission limitations applicable to small wood-fired units.

As mentioned previously, the potential burden imposed by standards differs significantly by population segment. This occurs because steam generating units smaller than 8.7 MW (30 million Btu/hour) heat input capacity are primarily commercial-institutional units. Operators at commercial-institutional facilities are more likely to work part-time, or have other duties in addition to operating the steam generating unit. As a result these operators frequently have little or no training in the operation of sophisticated emission control equipment such as fabric filters or ESP's. At industrial facilities, on the other hand, operators are employed full-time and generally have been provided the training necessary to run the systems effectively. Commercial-institutional facilities are also more likely to have a higher operator turnover rate than industrial facilities due to the lower pay for operators at commercial-institutional facilities.

In light of the higher cost effectiveness of standards based on Regulatory Alternative III over Regulatory Alternative II and the significant burden standards based on Regulatory Alternative III would place on small commercial-institutional unit owners and operators, Regulatory Alternative III is considered unreasonable.

E. Selection of Best System of Sulfur Dioxide Emission Reduction

1. Natural Gas-Fired Small Steam Generating Units

The uncontrolled SO_2 emissions from the combustion of natural gas in steam generating units are very low. Uncontrolled SO_2 emission levels of less than 0.43 ng/J (0.001 lb/million Btu) heat input are typical of natural gas-fired steam generating units. Because of these low uncontrolled SO_2 emission levels, the application of any control technology to natural gas-fired steam generating units would entail unreasonable costs, and no further consideration was given to the development of standards of performance to limit SO_2 emissions from units firing natural gas.

2. Coal-Fired Small Steam Generating Units

Coal SO_2 Emissions and Control Techniques. The regulatory baseline SO_2 emission level for small coal-fired steam generating units is based on the national average SIP emission limit for small coal-fired units. Sulfur dioxide emission limits for small coal-fired units range from 1,400 to 1,510 ng/J (3.3 to 3.5 lb/million Btu) for units of 29 and 2.9 MW (100 and 10 million Btu/hour) heat input capacity, respectively. The overall national average SIP emission limit is 1,460 ng/J (3.4 lb/million Btu) heat input. Projected fuel prices, however, are available only for coals capable of meeting SO_2 emission limits of 1,550 and 1,120 ng/J (3.6 and 2.6 lb/million Btu) heat input. As a result, a regulatory baseline of 1,550 ng/J (3.6 lb/million Btu) heat input was selected for purposes of analysis.

A consideration that is always important when evaluating SO_2 control technologies for steam generating units is the selection of an appropriate averaging period. Sulfur dioxide emissions from steam generating units vary as a result of the normal variation in fuel sulfur content. As a result of this variability, data must be averaged over some period of time to assess emission control system performance. The longer the averaging period selected, the less the variability in fuel sulfur content affects the emission rate and the more accurate, or representative, the measured emission rate becomes as an indicator of the continuous performance of the system. From the perspective of enforcement, however, the longer the averaging period selected to measure performance, the longer the period between the time a source begins to operate and the time an initial assessment can be made of whether that source is in compliance.

An averaging period of 30 days is long enough to yield results that accurately represent the continuous performance of a control system, but is short enough to permit timely enforcement of a standard after a new source begins operation. In addition, a 30-day rolling average permits continued enforcement of the standard on a daily basis after the initial 30-day period had been completed. As a result, a 30-day rolling average was selected for assessing the performance of low sulfur fuels, FGD technologies (sodium scrubbing FGD systems, dual alkali FGD systems, lime/limestone FGD systems, and lime spray drying FGD systems), and FBC for the purpose of developing standards of performance limiting SO_2 emissions from new, modified, and reconstructed small steam generating units.

Low Sulfur Coal. Use of low sulfur coal limits SO_2 emissions by reducing the amount of sulfur available in the fuel for SO_2 formation. Low sulfur coal is defined as coal that can meet an emission limit of 520 ng/J (1.2 lb/million Btu) heat input on a continuous basis using a 30-day rolling average without additional SO_2 control.

Low sulfur coal is obtained primarily from naturally occurring low sulfur coal deposits. Low sulfur coal may also be produced through physical coal cleaning to reduce the naturally occurring sulfur content. Low sulfur coal can be burned in any small steam generating unit designed to fire coal, so its applicability is not limited by steam generating unit size.

Coal markets supplying coals with low sulfur contents [520 ng/J (1.2 lb/million Btu) heat input or less] have developed throughout the Nation. Because of widespread availability and extensive use of low sulfur coal for steam generating purposes, use of low sulfur coal is considered to be a demonstrated technique for reducing SO_2 emissions from small steam generating units.

Sodium Scrubbing FGD Systems. Sodium scrubbing FGD systems employ an aqueous solution of sodium hydroxide (NaOH) or sodium carbonate (Na_2CO_3) in the scrubber to absorb SO_2 from the steam generating unit flue gas. Sodium scrubbing FGD technology has been applied to small coal-fired units and is commercially available for all sizes of units.

Emission test data are available to document sodium scrubber performance for coal firing. Thirty days of certified CEM test data were gathered from a sodium scrubber applied to a pulverized coal-fired steam generating unit rated at 55 MW (188 million Btu/hour) heat input. The unit operated at loads between 40 and 60 percent of full load and averaged 48 percent of full load for the test duration. The sulfur content of the coal fired was 3.6 weight percent. The design SO_2 efficiency of this system was 90 percent at an inlet SO_2 concentration of 2,000 ppmv.

An analysis of available data shows consistently high SO_2 removal efficiencies, averaging 96 percent for the test period. The daily average outlet SO_2 emissions ranged from 56 to 270 ng/J (0.13 to 0.62 lb/million Btu) heat input, averaging 86 ng/J (0.20 lb/million Btu) heat input for the 30-day test period. This test shows that 90 percent or greater SO_2 removal can be consistently

achieved on a high sulfur coal-fired steam generating unit operated at normal, but less than maximum load. A sodium scrubbing system could also operate at this level of performance under full load conditions by adjusting the reagent addition rate and scrubbing liquor feed rate to maintain constant sodium-to-sulfur and liquid-to-gas ratios.

Although the sodium scrubber in this 30-day test was applied to a unit rated above 29 MW (100 million Btu/hour) heat input capacity, the performance data from this scrubber are applicable to small steam generating units. This application can be made because sodium scrubber design and operating characteristics (e.g., liquid-to-gas ratio, pH, gas distribution, etc.) do not vary significantly with unit size in this general size range. As a result, the performance of smaller sodium scrubbing FGD systems would be similar to that of the scrubber discussed above. Thus, achievement of a 90 percent SO_2 reduction by sodium scrubbing FGD systems on small coal-fired units on a 30-day rolling average basis is considered demonstrated.

Dual Alkali FGD Systems. The dual alkali FGD process is similar to sodium scrubbing FGD in the absorption stage; both technologies use a clear sodium solution for SO_2 removal. However, dual alkali FGD includes a regeneration stage where lime or limestone is used to regenerate the active sodium alkali for SO_2 sorption. Dual alkali FGD technology has been applied primarily to large coal-fired units, but is commercially available for units of all sizes. Tests of dual alkali FGD systems operating on coal-fired steam generating units have shown short-term SO_2 removal efficiencies of greater than 90 percent, with long-term efficiencies of around 92 percent.

Emission data are available from two long-term tests to document dual alkali FGD system performance for coal-fired steam generating units. The dual alkali FGD system tested consisted of two SO_2 absorbers, each serving a separate steam generating unit, and a single regeneration section. Seventeen days of test data were gathered from one absorber applied to a coal-fired spreader stoker steam generating unit rated at 40 MW (135 million Btu/hour) heat input capacity, and 24 days of test data were gathered from the other absorber applied to a unit rated at 23 MW (77 million Btu/hour) heat input capacity. Data were collected using continuous SO_2 emission monitors on both the inlet and outlet of the FGD system.

The sulfur content of the bituminous coal received at the plant during these tests averaged 1,490 ng/J (3.47 lb/million Btu) heat input. During these tests, the steam generating units also burned oil with an average sulfur content of 320 ng/J (0.74 lb/million Btu) heat input. During both tests, the dual alkali FGD system operated at a reliability level of 100 percent.

In the 17-day test, the steam generating unit operated at an average load of 67 percent, with the load varying between 42 and 96 percent. The SO_2 removal efficiency averaged 92 percent. In the 24-day test, the steam generating unit operated at an average load of 62 percent, with loads varying between 5 and 95 percent. The SO_2 removal efficiency averaged 92 percent.

Results of the 24-day test show that 90 percent SO_2 removal can be reliably and consistently achieved on a small coal-fired steam generating unit. In addition, the result of the 17-day test indicate that the SO_2 removal efficiency achieved on a steam generating unit larger than 29 MW (100 million Btu/hour) heat input capacity is essentially the same as that achieved on a steam generating unit smaller than 29 MW (100 Million Btu/hour) heat input capacity. This same level of performance can be achieved at full load conditions if vigorous gas-liquid contact is maintained in the absorber and the sodium-to-sulfur and liquid-to-gas ratios are maintained at a level sufficient to provide an adequate supply of active sodium species.

Based on these analyses of system performance, dual alkali FGD is a demonstrated technology for reducing SO_2 emissions from small coal-fired industrial-commercial-institutional steam generating units by 90 percent on a 30-day rolling average basis.

Lime/Limestone FGD Systems. Lime/limestone FGD systems employ a slurry of calcium oxide or calcium carbonate to remove SO_2 from industrial-commercial-institutional steam generating units. Emission data from two long-term tests are available to document lime/limestone FGD performance on six coal-fired stoker steam generating units with a total heat input capacity of 62 MW (210 million Btu/hour).

The tests were conducted using continuous SO_2 emissions monitors at both the inlet and outlet of the FGD system. Data were collected for a 29-day period while the system used a lime reagent and for 30 days while the system used a limestone reagent in the wet scrubbing system.

During the 29-day data collection period when lime was used as the reagent, the sulfur content of the bituminous coal fired averaged 2,200 ng/J (5.0 lb/million Btu) heat input. During this period, the steam generating unit load varied from 34 to 65 percent of full load. The SO_2 removal efficiency averaged 92 percent, and the reliability of the lime wet scrubbing FGD system exceeded 91 percent.

During the 30-day test period when limestone was used as the reagent, the sulfur content of the bituminous coal burned averaged about 2,200 ng/J (5.0 lb/million Btu) heat input. During this period, the steam generating unit load varied from 30 to 67 percent of full load. The SO_2 removal efficiency averaged 94 percent, and the system reliability was 94 percent.

Although these results were obtained at less than maximum load conditions, new systems could achieve this level of performance at full load by operating at a higher liquid-to-gas ratio. In addition, a new system would likely be equipped with a spray tower or turbulent contact absorber to provide increased mass transfer area and gas residence time for improved SO_2 absorption. Therefore, lime/limestone FGD systems are considered to be a demonstrated SO_2 technology for achieving 90 percent SO_2 reductions on a 30-day rolling average basis from small steam generating units.

Lime Spray Drying FGD Systems. Lime spray drying is a dry scrubbing process that involves contacting the flue gas with an atomized lime slurry or a solution of sodium carbonate. The hot flue gas dries the droplets to form a dry waste product while the sorbent reacts with SO_2 in the flue gas. The dry waste solids, consisting of sulfite and sulfate salts, unreacted sorbent, and fly ash are collected in a baghouse or an ESP for disposal.

Emission test data from a series of four short-term tests are available to document lime spray drying performance for coal firing. These four short-term tests, which lasted from 1 to 8 hours, were conducted on units ranging in heat input capacity from 34 MW (115 million Btu/hour) to 82 MW (280 million Btu/hour). The sulfur contents of the coals fired in these units ranged from 410 ng/J (0.96 lb/million Btu/hour) heat input to 2,800 ng/J (7.0 lb/million Btu) heat input. The resulting SO_2 removal efficiencies from these tests averaged in excess of 93 percent.

These high removal efficiency values indicate that lime spray drying systems are capable of achieving 90 percent reduction in SO_2 emission from industrial-commercial-institutional steam generating units. Furthermore, due to similarities in design and operation between large and small systems, lime spray dryers are capable of achieving the 90 percent SO_2 reduction levels on small industrial-

commercial-institutional units. Therefore, lime spray drying is considered a demonstrated SO_2 control technology for achieving 90 percent SO_2 reductions on a 30-day rolling average basis from small coal-fired steam generating units.

Fluidized Bed Combustion. Fluidized bed combustion is a steam generating unit design which, because of its ability to incorporate limestone addition, can achieve significant SO_2 emission reductions. This technology offers a variety of advantages over conventional steam generating unit designs, including SO_2 emission reduction without the use of FGD systems as well as greater flexibility in fuel use.

Atmospheric fluidized bed combustion (AFBC) steam generating units have developed rapidly over the past 5 years and are now being applied to small steam generating unit sizes. The two primary AFBC design alternatives that are currently available are the bubbling fluidized bed (with or without solids recycle) and the circulating fluidized bed. Pressurized FBC technology has been under development for over a decade, but has not yet been used in commercial practice and is unlikely to be applied to small units.

Emission data were analyzed for one circulating bed and four bubbling bed FBC units ranging in size from 15 to 61 MW (50 to 210 million Btu/hour) heat input capacity. The results indicate that SO_2 removal efficiencies ranged from 86 to 99 percent for tests on the four bubbling bed units. The outlet SO_2 emissions for a 15 MW (50 million Btu/hour) heat input capacity bubbling bed unit at Prince Edward Island, Nova Scotia, averaged 26, 430, and 260 ng/J (0.06, 1.0, and 0.60 lb/million Btu) heat input for test durations of 5 hours, 15 hours, and 7.5 days, respectively. Based on coal sulfur content, these values correspond to a 91 to 99 percent SO_2 removal efficiency. Emission data were also collected over a 30-day test period for this unit, with an overall average for the 30 days of 94 percent. The daily average SO_2 removal efficiency ranged from 73 to 97 percent. The lower daily average SO_2 removal efficiency of 73 percent occurred on a single day and was attributed to operating the unit at a low calcium/sulfur ratio.

Although these performance levels are based primarily on bubbling bed designs, equal or better performance is expected from circulating and dual bed systems because of more rapid carbon burnout, higher limestone particle densities in the freeboard area, and more uniform gas-solid contact between SO_2 and limestone.

As a result, FBC is considered a demonstrated SO_2 control technology for achieving 90 percent reduction in SO_2 emissions on a 30-day rolling average basis from small coal-fired steam generating units.

Analysis of Control Options. The analysis of SO_2 control options examined, from the perspective of individual steam generating units, the potential impacts of various control options that could serve as the basis for regulatory alternatives limiting SO_2 emissions. The analysis compared the impacts for various control options based on demonstrated SO_2 emission control techniques relative to a regulatory baseline and to each other. A summary of the SO_2 control options analyzed for coal-fired units appears in Table 5 below.

TABLE 5.—SO_2 CONTROL OPTIONS FOR SMALL COAL-FIRED UNITS

Control option	SO_2 emission level ng/J (lb/million Btu)	Basis
Coal:		
Control option A.	520 (1.2)	Low sulfur coal.
Control option B.	90% SO_2 reduction.	FGD or FBC*.

*FGD=Flue Gas Desulfurization. FBC=Fluidized Bed Combustion.

As discussed above, the evaluation of SO_2 control techniques for small coal-fired units indicates that both low sulfur coal and FGD/FBC technology are demonstrated SO_2 control techniques for small coal-fired units. Low sulfur coal combustion will reduce SO_2 emissions to 520 ng/J (1.2 lb/million Btu) heat input or less. This technique, therefore, was selected as Control Option A for coal-fired units. Flue gas desulfurization systems and FBC units are capable of 90 percent SO_2 reduction from small coal-fired units. Consequently, 90 percent SO_2 reduction was selected as Control Option B for coal-fired units.

For a typical small coal-fired steam generating unit [i.e., 15 MW (50 million Btu/hour) size unit operating at a 55 percent (0.55) capacity factor], the SO_2 emissions at the regulatory baseline are 310 Mg/year (340 tons/year). The emission reduction achieved by Control Option A (i.e., standards based on the use of low sulfur coal) compared to the regulatory baseline is 190 Mg/year (210 tons/year), whereas the emission reduction achieved by Control Option B over the regulatory baseline is 280 Mg/year (310 tons/year).

Capital costs of SO_2 control relative to the regulatory baseline would increase by about 1 percent for standards based on Control Option A and by about 30 percent for standards based on Control Option B. The annualized cost compared to the regulatory baseline would increase by about 6 percent for standards based on Control Option A and by about 30 percent for standards based on Control Option B.

The costs associated with standards based on Control Option B (i.e., standards requiring a 90 percent reduction in SO_2 emissions) were based on an average of the costs of sodium scrubbing and dual alkali FGD systems. The costs of the other three demonstrated percent reduction technologies—lime/limestone FGD, lime spray drying FGD, and FBC—are within the range of costs associated with sodium scrubbing and dual alkali FGD systems and, thus, an average of the costs of sodium scrubbing and dual alkali FGD systems is considered representative of the costs that would be imposed on small steam generating units by a requirement to achieve a 90 percent reduction in SO_2 emissions.

The cost effectiveness of SO_2 emission control associated with standards based on Control Option A over the regulatory baseline would be about $630/Mg ($570/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A would be about $4,900/Mg ($4,500/ton).

The incremental cost effectiveness of standards based on Control Option B relative to standards based on Control Option A is quite high. For small coal-fired steam generating units of less than 22 MW (75 million Btu/hour) heat input capacity, for example, the incremental cost effectiveness of standards based on Control Option B over standards based on Control Option A exceeds $3,700/Mg ($3,300/ton). Similarly, the incremental cost effectiveness of standards based on Control Option B over standards based on Control Option A for all coal-fired units within the source category operating at annual capacity factors less than 55 percent (0.55) exceeds $3,700/Mg ($3,300/ton). Consequently, no further consideration was given to options or alternatives requiring a percent reduction in SO_2 emissions for small coal-fired steam generating units of less than 22 MW (75 million Btu/hour) heat input capacity or small coal-fired steam generating units operating at annual capacity factors of less than 55 percent (0.55).

Analysis of Regulatory Alternatives. The analysis of regulatory alternatives examined the potential national impacts of various NSPS on both the industrial and commercial-institutional segments

of the small steam generating unit population. The national impacts that would occur in the fifth year after proposal of the standards for small steam generating units were analyzed in terms of national SO_2 emission reductions, national increased annualized costs, national incremental cost effectiveness, as well as secondary environmental and energy impacts.

As shown in Table 6, SO_2 standards for coal-fired steam generating units were evaluated for three regulatory alternatives: Regulatory Alternative I, representing standards based on the use of low sulfur coal [520 ng/J (1.2 lb/million Btu)] for units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater; Regulatory Alternative II, representing standards based on the use of low sulfur coal for units with a heat input capacity of 2.9 MW (10 million Btu/hour) or greater; and Regulatory Alternative III, representing standards requiring a 90 percent reduction in SO_2 emissions for small steam generating units greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor above 55 percent (0.55) and standards based on the use of low sulfur coal for all other small coal-fired steam generating units with heat input capacities of 2.9 MW (10 million Btu/hour) or greater.

TABLE 6.—SO_2 REGULATORY ALTERNATIVES FOR SMALL COAL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	SO_2 Emission Level ng/J (1b/million Btu)	Basis[b]
I	>8.7 (30)	520 (1.2)	Control option A.
II	>2.9 (10)	520 (1.2)	Control option A.
III	>22 (75) and >55% CF[a]	90% SO_2 reduction	Control option B,
	>2.9 (10)	520 (1.2)	Control option A.

[a] CF = Capacity factor.
[b] Control option A = Low sulfur coal.
Control option B = Flue gas desulfurization or fluidized bed combustion.

Some 105 small coal-fired steam generating units between 2.9 and 29 MW (10 and 100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 20 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

Estimated national SO_2 emission reductions of 4,200 Mg/year (4,600 tons/year) would result from a standard for coal-fired units based on Regulatory Alternative I, and SO_2 emission reductions of 9,500 Mg/year (11,000 tons/year) would result from a standard for coal-fired units based on Regulatory Alternative II as well as a standard for coal-fired units based on Regulatory Alternative III. Projected national impacts associated with standards for small coal-fired steam generating units based on Regulatory Alternatives II and III are the same since the analysis projects no new coal-fired steam generating units operating at annual capacity factors exceeding 55 percent (0.55).

No significant water pollution impacts are projected for small coal-fired steam generating units under any of the regulatory alternatives, and the projected impacts on solid waste generation are also negligible. Standards based on any of the regulatory alternatives for small coal-fired steam generating units would not result in significant energy impacts on national fuel use markets. Some fuel switching from coal to natural gas or distillate oil may occur, but the impact of any fuel switching on coal markets would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives for small coal-fired steam generating units would be small.

National annualized emission control cost increases over baseline or coal-fired units are estimated to be $1.8 million for a standard based on Regulatory Alternative I, and $5.9 million for a standard based on Regulatory Alternative II or a standard based on Regulatory Alternative III.

The national incremental cost effectiveness of a standard based on Regulatory Alternative I would be about $560/Mg ($400/ton) compared to the regulatory baseline. The national incremental cost effectiveness of a standard based on Regulatory Alternative II or on Regulatory Alternative III would be about $800/Mg ($700/ton). Because no coal-fired units are projected to be built through the fifth year in the size range affected by the percent reduction requirement, the cost effectiveness of a standard based on Regulatory Alternative III would be the same as for Regulatory Alternative II.

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from $600/Mg to $1,100/Mg ($500/ton to $1,000/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from $600/Mg to $2,100/Mg ($500/ton to $1,900/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from $600/Mg to $3,700/Mg ($500/ton to $3,300/ton).

3. Oil-Fired Small Steam Generating Units

Oil SO_2 Emissions and Control Techniques. The regulatory baseline SO_2 emission level for small oil-fired steam generating units is based on the national average SIP emission limit for small oil-fired units. The SIP emission limits for oil are essentially independent of steam generating unit size, and the national average SIP SO_2 emission limit for small oil-fired units is 1,010 ng/J (2.35 lb/million Btu) heat input. Projected fuel prices, however, are available for oils capable of meeting SO_2 emission limits of 1,290 and 690 ng/J (3.0 and 1.6 lb/million Btu) heat input, but not 1,010ng/J (2.35 lb/million Btu) heat input. As a result, a regulatory baseline of 1,290 ng/J (3.0 lb/million Btu) heat input was selected for purposes of analysis.

The control techniques considered for reducing SO_2 emissions from small oil-fired steam generating units include use of oils with reduced sulfur contents (i.e., medium sulfur oil, low sulfur oil, and very low sulfur oil), sodium scrubbing FGD, dual alkali FGD, and lime/limestone FGD.

Medium, Low, and Very Low Sulfur Oils. The sulfur content of fuel oil determines the SO_2 emission rate of oil-fired steam generating units. Table 7 presents the oil classification scheme used to represent fuel oils fired in steam generating units. In this classification scheme, oil is classified by its sulfur content. This classification scheme originated from classifications used by

the U.S. Department of Energy to study fuel oil use patterns and to report refinery production data. The classifications reflect the fact that many distillate and residual oils are produced to meet market demands created by existing Federal, State, and local SO_2 emission regulations. For example, "low sulfur" distillate and residual fuel oils can be fired to meet the 1971 NSPS (40 CFR Part 60, Subpart D) emission limit of 340 ng/J (0.80 lb/million Btu) heat input for steam generating units with a heat input capacity greater than 73 MW (250 million Btu/hour), or more stringent standards adopted by State or local governments.

TABLE 7.—SO_2 EMISSION RATES FOR VARIOUS OIL TYPES

Oil type	SO_2 emission rate, ng/J (lb/million Btu)
Very Low Sulfur	215 (0.50)
Low Sulfur	340 (0.80)
Medium Sulfur	690 (1.6)
High Sulfur	1,290 (3.0)

Fuel oils with low sulfur contents are generally produced by refining low sulfur content crude oils. Although both distillate oils and low sulfur residual oils can be produced from any crude oil, most low sulfur residual oils are produced from low sulfur crude oils and/or by blending with lower sulfur oils. Low sulfur oils can be fired in any steam generating unit designed to fire oil, although different burners may be required to achieve good combustion and fuel heating may be required to reduce viscosity for pumping and proper atomization at the burner tip.

A distinction exists between the sulfur content of most residual oils and distillate oil. Residual oils are generally higher in sulfur content and generally have a wider range of sulfur contents than distillate oil. The sulfur content of residual oil, for example, can vary from as little as 0.3 weight percent to over 3.0 weight percent. Although the sulfur content of distillate oil can be as low as 0.2 weight percent, the maximum sulfur content is limited to 0.5 weight percent by fuel oil specifications adopted by the ASTM.

Medium sulfur residual oil is widely available throughout the United States. Generally speaking, low and very low sulfur residual oils are not widely available throughout the United States. Distillate oil, however, is widely available. The maximum sulfur content of distillate oil (0.5 weight percent), therefore, serves as a useful benchmark for identifying the sulfur content of those very low sulfur fuel oils that are widely available throughout the United States. In a few areas, both distillate oil and very low sulfur residual oils with sulfur contents of less than 215 ng/J (0.5 lb/million Btu) heat input are available.

Because of their national availability and extensive use in small steam generating units, medium sulfur oils and very low sulfur oils (distillate oil and very low sulfur residual oils) are considered demonstrated control techniques for reducing SO_2 emissions from small steam generating units.

Sodium Scrubbing FGD Systems. Sodium scrubbers are the most extensively used wet FGD systems on industrial steam generating units and have been applied widely on small oil-fired units. Sodium scrubbers used in these applications are package systems that are skid-mounted, shipped to the site, and installed for operation with a minimum of on-suite fabrication.

Sulfur dioxide emissions data were analyzed for 20 oil-fired steam generators equipped with sodium scrubbers and operated to produce steam for tertiary oil recovery. All SO_2 emission tests were short-term compliance tests (typically for a 3-hour period), and SO_2 removal efficiency ranged from 87.5 to 99.5 percent for oils having sulfur contents ranging from 0.6 to 1.7 weight percent. Steam generating unit operating loads ranged from 67 to 108 percent of full load. Sulfur dioxide removal efficiency for these 20 sodium scrubbers averaged 95 percent. The average SO_2 outlet emissions were 30 ng/J (0.07 lb/million Btu) heat input. Thus, the ability of sodium scrubbers to reduce SO_2 emissions by 90 percent on a 30-day rolling average basis from small oil-fired units is considered demonstrated.

Dual Alkali FGD Systems. Dual alkali technology has been applied primarily to coal-fired units. Emissions data are available, however, for one dual alkali system applied to an oil-fired steam generating unit. The SO_2 removal performance of the dual alkali system applied to the oil-fired unit is comparable to that of coal-fired units. The data for the oil-fired unit were obtained from a compliance test. The steam generating unit had a heat input capacity of 91 MW (310 million Btu/hour), and the sulfur content of the oil fired as 1.5 weight percent. The outlet emissions were 40 ng/J (0.09 lb/million Btu) heat input, and the SO_2 removal efficiency was 92 percent.

Long-term performance data are not available for dual alkali systems operating on small oil-fired steam generating units. However, the design and operating principles for dual alkali technology are similar for both coal- and oil-fired units. Thus, the performance of these systems on oil-fired units can be evaluated from anayzing their performance on large and small coal-fired units. These test data were discussed above, and the average SO_2 removal efficiency of these scrubbers was 92 percent. Therefore, the ability of dual alkali scrubbers to reduce SO_2 emissions by 90 percent on a 30-day rolling average basis from small oil-fired steam generating units is considered demonstrated.

Lime/Limestone FGD Systems. Although no emission data are available to document the performance of lime/limestone FGD systems on oil-fired steam generating units, emission data are avaiable for lime and limestone FGD systems applied to small and large coal-fired units. These data, which were discussed above, show SO_2 removal efficiencies for lime and limestone FGD systems of 91.5 and 94 percent, respectively. Due to the similarity in system design and operation, lime/limestone FGD is considered a demonstrated control technology for achieving a 90 percent reductin in SO_2 emissions on a 30-day rolling average basis from small oil-fired generating units.

Analysis of Control Options. The analysis of SO_2 control options examined, from the perspective of individual steam generating units, the potential impacts of various control options that could serve as the basis for regulatory alternatives limiting SO_2 emissions from small oil-fired units. The analysis compared the impacts for various control options based on demonstrated SO_2 emissions control techniques relative to a regulatory baseline and to each other. A summary of the SO_2 control options analyzed for oil-fired units appears in Table 8 below.

TABLE 8.—SO_2 CONTROL OPTIONS FOR SMALL OIL-FIRED UNITS

Control option	SO_2 emission level ng/J(lb/million Btu)	Basis
Oil Control option A.	690 (1.6)	Medium sulfur oil.
Control option B.	215 (0.50)	Very low sulfur oil.[a]
Control option C.	90% SO_2 reduction.	FGD.[b]

[a] Distillate oil.
[b] FGD=Flue gas desulfurization.

The evaluation of SO_2 control techniques for small oil-fired units indicates that medium sulfur oil, very low sulfur oil, and FGD systems are

demonstrated techniques that could serve as the basis for developing NSPS for small units. The use of medium sulfur oil will reduce SO_2 emissions to 690 ng/J (1.6 lb/million Btu) heat input; therefore, this technique was selected as Control Option A for oil-fired units. Very low sulfur oil combustion will reduce SO_2 emissions to 215 ng/J (0.50 lb/million Btu) heat input; therefore, this technique was selected as Control Option B for oil-fired units. Flue gas desulfurization systems are capable of 90 percent SO_2 emission reduction and, as a result, 90 percent SO_2 reduction was selected as Control Option C for small oil-fired units.

Sulfur dioxide emission from a typical oil-fired unit [i.e., 15 MW (50 million Btu/hour) heat input size and 55 percent (0.55) capacity factor] at the regulatory baseline are 330 Mg/year (360 tons/year). Compared to the regulatory baseline, standards based on Control Option A (i.e., standards based on the use of medium sulfur oil) would reduce emissions by about 150 Mg/year (170 tons/year). Control Option B (i.e., standards based on the use of very low sulfur oils) would reduce emissions by about 300 Mg/year (325 tons/year). Control Option C (i.e., standards based on 90 percent SO_2 reduction) would reduce emissions by about 305 Mg/year (335 tons/year).

The potential impacts on capital costs of standards based on these options were evaluated for a typical oil-fired unit. Compared to the regulatory baseline, standards based on Control Option A would increase capital costs by less than 1 percent, and standards based on Control Option B would increase capital costs by less than 1 percent. Standards based on Control Option C, however, would increase capital costs by about 80 percent.

Compared to the regulatory baseline, standards based on Control Option A would increase annualized costs for this unit by about 3 percent and standards based on Control Option B would increase annualized costs by about 20 percent. Standards based on Control Option C would increase annualized costs by about 40 percent.

The cost effectiveness of SO_2 control associated with standards based on Control Option A compared to the regulatory baseline is about $330/Mg ($300/ton), and the incremental cost effectiveness of SO_2 control associated with standards based on Control Option B compared to standards based on Control Option A is about $1,500/Mg ($1,400/ton).

The incremental cost effectiveness of SO_2 control associated with standards based on Control Option C compared to standards based on Control Option B is very high and exceeds $11,000/Mg ($10,000/ton) for all oil-fired steam generating units. Consequently, no further consideration was given to options or alternatives requiring a percent reduction in SO_2 emissions from small oil-fired steam generating units.

Analysis of Regulatory Alternatives. The analysis of regulatory alternatives examined the potential national impacts of various NSPS on both the industrial and commercial-institutional segments of the small steam generating unit population. The national impacts that would occur in the fifth year after proposal of the standards for small steam generating units were analyzed in terms of national SO_2 emission reductions, national increased annualized costs, national incremental cost effectiveness, as well as secondary environmental and energy impacts.

As shown in Table 9, the proposed SO_2 standards for oil-fired steam generating units were evaluated for three regulatory alternatives: Regulatory Alternative I, representing standards based on the use of medium sulfur oil [690 ng/J (1.6 lb/million Btu) heat input] for units of 8.7 MW (30 million Btu) heat input capacity or greater; Regulatory Alternative II, representing standards based on the use of medium sulfur oil [690 ng/J (1.6 lb/million Btu) heat input] for units of 2.9 MW (10 million Btu/hour) heat input capacity or greater; and Regulatory Alternative III, representing standards based on the use of very low sulfur oil [215 ng/J (0.50 lb/million Btu) heat input] for all oil-fired units of 2.9 MW (10 million Btu/hour) heat input capacity or greater.

TABLE 9.—SO_2 REGULATORY ALTERNATIVES FOR SMALL OIL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	SO_2 emission Level ng/J (lb/million Btu)	Basis[a]
I	>8.7 (30)	690 (1.6)	Control option A.
II	>2.9 (10)	690 (1.6)	Control option A.
III	>2.9 (10)	215 (0.50)	Control option B.

[a] Control option A=Medium sulfur coal. Control option B=Very low sulfur oil (distillate oil).

Some 915 small oil-fired steam generating units between 2.9 and 29 MW (10 and 100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 335 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

Estimated national SO_2 emission reductions over the regulatory baseline are about 8,600 Mg/year (9,400 tons/year) for a standard for small oil-fired units based on Regulatory Alternative I; about 10,000 Mg/year (11,000 tons/year) for a standard based on Regulatory Alternative II; and about 25,000 Mg/year (27,000 tons/year) for a standard based on Regulatory Alternative III.

No significant water pollution impacts are projected for small oil-fired steam generating units under any of the regulatory alternatives, and the projected impacts on solid waste generation are also negligible. Standards based on any of the regulatory alternatives for small oil-fired steam generating units would not result in significant energy impacts on national fuel use markets. Some fuel switching from residual oil to natural gas or distillate oil may occur, but the impact of any fuel switching on oil and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives for small oil-fired steam generating units would be small.

National annualized emission control cost increases over baseline costs were estimated to be $4.3 million for a standard based on Regulatory Alternative I; $5.0 million for a standard based on Regulatory Alternative II; and $22.8 million for a standard based on Regulatory Alternative III.

The national incremental cost effectiveness of a standard based on Regulatory Alternative I would be about $500/Mg ($400/ton) compared to the regulatory baseline. The national incremental cost effectiveness of a standard for small oil-fired units based on Regulatory Alternative II would be about $600/Mg ($500/ton), and the

national incremental cost effectiveness of a standard based on Regulatory Alternative III would be about $800/Mg ($700/ton).

For individual steam generating units subject to standards based on either Regulatory Alternative I or Regulatory Alternative II, cost-effectiveness values remain essentially constant at about $400/Mg ($300/ton), independent of unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative III, cost-effectiveness values range from about $1,400/Mg to $1,600/Mg ($1,300/ton to $1,500/ton), depending on unit size and capacity factor.

4. National Economic Impacts

The analysis of the national economic impacts of standards was performed separately for the two major segments of the small steam generating unit population. For the industrial segment, the analysis focused on six major industry groups: food and kindred products, textile mill products, paper and allied products, chemicals and allied products, petroleum and coal products, and primary metals industries. An examination of potential product price impacts, assuming full cost pass through and 100 percent replacement of existing process steam, for "worst case" facilities in each of these six categories showed product price increases typically less than 1 percent. For the most steam intensive industries, product prices under the "worst case" were projected to increase by 2.8 percent. Potential price increases would be significantly less at the national level because only a small percentage of process steam in these industries would be affected by the proposed standard. Industries that are more likely to experience adverse impacts because of the steam intensity of their production process were selected for further analysis. None of the selected industries experienced significant adverse economic impacts as a result of the proposed standards.

For the commercial-institutional segment, economic impacts were assessed in terms of the costs of control as a percent of annual budgets (expressed as annual revenues) for five major categories of facilities. These five types of facilities included laundries, hotels, hospitals, colleges, and secondary schools. Most commercial-institutional facilities would not be affected by the proposed standards because most of these facilities use steam generating units with heat input capacities of less than 2.9 MW (10 million Btu/hour) and most use natural gas. Of the commercial-institutional facilities with steam generating units subject to the proposed SO_2 and PM standards, the annual costs of pollution control were generally less than 0.5 percent of annual revenues. In other words, costs of services would typically increase by less than 0.5 percent. For the most steam intensive commercial facility, the annual costs of pollution control were 1.3 percent of annual revenues.

Economic impacts for the commercial-institutional segment were also measured in terms of the potential impact of the proposed standards on the rental rates of typical commercial and institutional buildings. Five different size categories of buildings were examined, ranging from less than 25,000 square feet (sq ft) to those over 200,000 sq ft in size. In each case, small steam generating units sized for the building were assumed to be used for space and water heating purposes.

The analysis of rental rate impacts showed that the proposed standards could potentially increase building rental rates by about 1 percent for a typical building smaller than 25,000 sq ft in size and less than 0.5 percent for a building larger than 25,000 sq ft in size.

Actual rental rate impacts, however, are expected to be even less than this because these rental rate impacts assume the use of residual oil, and the relatively low baseline rental rates assumed for the analysis produce a somewhat exaggerated effect on percentage increases in rental rates. In addition, it is unlikely that steam generating units of 2.9 MW (10 million Btu/hour) heat input or larger would be installed in a building as small as 25,000 sq ft in size, and it is unlikely that owners/operators of buildings below 200,000 sq ft in size would install a new residual oil-fired unit. It is much more likely that a steam generating unit installed in a commercial-institutional building smaller than 200,000 sq ft in size would use natural gas or distillate oil since units firing these fuels require much less maintenance and operator attention than units firing residual oils. Thus, the projected impacts on building rental rates are considered "worst case."

The analysis of the potential national and economic impacts associated with various regulatory alternatives for standards limiting emissions from small steam generating units does not identify any potential impacts that are considered unreasonable. Based on the above-described analysis of control options, regulatory alternatives, national impacts, and economic impacts of standards limiting emissions of SO_2 and PM from small steam generating units, the proposed standards are based on PM Regulatory Alternative II for coal and wood, and on SO_2 Regulatory Alternative III for coal and oil. The standards limiting PM emissions from small steam generating units would establish an emission limit of 22 ng/J (0.05 lb/million Btu) heat input for coal-fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater and would establish an emission limit of 43 ng/J (0.10 lb/million Btu) heat input for wood-fired units in the same size range. The standard limiting SO_2 emissions from small coal-fired steam generating units would require a 90 percent reduction in SO_2 emissions from units of greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor greater than a 55 percent (0.55). Sulfur dioxide emissions from small coal-fired steam generating units of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour), would be limited to 520 ng/J (1.2 lb/million Btu) heat input. The standard limiting SO_2 emissions from small oil-fired steam generating would limit emissions to 215 ng/J (0.50 lb/million Btu) heat input for all oil-fired units with heat input capacities of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour).

F. Modification and Reconstruction Provisions

Existing steam generating units that are modified or reconstructed would be subject to the requirements in the General Provisions (40 CFR 60.14 and 60.15) that apply to all NSPS. Few, if any, changes typically made to existing steam generating units would be expected to bring such steam generating units under the proposed SO_2 or PM standards.

A modification is any physical or operational change to an existing facility that results in an increase in emissions. Changes to an existing facility that do not result in an increase in emissions, either because the nature of the change has no effect on emissions or because additional emission control technology is employed to offset an increase in emissions, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14). These exemptions include: routine maintenance, repair, and replacement; production increases achieved without a capital expenditure as defined in section 60.2; production increases resulting from an increase in the hours of operation;

addition or replacement of equipment for emission control (as long as the replacement does not increase emissions); relocation or change of ownership of an existing facility; and use of an alternative fuel or raw material if the existing facility were designed to accommodate it. In addition, both Section III of the CAA and 40 CFR 60.14 of the General Provisions exempt mandatory conversions to coal.

Reconstruction of an existing facility could make that facility subject to an NSPS regardless of any change in the emission rate, depending on the cost of the replaced components and the feasibility of meeting the standards. Reconstructed steam generating units would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate, if the fixed capital cost of reconstruction exceeds 50 percent of the cost of an entirely new steam generating unit of comparable design and if it is technologically and economically feasible to meet the applicable standards. Costs associated with steam generating unit routine maintenance are not included in determining reconstruction costs.

G. Performance Test Methods and Monitoring Requirements

The performance testing and emission monitoring requirements included in the proposed regulation would apply to all small steam generating units subject to the proposed SO_2 or PM standards, except as noted below.

1. Sulfur Dioxide

The proposed SO_2 standard for small coal-fired steam generating units includes provisions for monitoring of SO_2 emissions to demonstrate continuous compliance with the standards. Use of a CEMS at the inlet and outlet of the SO_2 control device would be required for coal-fired units subject to a percent reduction requirement. Data collected from the CEMS would be used to determine compliance with the emission limits in accordance with Reference Method 19 (Appendix A). As-fired fuel sampling and analysis at the inlet to the steam generating unit or emissions measurement in accordance with Reference Method 6B could be used in lieu of CEMS.

Affected facilities for which only an emission limit has been proposed would be able to monitor SO_2 emissions using any of the procedures included in Method 19 (Appendix A) or other approved alternative procedures. These procedures include as-fired fuel sampling and analysis, stack sampling, or operation of a single CEMS at the outlet of the SO_2 control device.

If fuel sampling and analysis is used, a representative sample would be collected each steam generating unit operating day and would be analyzed for sulfur content. This value would be used to calculate the emission rate for that day.

Compliance with the proposed SO_2 emission limit for small coal-fired steam generating units would be based on a 30-day rolling average of data collected during the previous 30 consecutive steam generating unit operating days. (Hourly values would be computed when using a CEMS; daily values would be computed when using Method 6B or fuel sampling.) The first 30-day average SO_2 emission rate calculated after initial unit start-up would serve as the initial performance test required under 40 CFR section 60.8. Thereafter, a new 30-day rolling average emission rate would be calculated each steam generating unit operating day.

Under the proposed SO_2 standards for small coal-fired steam generating units, each 30-day rolling average would be calculated using all of the data collected during the previous 30 consecutive steam generating unit operating days. Although all data collected must be used in calculating each 30-day average, the proposed standards include provisions to account for periods when data cannot be collected due to equipment failure. These provisions require that data must be gathered by fuel sampling and analysis or stack sampling for a minimum of 22 days within each 30 consecutive steam generating unit day period.

If a small coal-fired steam generating unit were to fire other fuels periodically, such as natural gas, distillate oil, or wood, 24-hour periods during which these other fuels are the only fuels fired would not be considered small steam generating unit operating days for purposes of determining compliance with the SO_2 standards. Emissions of SO_2 from the combustion of natural gas, distillate oil, and other such fuels are so low that including these emissions in the 30-day rolling average calculations for coal-fired units would serve only to "dilute" the reported emission values. Consequently, only those 24-hour periods (as defined in the proposed standards) during which some coal is fired in the small steam generating unit would constitute small steam generating unit operating days.

Twenty-four-hour periods during which both coal and other fuels are fired, however, would be considered small steam generating unit operating days. In such cases, one method of determining compliance with the SO_2 standard would be the use of as-fired fuel sampling and analysis of the coal. If a small steam generating unit simultaneously combusts coal with another fuel and uses a CEMS to determine complinace with the SO_2 standard, an adjusted hourly SO_2 emission rate would be used in Equation 19–19 of Reference Method 19 to compute an adjusted 30-day average emission rate.

In order to ensure that CEMS provide accurate data, daily calibration drift checks and quarterly accuracy audits would be required for each CEMS. These quality assurance checks would be performed in accordance with 40 CFR Part 60, Appendix F, Procedcure 1, "Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination."

The proposed SO_2 standard for small oil-fired steam generating units includes provisions for monitoring of SO_2 emissions from small residual oil-fired steam generating units to demonstrate continuous compliance with the standards. No SO_2 monitoring requirement would apply to small distillate oil-fired steam generating units. Monitoring of SO_2 emissions from small residual oil-fired units would be accomplished through the use of fuel sampling and analysis, Method 6B, or CEMS. Data collected would be used to determine compliance with the proposed SO_2 emission limits in accordance with Reference Method 19 (Appendix A).

If fuel sampling and analysis is used to determine compliance at a small residual oil-fired steam generating unit, an as-fired daily oil sample can be taken and analyzed. As an alternative to the use of daily fuel sampling, a representative sample could be collected from the oil supply tank for the steam generating unit after each fuel delivery. This sample could be analyzed for sulfur content and then used as the daily value when calculating the 30-day rolling average SO_2 emission rate until the next oil shipment is received. Upon receipt of a new oil shipment, a new sample from the oil supply tank would be collected after the oil tank has been refilled, analyzed, and then used as the new daily average. It is assumed that adequate mixing would occur as the oil tank is being filled, so that a sample taken from the tank after filling would accurately represent the sulfur content of the oil in the tank.

As with coal, compliance with the proposed SO_2 emission limits for small residual oil-fired steam generating units would be based on a 30-day rolling

average of data collected during the previous 30 consecutive steam generating unit operating days (hourly values when using CEMS, daily values when using Method 6B or fuel sampling and analysis). The same minimum data requirements for coal-fired units also apply to oil-fired units. As with coal, if a small steam generating unit combusts oil with another fuel and uses CEMS to determine compliance with the SO_2 standard, an adjusted hourly SO_2 emission rate would be used in Equation 19–19 of Reference Method 19 to compute an adjusted 30-day average emission rate.

2. Particulate Matter

The performance test methods and monitoring requirements for PM would apply to coal- and wood-fired small steam generating units, except as noted below. Performance tests would be conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17 (40 CFR Part 60, Appendix A). Reference Method 1 would be used for determining the number and location of sampling points. Reference Method 3 would be used for flue gas analysis. After the initial performance test, subsequent performance tests may be required by enforcement personnel. All performance tests would consist of a minimum of three runs using Reference Method 5, Reference Method 5B, or Reference Method 17 at full-load operating conditions (i.e., full capacity). The average PM emission rate of the three runs would be used to determine compliance. Reference Method 17 could be used in place of Reference Method 5 for facilities without wet FGD systems that have stack gas temperatures of less than 160 °C (320 °F). For facilities with wet FGD systems, Reference Method 5B would be used.

The performance test methods and monitoring requirements for opacity would apply to coal-, oil-, and wood-fired units. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine initial compliance with the proposed 20 percent opacity standard for all three fuels. A transmissometer would be used to demonstrate proper operation and maintenance of the control device after completion of the initial performance test for coal-, oil-, and wood-fired units.

The opacity standard provides an inexpensive indicator of PM control system performance. To account for factors such as unusually large diameter stacks or other site specific unique circumstances that might influence opacity, provisions are available in 40 CFR 60.11(e) to obtain a site-specific opacity standard when a facility is unable to comply with the applicable opacity standard, but demonstrates compliance with the applicable PM emission limit.

H. Reporting and Recordkeeping Requirements

The proposed standards would require owners and operators of all small steam generating units to submit notifications of unit construction or reconstruction, date of anticipated startup, date of actual startup, and anticipated date of demonstration of the CEMS (if applicable), as required under the General Provisions (40 CFR 60.7). In addition, this notification would include a description of the fuel(s) to be fired in the small steam generating unit.

After the initial performance tests have been completed, the proposed standards would require submission of quarterly reports. For small coal- and residual oil-fired steam generating units, these reports would include all 30-day rolling average SO_2 emission rates calculated during the reporting period, as well as identification of any periods for which data were excluded from these calculations. In addition, each quarterly report would include the results of the daily CEMS drift checks and quarterly accuracy audits as required under Appendix F, Procedure 1. For small distillate oil-fired steam generating units, quarterly reporting of fuels fired would also be required. These reports must include a certified statement signed by the owner of the steam generating unit indicating that all fuels fired in the unit met the ASTM definition of distillate oil. For small coal-, wood-, and oil-fired steam generating units of 8.7 MW (30 million Btu/hour) heat input capacity or greater, these reports would also include an excess emission report for opacity. If no excess emissions of opacity occur during a quarter, then an excess emission report for opacity would not be required for that quarter, but would be required for the following quarter. Thus, as long as there are no excess emissions of opacity, only semiannual excess emission reports for opacity are required.

If the applicable SO_2 percent reduction requirement or emission limit is exceeded during the reporting period, the quarterly report would also describe the reason for the exceedance or failure to meet the requirement or limit and the corrective action taken. If the minimum amount of SO_2 data (as discussed in "Performance Test Methods and Monitoring Requirements") was not obtained for any 30-day rolling average period, reasons for failure to obtain sufficient data and a description of corrective action taken would also be included, along with all information needed to calculate the 30-day average emission rates according to Method 19, Section 7. In addition, if the applicable PM emission limit or opacity standard is exceeded, the quarterly report would also describe the reason for the exceedance and the corrective action taken.

The proposed standards would also require that certain types of records be maintained. Records to be maintained include records of the types and amounts of each fuel fired on each steam generating unit operating day; all data outputs of the CEMS, or results of fuel sampling and analysis; all quarterly reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed regulation are necessary to inform enforcement personnel as new small steam generating units begin operation. In addition, they would provide the data and information necessary to ensure continued compliance of small steam generating units with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on small steam generating unit owners or operators.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Central Docket Section at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in

the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials (Section 307(d)(7)(A)). The docket number for this rulemaking is A-86-02.

C. Clean Air Act Procedural Requirements.

1. Administrator Listing—Section 111

As prescribed by section 111 of the CAA, as amended, establishment of standards of performance for industrial-commercial-institutional steam generating units is based on the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979, and 49 FR 25156, dated June 19, 1984) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. Periodic Review—Section 111

The regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117

In accordance with section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

4. Economic Impact Assessment—Section 317

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the BID's and additional information is included in the docket.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Copies of these comments should also be submitted to Central Docket Section (LE-131), Attention: Docket Number A-86-02, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The final rule will reflect consideration of any comments on the information collection requirements.

The average annual industry-wide burden of the reporting and recordkeeping requirements associated with the proposed regulation would be 22 person-years, based on an average of 351 respondents per year.

2. Executive Order 12291 Review

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any reponses to those comments will be included in Docket A-86-02. This docket is available for public inspection at the EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act requires consideration of the impacts of proposed regulations on small entities, including small businesses, organizations, and jurisdictions. A small business is defined as any business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Administration (SBA) regulations under section 3 of the Small Business Act. Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of fewer than 50,000 people.

The proposed standard would apply to small steam generating units in small businesses (defined as having 500 to 1,500 employees depending on the SIC classification) as well as large businesses. The proposed standard, however, would not affect a substantial number of small businesses. Most small businesses will not be affected by the proposed standards because sales of new steam generating units are expected to remain at their current low levels. New small steam generating units, therefore, are expected to be a relatively small percentage of the existing population of small steam generating units over the next five years. In addition, small steam generating units in the commercial segment are used primarily for space heating and hot water. A relatively small percentage of commercial buildings will be impacted because (1) steam is not the predominant choice for heating new buildings, (2) most steam generating units used in commercial applications will be smaller than 2.9 MW (10 million Btu/hour) heat input, and (3) the predominant fuels used in commercial applications are natural gas and distillate oil, which will incur little or no compliance costs.

An economic impact is considered significantly adverse if one of the following four criteria is met:

Annual costs of compliance with the standard increase process or product costs by more than five percent.

Compliance costs as a percent of sales are at least ten percentage points higher for small businesses than for large businesses.

Capital costs of compliance represent a significant portion of capital available to small businesses.

The standards are likely to result in closures of small businesses.

The proposed standards would increase production costs by less than five percent, assuming full cost pass through, for "worst case" facilities in the most steam intensive industries. Impacts on product prices at the national level are expected to be insignificant. In the commercial segment, rental rates for office buildings that are affected by the proposed standards would increase by less than 1 percent.

Compliance costs as a percent of sales or annual revenues were analyzed for small and large businesses. This measure of the regulatory burden of the proposed standards would not be significantly higher for small businesses.

The proposed standards would impose additional capital expenditures for fabric filters on new small coal-fired steam generating units. These additional capital costs, however, would increase the capital requirement for the purchase

of a new small steam generating unit by less than 10 percent.

Finally, the additional costs associated with the proposed standards are not expected to result in any business closures. Consequently, the proposed standard will not result in significant adverse economic impacts on small businesses.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Fossil fuel-fired steam generating units, Nonfossil fuel-fired steam generating units.

Date: June 1, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.17 is amended by revising paragraphs (a)(1), (a)(10) and (a)(50) as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(1) ASTM D388–77, Standard Specification for Classification of Coals by Rank, incorporation by reference (IBR) approved January 27, 1983, for §§ 60.41(f); 60.45(f)(4) (i), (ii), (vi); 60.41a; 60.41b; 60.41c; 60.251 (b), (c).

* * * * *

(10) ASTM D396–78, Standard Specification for Fuel Oils, IBR approved January 27, 1983, for §§ 60.40b; 60.41b; 60.41c; 60.111(b); 60.111a(b).

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(50) ASTM D1835–86, Standard Specification for Liquified Petroleum (LP) Gases, to be approved for §§ 60.41b; 60.41c.

* * * * *

3. Part 60 is amended by adding Subpart Dc to read as follows:

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

Sec.

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

§ 60.40c Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and which has a maximum heat input capacity from fuels combusted in the steam generating unit of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour).

(b) Affected facilities that also meet the applicability requirements under Subpart E (Standards of performance for incinerators; § 60.50) are subject to the particulate matter standards under this subpart.

(c) Affected facilities that also meet the applicability requirements under Subpart J (Standards of performance for petroleum refineries; § 60.100) are subject to the particulate matter standards under this subpart and the sulfur dioxide standards under Subpart J (§ 60.104).

(d) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

§ 60.41c Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Annual capacity factor" means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.42c or § 60.43c, as applicable, during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility in a calendar year.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, Standard Specification for Classification of Coals by Rank (incorporated by reference—see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

"Coal refuse" means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent, by weight, and a heating value less than 13,900 kJ/kg (6,000 Btu/lb) on a dry basis.

"Cogeneration steam generating unit" means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

"Combined cycle system" means a system in which a separate source, such as a gas turbine, internal combustion engine, or kiln, provides exhaust gas to a heat recovery steam generating unit.

"Conventional technology" means wet flue gas desulfurization (FGD) technology, dry FGD technology, atmospheric fluidized bed combustion, and oil hydrodesulfurization technology.

"Distillate oil" means fuel oils that comply with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396–78, Standard Specification for Fuel Oils (incorporated by reference—see § 60.17).

"Dry flue gas desulfurization technology" means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry flue gas desulfurization technology include, but are not limited to, lime and sodium.

"Duct burner" means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases

enter a heat recovery steam generating unit.

"Emerging technology" means any sulfur dioxide control system that is not defined as a conventional technology under this section, and for which the owner or operator of the facility has applied to the Administrator and received approval to operate as an emerging technology under § 60.48c(a)(4).

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

"Fluidized bed combustion technology" means a device (including but not limited to bubbling bed units and circulating bed units) wherein fuel is distributed onto a bed, or series of beds, of limestone aggregate (or other sorbent materials) for combustion and these materials together with solid products of combustion are forced upward in the device by the flow of combustion air and the gaseous products of combustion.

"Fuel pretreatment" means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

"Full capacity" means operation of the steam generating unit at 90 percent or more of the maximum design heat input capacity.

"Heat input" means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources, such as gas turbines, internal combustion engines, or kilns.

"Heat transfer medium" means any material that is used to transfer heat from one point to another point.

"Maximum design heat input capacity" means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

"Natural gas" means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquified petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835–86, "Standard Specification for Liquid Petroleum Gases" (incorporated by reference—see 60.17).

"Noncontinental area" means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Marianas Islands.

"Oil" means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

"Potential sulfur dioxide emission rate" means the theoretical sulfur dioxide emissions (ng/J, lb/million Btu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

"Process heater" means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

"Residual oil" means all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396–78, Standard Specifications for Fuel Oils (incorporated by reference—see 60.17).

"Steam generating unit" means a device which combusts any fuel to produce steam or to heat water or any other heat transfer medium. This term includes any steam generating unit which combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters as defined in this subpart.

"Steam generating unit operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

"Very low sulfur oil" means a distillate oil or residual oil that when combusted without post-combustion sulfur dioxide control has a sulfur dioxide emission rate equal to or less than 215 ng/J (0.5 lb/million Btu) heat input.

"Wet flue gas desulfurization technology" means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contracting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium.

"Wet scrubber system" means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter or sulfur dioxide.

"Wood" means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that:

(1) Combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 20 percent of the potential sulfur dioxide emission rate (80 percent reduction), and that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is fired with coal refuse, the affected facility is subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to an emission limit determined pursuant to paragraph (e) of this section, and to the percent of the potential sulfur dioxide emission rate specified in paragraph (a) of this section.

(2) Combusts coal and that uses an emerging technology for the control of sulfur dioxide emissions, shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 50 percent (0.50) of the potential sulfur dioxide emission rate and that contain sulfur dioxide in excess of 260 ng/J (0.60 lb/million Btu) heat input.

(c) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no

owner or operator of an affected facility that combusts coal and is listed in paragraph (c) (1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) All affected facilities that have a heat input capacity of 22 MW (75 million Btu/hour) or less;

(2) All affected facilities that have an annual capacity factor for coal of 55 percent (0.55) or less and are subject to a Federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less;

(3) All affected facilities located in a noncontinental area; or

(4) All affected facilities that combust coal in a duct burner as part of a combined cycle system where 55 percent (0.55) or less of the heat input to the steam generating unit is from combustion of coal in the duct burner, and 45 percent (0.45) or more of the heat input to the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 215 ng/J (0.5 lb/million Btu) heat input.

(e) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that

(1) Combusts coal in combination with any other fuel,

(2) Has a heat input capacity greater than 22 MW (75 million Btu/hour) and

(3) Has an annual capacity factor for coal greater than 55 percent (0.55) cause to be discharged into the atmosphere any gases that contain sulfur dioxide from coal in excess of the percent of the potential sulfur dioxide emission rate required in paragraph (a) or (b)(2) of this section, as applicable. On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel, shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of the emission limit determined according to the following formula:

$$E_s = (K_a H_a + K_b H_b + K_c H_c)/(H_a + H_b + H_c)$$

where:

E_s is the sulfur dioxide emission limit, expressed in ng/J or lb/million Btu heat input,

K_a is 520 ng/J (or 1.2 lb/million Btu);

K_b is 260 ng/J (or 0.60 lb/million Btu),

K_c is 215 ng/J (or 0.50 lb/million Btu),

H_a is the heat input from combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu),

H_b is the heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu),

H_c is the heat input from the combustion of oil, in J (million Btu). Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or heat input to the affected facility from exhaust gases from another source, such as gas turbines, internal combustion engines, and kilns.

(f) Except as provided in paragraph (g) of this section, compliance with the percent reduction requirements and emission limit(s) of this section shall be determined on a 30-day rolling average basis.

(g) Compliance with the emission limits under this section are determined on a 24-hour average basis for affected facilities that:

(1) Have a federally enforceable permit limiting the annual capacity for oil to 10 percent (0.10) or less;

(2) Combust only very low sulfur oil; and

(3) Do not combust any other fuel.

(h) The sulfur dioxide emission limits and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(i) Reduction in the potential sulfur dioxide emission rate through fuel pretreatment are not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent or greater reduction in potential sulfur dioxide emissions; and

(2) Emissions from the pretreated fuel (without combustion or post combustion sulfur dioxide control) are equal to or less than the emission limits specified in paragraph (b)(2) of this section.

§ 60.43c Standard for particulate matter.

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 million Btu/hour) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of the following emission limits:

(1) 22 ng/J (0.05 lb/million Btu) heat input, if the affected facility combusts only coal, or combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/million Btu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts wood or combusts mixtures of wood with other fuels, except coal, and has a heat input capacity of 8.7 MW (30 million Btu/hour) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 43 ng/J (0.10 lb/million Btu) heat input.

(c) For purposes of these standards, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal or wood, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operating for 8,760 hours at the maximum design heat input capacity.

(d) On and after the date on which the intial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility having a heat input capacity of 8.7 MW (30 million Btu/hour) or greater that combusts coal, wood, or oil shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(e) The particulate matter and opacity standards apply at all times, except during periods of startup, shutdown, or malfunction.

§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.

(a) The sulfur dioxide standards under § 60.42c apply at all times, including periods of startup, shutdown, or malfunction.

(b) Except as provided under § 60.42c(g), compliance with the emission limits under § 60.42c is determined on a 30-day rolling average basis.

(c) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility shall conduct an initial performance test using a continuous emission monitoring system (CEMS) or following the procedures of Method 6B to determine compliance with the percent of potential sulfur dioxide emission rate ($\%P_s$) and sulfur dioxide emission rate pursuant to § 60.42c, as applicable, following the procedures listed below:

(1) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and procedures in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this subpart. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(2) The initial performance test shall be conducted over the first 30 operating days of the steam generating unit. Compliance with the sulfur dioxide standards shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after the initial startup of the facility.

(3) If only coal is combusted, the following procedures are used:

(i) Where a CEMS is used in conducting the initial performance test, the procedures in Method 19 are used to determine the hourly sulfur dioxide emission rate (E_{ho}) and the 30-day average emission rate (E_{ha}). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system. The percent of potential sulfur dioxide emission rate ($\%P_s$) emitted to the atmosphere is computed using the following formula:

$$\%P_s = 100\,(1-\%R_g/100)\,(1-\%R_f/100)$$

where:

$\%R_g$ is the sulfur dioxide removal efficiency of the control device as determined by Method 19, in percent.

$\%R_f$ is the sulfur dioxide removal efficiency of fuel pretreatment as determined by Method 19, in percent.

(ii) Where Method 6B is used in conducting the performance test, daily averages are used to compute the 30-day average emission rate.

(4) If only oil is combusted, the following procedures are used:

(i) Where a CEMS is used in conducting the initial performance test, the procedures in Method 19 are used to determine the hourly sulfur dioxide emsision rate (E_{ho}) and the 30-day average emission rate (E_{ha}). The hourly averages used to compute the 30-day averages are obtained from the CEMS.

(ii) Where Method 6B is used in conducting the performance test, daily averages are used to compute the 30-day average emission rate.

(5) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraphs (c)(3) and (c)(4) of this section are used, except as provided in the following:

(i) An adjusted hourly sulfur dioxide emission rate ($E_{ho}{}^o$) is used in Equation 19–19 of Method 19 to compute an adjusted 30-day average emission rate ($E_{ao}{}^o$). The $E_{ho}{}^o$ is computed using the following formula:

$$E_{ho}{}^o = [E_{ho} - E_w\,(1-X_k)]/X_k$$

where:

$E_{ho}{}^o$ is the adjusted hourly sulfur dioxide emission rate, ng/J (lb/million Btu);

E_{ho} is the hourly sulfur dioxide emission rate, ng/J (1b/million Btu);

E_w is the sulfur dioxide concentration in fuels other than coal and oil combusted in the affected facility, as determined by the fuel sampling and analysis procedures in Method 19, ng/J (1b/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted;

X_k is the fraction of the total heat input from fuel combustion derived from coal or coal and oil, as determined by applicable procedures in Method 19.

(ii) To compute the percent of potential sulfur dioxide emission rate ($\%P_s$), and adjusted $\%R_g$ ($\%R_g{}^o$) is computed from the adjusted $E_{ao}{}^o$ from paragraph (c)(5)(i) of this section and an adjusted average sulfur dioxide inlet rate ($E_{ai}{}^o$) using the following formula:

$$\%R_g{}^o = 100\left(1.0 - \frac{E_{ao}{}^o}{E_{ai}{}^o}\right)$$

To compute $E_{ai}{}^o$, an adjusted hourly sulfur dioxide inlet rate ($E_{hi}{}^o$) is used. The $E_{hi}{}^o$ is computed using the following formula:

$$E_{hi}{}^o = [E_{hi} - E_w(1-X_k)]/X_k$$

where:

$E_{hi}{}^o$ is the adjusted hourly sulfur dioxide inlet rate, ng/J (1b/million Btu).

E_{hi} is the hourly sulfur dioxide inlet rate, ng/J (1b/million Btu).

(6) The owner or operator of an affected facility subject to paragraph (c)(5) of this section does not have to measure parameters E_w or X_k if the owner or operator elects to assume that $E_w = 0$.

(7) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c (c) or (d) does not have to measure parameters E_w or X_k under paragraph (c)(5) of this section if the owner or operator of the affected facility elects to measure sulfur dioxide emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19.

(d) The owner or operator of an affected facility that combusts only very low sulfur oil and does not combust any other fuel, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a Federally enforceable requirement limiting operating of the affected facility to an annual capacity for oil of 10 percent (0.10) or less shall:

(1) Conduct the intitial performance test over 24 consecutive steam generating unit operating hours at full capacity, using the methods and procedures in Appendix A of this part;

(2) Determine compliance with the standards after the initial performance test based on the arithmetic average of the hourly emissions data during each steam generating unit operating day if a CEMS is used, or based on a daily average if Method 6B or fuel sampling and analysis procedures under Method 19 are used.

(e) The owner or operator of an affected facility seeking to demonstrate compliance with the sulfur dioxide standards in this subpart pursuant to the provisions of § 60.42c (c)(1) or (c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the facility at this capacity for 24 hours. This demonstration will be made during the initial performance test and a subsequent demonstration may be requested at any other time. If the 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity provided by the manufacturer of the affected facility, the 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility, otherwise the maximum design heat input capacity provided by the manufacturer shall be used.

(f) For the initial performance test required under § 60.8, compliance with

the sulfur dioxide emission limits and percent reduction requirements under § 60.42c is based on the average emission rates and the average percent reduction for sulfur dioxide for the first 30 steam generating unit operating days, except as provided under paragraph (d) of this section. The initial performance test is the only test for which at least 30 days prior notice is required unless otherwise specified by the Administrator. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capcity, but must be representative of future operating conditions and include at least one 24-hour period at full capacity.

(g) After the initial performance test required under § 60.8, compliance with the sulfur dioxide emission limits and percent reduction requirements under 60.42c is based on:

(1) Continuous emissions monitoring, as described in § 60.46c (a), (c), (d), and (e);

(2) Sampling of fuel sulfur content, as described in § 60.46c(b) (1) and (2); or

(3) Method 6B as described in § 60.46c(b)(3). Calculations to determine compliance must be made in accordance with Reference Method 19.

(h) Except as provided under paragraph (i) of this section, the owner or operator of an affected facility shall use all valid sulfur dioxide emissions data in calculating $\%P_s$ and E_{ho} under paragraph (c) of this section, whether or not the minimum emissions data requirements under § 60.46c are achieved. All valid emissions data, including valid sulfur dioxide emissions data collected during periods of startup, shutdown, and malfunction, shall be used in calculating $\%P_s$ or E_{ho} pursuant to paragraph (c) of this section.

(i) During periods of malfunction or maintenance of the sulfur dioxide control systems when very low sulfur oil is combusted, emission data are not used to calculate $\%P_s$ or E_{ho} under § 60.42c (a) or (b); however, the emissions data are used to determine compliance with the emission limit under § 60.42c(d).

(j) The owner or operator of an affected facility that combusts oil may, as an alternative to performance testing as required by paragraph (c)(4) of this section, demonstrate compliance with the sulfur dioxide emission limits of § 60.42c(d) by combusting residual oil having a sulfur content of 0.5 weight percent sulfur or less, or distillate oil. The owner or operator of the affected facility shall maintain records as required by § 60.48c(f).

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The particulate matter emission and opacity standards under § 60.43c apply at all times, except during periods of startup, shutdown, or malfunction.

(b) The following procedures and reference methods are used to determine compliance with the standards for particulate matter under § 60.43c:

(1) Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dscm (60 dscf) except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(2) Method 3 shall be used for gas analysis when applying Method 5, Method 5B, or Method 17.

(3) Method 5, Method 5B, Method 17 shall be used to measure the concentration of particulate matter as follows:

(i) Method 5 shall be used at affected facilities without wet flue gas desulfurization (FGD) technology; and

(ii) Method 17 may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160° C (320° F). The procedures of §§ 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used in conjunction with wet FGD technology. Method 17 shall not be used in conjunction with wet FGD technology if the effluent is saturated or laden with water droplets.

(iii) Method 5B shall be used only in conjunction with wet flue gas desulfurization technology.

(4) For Method 5 or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160° C (320° F).

(5) For determination of particulate matter emissions, an oxygen or carbon dioxide measurement shall be obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the same sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rates expressed in ng/J (lb/million Btu) heat input shall be determined using:

(i) The oxygen or carbon dioxide measurements and particulate matter measurements obtained under this section;

(ii) The dry basis F factor; and

(iii) The dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

(7) Method 9 (6-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

§ 60.46c Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraph (b) of this section, the owner or operator of an affected facility subject to the sulfur dioxide emission limits under § 60.42c (a), (b), (c), (d), or (e) shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide concentrations and either oxygen (O_2) or carbon dioxide (CO_2) concentrations at the outlet from the sulfur dioxide control device or the steam generating unit, and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements of § 60.42c (a) or (b) shall monitor sulfur dioxide and either oxygen (O_2) or carbon dioxide (CO_2) concentrations at both the inlet and outlet of the sulfur dioxide control device.

(b) As an alternative to operating a CEMS at the outlet of the steam generating unit as required under paragraph (a) of this section, an owner or operator may elect to determine the average sulfur dioxide emissions by sampling the sulfur content of the fuel combusted or by using Method 6B. The sulfur content of the fuel combusted shall be determined pursuant to paragraph (b)(1) and (b)(2) of this section. Method 6B shall be conducted pursuant to paragraph (b)(3) of this section. For affected facilities subject to the percent reductions requirements of § 60.42c (a) or (b), a CEMS or Method 6B shall be used to measure sulfur dioxide emissions at the outlet of the sulfur dioxide control device.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according to Method 19. Method 19 provides procedures for converting these measurements into the format to be used in calculating the average sulfur dioxide input rate.

(2) For affected facilities combusting only oil, oil samples shall be collected from the fuel tank for each steam generating unit after each new shipment of oil is received and before any amount of oil is combusted. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when computing the 30-day

rolling average until the new shipment is received. When the new shipment is received, a new sample shall be taken and analyzed, and a new daily value obtained. If a partially empty fuel tank is refilled, a new analysis of the fuel in the tank would be required upon filling.

(3) Method 6B may also be used in lieu of CEMS to measure sulfur dioxide at the inlet or outlet to the sulfur dioxide control system. An initial stratification test is required to verify the adequacy of the Method 6B sampling location. The stratification test shall consist of three paired runs of a suitable sulfur dioxide and carbon dioxide measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2. Method 6B, Method 6A, or a combination of Methods 6 and 3 or Methods 6C and 3A are suitable measurement techniques. If Method 6B is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(c) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section or sampling as-fired fuel samples pursuant to paragraph (b)(1) of this section shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

(d) The 1-hour average sulfur dioxide emission rates measured by a CEMS shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average daily emission rates under § 60.42c. Each 1-hour average sulfur dioxide emission rate must be based on at least 30 minutes of operation and include at least 2 data points representing two 15-minute periods. Hourly sulfur dioxide emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 (Appendix B).

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(3) The span value of the sulfur dioxide CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel combusted, and the span value of the CEMS at the outlet to the sulfur dioxide control device shall be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel combusted.

(f) The monitoring requirements of paragraphs (a) and (b) of this section shall not apply to any steam generating unit firing only distillate oil.

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standard under § 60.43c shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) All CEMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 (Appendix B).

§ 60.48c Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction, anticipated startup, and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of the fuels to be combusted in the affected facility.

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the facility based on all fuels fired and based on each individual fuel fired.

(4) Notification that an emerging technology will be used for controlling emissions of sulfur dioxide. The Administrator will examine the description of the emerging technology and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) and (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the sulfur dioxide or particulate matter emission limits of § 60.42c or § 60.43c or the opacity limits under § 60.43c shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS using the applicable performance specifications in Appendix B.

(c) The owner or operator of each affected facility subject to the opacity limits under § 60.43c(d) shall submit excess emission reports for any calendar quarter during which there are excess emissions from the facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test, unless no excess emissions occur during that quarter. The initial semiannual report shall be postmarked by the 30th day of the sixth month following the completion of the initial performance test, or following the date of the previous quarterly report, as applicable. Each subsequent quarterly or semiannual report shall be postmarked by the 30th day following the end of the reporting period.

(d) The owner or operator of each affected facility subject to the sulfur dioxide emission limits or percent reduction requirements under § 60.42c shall submit quarterly reports to the Administrator. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test. Each subsequent quarterly report shall be postmarked by the 30th day following the end of the reporting period.

(e) The owner or operator of each affected facility subject to the sulfur dioxide emission limits or percent reduction requirements under § 60.42c shall keep records and submit quarterly reports as required by paragraph (d) of this section, including the following information, as applicable.

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average (or 24-hour average, as applicable) sulfur dioxide emission rate [ng/J (lb/million Btu)] measured during the reporting period, ending in the last 30-day (or 24-hour, as applicable) emission rate calculated in the period; reasons for any noncompliance with the emission limits; and a description of corrective actions taken.

(3) Each 30-day average percent reduction in sulfur dioxide emissions calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for noncompliance with the emission standards; and a description of the corrective actions taken.

(4) Identification of any steam generating unit operating days for which sulfur dioxide or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.

(5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

(6) Identification of F factor used for calculations, method of determination, and type of fuel combusted.

(7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.

(8) If a CEMS is used, identification of any times when the pollutant concentration exceeded full span of the CEMS.

(9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3.

(10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under Appendix F, Procedure 1.

(11) If residual oil is combusted, identification of any steam generating unit operating days for which the 30-day rolling average (or 24-hour average, as applicable) oil sulfur content of the fuel sample collected exceeded 0.5 weight percent sulfur.

(12) If distillate oil is combusted, a certification from the owner or operator of the affected facility identifying the steam generating unit operating days during the previous quarter when the affected facility combusted distillate oil meeting the specifications for fuel oil number 1 or number 2 of the American Society for Testing and Materials' Standard Specification for Fuel Oils, ASTM D396–78.

(f) For affected facilities combusting coal or oil that are subject to the sulfur dioxide standards established under § 60.42c, the owner or operator shall keep a record of fuel supplies used or intended for use in the affected facility. Such fuel records shall include the following information.

(1) For residual oil and coal, all measurements, data, calculations, and results of fuel sulfur sampling developed pursuant to § 60.46c(b);

(2) For distillate oil, a certification from the fuel supplier that the fuel meets the specifications for fuel oils number 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396–78, Standard Specification for Fuel Oils (incorporated by a reference—see § 60.17).

(g) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

§ 60.49c Standard for nitrogen oxides.

No owner or operator of an affected facility that combusts coal, oil, natural gas, or mixtures of these fuels with any other fuel shall cause to be discharged into the atmosphere any gases that contain nitrogen oxides in excess of 430 ng/J (1.0 lb/million Btu) heat input. No performance testing, monitoring, reporting, or recordkeeping requirements are required.

[FR Doc. 89–13474 Filed 6–8–89; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Friday
June 9, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200 and 206

Home Equity Conversion Mortgage Insurance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule adds a new Part 206 to Title 24, Chapter II of the Code of Federal Regulations. The rule implements section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash. A total of 2,500 mortgages may be insured under this program until September 30, 1991.

EFFECTIVE DATE: July 24, 1989, except §§ 206.205 and 206.211 which have been submitted to OMB for approval. The approval number will be published in the **Federal Register** through a technical amendment.

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Economic Affairs, (202) 755-5426, Room 8218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

All except two of the information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 2528-0133. The two new requirements have been submitted to OMB for review. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Introduction

On October 25, 1988, a proposed rule for the Home Equity Conversion Mortgage Insurance Demonstration, also known as the FHA reverse mortgage program, was published in the **Federal Register**. Twenty-two comments were received, including three from potential borrowers and one from an advocate of sales-leasebacks. Comments were also received from the American Association of Retired Persons (AARP), the National Council on the Aging (NCOA), the Mortgage Bankers Association (MBA), the American Bankers Association (ABA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the State of Connecticut (CN), the Rhode Island Housing and Mortgage Finance Corporation (RIHMFC), the Virginia Housing Development Authority (VHDA), the Georgia Residential Finance Authority (GRFA), the Ohio Department of Aging (OHDA), Capital Holding Corporation (CHC), Riggs National Bank (RNB), Suncoast Schools Federal Credit Union (SSFCU), Eden Council for Hope and Opportunity (ECHO) of Walnut Creek, CA, Catholic Social Service (CSS) of Tucson, AZ, and a consultant.

In addition, a letter was received that was jointly signed by Senator Bob Graham, Member of the Senate Committee on Banking, Housing, and Urban Affairs, Senator John Heinz, Ranking Minority Member on the Senate Committee on Aging, Representative Don Bonker, Chairman of the Subcommittee on Housing and Consumer Interests of the House Select Committee on Aging, and Representative Edward R. Roybal, Chairman of the House Select Committee on Aging (Congressmen).

On the basis of these comments and further development of concepts in the proposed rule, the Department has made changes to the proposed rule which are discussed in the following sections.

2. Size of Demonstration

By statute, HUD is authorized to insure up to 2,500 mortgages on the homes of elderly homeowners under the demonstration. FNMA, FHLMC, and ECHO expressed the view that the size of the demonstration is too small and should be increased to 25,000 (FNMA) or 30,000 (FHLMC). Since the limit on the size of the program is statutory, this concern cannot be addressed in the final rule. However, the statutory limitation of 2,500 mortgages and the September 30, 1991 statutory deadline for firm commitments are no longer specifically mentioned in the rule text. The Department has attempted to draft a rule which would continue to be suitable if Congress choose to extend the program, either in terms of volume or duration, without substantive changes. Of course, the statutory limitations continue to apply unless changed by law, and HUD Handbook 4235.1, *Home Equity Conversion Mortgages*, will clearly state the limitations.

The ABA expressed the concern that "limiting the insurance program to 2,500 mortgages will discourage many lenders who would otherwise be interested from participating because their involvement would be limited to so few mortgages that developing the expertise would not be productive." It recommended confining the program to "those lenders that have already developed their own reverse annuity mortgage programs." It is the Department's view that such a policy would not be consistent with the statutory objective "to encourage and increase the involvement of lenders and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners."

3. Legal Authority

Section 255(b)(3) of the National Housing Act limits the definition of home equity conversion mortgages to those mortgages which a lender is authorized to make under one of three sources of legal authority: (1) Section 804 of the Garn-St Germain Depository Institutions Act of 1982, which empowers Federal regulatory agencies to issue regulations to exempt State-chartered lenders from restrictions of State law on alternative mortgage transactions, such as reverse mortgages, unless a State later excludes itself from section 804 coverage; (2) other Federal law, such as the laws governing federally-chartered lenders, but not including section 255 of the National Housing Act; or (3) State law. This restriction was not expressly included in the proposed rule. It is included in the final rule to emphasize the fact that reverse mortgages do not necessarily conform to the normal legal constraints applicable to home mortgage lenders, so that a lender may need to rely on special legal athority which overcomes the normal constraints. It is important that each lender participating in the program review and confirm its legal authority to make reverse mortgages.

RNB recommended that "the HUD rule should specifically supersede any State law or court decision that prohibits the compounding of interest. State laws that prohibit or are silent on the compounding question would inhibit full implementation of the program." This final rule is intended only to implement section 255 of the National Housing Act, which does not empower HUD to supersede laws which prohibit compounding of interest. The Federal law designed specifically to address this question is section 804 of the Garn-St Germain Depository Institutions Act of 1982, mentioned above.

The Federal Home Loan Bank Board (FHLBB) is authorized to issue section 804 regulations concerning all types of lenders except commercial banks (regulations to be issued by the Office of the Comptroller of the Currency (OCC)) and credit unions (regulations to be issued by the National Credit Union Administration (NCUA)); they appear as the Appendix to 12 CFR Part 545. The FHLBB regulations authorize compound interest. HUD is currently seeking clarification regarding some ambiguities in these regulations. However, some States have exempted themselves from section 804 as permitted by law.

Neither the OCC nor the NCUA regulations specifically mention the question of compounding of interest. However, both agencies appear to have used their section 804 powers to permit State-chartered lenders to make any alternative mortgages, including reverse mortgages, which are insured by HUD. See NCUA policies published at 12 CFR 701.21(a) and (e), and OCC policies published at 12 CFR 34.3 (footnote 1) and 48 FR 40700.

Two other Federal laws may be relevant. Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 supersedes State laws "expressly limiting the rate or amount of interest" for many types of lenders; the implementing regulations issued by the FHLBB appear at 12 CFR Part 590. This law may apply if compounded interest is regarded as usury under State law. However, in some jurisdictions compounding of interest is prohibited as a matter of public policy as a separate matter from usury. HUD is not aware of any official interpretation of section 501 addressing this situation.

Section 529 of the National Housing Act is similar to section 501; it also supersedes State laws "expressly limiting the rate or amount of interest." However, its effect on compound interest is also unclear in those States which regard interest compounding as a prohibited practice distinct from usury. Also, section 529 allows a State at any time to enact new interest restrictions which supersede section 529. No regulations have been issued to interpret section 529.

Finally, it may be noted that some States have laws which exempt FHA-insured loans from legal constraints which would otherwise apply, and some of these laws may have the effect of overcoming restrictions on compound interest.

Unfortunately, HUD is not in a position to make a blanket statement that all State restrictions on compound interest are superseded for lenders who make insured reverse mortgages. Lenders are urged to seek the advice of competent legal counsel.

4. Reservation of Insurance Authority

In the proposed rule, HUD announced its intention to invite HUD-approved lenders to apply for reservations of insurance authority prior to publication of the final rule, so that it could train HUD-approved housing counseling agencies about reverse mortgages and their alternatives in those areas where lenders plan to originate mortgages. HUD allocated its 2,500 reservations among its 10 Regional Offices in proportion to each Region's share of the Nation's elderly homeowners. On January 24, 1989, (54 FR 3564), the Department published a notice in the **Federal Register** inviting lenders to apply for reservations of home equity conversion mortgage authority from their Regional Offices of Housing. The notice contained application instructions for lenders and initial distribution instructions for Regional Offices of Housing which are not repeated in the final rule.

Two changes have been made to § 206.11 dealing with applications for reservations of insurance authority. First, the restriction in § 206.11(b) that lenders may apply for reservations of insurance authority "for not less than 10 but not more than 50 mortgages" has been replaced with "in accordance with instructions issued by the Secretary." Current instructions issued in the notice provide the reservations will be issued in lots of 50.

Second, § 206.11(d) dealing with expiration and extension of reservations has been amended to state that, if a conditional commitment has been issued, a reservation may be extended until the firm commitment for that application expires. This is consistent with other FHA procedures governing the duration of conditional and firm commitments. This will enable a lender to have up to nine months to complete the insurance application process. It is also partially responsive to a concern expressed by the ABA that individuals who experience delays due to counseling should not be precluded from participating and to a recommendation by GRFA that the reservations expire after nine rather than six months.

5. Eligible Mortgages: Overview

Sections 206.17 through 206.31 dealing with eligible mortgages have been substantially redrafted. The proposed rule could be read to suggest that FHA proposed to insure three different types of mortgages. In fact, FHA intends to insure a reverse mortgage under which a borrower may initially choose among three basic payment options—tenure, term, and line of credit—and may combine a line of credit with tenure or term payments or change the pattern of payments to accommodate changes in the borrower's circumstances. In addition, a borrower may elect to receive a lump sum draw at closing to pay off an existing mortgage, to pay off a contractor's lien for repairs, or for other purposes. Given these options, any FHA-insured reverse mortgage resembles a line of credit under which the pattern of payments may be changed and varied.

In the final rule, the definition of "principal limit" has been clarified and will be used to calculate all payments to borrowers, including tenure monthly payments. This change will have little impact upon the size of a tenure monthly payment, but it will greatly increase the simplicity and flexibility of FHA-insured reverse mortgages. The AARP recommended that, "in the interests of consumer choice, * * * participating lenders be required to offer at least one type of tenure HECM (without appreciation-sharing) and one type of line-of-credit HECM." In fact, the final rule provides consumers with a broader array of choices.

6. Definitions

A. Expected Average Mortgage Interest Rate

The definition of "expected average mortgage interest rate," also known as the "expected rate," has been changed for adjustable rate mortgages. The expected rate is used to calculate the principal limit for all borrowers. For borrowers who have selected an adjustable rate mortgage, the expected rate is intended to be the market's best estimate of the average mortgage interest rate during the term of the mortgage.

In the proposed rule, the expected rate was defined as the lender's current 15-

year fixed rate or a comparable rate approved by the Secretary. However, not all lenders offer 15-year fixed rate morgages, and fixed mortgage rates compensate lenders for certain risks which are not present in adjustable rate reverse mortgages. Section 206.3 of the final rule defines the expected rate as the lender's margin plus the 10-year Treasury bond rate. The lender's margin is defined as the initial mortgage interest rate minus the initial index rate—i.e., the one-year Treasury rate. It is also required to be the same margin used to adjust interest rates annually. This approach will discourage lenders from offering a teaser rate—i.e., an initial interest rate below the margin plus the index—because doing so results in a higher margin and consequently lower payments to the borrower. This definition of the expected rate is more technically defensible because the 10-year Treasury rate incorporates market expectations of future one-year interest rates, without including the inappropriate components of the 15-year fixed rate. It is also easier to adjust lender margins than the 15-year fixed rates.

To illustrate, VHDA asked what expected rate State housing finance agencies should use, since they "raise capital and set interest rates differently than do private lenders. Rates are set according to long-term bond prices and may not reflect current market conditions." If State housing finance agencies offer FHA-insured adjustable rate reverse mortgages, they will be bound by the definition of the expected rate in the final rule. However, they may offer a non-market rate by selecting a suitable margin over or under the one-year Treasury rate and still accurately calculate the expected rate for a particular mortgage.

Rates shall be adjusted in accordance with the procedures in 24 CFR 203.49, as amended by § 206.21 of the final rule.

B. Maximum Claim Amount

To simplify terminology, the final rule eliminates the concept of "maximum FHA claim amount," and defines "maximum claim amount" as the lesser of the appraised value of the property or the maximum dollar amount that FHA can insure for a one-family residence in an area under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum insurable amount are to be determined as of the date that the conditional commitment is issued. Closing costs will not be taken into account in determining the appraised value, but closing costs may be financed under the reverse mortgage.

CHC recommended that the program exclude homes with values in excess of the maximum dollar amount that FHA can insure in an area. Such a limitation on value was contained in section 255(d)(3) of the Act as originally passed by Congress, but it was recognized as a drafting error and eliminated by section 1066 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

MBA recommended that the maximum claim amount be increased substantially, and that, as an interim step, HUD should develop a second mortgage option for the program for homeowners who need help making their first mortgage payments to stay in their homes. Both of these recommendations are beyond the scope of the program as authorized by the Act.

C. Principal Limit

At the time of the proposed rule, the Department planned to use separate factors for calculating tenure payments and term and line of credit payments. It was subsequently determined that it would be easier to use a single factor to determine a principal limit for use in calculating all payments to borrowers. The definition of the principal limit has been modified to accommodate this change. A unique principal limit will be calculated based on the age of the youngest borrower, the expected rate, and the maximum claim amount using a factor provided by the Secretary. (Because the mortality table in the payments model is truncated at age 100, it will underestimate the life expectancy of borrowers over 95 years of age. For this reason, borrowers over 95 years of age will be treated as if they were 95 for the purpose of calculating payments.)

The principal limit is literally the maximum dollar amount that a borrower can withdraw on the first day that a mortgage is in effect. It increases each month at a compound rate of one-twelfth of the expected rate plus the monthly mortgage insurance premium (MIP). When the mortgage balance equals the principal limit, the borrower cannot receive any more payments (expect as noted below), but is able to remain in the house until the borrower moves, sells, or dies. A borrower who has selected the tenure option and who becomes 100 years old will continue to receive payments even though the mortgage balance equals the principal limit. Likewise, borrowers who have selected the tenure or term options with adjustable interest rates will continue to receive payments for the duration of the selected term, even though the mortgage balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected rate.

The initial principal limit may be regarded as the present value of the payments available to a borrower. Under the FHA reverse mortgage program, the borrower is able to control the timing of the payments by selecting among three basic payment options: tenure, term, and line of credit. The borrower may combine a line of credit with a term or tenure option and may alter the payment plan initially selected.

The Department believes that borrowers will value the flexibility afforded by the use of a principal limit since they cannot predict their future cash needs with certainty, yet, by statute, are entitled to remain in their homes until they move, sell, or die. The Department believes that lenders will also value the flexibility because the use of standard procedures will reduce the cost of responding to the borrower's changing needs. To cover these costs, lenders will be permitted to charge a fee of no more than $20 each time that payments are recalculated. Detailed instructions for using the principal limit to determine payments are contained in HUD Handbook 4235.1.

7. Payment Options

New § 206.19 describes the reverse mortgage payments options available to a borrower. The description of the term option has been changed slightly: the duration of term payments is "chosen by the borrower" rather than "agreed upon between the borrower and lender," removing the unintended implication that the lender could veto a term selected by the borrower.

CN asked whether the regulations could be written to permit gradually increasing monthly payments. Such payments could be provided under the line of credit option which permits any pattern of draws. In this case, the borrower would make a one time request for a line of credit payment plan under which the lender would make monthly payments according to a schedule generated by the lender. The payment schedule should be calculated so that the mortgage balance equals the principal limit at the end of the desired term.

8. Interest Rate

New § 206.21 provides that an FHA reverse mortgage may have a fixed or an adjustable interest rate as agreed upon by the borrower and lender and modifies the proposed rule with respect to adjustable rates in response to comments received from FNMA and

FHLMC. Both secondary mortgage market agencies expressed the view that line of credit payments to borrowers create excessive interest rate risk for the lender, necessitating higher interest rates than for fixed payments. Since all FHA reverse mortgages may be regarded as line of credit mortgages, the Department has taken steps to reduce the interest rate risk to lenders and investors, and so, cost to borrowers.

The Department will insure reverse adjustable rate mortgages (ARMs) with and without interest rate caps. For capped reverse ARMs, the Department has retained the five percentage point life-of-loan limit on interest rate increases and decreases, but has increased the annual limit on rate increases and decreases from one percentage point to two. The annual limit was changed from one to two percentage points to permit the interest rate on reverse ARMs to adjust more rapidly to the market rate and so will reduce the compensation that lenders will seek from borrowers for capped reverse ARMs.

The Department will also insure a reverse ARM with monthly interest rate adjustments and no caps (except a maximum interest rate chosen by the lender for compliance with Section 1204 of the Competitive Equality Banking Act of 1987) as long as the lender also offers a comparable reverse ARM with annual interest rate adjustments and the above prescribed caps. Section 1204 requires each adjustable rate mortgage loan to include a limitation on the maximum interest rate that may apply during the term of the loan.

The Department has decided to offer an uncapped reverse ARM with monthly adjustments for several reasons. Numerous studies have shown that a borrower must compensate a lender by paying a higher margin (i.e., the spread between the ARM rate and the index) for a forward ARM with annual and life-of-loan caps than for an ARM without caps. The margin increase depends on the shape of the yield curve and the volatility of interest rates. Generally, lenders charge more for caps when the yield curve slopes upward and interest rate volatility is high than when the yield curve is flat or downward sloping and interest rate volatility is low.

Lenders wil charge more for caps applied to reverse ARMs than to forward ARMs in all yield curve and volatility environments for two reasons. First, unlike forward ARM borrowers, reverse ARM borrowers have the option to withdraw funds (up to the principal limit) at any time. If interest rates go up above the cap, the borrower in effect has the option to borrow funds at a below-market rate. While it is unlikely that all elderly borrowers in this demonstration would exercise this option in such circumstances, lenders will charge a higher margin for capped reverse ARMs than capped forward ARMs because there is a risk that some borrowers would exercise the option. Second, because reverse mortgage balances are initially low and increase over the life of the loan, a lender receives more compensation from a margin in later years. Discounting this deferred income stream will cause the lender to charge a higher rate for caps on reverse ARMs than on forward ARMs for which compensation is not deferred as far into the future.

An uncapped reverse ARM with monthly adjustments is similar to a forward home equity line of credit with monthly adjustments. An uncapped reverse ARM with monhly adjustments will have a lower margin over the index than one with annual adjustments because the borrower's option to withdraw funds at any time increases in value as the period between rate adjustments lengthens. In effect, annual adjustment places a cap on the rate for the year. For example, if rates were to rise rapidly one month after an annual rate adjustment was made, a borrower could receive a below-market rate loan for eleven months by withdrawing an amount up to the borrower's net principal limit. Again, it is unlikely that all elderly borrowers would exercise the option; nevertheless, the lender would price the effective cap created by the annual adjustment period based on some assumption about how the option may be exercised and would include the price of this cap in the margin. Indications are that the increase in the margin would be less for uncapped than for capped annual adjustments; yet, neither is likely to be insignificant. Monthly adjustments to the interest rate would allow borrowers to be charged the lowest possible margin as interest rate risk is virtually eliminated.

In summary, HUD believes that a lender will typically charge a lower margin for an uncapped reverse ARM with monthly adjustments than for a capped reverse ARM with annual adjustments because the margins include the cost of the interest rate risk introduced by the caps and the adjustment period. By offering a lower margin (and consequently, a lower expected rate) for an uncapped reverse ARM, the lender provides the borrower with the opportunity to receive higher payments.

Under a reverse ARM, payments to the borrower do not change when the interest rate changes. Thus, unlike forward ARM borrowers whose payments to the lender change with the interest rate, reverse ARM borrowers are protected from "payment shock." Adjustments to the reverse ARM rate merely increase or decrease the rate at which remaining equity is consumed. It should also be recognized that a borrower with an uncapped reverse ARM may experience a lower reduction in equity than a borrower with a capped reverse ARM. During inflationary periods with sustained high interest rates, when caps would otherwise be in effect, the equity consumed under an uncapped reverse ARM would be offset by increased house value appreciation. During interest rate periods when the caps are not constraining, the more costly capped reverse ARM would consume equity at a faster rate. Thus, the Department feels that some borrowers may prefer the uncapped reverse ARM to the capped. Both will be offered under this demonstration.

Section 255(d)(5) of the Act permits a "fixed or variable interest rate * * * as agreed upon by the mortgagor and the mortgagee" with no reference at all to interest rate caps or frequency of rate adjustment. The House bill permitted only fixed interest. The Senate bill also permitted variable rates. The Senate report does not discuss caps, but the Conference report does, as follows: "The conferees make clear that they intend that variable interest should be capped at five points above the original rate * * *" without any mention of annual caps. Neither of the reports discusses frequency of rate adjustment.

Since the statute does not mention caps or frequency of rate adjustment, the Conference report statement has not been regarded as legally binding on HUD. However, borrowers are protected as desired by the Conferees, since each reverse ARM borrower will have the opportunity to choose a reverse ARMs with two percentage point annual and five percentage point life-of-loan caps on interest rate increases or decreases. Assessment of acceptable risk to HUD, within statutory restrictions, is a policy question committed to HUD's administrative discretion.

The Department believes that increasing the adjustability of interest rates for a reverse mortgage is preferable to the options proposed by FNMA and FHLMC. These options were to offer nonconvertible term and tenure mortgages; to fix the interest rate at the time of each line of credit draw; and to establish a new interest rate at the time of a change in a payment plan. The Department believes that each of these options is potentially more costly to the

borrower than capped or uncapped reverse ARMs for the following reasons.

If the Department agreed to insure term and tenure mortgages whose payment plans could not be altered by the borrower, servicing costs—and consequently, interest rates—could be expected to rise, because borrowers may nevertheless experience unanticipated needs for cash (e.g., money to repair the roof) that it will be in the lender's interest to meet. A lender faced with a choice between foreclosing upon a borrower for failure to maintain the property or advancing funds for repairs in most instances will prefer the latter. But the decision to advance funds on a special exception basis could often involve housing counselors, the HUD Field Office, and bank officers, and would likely to lend to higher servicing costs than changes made according to standard operating procedures. Of course, lenders could ignore the declining house value in hopes that any loss would not exceed the maximum claim amount. By permitting the lender to advance funds for repairs, HUD hopes to discourage this option.

If the Department agreed to insure line of credit mortgages with interest rates fixed for each draw, a lender would have a sort of uncapped reverse ARM, but would be required to treat each draw as a separate loan—again, resulting in higher servicing costs than when the adjusted rate applies to the entire balance. In addition, special accounting rules would be needed to deal with partial prepayments—i.e., first-in, last-out; last-in, first-out; or weighted averaging. None of these are typical of current mortgage servicing practices.

Finally, if the Department agreed to allow the interest rate to change on tenure or term mortgages at the time of a change in payment plan, the lender would have only partial protection against interest rate risk compared with the alternative of capped or uncapped reverse ARMs which permit the interest rate to be adjusted at periodic intervals over the life of the loan. As a consequence, the lender should be able to offer a capped or uncapped reverse ARMs at a lower cost to the borrower than the proposed option.

One commentator recommended the creation of a price-level-adjusted reverse mortgage. Such an option was considered, but rejected as beyond the scope of this program.

The requirements for disclosure of the adjustable rate features of a mortgage have been revised for two reasons. First, the proposed rule assumed that some insured mortgages would be "closed end" credit for purposes of Truth-in-Lending regulations, which is no longer the case. HUD has received written advice from the Division of Consumer and Community Affairs of the Federal Reserve Board that all insured mortgages under the final rule will constitute open end credit. Second, Congress has passed the Home Equity Loan Consumer Protection Act of 1988 to cover disclosures for "open end" credit. The final rule provides for basic pre-loan disclosures similar to the regular FHA ARM program until the new law is implemented. The new law will require very extensive disclosure and will eliminate the need for any separate HUD pre-loan disclosure requirements. HUD will apply its regular FHA ARM policy requiring 25 days advance disclosure of interest rate adjustments since the new Consumer Protection Act does not mandate any advance disclosure.

9. Shared Appreciation

Section 206.23 provides that any mortgage may provide for shared appreciation between the borrower and the lender as long as the lender also offers a comparable mortgage without shared appreciation. This differs from the proposed rule under which shared appreciation was permitted only for fixed-rate tenure mortgages. Both the AARP and NCOA urged that shared appreciation be offered for term as well as tenure mortgages. Since it is the Department's intention to insure a reverse mortgage under which the borrower may choose among payment options, there is no reason to deny borrowers who choose shared appreciation the flexibility available to those who do not. The final rule corrects an oversight in the proposed rule by clarifying that appreciation will be measured by appraised value rather than sales price when no sale has occurred at the time the loan is repaid.

10. Initial Payment

The proposed rule placed a limit on the size of an initial payment to the borrower used to pay off an existing lien or to make repairs. Under the final rule in § 206.25(a), the size of any initial payment is limited only by the principal limit, and there are no limitations on the purposes for which it may be used. This change is consistent with the recommendations of the AARP, NCOA, and GRFA.

It is evident that some borrowers will be able to increase their cash flow by paying off existing mortgages. Others may use a reverse mortgage as a deferred payment rehabilitation loan: Some will choose to make the repairs before closing to take advantage of any resulting increase in their home's appraised value, and others, after closing, under a line of credit or the provisions of § 206.47.

11. Calculation of Payments

Unlike the proposed rule, the final rule provides that a line of credit may be combined with term and tenure monthly payments. Term and tenure monthly payments are both calculated in the same way, except that the number of months used in the calculation for term payments is the number of months selected by the borrower, while for tenure payments it is the age of the youngest borrower subtracted from 100 and multiplied by 12. At origination, the principal limit is reduced by any initial payment and any amounts set-aside for a line of credit, for repairs after closing, and for the first year's payments of taxes, insurance, and other property charges. Then, monthly payments are calculated by determining the future value of the net principal limit at the end of the applicable number of months using a monthly compounding rate of one-twelfth of the expected rate plus the monthly MIP. This future value and the monthly compounding rate are used in a sinking fund formula for payments made at the beginning of a month to determine the maximum monthly term or tenure payment.

As long as the mortgage balance is less than the principal limit, a borrower may request a payment of any amount up to the principal limit or may change from one payment option to another. If the borrower changes payment options or makes a lump sum draw, a lender will recalculate payments to the borrower using a method similar to the one described above. Specifically, the lender will subtract the mortgage balance (and any unused amount set-aside for a line of credit or for other purposes) from the principal limit for the current month, project the net principal limit to the end of the term, and use a sinking fund formula to recalculate monthly payments, if any. The final rule provides that a lender may charge a fee, not to exceed twenty dollars, to change a borrower's payment plan.

Factors and detailed instructions for making these calculations are contained in HUD Handbook 4235.1. Computation screens for use on a personal computer are available from a computer bulletin board maintained by the Housing Information and Statistics Division in the Office of Housing. The screens (including the factors) and payments model can be downloaded using the caller's personal computer and communications software by

telephoning (202) 755–3102, selecting the HECM menu option, and following the instructions on the screen. Technical assistance is available by calling the Housing Information and Statistics Division (202) 755–6190. (These are not toll-free numbers.)

12. Size of Payments

The Congressmen, AARP, NCOA, and ECHO all urged that an effect be made to maximize payments to borrowers by fine-tuning the assumption used in the payments model. A technical explanation of the payments model was provided in the preamble to the proposed rule and is not repeated here. In addition to the mortality data (1979–81 female mortality tables, based on Census data and published by the U.S. Department of Health and Human Services), the model uses four critical assumptions. These assumptions and their values for the program are: The expected appreciation rate, .04; the variance of the appreciation rate, .01; the mortgage termination rate (i.e., terminations due to death, move-outs, and refinancings), 1.3 times the mortality rate; and the discount rate, which is set equal to the mortgage interest rate minus 50 basis points (one-half percentage point). The values for these assumptions were selected after extensive research, and they will be refined following the demonstration once data from the program are analyzed. They represent the Department's best estimates given the counterbalancing objectives of maximizing payments to borrowers and designing an actuarially sound program.

CHC questioned the use of population mortality rather than annuitant mortality rates:

> Just as a person who did not anticipate that they would have a substantial additional life expectancy would not be likely to apply for a life annuity, so an individual who did not anticipate living in their home for a substantial additional period of time would not be likely to go through the time and expense of applying for a home equity conversion mortgage. This self-exclusion of the more high risk and ill portion of the elderly population makes the use of annuitant mortality tables necessary to make the program actuarially sound.

The Department rejects this argument on the grounds that the initial cost of a home equity conversion mortgage is much lower than the cost of a life annuity, so that it is likely that the program will appeal to a broader segment of the elderly homeowner population than those who expect to be long-lived. Some may use a reverse mortgage proceeds for a short time until they can make another living arrangement. Some elderly homeowners who are ill or infirm may use reverse mortgage proceeds to purchase long-term care or other services to make their final years more comfortable. How borrower mortality rates compare with those of the general population will be among the topics studied in the course of the program.

CSHA asked whether a lender must use the age of the youngest borrower or could use joint mortality tables. For ease of administration, the Department is requiring use of the age of the youngest borrower. GRFA recommended that the payments model take the gender of the borrower into account. Gender-specific tables cannot be used because the Civil Rights Act of 1968, as amended in 1976, forbids discrimination on the basis of sex in the terms and conditions of a mortgage. Use of female mortality tables introduces an element of conservatism into the payment model's assumptions; however, a large majority of borrowers are expected to be female.

13. Treatment of Houses With Values in Excess of Maximum Claim Amount

By statute, Congress placed a limit on the maximum insurance claim that FHA can pay under the program. As a consequence, FHA will insure a reverse mortgage on a house of any value, but, for purposes of determining payments to borrowers, will disregard any house value above the maximum claim amount. HUD believes that limiting benefits available to borrowers whose house values exceed the maximum claim amount will have the salutary effect of encouraging the development of conventional reverse mortgages to complement those insurable under the FHA program.

Several commentators recommended special treatment of borrowers whose house values exceeded the maximum claim amount. CSHA recommended that HUD adopt one of the following: (1) Charge a lower MIP to elderly homeowners with houses above the maximum, (2) limit the liability of the borrower to an initial equity of $101,250 plus appreciation, or (3) raise payments to all borrowers by taking into account the insurance of higher valued properties. AARP and NCOA also recommended charging a lower MIP. AARP, NCOA, ECHO, and the Congressmen also supported permitting borrowers to withhold a portion of their equity for later use by themselves or their heirs.

The Department believes that borrowers with house values in excess of the maximum claim amount should not be treated differently from others. Neither charging a lower mortgage insurance premium nor permitting them to withhold a portion of their equity is practical or consistent with the apparent Congressional intent to limit benefits to elderly homeowners under the FHA reverse mortgage program. Charging a lower MIP would require redesign of the program since it is by holding the MIP structure constant that the payments model is able to solve for the unique principal limit that equates the present value of the expected MIP with the present value of the expected losses.

Permitting equity withholding is without precedent in FHA experience and would effectively give the homeowner or some other creditor of the homeowner a lien superior to the reverse mortgage. The statute requires the insured mortgage to be a first mortgage. In the case of long-lived borrowers in moderately appreciating houses, FHA would be in the position of paying insurance claims even though proceeds from the sale of the property exceeded the mortgage balance at the time that the mortgage became due and payable. Within the bounds of the program's design, however, the objective of equity withholding can be partially achieved. Under the final rule, a homeowner has the opportunity to combine a line of credit with term and tenure payments and effectively to withhold equity until such time as the homeowner chooses to draw upon it.

Raising payments to all borrowers by taking into account the insurance of high valued properties would also conflict with FHA practice. FHA insures lenders against default by borrowers with mortgages that meet FHA underwriting standards. Payments to a borrower with a reverse mortgage are uniquely based upon the age of the youngest borrower, the expected rate, and the maximum claim amount. The payments model sets the present value of the MIP expected to be collected equal to the present value of the losses expected to be incurred to solve for a unique principal limit for a borrower with the specified characteristics. The program does not take into account assumptions about the proportion of houses of different values in the pool of mortgages insured. It is not designed as a subsidy program under which some borrowers pay more so that other borrowers can receive higher payments. Each borrower is paying a premium which is estimated to be sufficient to compensate the insurer for the risks of the particular mortgage. From a practical point of view, it is impossible to know what the composition of house values in the pool of insured mortgages will be. In the beginning, the proportion of high-valued

properties may be relatively high, but their proportion should decline as private lenders and insurers develop products that permit owners of these properties to take fuller advantage of their equity.

Apart from the practicality of the individual recommendations, making the program more attractive to homeowners whose houses exceed the maximum claim amount would decrease the incentive to private lenders and insurers to provide conventional reverse mortgages. For these reasons, the recommendations have not been adopted.

14. Mortgage Provisions

A. Mortgage Forms

Section 206.27(a) states that: "The mortgage shall be in a form meeting the requirements of the Secretary." MBA and ABA recommended that HUD develop standardized mortgage forms for use by lenders. HUD will develop standardized mortgage provisions for use in mortgage forms developed by the lender. The mortgage forms will consist of a security instrument of the type typically used in the jurisdiction (mortgage or deed of trust), a promissory note, and a loan agreement specifying the lender's obligation to advance funds.

B. Timing of Payments to Borrowers

Section 206.27(b)(1) makes it clear that monthly payments to borrowers shall be mailed to the borrower or transferred to the account of the borrower on the first business day of each month beginning with the first month after closing. Line of credit draws shall be mailed or transferred within five business days after the lender has received a written request for payment.

FNMA requested that the lenders have 10 business days in which to make a line of credit payment. HUD believes that mortgage servicers should be able to advance payments to borrowers and receive reimbursement from investors, reducing the time that would otherwise be needed to complete the transaction.

C. Amount of Hazard Insurance

ABA recommended that § 206.27(b)(2) should be amended "so that the borrower is required to maintain hazard insurance on the property in an amount acceptable not only to HUD but also to the lender." This change has been made.

D. Property Maintenance

Section 206.27(b)(5) provides that: "The borrower must keep the property in good repair." ABA recommended that the mortgage "be structured so as to ensure adequate maintenance of the property." RNB suggested that "a drive-by inspection of the property should qualify to determine that the property is in proper repair. Only if the drive-by indicates problems, should further investigation of the premises be required." CHC observed:

> The proposed rules do not provide lender motivation to enforce (HUD's) property standards because the Department will suffer any loss up to the maximum FHA claim amount before lenders lose anything * * *. We suggest that lender be required to regularly recertify, under penalty of potential loss of their FHA insurance, that the property is being maintained.

HUD requires that properties meet Minimum Property Standards at the time that they are insured and permits lenders to foreclose if borrowers fail to keep their property in good repair. The Department believes that borrowers will have a strong incentive to maintain their property throughout the duration of most mortgages, because sales proceeds in excess of the mortgage balance belong to the borrower or the estate of the borrower. The Department further believes that imposing an affirmative obligation upon a lender to inspect insured properties at regular intervals would be too costly. Instead, the Department has increased the borrower's ability to make lump sum withdrawals under a reverse mortgage, and so, in this way, enhanced the borrower's ability to maintain the property.

E. Payment of Property Charges

Sections 206.27(b)(6) and 206.205 deal with the payment of taxes, insurance premiums, and other property charges. The borrower is responsible for these payments, but may choose to have the lender pay them with money withheld from the borrower's monthly payments or charged to the borrower's line of credit. These payments are not made from an escrow account, as provided in the proposed rule. Instead, the payments will be added to the mortgage balance at the time that they are made, as explained in revised § 206.205.

MBA recommended that borrowers be required to establish escrows for taxes and insurance. This recommendation is not practicable because some borrowers will withdraw the maximum allowed on the first day or will reach the principal limit sooner than others and will be responsible for making these payments from their own funds as long as they reside in the property.

F. Preservation of First Lien

RNB recommended "that to protect both lenders and HUD, HUD should pre-empt all State mechanics liens and State lien statutes (taxes, utility, etc.) that could affect the lien priority of the lender and HUD on the property." While HUD cannot pre-empt these State laws, § 206.27(b)(10) requires the lender to take affirmative action to preserve the mortgage's first lien status if State law limits the lien originally executed and recorded to a maximum amount of debt or a maximum number of years and further requires the lender to cause any other liens to be removed or subordinated. Many States require that a mortgage state a maximum principal amount which will be secured by the mortgage, and at least one State (Florida) limits the period during which loan advances after closing retain the original lien priority. The borrower can avoid foreclosure and continue to receive payments by signing necessary documents prepared by the lender and by keeping the property clear of other liens unless the junior lienholder agrees to be subordinated to the entire insured mortgage.

G. Lender's Late Fee

Section 206.25(g) clarifies the lender's late fee which is owed to the borrower if a monthly payment or requested line of credit payment is not mailed to the borrower or transferred to the borrower's account on time. The proposed rule would have required the lender to pay a 10 percent late charge for any late payment. The charge would have been due as soon as the payment was one day late and would not have increased in case of longer payment delays. HUD continues to believe that a "grace period" is inappropriate, so that a late charge should be imposed immediately. However, HUD has also determined that the late charge will be a more effective incentive for prompt payment if it increases as the length of the payment delay increases. Thus, the final rule adds to the basic 10 percent late charge a continuing late charge on the late payment calculated daily at a rate equivalent to the mortgage interest rate, subject to a cap of $500.

H. Due and Payable

NCOA and RNB asked that the preamble to the final rule discuss the various bases for determining when a reverse mortgage becomes due and payable under § 206.27. These matters are dealt with in detail in HUD Handbook 4235.1.

15. Allowable Fees and Charges

MBA expressed concern about the limitations on allowable fees, stating that:

Mortgage bankers generally receive a substantial portion of their income from the servicing of mortgages. For example, for their duties in servicing FHA and VA mortgages, they receive 44 basis points to cover their costs and to create revenue for their companies. With the home equity conversion mortgage, such fees will not be available because of the structure of the program.

As a solution, MBA recommended permitting higher origination fees or discount points or permitting all mortgagees to share MIP income, not just those choosing the share premium option.

VHDA and RIHMFC feared that the prohibition against charging discount points might limit a lender's ability to sell reverse mortgages in the secondary market. FHLMC recommended that HUD allow "an explicit servicing fee to be charged against each payment under a HECM."

The Department does not support using MIP for purposes other than mortgage insurance, charging unearned interest—i.e., discount points, or charging origination fees in excess of actual costs. It does acknowledge, however, that the traditional method for setting a servicing fee for forward mortgages—namely, as a fixed percentage of the outstanding principal balance—is unlikely to work for reverse mortgages, because initial balances are generally low, reducing initial servicing income. In addition, servicers would demand higher fees to cover the risk that, due to unanticipated prepayments or underutilization of lines of credit, they would not recoup their out-of-pocket costs before a mortgage was assigned to HUD. Since a servicer's costs are most logically and economically covered by a flat monthly fee for the actual cost of the service, it was decided to set aside § 203.552(a)(12) of the basic FHA regulations which precludes a post-endorsement fee to a borrower for "charges for servicing activities of the mortgagee or servicer." Section 206.207(b) permits a mortgagee or servicer to charge a flat monthly fee set at the time of loan origination to compensate them for their costs. The department has been assured by FNMA and FHLMC that this policy will result in significant reductions in the interest rate that may be charged to borrowers and so will not affect the payments received by borrowers.

A mortgagee may choose whether to receive compensation for mortgage servicing as an implicit fee included in the interest rate or as an explicit flat monthly fee charged to the borrower. If the latter is chosen, the amount of the fee must be fixed at loan origination, disclosed to the borrower, and included in the loan agreement. If a servicing fee is charged to the borrower, the lender will reduce the principal limit used to calculate payments to borrowers by an amount sufficient to fund the fee for the duration of the mortgage. The fee will be charged to the borrower's mortgage balance only as it is earned by the lender or servicer.

It is believed that permitting a post endorsement fee for servicing will benefit all parties to the transaction. Servicers will be compensated for the cost of services performed. Borrowers will pay a servicing fee only as services are received. In addition, they will pay a lower interest rate than would otherwise be charged, qualifying them for higher payments. To compare reverse mortgages with and without servicing fees, a borrower need focus only upon the size of the payments that the lender is offering. The higher the payments, the lower the cost to the borrower.

16. Eligible Borrowers

A. Minimum Age

Section 206.33 states that, to be eligible, the youngest borrower must be 62 years of age. CSHA asks whether individual lenders can set higher age limits? A lender may not since the statute states that elderly homeowners must be "at least 62 years of age or such higher age as the Secretary may prescribe," and the Secretary has not chosen to change the age in the statute.

B. General Credit Standing

Section 206.37 requires that a borrower have "a general credit standing satisfactory to the Secretary." VHDA, RIHMFC, and RNB asked for an explanation of this requirement. As spelled out in HUD Handbook 4235.1, borrowers will be asked to show that they are not currently in default with regard to any debt that they owe the Federal Government. It is understood that many applicants will be applying for a reverse mortgage to pay off other delinquent accounts. Certain financial information will be collected from borrowers using a standard mortgage credit analysis form to facilitate evaluation of the program.

C. Principal Residence

Section 206.39 defining "principal residence" has been revised to clarify the eligibility of borrowers with institutionalized spouses. Concern with this matter was expressed by AARP, NCOA, VHDA, RIHMFC, GRFA, and the Congressmen.

RNB recommended that: "The lender should be able to send a certification to the borrower to sign to ascertain whether the residence is the principal residence and occupied by the borrower." A new § 206.211 has been added requiring lenders to determine on an annual basis whether or not the property is the principal residence of at least one borrower. A borrower will be asked to so certify, and the lender may rely on the certification unless it has information indicating that the certification may be false. This section is also responsive to a concern expressed by CHC that the Department needs a way of ascertaining whether the borrower has moved or died in order to prevent fraud.

D. Counseling

Section 206.41 deals with counseling. CHC and SSFCU opposed mandatory counseling by a HUD-approved housing counseling agency. CHC suggested that "the counsel of any adult advisor who is not connected with the lender and whose counsel is trusted by the prospective borrowers should be acceptable to the Department." In addition, CHC claimed that the counseling requirement "amounts to a challenge to the senior's right and ability to contract."

The statute authorizing the program requires that the borrower receive "adequate counseling by a third party (other than the lender)"; and that the lender "make available to the homeowner * * * a written list of the names and addresses of third-party information sources who are approved by the Secretary as responsible and able to provide the information required"; and that "the Secretary shall provide or cause to be provided by entities other than the lender" certain specific items of information which "shall be discussed with the borrower." These passages amply support the conclusion that Congress intended borrowers to receive counseling from HUD-approved counseling agencies.

OHDA expressed strong doubt regarding the ability of HUD-approved counseling agencies to provide reverse mortgage counseling, and asked how HUD would approve other agencies for reverse mortgage counseling. ABA and VHDA recommended that HUD expedite the approval of additional counseling agencies. HUD has taken several steps consistent with these recommendations. First, on December 2, 1988, Assistant Secretary Thomas T. Demery sent a memorandum to HUD Regional and Field Offices authorizing them to approve additional counseling agencies that specialize in reverse mortgage counseling as long as they meet the other requirements for

counseling agencies spelled out in HUD Handbook 7610.1 REV.

Second, under an Interagency Agreement with HUD, the Administration on Aging (AoA) is enlisting the assistance of its Regional Offices and its State Agencies on Aging to identify additional counseling agencies for approval by HUD Field Offices. In addition, HUD and AoA are jointly funding training for existing and new housing counseling agencies about reverse mortgages and their alternatives.

Third, in keeping with the ABA's recommendation, HUD is developing and distributing materials explaining the program to lenders, borrowers, and housing counselors. In keeping with CHC's recommendation, these materials will discuss home equity conversion mortgages available from other lenders who are not participating in the program, as well as those who are. Finally, in keeping with a recommendation from NCOA, to reduce the potential for adverse legal action by heirs, borrowers will be urged to invite heirs to counseling sessions. Of course, the homeowner is ultimately responsible for deciding whether or not to take out a reverse mortgage.

17. Eligible Properties

A. Title Evidence

HUD has clarified the title evidence requirements in § 206.45(a) by stating that the title insurance commitment is required with the application for insurance, while the title insurance policy is submitted after closing as provided in § 206.15(e).

B. Types of Dwellings

MBA recommended that two-to-four family dwellings be eligible as long as the owner occupies the property and meets other program criteria. This recommendation is inconsistent with section 255(d) of the statute which states that to be eligible for insurance, a mortgage shall "be secured by a dwelling that is designed principally for a 1-family residence."

C. Cooperatives

NCOA supported the inclusion of cooperatives and condominiums as properties eligible for an FHA reverse mortgage. Commenting on § 206.45(b), FNMA recommended: "Because of the unique relationship that exists between a cooperative unit owner and the cooperative association, there should be an agreement between the association and the cooperative owner indicating that the cooperative owner is participating in a reverse mortgage program."

Section 206.45 of the proposed rule included both condominium and cooperative housing units as types of property eligible for reverse mortgage insurance. The condominium provisions have been retained, but cooperative housing units are not included in the final rule. The proposed rule had anticipated the use of special procedures and requirements applicable to mortgage insurance for cooperative housing units under section 203(n) of the Act. However, the section 203(n) program has rarely been used since it was announced over 10 years ago, and Field Offices have little or no experience in dealing with mortgages for cooperative housing units. The Department has now concluded that this lack of experience coupled with the many unusual features of reverse mortgages would probably result in significant delays in processing a reverse mortgage for a cooperative housing unit, and that the limited amount of insurance authority available during the demonstration stage would be better applied to other types of single-family housing more familiar to HUD Field Offices and Headquarters.

D. Appraisals

ABA and CHC recommended that HUD take steps to ensure that properties are properly appraised. Appraisals will be conducted by appraisers approved by the Secretary following established appraisal standards.

E. Repair Work

Section 206.47 dealing with repairs to meet minimum property standards has been revised. It permits such repairs to be made after closing if they are expected to cost less than 15 percent of the maximum claim amount. The lender may charge a fee of the greater of $50 or one and one-half percent of the amount spent on these repairs as compensation for these services (see § 206.31).

F. Leases

Section 206.45(a) will now permit insurance of a mortgage on a leasehold property if the lease is for a 99 year term and is renewable. Other leasehold properties are eligible, but the lease term must be at least 50 years from the 100th birthday of the youngest borrower. Fifty years has been substituted for the 10 years in the proposed rule to eliminate any doubt that the leasehold interest will always have substantial value relative to the mortgage balance.

18. Mortgage Insurance Premiums

A. Automated Collection of MIP and Related Data

Sections 206.105(b), 206.111(b), and 206.115 dealing with the periodic MIP have been revised. Under section 530 of the Act, HUD is required to collect MIP from a lender immediately after it has been collected from a borrower. The initial MIP must be paid before a loan can be endorsed for insurance. It is earned when collected and therefore is not refundable after endorsement. Since the monthly MIP will accrue daily on the mortgage balance and be added to the borrower's account monthly, it will be collected monthly. It will be due to the Secretary on the first day of the month following its accrual.

To facilitate collection, all MIP transactions between HUD and the lender will be automated. HUD will use a contractor to collect initial MIP, monthly MIP, and all data needed to update its records. Each lender will be required to establish a banking account from which HUD will collect payments by means of Debit Automated Clearing House (ACH) transactions based on data transmitted electronically by the lender to the HUD contractor.

The lender will need to obtain a personal computer, printer, and modem which are compatible with the contractor's equipment. The HUD contractor will provide each lender with program format screens and complete instructions for each of the functions to be performed. Further details are contained in HUD Handbook 4235.1

FHLMC recommended that HUD simplify the collection of the periodic MIP. It is believed that use of an ACH will simplify MIP and related data collection.

B. Shared Premium Option

To eliminate confusion with another program, the Department has changed the name of the "coinsurance" option to the "shared premium" option at § 206.107 of the final rule. Section 206.109 has been corrected to state that the lender's share of premium is based on the age of the youngest borrower and the expected rate (without regard to the maximum claim amount.) The amount of the lender's share of premium is determined each month by applying the specified number of basis points to the mortgage balance.

Preparation of the matrix of shared premiums for borrowers between the ages of 62 and 95 and for all interest rates between 7.0 and 15.875 percent has revealed that the lender share of MIP in some cases—those for younger

borrowers with high interest rates—exceeds 50 basis points, the size of the monthly premium. In HUD Handbook 4235.1, these premiums have been capped at 50 basis points and starred in the table to warn lenders that these mortgages carry added risk. Premiums below 5 basis points—those for the oldest borrowers with any interest rate, but also for older borrowers with low interest rates—have been raised to 5 basis points (and starred) to reward lenders for choosing this option.

C. Late Charges and Interest

The final rule at § 206.113(c), dealing with charges for late remittance of MIP, provides that "any late charge owed by the lender must be paid from the lender's funds and may not be added to the mortgage balance of the borrower."

ABA recommends that lenders have a grace period before payment of a late charge is required. Lenders will have a 10 day grace period; however, they will be unable to add the monthly MIP to the borrower's mortgage balance until it is actually paid to HUD.

19. Processing

MBA recommended that reverse mortgage processing be handled by HUD Regional rather than Field Offices. The Department believes that, with the guidance provided in HUD Handbook 4235.1, Field Offices will be fully capable of handling reverse mortgage processing.

Regarding § 206.129 dealing with payment of a claim, FNMA recommended that HUD agree to process a claim for an assignment within 90 days. HUD cannot guarantee payment of a claim by a particular date, but it does pay interest at the debenture rate from the date of a specified action which precedes filing a claim (e.g., notice to the borrower that the mortgage is due and payable, or recordation of a mortgage assignment to HUD).

20. Tax Treatment of Reverse Mortgage Proceeds

GRFA recommended that HUD seek an opinion from the Internal Revenue Service regarding the taxability of reverse mortgage proceeds. HUD is planning formally to request a revenue ruling from IRS dealing with various aspects of reverse mortgages.

21. Evaluation of the Program

ABA recommended that HUD should report periodically on all aspects of the program. By statute, HUD is required to make an interim report to Congress on the program by September 30, 1989, conduct a preliminary evaluation by March 30, 1992, and file an updated report and evaluation every two years thereafter.

AARP recommended that counselors be involved in the data-gathering process and an accounting be provided for all waivers granted under § 206.5. These recommendations will be considered when the evaluation is designed.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a signficant 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Participation in the program is voluntary by both ,es and mortgagors.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule pertains only to the regulation of lenders insured by the Federal Housing Administration.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes insurance for loans by private lenders to the elderly based on the equity in their home. The use of the loan proceeds is without HUD discretion.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974) under Executive Order 12291 and Regulatory Flexibility Act.

The Home Equity Conversion, Insurance program is not listed in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the collection of information requirements of section 3504(h) of the Paperwork Reduction Act of 1980 under this rule at §§ 206.11, 206.15, 206.21 206.23, 206.27, 206.41, 206.43, 206.45, 206.47, 206.105, 206.123, 206.125, 206.127, 206.131, 206.133, and 206.203. The OMB clearance number is 2528–0133. The final rule adds two new collection of information requirements at §§ 206.205 and 206.211 which have been submitted to OMB for review. These new collection of information requirements are not effective until such time that OMB grants its approval. The approval number will be published in the **Federal Register** through a technical amendment. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN APPROVED INFORMATION COLLECTIONS IN THE FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM

Description of information collection	Section of 24 CFR affected final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application for reservation of insurance authority	206.11	50	1	50	.5	25
Purchase commitment by loan correspondent's sponsor	206.11(e)	5	1	5	1	5
Application for insurance (2502-0059, 2502-0111)	206.15	50	25	1,250	1	1,250
Certification of receipt of counseling	206.15(c) 206.41(c)	50	25	1,250	.05	62.5

TABULATION OF ANNUAL REPORTING BURDEN APPROVED INFORMATION COLLECTIONS IN THE FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM—Continued

Description of information collection	Section of 24 CFR affected final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Adjustable rate line of credit disclosures	206.21(c)	50	10	500	.1	50
Disclosure of new adjustable interest rate	206.21(d)	50	70	3,500	.02	75
Disclosure of shared appreciation mortgage terms and options	206.23(d)	50	15	750	.5	375
Mortgage provisions	206.27(b)	50	25	1,250	.05	62.5
Notification to Secretary of potential default conditions	206.27(c)(2) 206.125(a)(1)	50	1	50	.5	25
List of HUD-certified counseling organizations in mortgagor's area	206.41(a)	50	50	2,500	.05	125
Information provided by counselors to mortgagors	206.41(b)	100	50	5,000	1.5	7,5000
Disclosure of mortgage terms and conditions	206.43(a)	50	25	1,250	.2	250
Written explanation of procedures in event of mortgagee default	206.43(b)	50	25	1,250	.05	125
Provision of title evidence to the Secretary	206.45(a)	50	25	1,250	.1	125
Certificate that no child under 7 lives in home with hazardous paint surfaces	206.45(d)	50	.1	5	.2	2.5
Inspection of repairs by mortgagee	206.47(c)	50	1	50	.3	15
Amount of mortgage insurance premium	206.105	50	25	1,250	.01	12.5
Claim of mortgage insurance benefits (2502-0093)	206.123(a) 206.127	50	.1	5	1	5
Notification of mortgagor that mortgage is due and payable	206.125(a)(2)	50	.001	.05	.5	.025
Notice to Secretary to initiate an appraisal pursuant to a claim	206.125(b)	50	.1	5.	.2	2.5
Notice to Secretary of foreclosure proceedings (2502-0347)	206.125(d)(3)	50	.01	.5	.1	.5
Request to sell property at lower price	206.125(g)	50	.001	.05	.5	.025
Certification of condition of condominium upon assignment of mortgage	206.131(c)	50	.01	.5	1	.5
Notice pursuant to termination of insurance	206.133(d)	50	1	50	.2	10
Statements to mortgagor of mortgage activity during the year	206.203	50	100	5,000	.1	500
Notice of prepayment of line of credit mortgage	206.209(c)	10	1	10	.3	3
Total annual burden						10,606.55

TABULATION OF ANNUAL REPORTING BURDEN NEW INFORMATION COLLECTIONS IN FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Notice of change in withholding for property charges	206.205(e)(3)	50	20	100	.25	25
Mortgagor's annual certification of occupancy	206.211	50	50	250	.1	25
Total Annual Burden						50

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 206

Home equity conversion mortgage insurance.

Accordingly, 24 CFR Part 200 is amended and a new 24 CFR Part 206 is added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is added to § 200.810 to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion, insurance) unless the mortgagor provides the certification described in § 206.45(d) of this chapter. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this chapter.

3. A new Part 206 is added to Chapter II of 24 CFR to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

Subpart A—General

Subpart B—Eligibility Applications

Eligible Mortgages

Authority: Secs. 211 and 255 of the National Housing Act (12 U.S.C. 1715b, 1715z–20); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 206.1 Purpose.

Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) added a new section 255 to the National Housing Act (12 U.S.C. 1715z–20). Section 255 authorizes a program for the insurance of home equity conversion mortgages (also known as reverse mortgages) for elderly homeowners. This program of mortgage insurance is designed:

(a) To meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

(b) To encourage and increase involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners; and

(c) To evaluate data to determine the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages, the types of home equity conversion mortgages that best serve the interests of elderly homeowner mortgagors, mortgagees and the Federal Government, and the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for the elderly.

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

"Assessment" means a special assessment by a public body or an assessment by a condominium or homeowner association.

"Contract of insurance" means the agreement evidenced by the issuance of a mortgage insurance certificate, incorporating by reference Subpart C and the applicable provisions of the National Housing Act.

"Day" means calendar day, except where the term "business day" is used.

"Expected average mortgage interest rate" means the mortgage interest rate used to calculate monthly payments to the mortgagor and established when the mortgage interest rate is established. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury Securities adjusted to a constant maturity of 10 years. The mortgagee's margin is defined as the initial mortgage interest rate minus the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. The mortgagee's margin is the same magin used to determine periodic adjustments to the interest rate.

"Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

"Maximum claim amount" means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area shall be as of the date the conditional commitment is issued. Closing costs shall not be taken into account in determining appraised value.

"MIP" means the mortgage insurance premium paid by the mortgagee to the Secretary in consideration of the contract of insurance.

"Mortgage" means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term "mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term refers both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed," or another term used in a particular jurisdiction. The term "mortgage" also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor, the mortgagee and Secretary.

"Mortgagee" means the original lender under an insured mortgage, any assign permitted by § 206.101 and the Secretary if the mortgage is assigned to the Secretary.

"Mortgagor" means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

"Principal limit" means the maximum disbursement that could be received in any month under a mortgage, assuming that no other disbursements are received, taking into account the age of the youngest mortgagor, the expected average mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for purposes of calculating the principal limit. The principal limit is calculated for the first month that a mortgage could be

outstanding using factors provided by the Secretary. It increases each month thereafter by one-twelfth of the expected average mortgage interest rate, plus the monthly MIP. It is used to calculate payments to a mortgagor.

"Principal residence" means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

"Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

§ 206.5 Waivers.

The Secretary, in an individual case, may waive any requirement of Subpart B not required by statue if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of this program. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be delegated further.

§ 206.7 Effect of amendments

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to Subparts B and C shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured, and shall not adversely affect the interests of a mortgagee on any mortgage to be insured on which the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

Subpart B—Eligibility Applications

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* A mortgagee must be authorized to made reverse mortgages under a Federal law other than § 255 of the National Housing Act, including section 804 of the Garn-St Germain Depository Institutions Act of 1982, or the law of the State where the property to be mortgaged is located.

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under Part 203 of this chapter, except an investing mortgagee approved under § 203.6 of this chapter, is eligible to apply for reservations of insurance authority in accordance with § 206.11 of this chapter. A mortgagee approved under §§ 203.3, 203.4, 203.6 or 203.7 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

§ 206.11 Application for reservations of insurance authority.

(a) *Definition.* A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the requirements of this subpart.

(b) *Application.* An eligible mortgagee may apply for reservations of insurance authority in accordance with instructions issued by the Secretary. An eligible mortgagee may apply for additional reservations after its initial reservations are used or expire if reservations of insurance authority are available.

(c) *Approval.* If the application for the reservations is acceptable, the Secretary will then approve the request for reservations if reservations of insurance authority are available. A mortgagee may not originate a mortgage under this part without first obtaining a reservation of insurance authority for the mortgage.

(d) *Expiration and extension.* A reservation of insurance authority will expire six months after the date of issue. Reservations will be extended if a conditional commitment is secured from the Secretary before the reservation expires. Reservations of insurance authority will be extended until the firm commitment for that application expires.

(e) *Requirements for approval—loan correspondents.* At the time of application for reservations of insurance authority, a loan correspondent (as defined in § 203.5 of this chapter) shall provide evidence satisfactory to the Secretary that the mortgages to be insured under this part will be purchased by the loan correspondent's sponsor or sponsors. Such evidence shall include: (1) The name of each sponsor mortgagee which will purchase the mortgages originated under this part, and (2) a copy of each purchase agreement which obligates the sponsor mortgagee to purchase the mortgages originated under this part. The collective agreements must show that all the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent under paragraph (c) of this section is used.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.13 Ineligible programs.

Mortgages originated through the Direct Endorsement or Coinsurance programs are not eligible for insurance under this part.

§ 206.15 Application for insurance.

(a) *Submission.* A mortgagee with a reservation of insurance authority may submit an application for insurance of a mortgage which is about to be executed.

(b) *Form.* The application must be made upon a form prescribed by the Secretary.

(c) *Insurance of mortgage.* The Secretary approves an application for mortgage insurance by issuing a conditional commitment and a firm commitment. The Secretary shall establish in the commitment documents the terms and conditions upon which the mortgage will be insured. The mortgagee, upon closing the mortgage, submits to the Secretary the commitment documents, the certificate received by the mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, a title insurance policy, the mortgagee's election of either the assignment or shared premium option under § 206.107, a copy of the mortgage to be insured, the original second mortgage required by § 206.27(e), and any other documentation required by the Secretary. If the mortgagee has complied with the terms and conditions of the commitment documents and this paragraph (c), the Secretary will issue a Mortgage Insurance Certificate. Mortgages insured under this part shall be obligations of the General Insurance Fund.

(Approved by the Office of Management and Budget under control number 2528–0133)

Eligible Mortgages

§ 206.17 General.

(a) *Payment options.* A mortgage shall initially provide for the tenure payment option (§ 206.19(a)), the term payment option (§ 206.19(b)), or the line of credit payment option (§ 206.19(c)), subject to later change in accordance with § 206.26.

(b) *Interest rate.* A mortgage shall provide for either fixed or adjustable interest rates in accordance with § 206.21.

(c) *Shared appreciation.* A mortgage may provide for shared appreciation in accordance with § 206.23.

§ 206.19 Payment options.

(a) *Term payment option.* Under the term payment option, equal monthly payments are made by the mortgagee to the mortgagor for a fixed term of months chosen by the mortgagor, unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c).

(b) *Tenure payment option.* Under the tenure payment option, equal monthly payments are made by the mortgagee to the mortgagor as long as the property is the principal residence of the mortgagor, unless the mortgage is prepaid in full or becomes due and payable under § 206.27(c).

(c) *Line of credit payment option.* Under the line of credit option, payments are made by the mortgagee to the mortgagor at times and in amounts determined by the mortgagor, if the mortgage balance after the payment will be less than or equal to the principal limit for the month in which the payment is drawn, excluding any portion of the principal limit set aside for repairs or servicing charges.

(d) *Principal limit set asides.* (1) Under the term or tenure options, the mortgagee shall, if requested by the mortgagor, set aside a portion of the principal limit to be drawn down as a line of credit.

(2) When repairs required by § 206.47 will be completed after closing, the mortgagee shall set aside a portion of the principal limit equal to 150% of the Secretary's estimated cost of repairs, plus the repair administration fee.

(3) When required by § 206.205(f), the mortgagee shall set aside a portion of the principal limit for payment of property charges consisting of taxes, ground rents, flood and hazard insurance premiums and assessments.

(4) When servicing charges will be made as permitted by § 206.207(b), the mortgagee shall set aside a portion of the principal limit sufficient to cover charges through a period equal to the payment term which would be used to calculate tenure payments under § 206.25(c).

(e) *Interest accrual and repayment.* The interest charged on the mortgage balance shall be added to the mortgage balance monthly as provided in the mortgage. Under all payment options, repayment of the mortgage balance including monthly MIP and interest is deferred until the mortgage becomes due and payable in full under § 206.27(c).

§ 206.21 Interest rate.

(a) *Fixed interest rate.* A fixed interest rate is agreed upon by the mortgagor and mortgagee.

(b) *Adjustable interest rate.* An initial interest rate is agreed upon by the mortgagor and mortgagee. The interest rate shall be adjusted in one of two ways depending on the option selected by the mortgagor. Whenever an interest rate is adjusted, the new interest rate applies to the entire mortgage balance. The difference between the initial interest rate and the index figure applicable when the firm commitment is issued shall equal the margin used to determine interest rate adjustments.

(1) A mortgagee offering an adjustable interest rate shall offer a mortgage that limits the frequency and magnitude of rate increases and decreases as provided in § 206.49(a), (c) and (e) of this chapter, except that reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "closing," and references in § 203.43(e)(1) to "one percentage point" shall mean "two percentage points."

(2) If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate, corresponding to an index as provided in § 203.49(a) and (e)(2), and which sets a maximum interest rate that can be charged without limiting monthly or annual increases or decreases. The first adjustment must occur on the first day of the second full month after closing.

(c) *Pre-loan Disclosure.* (1) At the time the mortgagee provides the mortgagor with a loan application, a mortgagee also shall provide a mortgagor with a written explanation of any adjustable interest rate features of a mortgage. The explanation must include the following items:

(i) The circumstances under which the rate may increase;

(ii) Any limitations on the increase; and

(iii) The effect of an increase.

(2) After 12 CFR Part 226 (Truth in Lending) has been amended to implement the pre-loan disclosure provisions of the Home Equity Loan Consumer Protection Act of 1988, compliance with 12 CFR Part 226 shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the interest rate may occur, the mortgagee must advise the mortgagor of the following:

(1) The current index amount; and

(2) The new mortgage interest rate.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.23 Shared appreciation.

(a) *Additional interest based on net appreciated value.* Any mortgage for which the mortgagee has chosen the shared premium option (§ 206.107) may provide for shared appreciation. At the time the mortgage becomes due and payable or is paid in full, whichever occurs first, the mortgagor shall pay an additional amount of interest equal to a percentage of any net appreciated value of the property during the life of the mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(b) *Computation of mortgagee share.* The mortgagee's share of net appreciated value is computed as follows:

(1) If the mortgage balance at the time the mortgagee's share of net appreciated value becomes payable is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (i.e., sales proceeds less transfer costs and capital improvement costs incurred by the mortgagor, but excluding any liens) and multiplying by the appreciation margin.

(2) If the mortgage balance is greater than the appraised value at the time of loan origination but less than the adjusted proceeds, the mortgagee's share is calculated by subtracting the mortgage balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the mortgage balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(4) If there has been no sale or transfer involving satisfaction of the mortgage at the time the mortgagee's share of net appreciated value becomes payable, "sales proceeds" for purposes of this section shall be the appraised value as determined in accordance with procedures approved by the Secretary.

(c) *Effective interest rate.* To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the mortgage balance at the beginning of the twelve month period prior to sale plus the payments to or on behalf of the mortgagor (but not including interest) in the twelve months prior to the sale, shall not exceed an effective interest rate of twenty percent.

(d) *Disclosure.* At the time the mortgagee provides the mortgagor with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the mortgagor the principal limit, payments and interest rate which are applicable to a comparable mortgage offered by the mortgage without shared appreciation.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.25 Calculation of payments.

(a) *Initial payment.* At closing an initial payment shall be made by the mortgagee in an amount equal to the sum of initial MIP under § 206.105(a) if not paid in cash by the mortgagor, fees and charges allowed under § 206.31(a) if not paid in cash by the mortgagor, and any additional payment requested by the mortgagor. The total initial payment, plus any amount set aside for repairs after closing under § 206.47, for property charges under § 206.205(f), or for servicing charges under § 206.207(b), shall not exceed the principal limit.

(b) *Monthly payments—term option.* (1) Using factors provided by the Secretary, the mortgagee shall calculate the monthly payment so that the sum of (i) or (ii) added to (iii), (iv), (v) and (vi) shall be equal to the principal limit at the end of the payment term:

(i) An initial payment under paragraph (a) of this section plus any portion of the principal limit set aside for repairs, or property charges or servicing charges under § 206.19(d), or

(ii) The mortgage balance at the time of a change in payment pattern in accordance with § 206.26 plus any portion of the principal limit set aside for repairs or property charges under § 206.19(d) which remains unused; and

(iii) Any amount of the principal limit set aside as a line of credit; and

(iv) All monthly payments (including any amounts to be withheld for property charges) due through the payment term; and

(v) All MIP due through the payment term; and

(vi) All interest through the payment term. The expected average mortgage interest rate shall be used for this purpose.

(2) If the mortgage has an adjustable interest rate, the mortgagee shall make all monthly payments through the payment term even if the mortgage balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate.

(c) *Monthly payments—tenure option.* Monthly payments under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the age of the youngest mortgagor multiplied by 12, but payments shall continue until the mortgage becomes due and payable under § 206.27(c).

(d) *Combining options.* If the mortgagor combines a line of credit set aside with the term or tenure payment option, the principal limit is divided into one amount for the term or tenure payments and another amount for the line of credit payments. Each part of the principal limit increases independently at the same rate as the total principal limit increases under § 206.3. A payment under the line of credit may not exceed the difference between the current value of the principal limit set aside and the portion of the mortgage balance, including accrued interest and MIP, attributable to draws on the line of credit.

(e) *Payment of MIP and interest.* At the end of each month, interest accrued during the month shall be added to the mortgage balance. Monthly MIP shall be added to the mortgage balance when paid to the Secretary.

(f) *Mortgagee late charge.* The mortgagee shall pay a late charge to the mortgagor for any late payment. If the mortgagee does not mail or electronically transfer a scheduled monthly payment to the mortgagor on the first business day of the month or make a line of credit payment within 5 business days of the date the mortgagee received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the mortgagor for that month or as a result of that request. For each additional day that the mortgagor does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. In no event shall the total late charge exceed five hundred dollars. Any late charge shall be paid from the mortgagee's funds and shall not be added to the mortgage balance.

(g) *No minimum payments.* A mortgagee shall not require, as a condition of providing a loan secured by a mortgage insured under this part, that the monthly payments under the term or tenure payment option or draws under the line of credit payment option exceed a minimum amount established by the mortgagee.

§ 206.26 Change in payment option.

(a) *General.* The initial payment option may be changed as provided in this section.

(b) *Change due to initial repairs.* (1) If initial repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, monthly payments shall be recalculated in accordance with § 206.25 when repairs are completed.

(2) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagor may draw additional funds needed to complete repairs, within the principal limit, and monthly payments shall be recalculated in accordance with § 206.25 when repairs are completed.

(3) If repairs are not completed when required by the mortgage, the mortgagee shall stop monthly payments and the mortgage shall convert to the line of credit payment option. Until the repairs are completed, the mortgagee shall make no line of credit payments except as needed to pay for repairs required by the mortgage.

(c) *Other changes.* As long as the mortgage balance is less than the principal limit, a mortgagor may request a change from any payment option to another or a payment of any amount (not to exceed the difference between the principal limit and the sum of the mortgage balance and any set asides for repairs or servicing charges. A mortgage will continue to bear interest at a fixed or adjustable interest rate as agreed between the mortgagee and the mortgagor at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with § 206.25.

(d) *Fee for change in payments.* The mortgagee may charge a fee, not to exceed twenty dollars, whenever payments are recalculated.

(e) *Limitations.* The Secretary may prescribe a limitation on the frequency of payment changes, a minimum notice period that a mortgagor must provide with a request under paragraph (c) of this section, or other limitations on changes by the mortgagor.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requirements of the Secretary.

(b) *Provisions.* The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions designed to ensure compliance with this part and provisions on the following additional matters:

(1) Payments by the mortgagee under the term or tenure payment options shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor on the first business day of each month beginning with the first month after closing. Payments under the line of credit payment option shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an

amount acceptable to the Secretary and the mortgagee.

(3) The mortgagor shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to the insured mortgage and the second mortgage held by the Secretary.

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The mortgagor must keep the property in good repair.

(6) The mortgagor must pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner, except to the extent such property charges are paid by the mortgagee in accordance with § 206.205.

(7) The mortgagor shall be charged for the payment of monthly MIP.

(8) The mortgagor shall have no personal liability for payment of the mortgage balance. The mortgagee shall enforce the debt only through sale of the property. The mortgagee shall not be permitted to obtain a deficiency judgment against the mortgagor if the property is foreclosed.

(9) If the mortgage is assigned to the Secretary under § 206.121(b), the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the mortgage balance including accrued interest, owed by the mortgagor at the time of the assignment.

(10) If State law limits the first lien status of the mortgage as originally executed and recorded to a maximum amount of debt or a maximum number of years, the mortgagor shall agree to execute any additional documents required by the mortgagee and approved by the Secretary to extend the first lien status to an additional amount of debt and an additional number of years and to cause any other liens to be removed or subordinated.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall state that the mortgage balance will be due and payable in full if (i) a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or (ii) a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property in fee simple or on a leasehold interest as set forth in § 206.45(a).

(2) The mortgage shall state that the mortgage balance shall be due and payable in full, upon approval of the Secretary, if any of the following occur:

(i) The property ceases to be the principal residence of a mortgagor for reasons other than death and the property is not the principal residence of at least one other mortgagor;

(ii) For a period of longer than 12 consecutive months, a mortgagor fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other mortgagor; or

(iii) An obligation of the mortgagor under the mortgage is not performed.

(d) *Second mortgage to Secretary.* A second mortage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before a mortgage insurance certificate is issued for the first mortgage. The second mortgage shall be junior only to the insured mortgage and in a form meeting the requirements of the Secretary which shall be similar to requirements for the insured mortgage. The mortgagee shall pay all expenses of preparing and recording the second mortgage.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: *Provided*, That the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the mortgagor;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Such other charges as may be authorized by the Secretary.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet HUD requirements, the mortgagee may collect a fee as compensation for administrative duties relating to repair work pursuant to § 206.47(c), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the mortgage balance.

Eligible Mortgagors

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance under § 206.15.

§ 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage.

§ 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

§ 206.39 Principal residence.

The property must be the principal residence of each mortgagor at closing. For purposes of this section, the property will be considered to be the principal residence of any mortgagor who is temporarily or permanently in a health care institution as long as the property is the principal residence of at least one other mortgagor who is not in a health care institution.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of housing counseling agencies which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

(b) *Information to be provided.* A counselor shall discuss the following information with the mortgagor:

(1) Options other than a home equity conversion mortgage, including a mortgage insured under this part, that are available to the mortgagor, including other housing, social service, health, and financial options;

(2) Other home equity conversion options that are or may become available to the mortgagor, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) The financial implications of entering into a home equity conversion mortgage, including a mortgage insured under this part;

(4) A disclosure that a home equity conversion mortgage, including a mortgage insured under this part, may have tax consequences, affect eligibility for assistance under Federal and State

programs, and have an impact on the estate and heirs of the homeowner; and

(5) Any other information the Secretary may require.

(c) *Certificate.* The counselor will provide the mortgagor with a certificate stating that the mortgagor has received counseling. The mortgagor shall provide the mortgagee with a copy of the certificate.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.43 Information to mortgagor.

(a) *Explanation of mortgage terms.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall provide each mortgagor with a copy of the mortgage forms. At that time the mortgagee shall identify and explain to the mortgagor the principal provisions of the mortgage.

(b) *Statement of payment procedures.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall give to each mortgagor an unsigned, written statement prepared by the Secretary of the procedures to be followed to ensure that timely payments are made by the mortgagee. After the mortgage insurance certificate is issued, the Secretary will provide a signed copy of this statement of procedures to the mortgagor, pursuant to § 206.119.

(Approved by the Office of Management and Budget under control number 2528–0133)

Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. The mortgagee shall submit to the Secretary with the application for insurance a commitment for mortgagee's title insurance satisfactory to the Secretary. If the Secretary determines that title insurance for reverse mortgages is not available for reasonable rates in a State, then the Secretary may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a one-family residence. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) *Flood insurance and property location.* The provisions of § 203.16a of this chapter pertaining to flood insurance and § 203.40 of this chapter pertaining to the location of the property are incorporated by reference.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) of this chapter shall apply unless the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the Minimum Property Standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

(b) *Assurance that repairs are made.* The mortgage may be closed before the repair work is completed if the Secretary estimates that the cost of the remaining repair work will not exceed 15 percent of the maximum claim amount and the mortgage contains provisions approved by the Secretary concerning payment for the repairs.

(c) *Role of mortgagee.* The mortgagee shall cause one or more inspections of the property to be made by an inspector approved by the Secretary in order to ensure that the repair work is satisfactory, and prior to the release of funds for the repairs. The mortgagee shall hold back a portion of the contract price attributable to the work done before each interim release of funds, and the total of the hold backs will be released after the final inspection and approval of the release by the mortgagee. The mortgagee shall ensure that all mechanics' and materialmen's liens are released of record. A fee as established in § 206.31(b) may be charged by the mortgagee as compensation for administration of the repair provisions of the mortgage.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

The provisions of §§ 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee in cash, until the contract of insurance is terminated.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Secretary an initial MIP of two percent of the maximum claim amount.

(b) *Monthly MIP.* Monthly MIP will accrue daily on the mortgage balance at a rate equivalent to one-half of one percent per annum and shall be added to the mortgage balance when paid to the Secretary.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.107 Mortgagee election of assignment or shared premium option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the shared premium option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary at the time that the mortgage balance, including accrued interest and MIP, equals the maximum claim amount, if:

(i) The mortgagee is current in making the required payments under the mortgage to the mortgagor;

(ii) The mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Secretary;

(iii) The mortgage is not due and payable under § 206.27(c)(1); and

(iv) The mortgagee has not informed the Secretary of an event described in § 206.27(c)(2), or the Secretary has been so informed but has denied approval for the mortgage to be due and payable. At the mortgagee's option, the mortgagee may forgo assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(2) Under the shared premium option, the mortgagee may not assign a mortgage to the Secretary unless the

mortgagee fails to make payments and the Secretary demands assignment (§ 206.123(a)(2)), but the mortgagee shall only be required to remit a reduced monthly MIP to the Secretary. The mortgagee shall collect from the mortgagor the full amount of the monthly MIP provided in § 206.105(b) but shall retain a portion of the monthly MIP paid by the mortgagor as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by a mortgagee shall be determined by the Secretary as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a)(2)–(5).

(b) *No election for shared appreciation.* Shared appreciation mortgages shall be insured by the Secretary only under the shared premium option.

§ 206.109 Amount of mortgagee share of premium.

Using the factors provided by the Secretary, the amount of the mortgagee share of the premium shall be determined for each mortgage based upon the age of the youngest mortgagor and the expected average mortgage interest rate.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Secretary within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance.

(b) *Monthly MIP.* Each monthly MIP shall be due to the Secretary on the first business day of each month except the month in which the mortgage is closed.

§ 206.113 Late charge and interest.

(a) *Late charge.* Initial MIP remitted to the Secretary after the payment date in § 206.111(a) and monthly MIP remitted to the Secretary 10 days after the payment date in § 206.111(b) shall include a late charge of one percent of the amount paid.

(b) *Interest.* In additon to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Secretary more than 30 days after closing, and interest on any monthly MIP remitted to the Secretary more than 30 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

(c) *Paid by mortgagee.* Any late charge owed by the mortgagee shall be paid from the mortgagee's funds and shall not be added to the mortgage balance of the mortgagor.

§ 206.115 Termination.

When the insurance contract is terminated, the mortgagee shall pay the monthly MIP which has accrued for the current month and which has not yet been paid to the Secretary.

HUD Responsibility to Mortgagors

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary will hold a second mortgage to secure repayment by the mortgagor, see § 206.27(d).

§ 206.119 Written statement of procedures to mortgagor.

When the mortgage is insured, the Secretatry shall provide the mortgagor with a signed statement of procedures to ensure that all of the funds due under the mortgage will be received by the mortgagor, or paid to a third party on behalf of the mortgagor. The statement shall specify (a) the HUD office to contact in case of a late payment, and (b) the procedures which the mortgagor must follow to make a request for payment by the Secretary.

§ 206.121 Secretary authorized to make payments.

(a) *Investigation.* The secretary will investigate all complaints by a mortgagor concerning late payments. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand, that within 30 days from the demand, the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the morrgagee complies by assigning the mortgage for record within 30 days of the demand, then the Secretary shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage required by § 206.27(e). Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Secretary begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

Claim Procedure

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in § 206.121(b);

(3) The mortgagor sells the property for less than the mortgage balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g), for an amount which does not satisfy the mortgage balance; or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the mortgage balance, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term "mortgagor" as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term

shall also mean the mortgagor's estate or personal representative.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable. The mortgage shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the mortgagor to pay any costs that the mortgagee incurred to reinstate the mortgagor, including forclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceeding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The property may be appraised upon the mortgagor's request at the time the mortgagor is sent the notice that the mortgage is due and payable, or in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. Whenever an appraisal is requested or required, the mortgagee shall notify the Secretary to cause an appraisal of the property to be made. The Secretary shall inform the mortgagee and the mortgagor in writing of the appraised value of the property. The appraisal shall be at the mortgagor's expense.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within three months of giving notice to the mortgagor that the mortgage is due and payable, or within such additonal time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is situated do not permit the commencement of the foreclosure within three months from the date of the notice to the mortgagor that the notice is due and payable, the mortgagee shall commence foreclosure within three months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and shall exercise reasonable diligence in prosecuting such proceedings to conclusion.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If the party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage balance.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall make diligent efforts to attempt to sell the property within six months from the date the mortagee acquired the property. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary of HUD or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Secretary of HUD or guaranteed, insured or taken by the Secretary of Veterans Affairs.

(3) The provisions of § 204.305(b) of this chapter shall be followed by the mortgagee to avoid conflicts of interest.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Within 15 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee shall bear the cost of the appraisal.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the

payment of the insurance benefits shall include the items listed in § 203.351(a) of this chapter and the certification required under § 203.353 of this chapter.

(Approved by the Office of Management and Budget under control number 2528–0133)

§ 206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* In no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(2)(iii), (e)(2) and (f)(2) of this section shall not be included in determining the limit on the claim amount.

(c) *Shared appreciation mortgages.* The terms "mortgage balance" and "accrued interest" as used in this section do not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance, (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which have not been added to the mortgage balance as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)) and the items set forth in paragraph (d)(3) of this section. "Due date" means the date when the mortgagee notifies the Secretary under § 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under § 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items:

(i) Items listed in § 203.402(a), (b), (c), (d), (e), (g) and (j) of this chapter, and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75.00, whichever is the greater. Costs of acquiring the property otherwise than by foreclosure may include an additional amount not to exceed $200 paid to the mortgagor for the execution of the deed in lieu of foreclosure.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(iv) Costs of any appraisal under § 206.127 if not otherwise included in the mortgage balance.

(3) There shall be deducted from the amount computed in paragraph (d)(1)(i) of this section:

(i) The items listed in § 203.402 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the maximum claim amount the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the mortgage was assigned to the Secretary to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Secretary, the mortgagee will not receive the entire claim payment as contained in paragraphs (e)(1) and (2) of this section. The amount of the claim shall be computed by (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and subtracting from the total (ii) the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter. The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgage, which may include expenses for staff time. If more than one mortgage is assigned to the Secretary, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage balance.

(f) *Amount of payment-mortgagor sells the property.* This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage balance, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2)(i) and (iv) of this section as applicable, and subtracting from the total (ii) the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, the interest allowance in

such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term "property" as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Secretary, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the conditions of the property as of the date the assignment is filed for record. Section 234.275 of this chapter concerning the certification of condition is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages involved under this part which are assigned to the Secretary.

(Approved by the Office of Management and Budget under control number 2528–0133)

Termination of Insurance Contract

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the demand by the Secretary for reimbursement or assignment, the contract of insurance shall automatically terminate. The Secretary may later reinstate the contract of insurance, which shall continue in force as if no termination had occurred, upon reimbursement with interest as provided in § 206.121. Upon reinstatement, the mortgagee shall be liable for all MIP which would have been due if no termination had occurred, including late charge and interest as provided in § 206.113.

(d) *Notice of termination.* The mortgagee shall give written notice to the Secretary within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) of this section unless such notice is given.

(e) *Voluntary termination.* The mortgagor and the mortgagee may jointly request the Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The provisions of § 203.295 of this chapter concerning voluntary termination shall apply when a contract of insurance under this part is voluntarily terminated.

(f) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

(Approved by the Office of Management and Budget under control number 2528–0133)

Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD mortgagee approval.

(b) *Importance of timely payments.* The paramount servicing responsibility is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including Part 24 (Debarment, Suspension and Limited Denial of Participation), and Part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* The provisions of § 203.502 of this chapter pertaining to the responsibility for servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

§ 206.203 Providing information.

(a) *Annual statement.* The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage, the MIP paid to the Secretary and charged to the mortgagor, the total amount of deferred interest added to the mortgage balance, the total mortgage balance and the current principal limit. If the mortgagor has elected to have the mortgagee pay property charges pursuant to § 206.205, the mortgagee shall include an accounting of all payments for property charges for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) *Line of credit and payment change statements.* The mortgagee shall provide the mortgagor with a statement of the account every time a line of credit payment is made under the line of credit payment option or from a line of credit set aside, and every time that monthly payments are recalculated. The Secretary shall specify the required information to be included in the statement.

(c) *Servicing.* The provisions of § 203.508 (a) and (b) of this chapter pertaining to loan information to mortgagors shall also be applicable to mortgages insured under this part. The mortgagee, as part of the information required under § 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee changes.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.205 Property charges.

(a) *General.* The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and assessments in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(b) *Election.* A mortgagor may elect to require the mortgagee to pay property charges by withholding funds from monthly payments due to the mortgagor or by charging such funds to a line of credit. The mortgagor may make or rescind such an election at any time. If the sum of the mortgage balance and any unused set asides for repairs has reached the principal limit or the mortgage funds are otherwise insufficient to pay the property charges, the mortgagor shall pay such items as provided in paragraph (a) of this section, even though the mortgagor elected payment to be made by the mortgagee.

(c) *Mortgagor's failure to make payments.* If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the mortgagor's funds as if the mortgagor elected to have the mortgagee pay the property charges under this section.

(d) *Assignment of mortgage to the Secretary.* If the insured first mortgage is assigned to the Secretary under § 206.107(c)(1) or § 206.121(b), or if payments are made through the second mortgage under § 206.121(c), the Secretary is not required to assume the mortgagee's responsibility under paragraph (b) of this section, despite the election by the mortgagor.

(e) *Mortgagee's responsibilities.* (1) Funds withheld from payments due to the mortgagor for property charges under paragraph (b) of this section shall not be paid into an escrow account. When property charges are actually paid, the mortgagee may add the amount paid to the mortgage balance.

(2) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent. Mortgagees must establish controls to ensure that the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for property charges must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the mortgagor's benefit.

(3) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the amounts withheld from monthly payments. The analysis shall be performed at least once a year thereafter. The amount shall be adjusted, after analysis, to provide sufficient available funds to make anticipated disbursements during the ensuing year. The mortgagor shall be given at least ten days notice of adjustment in the amount of withholding and an adequate explanation of the reasons for any change. When the amount withheld is analyzed in accordance with this paragraph, any surplus shall be paid to the mortgagor and added to the mortgage balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (e)(4) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the mortgagor could request a payment equal to the shortage under § 206.26(c), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the mortgagor under § 206.26(c).

(4) The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the mortgagor. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(f) *Set aside for first year property charges.* If the mortgagor elects to require the mortgagee to pay property charges and to receive payments under the term or tenure payment option, then the mortgagee shall set aside at closing a portion of the principal limit that will be sufficient to pay such items for the period beginning in the last date on which each such charge would have been paid under the normal lending practices of the mortgagee and local custom (if each such date constitutes prudent lending practice), and ending in the due date of the first monthly payment to the mortgagor.

§ 206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: Items listed in § 203.552(a) (6), (9), (11) and (13) of this chapter; items authorized by the Secretary under § 203.552(a)(12) of this chapter or as provided at § 206.26(d); or charges and fees related to additional documents described in § 206.27(b)(10).

(b) *Servicing charges.* The mortgagee may collect a fixed monthly charge for servicing activities of the mortgagee or servicer if (1) the charge is authorized by the Secretary, (2) the charge is disclosed as required by § 206.43 to the mortgagor in a manner acceptable to the Secretary at the time the mortgagee provides the mortgagor with a loan application, (3) amounts to pay the charge are set aside as a portion of the principal limit, and (4) the charge is payable only from the set aside.

§ 206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay a mortgage in full or in part without charge or penalty.

(b) *Tenure or term option.* When payments are being made under the term or tenure option, a mortgage may be prepaid at any time and the provisions of § 203.558 (a), (c), and (e) of this chapter shall be followed in handling a prepayment of such a mortgage insured under this part, except that the term "installment due date" shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

(c) *Line of credit option.* When payments are being made under the line

of credit option, a mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

§ 206.211 Annual determination of principal residence.

At least once during each calendar year, the mortgagee shall determine whether or not the property is the principal residence of at least one mortgagor. The mortgagee shall require each mortgagor to make an annual certification of his or her principal residence, and the mortgagee may rely on the certification unless it has information indicating that the certification may be false.

Dated: June 2, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-13639 Filed 6-8-89; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
June 9, 1989

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program—Moderate Rehabilitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2000; FR-2659]

Section 8 Housing Assistance Payments Program—Moderate Rehabilitation

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

ACTION: Notice of funding availability and invitation for applications for Section 8 moderate rehabilitation assistance.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of fiscal year 1989 funding authority for HUD's Section 8 Moderate Rehabilitation Program authorized by section 8(e)(2) of the United States Housing Act of 1937. Funding for the Program is provided in the Department of Housing and Urban Development—Independent Agencies Appropriations Act for Fiscal Year 1989. The funding authority is being made available, pursuant to 24 CFR Part 882 (Subparts D and E), subject to the more specific requirements set out in this NOFA.

DATE: Application due date: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION:

Background

In response to an audit by the HUD Office of Inspector General concerning, among other things, the selection methods used by PHAs in distributing assistance and the HUD allocation methods for the Section 8 Moderate Rehabilitation Program during the funding rounds for FY 1988 and 1989, the Department is carrying out a variety of activities designed to quickly implement substantially all of the recommendations made in the Report. As a part of this effort, on April 26, 1989, Secretary Kemp announced that: "All FY 1989 funding selections for the regular moderate rehabilitation program for which the HUD Field Offices and the PHA have not yet executed an Annual Contributions Contract will be cancelled." Further, he instructed that there be a new competitive selection round utilizing the available funds from the original FY 1989 funding. This Notice of Funding Availability (NOFA) implements the secretarial directive to carry out a new competitive selection round.

While this round is to be carried out in conformity with the requirements set forth in 24 CFR Part 882 (Subparts D and E)—Special Procedures for Moderate Rehabilitation—it is also to be subject to the additional specific requirements set forth in this NOFA.

With respect to future funding rounds, the Department is in the process of developing revisions to the current regulations to assure more completely that the selection process is fair and impartial and that program integrity is maintained. These revisions will be presented to the public in the form of a proposed rule.

Fund availability

Accordingly, this NOFA announces the availability of remaining fiscal year 1989 budget authority for the section 8 moderate rehabilitation program appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act (Pub. L. 100-404, approved August 19, 1988) (Fiscal Year 1989 Appropriations Act). If additional funds become available in FY 1989 for selection of PHA applications they will be allocated in accordance with this NOFA.

The Department will allocate the funds made available under the 1989 Appropriations Act to the Regional Offices using "fair share" procedures in accordance with 24 CFR Part 791. In conformance with Part 791 and section 213(d) of the Housing and Community Development Act of 1974, the Assistant Secretary for Housing—Federal Housing Commissioner is assigning 75 percent of the funds for use in metropolitan areas. Funds are to be fair-shared to Regional Offices (with adjustments to the allocation to account for units already under an Annual Contributions Contract in each Region). The limited number of units available makes it impracticable to fair-share to Field Offices as would otherwise be required under 24 CFR 882.501(a) and 24 CFR 791.403(d). No Moderate Rehabilitation funds will be retained for Headquarters discretionary use.

The table below shows the dollars of Annual Contributions Contract and budget authority to be allocated to each Region for use in metropolitan areas and nonmetropolitan areas and the estimated number of units this authority will support. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas announced by the Office of Management and Budget, effective June 30, 1983 (see OMB Public Affairs Issuance 83-20, June 27, 1983, and subsequent changes made June 27, 1984, June 27, 1985 and October 18, 1986).

FISCAL YEAR 1989 SECTION 8 MODERATE REHABILITATION (REGULAR) FAIR SHARE ESTIMATES, LESS AMOUNTS UNDER ACC TO DATE

[Assumptions (100% of Funds to be Fair-shared—75% Metro, 25% Nonmetro)]

[Units: 2,946; Contract Auth $21,592,398; Budget Auth $323,885,970; Adj Factor 1.001000]

Region	Total Metro ADJ need	Total non Metro ADJ need	Metro CA	Metro BA	Nonmetro CA	Nonmetro BA	Total regional CA	Total regional BA	Estimated units		Total estimated regional units
									Metro	Nonmetro	
Boston	0.077	0.069	$1,093,326	$16,399,890	$0	$0	$1,093,326	$16,399,890	141	0	141
New York	0.232	0.053	3,757,077	56,356,155	286,099	4,291,485	4,043,176	60,647,640	504	38	542
Philadelphia	0.092	0.089	137,703	2,065,545	480,431	7,206,465	618,134	9,272,010	20	68	88
Atlanta	0.096	0.234	1,554,653	23,319,795	1,263,155	18,947,325	2,817,808	42,267,120	230	186	416
Chicago	0.149	0.161	1,777,466	26,661,990	869,094	13,036,410	2,646,560	39,698,400	273	133	406
Fort Worth	0.066	0.119	490,880	7,363,200	642,374	9,635,610	1,133,254	16,998,810	72	93	165
Kansas City	0.022	0.080	0	0	176,483	2,647,245	176,483	2,647,245	0	28	28
Denver	0.016	0.055	0	0	119,889	1,798,335	119,889	1,798,335	0	20	20

FISCAL YEAR 1989 SECTION 8 MODERATE REHABILITATION (REGULAR) FAIR SHARE ESTIMATES, LESS AMOUNTS UNDER ACC TO DATE—Continued

[Assumptions (100% of Funds to be Fair-shared—75% Metro, 25% Nonmetro)]

[Units: 2,946; Contract Auth $21,592,398; Budget Auth $323,885,970; Adj Factor 1.001000]

Region	Total Metro ADJ need	Total non Metro ADJ need	Metro CA	Metro BA	Nonmetro CA	Nonmetro BA	Total regional CA	Total regional BA	Estimated units		Total estimated regional units
									Metro	Nonmetro	
San Francisco	0.225	0.072	3,643,717	54,655,755	388,663	5,829,945	4,032,380	60,485,700	371	40	411
Seattle	0.025	0.068	404,857	6,072,855	367,071	5,506,065	771,928	11,578,920	62	57	119
Totals	1.000	1.000	12,859,679	192,895,185	4,593,259	68,898,885	17,452,938	261,794,070	1,673	663	2,336

The foregoing distribution plan is a guide for prospective applicants. It esitmates the budget and contract authority expected to be available and the maximum number of units expected to be assisted in each HUD Regional Office jurisdiction. Only PHAs serving the jurisdictions listed in this NOFA are invited to apply for assistance. This Notice serves as an invitation for eligible PHAs to apply for the available units. Applications shall be postmarked or otherwise delivered to the appropriate HUD Field Office not later than July 10, 1989.

A Region-wide evaluation of the applications submitted will then be made. Field Offices will participate in rating the applications but selections will be made on the basis of a Regional rank order.

The jurisdictions listed below are places having the greatest need, as measured by the formula used to allocate rental rehabilitation grant funds under section 17(b) of the United States Housing Act of 1937. The formula variables are: rental units where the household head is at or below the poverty level; rental units built before 1940 where the household head is at or below the poverty level; rental units with at least one of the following four problems: overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs (all four terms are defined at 24 CFR 511.30(c)(3)). PHAs with cancelled FY 1989 applications serving these jurisdictions are eligible to reapply.

State	Metro	Non Metro
REGION I		
Connecticut	Hartford	None.
	New Haven	
Maine	Portland	None.
Massachusetts	Boston	None.
	Cambridge	
	Chelsea	
	Lawrence	
Rhode Island	Central Falls	None.
	Providence	
REGION II		
New York	Albany	Auburn.
	Binghamton	Corning.
	Buffalo	Cortland.
	Cohoes	Gloversville.
	Elmira	Hornell
	Fulton	Ithaca
	Glen Falls	Jamestown
	Long Beach	Kingston
	Middletown	Ogdensburg
	Mount Vernon	Oneonta
	New York	Plattsburgh
	Newburgh	Watertown.
	Niagara Falls	
	Oswego	
	Peekskill	
	Poughkeepsie	
	Rochester	
	Schenectady	
	Sweden Town	
	Syracuse	
	Troy	
	Utica	
New Jersey	Asbury Park	None.
	Atlantic City	
	Bridgeton	
	Camden	
	City of Orange Township.	
	East Orange	
	Elizabeth	
	Hackensack	
	Harrison	
	Hoboken	
	Irvington Township.	
	Jersey City	
	Long Branch	
	New Brunswick	
	Newark	
	Passaic	
	Paterson	
	Perth Amboy	
	Red Bank	
	Trenton	
	Union City	
	Weekhawken Township.	
	West New York	
Puerto Rico	Mayaguez Municipio.	Maricao Municipio.
	San Juan Municipio.	
REGION III		
Maryland	None	Cambridge.
		Salisbury.
Pennsylvania	State College	Bradford.
	Wilkinsburg	Butler.
	York	Indiana.
		Meadville.
		New Castle.
		Oil City.
		Pottsville.
		Shamokin.
		Sunbury.
Virginia	None	Blacksburg.
		Clifton Forge.
		Emporia.
		Franklin.
		Fredericksburg.
		Front Royal.
		Northhampton Cty.
		Southhampton Cty.
		Winchester.
West Virginia	None	Clarksburg.
		Clay County.
		Fairmont.
		Gilmer County.
		Martinsburg.
		Morgantown.
Delaware	None	None.
REGION IV		
Alabama	None	Auburn.
		Bullock County.
		Greene County.
		Perry County.
		Selma.
		Troy.
Florida	Belle Glade	Key West.
	Daytona Beach	Palatka.
	De Land	
	Fort Pierce	
	Gainesville	
	Homestead	
	Miami	
	Miami Beach	
	Opa-Locka	
	West Palm Beach.	

State	Metro	Non Metro
Georgia	Athens	Americus.
	Atlanta	Brooks County.
	Augusta	Brunswick.
	Covington	Burke County.
	Griffin	Carrollton.
		Clay County.
		Cordele.
		Dooly County.
		Early County.
		Fitzgerald.
		Jefferson County.
		Jenkins County.
		Johnston County.
		La Grange.
		Moultrie.
		Quitman County.
		Randolph County.
		Rome.
		Screven.
		Statesboro.
		Stewart County.
		Taliaferro.
County		Terrell County.
		Valdosta.
		Waycross.
Kentucky	Covington	Bowling Green.
	Louisville	Fulton County.
	Newport	Owsley County.
		Paducah.
		Richmond.
		Robertson County.
		Wolfe County.
Mississippi	None	Bolivar County.
		Clarksdale County.
		Coahoma County.
		Greenwood.
		Grenada.
		Hatiesburg.
		Humphreys County.
		Leflore County.
		Natchez.
		Quitman County.
		Sharkey County.
		Starkeyville.
		Tallahatchie Cty.
		Tunica County.
		Vicksburg.
		Yazoo City.
		Yazoo County.
North Carolina	Durham	Boone.
	Wilmington	Green County.
		Greenville.
		Halifax County.
		Henderson.
		Kinston.
		New Bern.
		Shelby.
		Wilson.
South Carolina	Anderson	Dillion County.
	Charleston	Sumter.
	Greenville	

State	Metro	Non Metro
REGION V		
Tennessee	None	Lake County.
Illinois	Champaign	Alexander County.
	Chicago	
	East St. Louis	Carbondale.
		Charleston.
		Danville.
		De Kalb.
		Harrisburg.
		Jackson County.
		Mount Vernon.
		Pulaski County.
		Quincy.
Indiana	Bloomington	Connerville.
	West Lafayette	Frankfort.
		Marion.
		New Castle.
		Richmond.
		Vincennes.
Michigan	Benton Harbor	Big Rapids.
	Detroit	Escanaba.
	Hamtramck	Houghton County.
	Highland Park	
	Kalamazoo	Marquette.
	Muskegon	Mount Pleasant.
	River Rouge	
	Ypsilanti	Owosso
		Sault Ste. Marie.
Minnesota	Minneapolis	Alberta Lea.
		Bemidji.
		Brainerd.
		Mankato.
		Winona.
Ohio	Bowling Green	Adams County.
	Cincinnati	Ashtabula.
	Cleveland	Athens.
	Dayton	Bellefontaine.
	East Cleveland	Cambridge.
	Kent	Chillicothe.
	Oxford	Coshocton.
	Springfield	East Liverpool.
		Marion.
		Mount Vernon.
		Portsmouth.
		Salem.
		Sandusky.
		Sidney.
		Washington.
		Wilmington.
		Wooster.
		Zanesville.
Wisconsin	Madison	Menomonie.
		Stevens Point.
		Whitewater.
Ohio	Bowling Green	None.
	Cincinnati	
	Cleveland	
	Dayton	
	East Cleveland	
	Kent	
	Oxford	
	Springfield	
Wisconsin	Madison	None.
REGION VI		
Arkansas	Crittenden County.	Chicot County.
		Desha County.
	Fayetteville	El Dorado.
		Forrest City.
		Hot Springs.
		Lee County.
		Mississippi County.
		Monroe County.
		Phillips County.
		St. Francis County.
		West Helena.
		Woodruff County.
Louisiana	Alexandria	Abbeville.
	Monroe	Bogalusa.
	New Orleans	Crowley.
		E. Carroll Parish.
		Eunice.
		Hammond.
		Natchitoches.
		Opelousas.
		Ruston.
		Tallulah.
		Tensas Parish.
New Mexico	None	Las Vegas.
		Mora County.
Oklahoma	None	Ada.
		Durant.
		Okmulgee.
		Stillwater.
Texas	College Station	Huntsville.
	Denton	Kenedy County.
	Galveston	King County.
	San Marcos	Nacogdoches.
		Paris.
		Presidio County.
REGION VII		
Kansas	None	Coffeyville.
		Junction City.
		Manhattan.
		Pittsburg.
Missouri	None	Dunklin County.
		Kennett.
		Kirksville.
		New Madrid County.
		Pemiscot County.
		Poplar Bluff.
		Rolla.
REGION VIII		
Colorado	None	Gunnison County.
		San Miguel County.
Montana	None	Bozeman.
		Kalispell.
		Missoula.
South Dakota	None	Vermillion.
Utah	None	Logan.
Wyoming	None	Laramie.
REGION IX		
Arizona	None	Douglas.
		Flagstaff.
		Nogales.
		Prescott.

State	Metro	Non Metro
California	Alhambra	Arcata.
	Bell	Brawley.
	Bell Gardens	Eureka.
	Berkeley	Hanford.
	Beverly Hills	Mono Couty.
	Chico	San Luis Obispo.
	Cudahy	Ukiah.
	Davis	
	East Palo Alto	
	El Monte	
	Glendale	
	Hawthorne	
	Hermosa Beach.	
	Huntington Park	
	Imperial Beach	
	Inglewood	
	Laguna Beach	
	Lawndale	
	Long Beach	
	Los Angles	
	Maywood	
	Merced	
	Monrovia	
	National City	
	Oakland	
	Pacific Grove	
	Pasadena	
	Sacramento	
	San Francisco	
	San Pablo	
	Santa Barbara	
	Santa Cruz	
	Santa Monica	
	South Lake Tahoe.	
	Stockton	
	West Hollywood.	
	Yuba City	
Hawaii	None	Hawaii County. Maui County.
Nevada	Reno	Eureka County.
REGION X		
Alaska	None	Nome Census Area.
Idaho	None	Lewiston. Moscow. Rexburg.
Oregon	Ashland	Albany.
	Eugene	Bend.
	Portland	City of the Dalles. Coos Bay. Corvallis. Grants Pass. Klamath Falls. La Grande. Pendelton.
Washington	Bellingham	Aberdeen.
	Spokane	Centralia. Ellensburg. Kelso. Longview. Mount Vernon. Pullman. Walla Walla. Wenatchee.

The total number of units funded in any jurisdiction will not exceed the lower of 100 units or the Regional metropolitan or nonmetropolitan fair share, as appropriate. Therefore, PHAs must limit their applications to this number.

A PHA is encouraged to apply for a number of units smaller than this maximum if its administrative capacity, rehabilitation expertise, and previous performance record in the moderate rehabilitation program is such that the PHA will be unable to demonstrate clearly that it can administer a larger size program effectively. Applying for a smaller number of units may improve these PHAs' ranking under the selection criteria set forth in 24 CFR 882.501(b).

The criteria HUD uses in ranking applications under § 882.501 are: (1) the demonstrated capacity of the PHA or its contractor(s) to provide the rehabilitation technical assistance to Owners required under the program; (2) the availability of financing resources, both assisted and unassisted, as demonstrated through statements from financing agencies (for example, local Community Development or State agency rehabilitation loan programs); (3) the PHA's experience with the section 8 Existing Housing Program (certificates and vouchers) or the PHA's overall administrative capability; (4) the potential of achieving, as expeditiously as possible, the rehabilitation and leasing of housing units under the Moderate Rehabilitation regulations; and (5) the overall feasibility of the proposed program.

Each Field Office will document its conclusions on how well the PHA rates on the five regulatory criteria. Regional Offices will assign scores to each application by convening a single rating panel or by choosing to have each Field Office convene a rating panel, with results from the Field Office ratings transmitted to the Regional Office for ranking.

The scoring system will be as follows:

Criterion	Maximum point value	Weight factor	Maximum score
(1) Rehabilitation Expertise	7	6	42
(2) Financing	7	1	7
(3) Administrative Capacity	7	5	35
(4) Rehabilitation and Leasing Rate	7	1	7
(5) Overall Feasibility	7	1	7
Perfect Score			98

It should be noted that great weight is placed on the criteria "Rehabilitation Expertise" and "Administrative Capacity". It is the experience of the Department that "Rehabilitation Expertise" and "Administrative Capacity" are the most important factors in the successful implementation of the moderate rehabilitation program.

In assessing "Administrative Capacity" and "Rehabilitation Expertise", Field Office reviews and available audits shall be considered.

A rating of "Excellent", "Adequate" or "Poor" will be assigned each criterion. Based on the comments on the review checklist and the contents of the application, the rating panel will assign numerical scores as follow: Excellent (6 or 7 points), Adequate (2, 3, or 4 points), Poor (0 points).

An "excellent" rating on the criterion of "Overall Feasibility" will only be assigned to PHAs rating excellent on all four preceding criteria.

Applications will be reviewed, rated and ranked based on the number of units requested. (This means, as stated above, PHAs will find it to their advantage to apply only for that number of units for which they can clearly demonstrate they have the administrative capacity and rehabilitation expertise as shown by their past track record to manage effectively.) However, when fund balances are not sufficient to fund the next ranked application, the units of the next rank-ordered application may be reduced. When Field Offices ratings are being transmitted to the Regional Office for selection, the Regional Office may change the Field Office's recommended scores *only* when a technical error has been made by the Field Office or when a Field Office has been inconsistent in making its ratings, when compared to other Field Offices within the Region. Each type of change must be indicated and documented in the comments section of the rating form. For technical changes, the Regional Office should cite consultation with the Field Office, if appropriate, and reference the specific portion of the Field Office analysis in question. For consistency changes, the Regional Office should document the standards of consistency the Office is applying to the rating categories and the reason(s) why the Field Office was not consistent. Where necessary, appropriate documentation should be attached.

The Regional Office shall transmit the checklists and ratings of the applications it has selected for funding to Headquarters.

Headquarters staff will review the checklists and rating sheets to make sure that ratings are consistent with the review comments. Discrepancies will be discussed with the appropriate office.

Where no fundable application can be satisfied by any remaining budget authority in a Region, the Assistant

Secretary for Housing will reallocate the budget authority to another Region where it can be used (to fund the next highest scoring application) pursuant to 24 CFR 791.407(a)(4)).

Each PHA notified of selection is required to publish a public Notice pursuant to § 882.503. PHAs should take special note of the fact that the report by the HUD Office of Inspector General criticized not only fund allocation methods for the Section 8 Moderate Rehabilitation Program but also serious deficiencies in the selection methods (or lack thereof) used by PHAs to distribute assistance. PHAs are hereby notified that the requirements of 24 CFR 882.503 and 882.504 must be strictly adhered to.

Promptly after receiving the executed ACC, the PHA must make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of the Program. The Notice must inform Owners where they may apply for the Program and must be made in accordance with the HUD guidelines for fair housing.

"Pipeline" proposals (proposals submitted in response to a previous Notice or other procedure to obtain proposals) may not be considered. A new public Notice must be published by the PHA.

The PHA must also develop a proposal format for Owners wishing to apply for participation in the Program.

In addition, an initial inspection and preliminary feasibility analysis is required after which the PHA should select among Owner proposals those proposals which it will approve. The PHA must establish a method of selecting among Owner proposals and must make this method known to any Owner submitting or planning to submit a proposal. Proposals must be approved in accordance with criteria established by the PHA and approved by HUD.

PHAs with a previously approved administrative plan containing its method of selecting proposals and plans for Owner outreach must resubmit the material for review and reapproval.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during the hours 9:00 a.m. to 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements contained in these Section 8 Moderate Rehabilitation application requirements have been assigned OMB control number 2502–0318.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this notice will not have a significant impact on family formation, maintenance or well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not involve the preemption of State law by Federal statute or regulation and does not have Federalism impacts.

(The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program)

Authority: Sec. 8(e), United States Housing Act of 1937 (42 U.S.C. 1437f(e)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: June 1, 1989.

James E. Schoenberger,

Deputy General Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–13677 Filed 6–8–89; 8:45 am]

BILLING CODE 4210–27–M

federal register

Friday
June 9, 1989

Part V

Department of the Interior

National Park Service

36 CFR Part 13

Units of the National Park System in Alaska (Hunting); Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Units of the National Park System in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing a Federal regulation that will prohibit the hunting of wolves in national preserves (NPS preserves) in Alaska on the same day in which a hunter is airborne. Hunting will continue to be allowed in the NPS preserves pursuant to applicable, non-conflicting State of Alaska (State) and Federal laws and regulations, as specifically directed by the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. Where conflict or contradiction occurs between Federal regulation and State law or regulation, Federal regulation will take precedence over the State law or regulation. Access to the NPS preserves by aircraft for sport hunting and other purposes is also allowed. While the State has a similar regulation in place for most big game species, commonly referred to as the same-day-airborne regulation, some big game wildlife species and some fur animals are exempted.

This proposed Federal rulemaking will:

1. Prohibit the same-day-airborne hunting of wolves;

2. Satisfy the legal mandate to provide for subsistence and sport hunting opportunities in the NPS preserves;

3. Allow NPS to manage NPS preserves for the purposes for which they were established by Congress; and,

4. Provide for more effective and fair enforcement of hunting laws and regulations.

DATES: Written comments will be accepted through August 8, 1989.

ADDRESS: Comments should be addressed to: Lou Waller, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892.

FOR FURTHER INFORMATION CONTACT: Lou Waller, National Park Service, 2525 Gamble Street, Anchorage, Alaska 99503–2892, Telephone: (907) 257–2548.

SUPPLEMENTARY INFORMATION:

Background

In 1980, the Alaska National Interest Lands Conservation Act (ANILCA: Pub. L. 96–487) was passed by Congress. This act, among other things, identified and set aside certain areas of Federal land in Alaska as being of a high public interest, the overall purpose being "to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska" (section 101). These "public interest" lands include units designated as national parks, monuments, and preserves. While sport hunting is not allowed in national parks, it is allowed in the national preserves. However, in section 1313 of the law and in legislative history, Congress made it clear that the preserve lands "qualify in every regard as National Parks," while recognizing, "in some instances, that the taking of wildlife under appropriate regulation is consistent with the maintenance of the natural values of lands which we otherwise would unhesitatingly designate as National Parks." (Congressional Record, House, November 12, 1980; H10549.)

The intent of Congress to allow sport hunting under "appropriate regulation" is reflected in this proposed rulemaking, and in existing NPS regulations codified in Title 36 of the Code of Federal Regulations (36 CFR). 35 CFR 2.2 adopts "Nonconflicting State laws" as a part of Federal hunting laws and regulations for all park units of the National Park System in which hunting is authorized by law. In § 13.21, which is specific to Alaska, applicable State and Federal law relative to hunting and trapping is also "adopted and made a part of these regulations." This proposed rulemaking does not change this adoption of non-conflicting State laws and regulations, and in fact duplicates some of the language of existing State regulations.

An Alaska State Statute, 5 ACC 92.085(4), has since 1975 prohibited the taking of big game species (except for deer in recent years) by "a person who has been airborne * * * until after 3:00 a.m. following the day in which the flying occurred * * *". The State defines "big game" as "black bear, brown and grizzly bear, bison, caribou, Sitka black-tail deer, elk, mountain goat, moose, musk oxen, Dall sheep, wolf and wolverine." This same-day-airborne regulation is accepted among lawful hunters and allows for adequate access to wildlife resources, while a the same time preventing the abuses that could result from hunters being able to spot and "drive" or "track" wildlife from the air and then to land immediately and take such wildlife. Recently, an amendment to this State Statute makes an exception for wolves under the State's big game classification in certain State game management units which include NPS preserves. This exception allows hunters in these units to land an aircraft and immediately take a wolf as a big game animal under the State's hunting regulations. This exception is commonly referred to as land-and-shoot hunting or same-day-airborne hunting. There have also been recent proposals presented to the Alaska Board of Game from some parties to make further exceptions to the "same-day-airborne" regulations for other species of wildlife. The proposed Federal regulation will prohibit same-day-airborne hunting for wolves in all NPS preserve units in Alaska, regardless of how State regulations may change in the future. The proposed rule will not, however, prohibit a trapper from using a firearm to dispatch an animal legally caught in a trap or snare on the same day in which flying occurred.

The NPS has long been recognized for its protection of esthetic, recreational, as well as biological and other scientific and resource values in park areas. ANILCA does not change this. Congress recognized that management values differ between agencies when it stated:

> * * * it is the intent of Congress that certain traditional National Park Service management values be maintained * * * the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained * * *. It is expected that the National Park Service will take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park System units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Congressional Record H10541, (November 12, 1980).

In section 101 of ANILCA, Congress clearly stated its intent that the conservation system units were set aside "* * * to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; * * * to protect the resources related to subsistence needs; * * * and to preserve wilderness resources values and related recreational opportunities including * * * sport hunting * * *". It is consistent with both NPS management values and Congressional intent, to manage for quality visitor use experiences, including hunting, in the NPS preserves in Alaska. Allowing same-day-airborne hunting in NPS preserves is inconsistent with Congressional intent and NPS management values. The National Park Service is responsible for managing hunting activities in park areas to assure

a high standard of quality while not unnecessarily interfering with the State of Alaska's ability to make wildlife resource allocations in the form of hunting seasons and bag limits. ANILCA, states that the national preserves are to be managed in exactly the same manner as national parks, except that sport hunting, subsistence uses and trapping shall be allowed. The National Park Service was charged with assuring that the taking of fish and wildlife is consistent with preserving the natural and other values of the park system. Congress clearly stated its intent in how the preserves should be managed when it stated:

> The standard to be met in regulating the taking of fish and wildlife, and trapping, it that the preeminent natural values of the Part System shall be protected in perpetuity, and shall not be jeopardized by human uses. These are very special lands, and this standard must be set very high: the objective for Park System lands must always be to maintain the health of the ecosystem, and the yield of fish and wildlife for huntig and trapping must be consistent with this requirement. Congressional Record H10549, (November 12, 1980)

Public comment received by the NPS strongly indicates the feeling that sport hunting does not include the use of aircraft for seeking out wildlife from the air, and then landing and immediately taking such wildlife; nor does it include selectivity in regulations to impose increased pressures on predator species.

In the nation's NPS preserves in Alaska, the prohibition of same-day-airborne hunting of wolves will be consistent with the "fair chase" philosophy of hunting. State regulations previously eliminated same-day-airborne hunting for most species. It is the intent and purpose of this proposed regulation to establish a similar Federal prohibition against same-day-airborne hunting of wolves in all NPS preserves in Alaska.

The Problem of Enforcement

There is evidence to indicate a correlation between legalization of same-day-airborne hunting and its abuse by associated illegal actions. In one incident in March of 1988, four wolves were illegally killed in and near Denali National Park and Preserve. Evidence at two kill sites indicated that the animals were run nearly to the point of exhaustion by aircraft before being killed. While this action is illegal, it illustrates and reinforces a common perception that land-and-shoot hunting places a hunter, and in particular a wolf hunter, too close to the threshold of violating the Federal Airborne Hunting Act, as well as existing State law, both of which prohibit the harassing of wildlife with aircraft.

Further evidence of harassing of wolves with aircraft can be found in a recent article in the Journal of Wildlife Management, which surveys the history of wolf predation on the Nelchina caribou herd ("Wolf Predation on Caribou: The Nelchina Herd Case History"; Bergerud, A.T., Ballard, W.B.; Journal of Wildlife Management, 1988; 52(2); p. 352). In explaining a discrepancy in the statistics for 1972 through 1976, which showed larger numbers of caribou than expected based on a similar high wolf count, the authors state that, "Our explanations for the higher-than-predicted values, based on wolf abundance, is that intense aerial hunting of wolves * * * resumed after 1967. We believe that wolves subjected to harassment from aerial hunters learn to avoid the high alpine area where caribou calve."

While the aerial hunting referred to here is the "shoot-and-land" method, shooting from the air while still flying, it is a difficult problem to show whether a hunter has hunted and shot from the air, or harassed an animal to the point of exhaustion then landed and shot. Harassment is difficult to prove in any case. It becomes virtually impossible when the law allows for same-day-airborne hunting, which permits methods that are difficult to distinguish from harassment.

Other enforcement problems also arise when certain species are made exceptions to the general regulation. For example, while there may be strong evidence available to an enforcement officer that a hunter was attempting to take caribou or another species protected by the same-day-airborne regulation, it becomes easy for the hunter under suspicion to claim that he was flying and hunting for wolf instead. Again, the discrepancy in the law places a hunter too close to the threshold of illegal activity.

Such activities do not reflect the intent of Congress in establishing the preserves. The opportunities for abuse inherent in same-day-airborne or land-and-shoot hunting cross a line of conservation management precepts and break with the established preservation ethic for which the NPS is known. Aircraft provide a means by which animals can be efficiently detected and quickly killed in relatively large numbers, as demonstrated by recently obtained State sealing records for wolf pelts taken in central Alaska. This "efficiency" is easily abused, and can quickly do serious damage.

This rulemaking does not unduly restrict aircraft access for sport hunting purposes when the concept of fair chase is maintained, when law enforcement problems are not allowed to continue or be created, and when wildlife are not harassed in any way. Other sport hunted animals that may be taken in the national preserves, such as waterfowl, ptarmigan and mammals that can't generally be spotted from the air, are not affected by this rulemaking because the airborne hunter does not have an unfair advantage where they are concerned.

Other Management Responsibilities

The ANILCA provision that addresses hunting in NPS preserves was made with specific Congressional intent that there be no other departure from protection, in the preserves, of park resources and values. Hunting and trapping activities were intended by Congress to be limited and compatible, "of types and intensities that will not interfere with" the broader purposes for which the preserves were set aside. To allow a system of land-and-shoot hunting, in lieu of encouraging quality hunting and trapping experiences in such areas, would be in conflict with purposes for which preserves were set aside.

Effects of Proposed Rulemaking

This proposed rule will prohibit same-day-airborne, land-and-shoot, hunting for sport and subsistence purposes by amending 36 CFR 13.21 to add a same-day-airborne prohibition of hunting wolves. Sport and subsistence hunters would continue to be able to hunt within the preserves under non-conflicting State and Federal laws. This will include being able to fly into a preserve and begin hunting the next day, a procedure that is currently legal and practiced by hunters. This proposed rulemaking will provide protection for wolves against same-day-airborne hunting in NPS preserves. This rule will apply to all hunters who use aircraft within the preserves.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. In addition, a schedule of public hearings to be held in the areas affected and other appropriate locations will be published in the **Federal Register** at a later date which will provide for public comment on the proposed rulemaking.

Drafting Information

The primary authors of this regulation are Lou Waller, Tony Sisto, and Steve Shackleton of the NPS Alaska Regional Office.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Change public hunting habits to the extent of adversely affecting wildlife or other natural ecosystems;

(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;

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

(e) Affect the hunting population in general.

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 21428). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

Aircraft, Alaska, National parks, Reporting and recordkeeping requirements, Traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I, Part 13, as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart A—[Amended]

1. The autority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; Sec. 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Section 13.21 is amended by removing and reserving paragraph (a), and revising paragraphs (d) and (e), to read as follows:

§ 13.21 Taking of fish and wildlife.

(a) [Reserved]

* * * * *

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal law and regulations and non-conflicting applicable State law and regulations. Such laws and regulations are hereby adopted and made a part of these regualtions. (2) Violating a provision of Federal or State hunting law or regulation is prohibited. (3) Engaging in trapping activities as the employee of another person is prohibited. (4) A person who has been airborne is prohibited from assisting in hunting or hunting with a weapon any species of wolf until after 3:00 a.m. of the day following the day in which the flying occurred.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30 or § 13.50 of this chapter. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

Becky Norton Dunlop,

Assistant Secretary for Fish, Wildlife and Parks.

Date: May 23, 1989.

[FR Doc. 89-13618 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-70-M

federal register

Friday
June 9, 1989

Part VI

Department of Education

Ronald E. McNair Post-Baccalaureate Achievement Program; Inviting Applications for New Grants for FY 1989; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.217]

Ronald E. McNair Post-Baccalaureate Achievement Program; Notice Inviting Applications for New Grants for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR) the notice contains information, application forms and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants for higher education institutions to prepare low-income first generation college students, and students from groups underrepresented in graduate education, for doctoral study.

Deadline for Transmittal of Applications: July 24, 1989.

Deadline for Intergovernmental Review: August 24, 1989.

Available Funds: $1,482,000.

Estimated Range of Awards: $80,000–$120,000 per year.

Estimated Average Size of Awards: $100,000 per year.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), and Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program

A post-baccalaureate achievement project assisted under this program may provide, at the undergraduate and graduate levels, services such as—

(1) Opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study;

(2) Summer internships;

(3) Seminars and other educational activities designed to prepare students for doctoral study;

(4) Tutoring;

(5) Academic counseling; and

(6) Activities designed to assist students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

Students participating in research under a post-baccalaureate achievement project may receive stipends not to exceed $2,400 per annum.

In addition to information relevant to the selection criteria, an applicant must include information on the following in the application:

(i) The quality of research and other scholarly activities in which students will be involved.

(ii) The level of faculty involvement in the project and the description of the research in which students will be involved.

(iii) The institution's plan for identifying and recruiting participants, including students enrolled in projects authorized under this program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title IV–A, Sec. 417D(d) of the Higher Education Act of 1965, as amended, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Title IV–A, section 417D(d) of the Higher Education Act of 1965, as amended.

(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 Title IV–A, section 417D(d) of the Higher Education Act of 1965, as amended, 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.* (25 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;

(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; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 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 paragraph (b)(4)(i) (A) and (B) 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), 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.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget 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.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (5 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.

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 #84.217), Washington, DC 20202–4725, 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 #84.217), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(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.

Notes: (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 title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to 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: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Assurances—Ronald E. McNair Post-Baccalaureate.

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Mrs. May J. Weaver, Acting Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066 ROB–3 400 Maryland Avenue SW., Washington, DC. 20202–5249. Telephone: (202) 732–4804.

Program Authority: 20 U.S.C. 1070d–1b.

Dated: April 21, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

APPENDIX

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY:

Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 1 7

TITLE: Ronald E. McNair Post-Baccalaureate Achievement Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS 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

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION 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 AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR PART III - Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the Description of Program and the Selection Criteria the Secretary uses to evaluate applications.

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 the information required by the program legislation (See Description of Program (i) - (iii)) and each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced typed pages (on one side only).

Public reporting burden for this collection of information is estimated to average 25 hours ~~(one response)~~ per response, including the time for reviewing instructions, searching existing data sources, and 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 the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C 20202-4651; and to the Paperwork Reduction Project, OMB 1840-0619, Office of Management and Budget, Washington, D.C. 20503.

(Information collection approved under OMB control number 1840-0619.

Expiration date: March 31, 1990)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

ASSURANCES-RONALD E. McNAIR POST-BACCALAUREATE ACHIEVEMENT PROGRAM

As the duly authorized representative of the applicant, I certify that the applicant will comply with the statutory requirements that:

1. Not less than two-thirds of the individuals participating in the project proposed to be carried out under this application be low-income individuals who are first-generation college students;

2. The remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education;

3. Participants be enrolled in a degree program at an eligible institution in accordance with the provisions of Section 487 of the Higher Education Act of 1965, as amended; and

4. Participants in summer research internships, if any, have completed their sophomore year in post-secondary education.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

As these terms are used above,

1-A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level (determined by using criteria of poverty established by the Bureau of the Census) in the calendar year preceding the year in which the individual participates in the project.

2-A "first generation college student" means an individual both of whose parents did not complete a baccalaureate degree; or in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-13726 Filed 6-8-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Friday
June 9, 1989

Part VII

Department of Education

Rehabilitation Long-Term Training Program, and Experimental and Innovative Training Program; Notices

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Training Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Years 1989 and 1990.

SUMMARY: The Secretary of Education announces funding priorities in fiscal years 1989 and 1990 for rehabilitation training activities to be supported under the following Rehabilitation Training Programs of the Rehabilitation Services Administration:
—Rehabilitation Long-Term Training
—Experimental and Innovative Training

EFFECTIVE DATE: These final funding priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of the final funding priorities, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3324), Washington, DC 20202-2649. Telephone: (202) 732-1400.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established in 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities, especially those who are the most severely disabled.

Program regulations for the Experimental and Innovative Training Program are established in 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of training programs for rehabilitation personnel, to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe disabilities, and to develop new and improved methods of training rehabilitation personnel and to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

The Department completed a study in 1989 to update data collected in a previous study of rehabilitation personnel shortages completed in 1987. Data collected through the 1989 study has been used to assist in directing Rehabilitation Training Program funds to areas of identified rehabilitation personnel shortage in fiscal years 1989 and 1990. Based on the results of the 1989 study, no revisions have been made in the funding priorities established for the Rehabilitation Training Program for fiscal years 1989 and 1990.

Awards are made under this program to State vocational rehabilitation agencies and other public and private agencies and organizations, including institutions of higher education.

On February 16, 1989, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (54 FR 7152). Except for minor editorial and technical revisions, there are no differences between the proposed priorities and these final priorities.

Analysis of Comments and Responses

In response to the Secretary's invitation in the notice of proposed priorities, eight parties submitted comments on the proposed priorities. Three parties submitted comments on the proposed priority for Rehabilitation Counseling under the Rehabilitation Long-Term Training Program. Four parties submitted comments on the proposed priority under the Experimental and Innovative Training Program. One party submitted comments that recommended the establishment of a specific priority under the Rehabilitation Long-Term Training Program for the field of Speech-Language Pathology and Audiology. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows. Technical and other minor changes are not addressed.

Rehabilitation Counseling

Comment: One commenter recommended that language be added to the priority to permit the support of training at the master's or doctoral level.

Discussion: The 1984 Amendments to the Rehabilitation Act mandate that Rehabilitation Training Program funds be directed to areas of identified personnel shortage. In accordance with this mandate, the Department of Education initiated surveys of rehabilitation personnel shortages in 1986 and 1988 to identify areas of personnel shortage. The data collected through these surveys have substantiated the need for training at the master's degree level in the field of Rehabilitation Counseling. The Secretary has, therefore, reserved funds for the support of master's degree level training projects in Rehabilitation Counseling. The Department, on the other hand, does not currently have available data to substantiate the need for doctoral level training in the field of Rehabilitation Counseling.

Change: None.

Comment: One commenter suggested that language be added to the priority to require that rehabilitation counseling personnel have specialized skills and knowledge necessary to serve individuals who are Spanish-speaking and individuals who are deaf.

Discussion: The priority does not preclude the support of training that will prepare rehabilitation counseling personnel with specialized skills and knowledge in serving individuals who are Spanish-speaking and individuals who are deaf. The Department has published similar priorities for the field of Rehabilitation Counseling in recent fiscal years and is currently supporting training programs in the field of Rehabilitation Counseling that prepare specialized personnel to work with individuals who are deaf. The Department also provides separate funding to train rehabilitation professionals specializing in deafness under the Rehabilitation Long-Term Training Program. The Secretary believes that the described priority would also allow the support of projects designed to prepared specialized rehabilitation counseling personnel to serve individuals who are Spanish-speaking.

Change: None.

Comment: One commenter suggested the inclusion of a priority to train the present complement of rehabilitation counselors in the various State vocational rehabilitation agencies.

Discussion: The Department initiated surveys of rehabilitation personnel shortages in 1986 and 1988 that have indicated the need to increase the number of rehabilitation counselors available for employment in rehabilitation service delivery. In response to an identified area of personnel shortage, the Secretary has established a priority for master degree level training in the field of Rehabilitation Counseling. In addition to the training available under the

Rehabilitation Long-Term Training Program for rehabilitation counseling personnel, the present complement of rehabilitation counselors in State vocational rehabilitation agencies can be trained through funds available under the Rehabilitation Continuing Education Program and the State Vocational Rehabilitation Unit In-Service Training Program. These programs are specifically intended to provide training that will maintain and upgrade the skills and knowledge of currently employed rehabilitation service delivery personnel, including rehabilitation counseling personnel.

Change: None.

Commenter: One commenter suggested that the rehabilitation long-term training field of Speech-Language Pathology and Audiology be identified as a priority.

Discussion: The Secretary does not believe that data from surveys initiated by the Department to identify areas of personnel shortage substantiate the need for funds to support new projects in the field of Speech-Language Pathology and Audiology. Based on data collected through personnel shortage surveys initiated by the Department, funds have been allocated for the field of Speech-Language Pathology and Audiology for the support of continuation projects only in fiscal year 1989.

Change: None.

Experimental and Innovative Training

Comments: Two commenters suggested that a priority be added to address the training of service providers and educators of service providers for individuals with severe disabilities, especially adults with traumatic brain injury. Another commenter recommended removal or alteration of the priority to include other types of experimental and innovative training.

Discussion: In addition to funding for the priority area, funds will be made available for the support of new Experimental and Innovative Training Program projects under a "Non-Priority" category. This will permit the Department the flexibility to support experimental and innovative training projects in areas that are not responsive to the described priority for this program, including the area of service delivery to adults with traumatic brain injury.

Change: None.

Commenter: One commenter recommended that a priority be added to train personnel who can provide assistance technology services in the vocational rehabilitation process, especially in the area of supported employment.

Discussion: Data collected by the Department in rehabilitation personnel shortage surveys it initiated in 1986 and 1988 have identified the need to train personnel in the area of Rehabilitation Engineering. In accordance with the data, the Department allocated funds in fiscal year 1987 for the support of new projects under the Rehabilitation Long-Term Training Program in the field of Rehabilitation Engineering. The Department considers it advisable at this time to permit currently funded grantees in the area of Rehabilitation Engineering to complete their projects and to assess the results of those projects before additional funds are identified for training in the area of assistive technology. Since funds will be available under the Experimental and Innovative Training Program for a "Non-Priority" category, training projects may be funded in areas under this program that are not responsive to the described priority, including assistive technology.

Change: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will set aside funds and give an absolute preference to applications submitted under the Rehabilitation Long-Term Training Program in the field of Rehabilitation Counseling and under the Experimental and Innovative Training Program that address one of the priorities described in the notice. An absolute preference is one that permits the Secretary to select only those applications that meet the described priorities.

The publication of these priorities does not bind the United States Department of Education to fund projects in any or all of these training areas, unless otherwise specified in statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

Final Priorities for Rehabilitation Long-Term Training Program

Priority 1—Rehabilitation Counseling

Projects in the long-term training field of Rehabilitation Counseling must provide training at the master's degree level that is designed to improve and strengthen the capacity of rehabilitation counselors to serve and place individuals with severe disabilities in employment, especially competitive employment, and arrange for independent living rehabilitation services and promote community options for individuals with severe disabilities. The training must directly involve trainees with business and industry in providing rehabilitation services, especially placement services, to individuals with severe physical and mental disabilities, and in providing independent living rehabilitation services to individuals with severe disabilities.

The coursework must be designed to provide trainees with skills and knowledge in: (1) Interpreting diagnostic, psychological, and educational background information to assess the functional capacities of, and do vocational and independent living rehabilitation planning for, individuals with disabilities, including traumatically brain-injured individuals, chronically mentally ill individuals, and learning-disabled individuals; and (2) planning effective vocational and independent living rehabilitation programs for, and delivering rehabilitation services to, individuals with disabilities, including traumatically brain-injured, chronically mentally ill, and learning-disabled individuals; (3) job development, job modification, and job restructuring; (4) workers' compensation programs; (5) providing vocational and independent living rehabilitation services to individuals with disabilities to facilitate their transition from school to employment; (6) providing supported employment services to individuals with disabilities; (7) providing services to individuals with disabilities to facilitate their integration in the community; (8) the applicability of sections 501, 502, 503, and 504 of the Rehabilitation Act and their implications for placement of individuals with disabilities, including the implications of section 504 for non-discrimination in all programs receiving Federal financial assistance; (9) utilizing rehabilitation engineering resources; (10) the services available under the Client Assistance Program; and (11) consulting with employers and potential employers to identify employment opportunities for individuals with disabilities, to educate and train employers in identifying and removing barriers to the employment of individuals with disabilities, and to educate or train employers and potential employers about various disabilities and the vocational implications of those disabilities. Practicum training must involve trainees directly with business and industry in developing jobs and placing individuals with disabilities in competitive employment and with agencies providing independent living rehabilitation services to individuals with disabilities. The practicum training may include trainee experiences in

business and industry settings and independent living programs.

Awards made in this field will be grants.

Priority 2—Other

Proposed projects under this priority must be directed to the collection, cataloging, storage, and dissemination of rehabilitation training materials.

This priority is intended to ensure that training materials of all types developed under the Rehabilitation Training Program and other training materials relevant for the training of rehabilitation personnel are available for dissemination to the rehabilitation community.

Proposed projects under this priority must demonstrate the need for the training support activity, define the proposed approach to be utilized, and substantiate the cost effectiveness of the proposed approach.

The award made under this priority will be a cooperative agreement.

Final Priority for Experimental and Innovative Training Program

The training under this priority must address the training of direct service delivery personnel to provide community-based supported employment services. The 1986 Amendments to the Rehabilitation Act of 1973 established a State supported employment formula grant program and added supported employment as an acceptable employment outcome under the State vocational rehabilitation services program under Title I of the Act. While supported employment is a viable rehabilitation method for achieving competitive employment for individuals with the most severe disabilities, there is a critical shortage of direct service delivery personnel, such as job coaches, to provide supported employment services. Unless this shortage is addressed, the full benefits of the new program and services under the vocational rehabilitation program may be delayed unnecessarily.

Training under this priority may be academic or non-academic in nature. Non-academic training may include a sequential series of workshops or seminars and practicum experiences in community-based settings that directly involve trainees in providing supported employment services to individuals with the most severe disabilities. Projects may provide intensive training in all skill areas necessary for direct service personnel to provide effective supported employment services.

Individuals who will be trained in the program may be currently employed, recruited from retirement, or already participating in another educational program. The training may be supplementary to an existing training program.

The awards made under this priority will be grants.

(Authority: 29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: May 16, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-13727 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Rehabilitation Long-Term Training Program; Invitation for Applications for New Awards in the Areas of Rehabilitation Counseling and "Other" for Fiscal Year (FY) 1989

Purpose of program: This program provides grants to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, for projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities and to maintain and upgrade basic skills and knowledge of personnel employed as providers of vocational, medical, social or psychological rehabilitation services.

Deadline for Transmittal of Applications: July 25, 1989.

Applications Available: June 13, 1989.

Estimated Total Available Funds: $1,200,000.

Awards are to be made in two priority categories. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 385 and 386.

The priorities in the notice of final priorities for this program, as published in this issue of the **Federal Register**, also apply.

For Applications or Information Contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC, 20202-2650. Telephone: (202) 732-1351.

Program Authority: 29 U.S.C. 774.

Dated: June 6, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated average size of awards	Estimated No. of awards
Priority 1—Rehabilitation counseling	$1,000,000	$100,000	10
Priority 2—Other	$200,000	$200,000	1

[FR Doc. 89-13728 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129]

Experimental and Innovative Training Program; Invitation for Applications for New Awards for Fiscal Year (FY) 1989

Purpose of program: This program provides grants to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, to develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe disabilities and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Deadline for transmittal of applications: July 25, 1989.

Applications available: June 13, 1989.

Estimated total available funds: $500,000.

Awards are to be made in one priority category and one non-priority category. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 385 and 387.

The priority in the notice of final priorities for this program, as published in this issue of the **Federal Register**, also applies.

For applications or information contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC 20202-2650. Telephone: (202) 732-1351.

Program authority: 29 U.S.C. 774.

Dated: June 6, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated average size of awards	Estimated No. of awards
Priority-training direct service delivery personnel to provide supported employment services to individuals with disabilities	$300,000	$150,000	2
Non-priority	$200,000	$100,000	2

[FR Doc. 89-13729 Filed 6-8-89; 8:45 am]
BILLING CODE 4000-01-M

Federal Register

Friday
June 9, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements; Final Rule; Delay of Effective Date

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304; Amdt. No. 91-209]

RIN 2120-AC35

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On October 6, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements, (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with Very High Frequency Omnidirectional Range (VOR) or tactical Air Navigation (TACAN) equipment, eliminating the previous exclusion for helicopters effective July 1, 1989. This action delays the effective date of the navigational equipment requirement for helicopter operations in a TCA until January 1, 1990.

The FAA by separate action intends to propose to amend the regulations requiring VOR or TACAN navigational equipment only for aircraft conducting operations under IFR. Consequently, the FAA is delaying the effective date of the TCA navigational equipment requirement for 180 days. This delay is necessary to allow interested parties to comment on the related equipment proposal and to delay purchase of equipment should that proposal be adopted.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Laser, Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with VOR or TACAN navigational equipment thereby eliminating, effective July 1, 1989, the previous exclusion for helicopters from the navigation equipment requirement.

Since that time, the FAA has received numerous requests for exemption from the helicopter equipment requirement, and petitions to allow the use of certain area navigational equipment for operations in a TCA. Specifically, the National Association of State Aviation Officials, in its letter of January 14, 1989, stated that many new generation helicopters are operating with LORAN-C as a primary navigation system, and that LORAN-C equipment provides better position information than VOR equipment. The Experimental Aircraft Association (EAA), in its letter of January 5, 1989, advised the FAA that it had conducted an investigation concerning the TCA navigation equipment requirement. It was EAA's conclusion that LORAN-C produces more satisfactory results for many users and is much more useful for helicopter operations than VOR equipment. The Helicopter Association International (HAI) petitioned the FAA for a similar change to the equipment requirement—an exception to the VOR or TACAN requirements for visual flight rules (VFR) and special VFR helicopter operations. Several other organizations that use helicopters extensively have petitioned the FAA for exemption from the VOR/TACAN navigation equipment requirement citing that their aircraft are already equipped with LORAN-C.

Discussion

Section 91.33(d)(2) of the Federal Aviation Regulations (FAR) (14 CFR Part 91) specifies that all civil aircraft used to conduct instrument flight rules (IFR) operations must have "* * * navigational equipment appropriate to the ground facilities to be used." This provision is intentionally broad to allow the use of a variety of ground-based navigational facilities when conducting flight under IFR. However, the requirement is not applicable to public aircraft, i.e., aircraft used only in the service of a government, or a political subdivision, and foreign aircraft. Section 91.90 of the FAR, Terminal Control Areas, provides a more specific navigational equipment requirement for both civil and public aircraft conducting IFR operations in a highly regulated air traffic control (ATC) environment. To illustrate, in the past, most departure and arrival procedures at TCA primary airports involved navigation via specific VOR radials to a given point along an airway, route, or precision instrument approach procedure. In the current radar environment the use of VOR radials in conjunction with departure and approach procedures is often replaced with radar vectoring procedures. However, the ATC system must be prepared to revert to a non-radar environment should the need arise, in which case, the VOR or TACAN requirement would be critical to the continued ATC separation of aircraft.

The need for specific navigational equipment for aircraft conducting operations in a TCA under VFR is a different issue. In a radar environment departure and arrival operations conducted by aircraft under IFR or VFR are handled by ATC in very much the same manner. Traffic operating under VFR is generally provided with radar vectors to points beyond which navigation within the TCA can be accomplished using pilotage or dead reckoning procedures. Should the radar become inoperative, ATC would simply allow VFR aircraft to navigate via visual reference to known checkpoints and landmarks where such routes can be procedurally separated from those used by IFR aircraft.

The Rule

Therefore, based on the foregoing, the FAA by separate action intends to propose to amend the regulations to require VOR or TACAN navigational equipment only for aircraft conducting operations under IFR. Consequently, the FAA is delaying the effective date of the TCA navigational equipment requirement for 180 days. This delay is necessary to allow interested parties to comment on the related equipment proposal and to delay purchase of equipment should that proposal be adopted.

Conclusion

For the above reasons the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A full regulatory evaluation was prepared for the final rule in Docket No. 25304 and placed in the regulatory docket. This action to delay the effective date of one

part of that rule does not have any significant effect on the information and conclusions contained in that evaluation. Accordingly, the existing regulatory evaluation remain valid and no futher evaluation is required. Also, for the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The requirements proposed herein would not have a substantial direct effect 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends Part 91 of the Federal Aviation Regulations (14 CFR Part 91) as follows:

PART 91—(AMENDED)

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq*; E.O. 11514; 49 U.S.C 160(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 91.90 [Amended]

2. Section 91.90(c)(1) is amended by replacing the words "July 1, 1989," with the words "January 1, 1990."

Issued in Washington, DC, on June 6, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89–13753, Filed 6–6–89; 3:46 pm]

BILLING CODE 4910–13–M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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