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Tuesday
November 10, 1981

Highlights

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulations, effective in January 1982, to require Federal employees to pay for health insurance when they continue enrollment in the Federal Employees Health Benefits (FEHB) program while in nonpay status. The interim regulations require seasonal, on-call, work-study program employees, and other employees who are regularly placed in nonpay status as a condition of employment, to pay both the employee and agency shares of the health insurance cost during nonpay status. Other employees who are not regularly placed in nonpay status as a condition of employment will not be required to pay for continued coverage during a period of nonpay status of 30 days or less, but will be required to pay the employee share when the period of nonpay status exceeds 30 days. Under current regulations, neither employees nor agencies pay for health insurance for up to 12 months of continuous nonpay status.

EFFECTIVE DATE: The interim regulations are effective on the first day of the first pay period beginning on or after January 1, 1982.

Comment date: Comments must be received on or before March 10, 1982.

ADDRESS: Send written comments to Mr. Craig B. Pettibone, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Landers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The FEHB law, 5 U.S.C. 8906(e)(1), provides that an employee's FEHB enrollment may continue for up to 12 months of continuous leave without pay status. The law authorizes OPM to prescribe regulations governing this benefit and to waive both employee and Government contributions to cover the cost of enrollment during the period of nonpay status. Current regulations, 5 CFR 890.303(e), 890.501 and 890.502, provide that neither the employee nor the employing agency shall contribute to the health insurance cost while an employee in nonpay status continues FEHB coverage. The cost of providing this free coverage results in an increase in the amounts paid by and on behalf of covered employees in pay status.

OPM has determined that continuation of the provision for free FEHB coverage, the cost of which is borne by both employees and the Government, is not warranted at a time when the cost of insurance is increasing dramatically. There are a large number of Federal employees who work under conditions which require that they be placed in a leave without pay status during periods of lack of work. These include seasonal employees (those who work under conditions of a predictable, recurring period of high workload, such as summer park employees or extra tax season employees), and "on-call" employees (those who work at least six months per year under unpredictable workload conditions which require additional employees during peak periods, such as may be required at a ship repair facility). Under current regulations, these employees pay nothing for up to 12 months of continuous nonpay status. Another group of employees which is eligible for FEHB participation, about 22,000 work-study program employees, work for the Government while pursuing a college degree, and are carried in leave without pay for as much as two-thirds of the duration of the work-study program with free health benefits.

These interim regulations will require seasonal, on-call, work-study program employees, and other employees who are regularly placed in nonpay status as a condition of employment, to pay both the employee and agency contributions for their health benefits for up to 12 months (or more in the case of work-study program employees) of continuous nonpay status. Both shares will also be required from these employees whenever the salary available for a pay period is not sufficient to cover the full employee share. Other types of employees will not be required to pay for continued coverage during a period of nonpay status of 30 days or less, but will be required to pay the employee share when the period of nonpay status exceeds 30 days. Where payment of the employee share only is required, the full employee share is required for any pay period during which salary available for health benefits withholdings is insufficient to cover the full employee share. Payment of the agency share during periods of nonpay status will be waived.

The requirement that seasonal, on-call and work-study employees pay the entire cost of health insurance during periods of nonpay status is based on the fact that these employees are recurringly placed in nonpay status from year to year as a condition of employment/appointment. Employees under such circumstances can generally be expected to foresee and provide for themselves during periods of nonpay status. Other employees, however, are employed/appointed without any expectation of being regularly placed in nonpay status. The provision in these interim regulations which allows an employee (other than a seasonal, on-call, work-study or similar type employee) to continue health benefits without cost for periods of up to 30 days is intended to reduce the administrative burden of implementing these regulations. Also, this provision takes into consideration insurance program cost implications of these regulations. The major group of employees who will be paying for health benefits during nonpay status are seasonal employees (about 50,000), while the next most important group, from this standpoint, are those employees who take leave without pay for periods of more than 30 days. The latter group of employees represents a lesser burden to the FEHB program, from a cost perspective, than the former. Employees who are in nonpay status for a month or less represent a much lesser program cost

burden and therefore, OPM has determined that it is not cost effective, with respect to overall Government outlays, to require the administrative expense of collecting health benefits premiums from them.

This amendment is effective for the first pay period beginning on or after January 1, 1982.

These interim regulations leave the method for collecting the payments to the discretion of the agency. However, it will be required that the payments be made on a current basis, or no later than 3 months after the end of the pay period for which they are required, unless the agency determines that the employee was unable to make the payments due to cause beyond his/her control. Failure to make the payments on a current basis (except for cause beyond the employee's control) will constitute a cancellation of the employee's enrollment (without an extension of coverage or conversion privilege) effective at the end of the pay period for which the required payment was last made, or at the end of the pay period during which free coverage ended. An employee whose enrollment has been canceled under these circumstances will not be permitted to reacquire coverage until he/she returns to pay status in a nonexcluded position and has sufficient salary available to cover the required FEHB withholdings. However, the period in nonpay status during which the enrollment may continue does not begin anew until the employee has returned to pay status for at least 4 consecutive months during which the employee was in pay status for at least part of each pay period so as to cover the full employee share. The period of nonpay status following a cancellation due to failure to make the required payments during nonpay status and during which the employee is not, therefore, enrolled, will not be counted against the minimum FEHB program participation requirement for continuation of an enrollment during receipt of annuity or workers' compensation payments.

The Director of the Office of Personnel Management finds good cause to issue these interim regulations without a period of proposed regulations because it is impracticable to publish proposed regulations due to the administrative lead time required for implementation of this amendment to coincide with the 1982 FEHB carrier contract year.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, the Office of Personnel Management is amending Part 890 of Title 5, Code of Federal Regulations, as follows:

(1) In Subpart C, § 890.303(e) is revised to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(e) *In nonpay status.* (1) Except as provided in section 8906(e)(2) of title 5, United States Code, in regard to an employee on leave without pay to serve as a full-time officer or employee of an employee organization, and except as provided in paragraphs (e)(3) and (e)(4) of this section with regard to seasonal, on-call, work-study and similar employees, the enrollment of an employee continues while he/she is in nonpay status without cost to the employee through the end of the pay period in which the employee completes 30 calendar days of continuous nonpay status.

(2) In addition to the period of coverage without cost to the employee as provided under paragraph (e)(1) of this section, the enrollment continues for up to a total of 365 days in nonpay status, subject to the requirements of § 890.502(b) of this chapter. The total 365 days' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status, he/she is entitled to begin the 365 days' continuation of enrollment anew. For the purposes of this paragraph and paragraph (e)(3) of this section, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status in each pay period long enough to make sufficient salary available to cover the withholdings for health benefits.

(3) Except as provided in section 8906(e)(2) of title 5, United States Code, in regard to an employee on leave without pay to serve as a full-time officer or employee of an employee organization, the enrollment of a seasonal, on-call, or other type of employee who is regularly placed in nonpay status as a condition of employment continues while he/she is in nonpay status for up to 365 days, subject to the requirements of § 890.502(b) of this chapter. The 365 days' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status, he/she is entitled to begin the 365 days' continuation of enrollment anew.

(4) Except as provided in section 8906(e)(2) of title 5, United States Code, in regard to an employee on leave without pay to serve as a full-time officer or employee of an employee organization, the enrollment of a work-study employee continues while he/she is in nonpay status, subject to the requirements of § 890.502(b) of this chapter, so long as he/she is participating in the cooperative work-study program.

* * * * *

(2) In Subpart C, § 890.304(a)(4) is revised to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(4) The day on which the continuation of enrollment under § 890.303(e) expires, or, if the employee is not entitled to any further continuation because he/she has not had 4 consecutive months of pay status since exhausting 365 days of coverage in nonpay status, the last day of his/her last pay period when sufficient pay was available to cover the withholdings for health benefits.

* * * * *

(3) In subpart E, § 890.501(e) is revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) The employing office shall not make a contribution for an employee for periods for which the employee is not required to make a payment or for periods when the employee pays either the employee share only (under § 890.502(b)(2)) or both the employee and Government contributions (under § 890.502(b)(1)).

(4) In Subpart E, § 890.502(b) is revised to read as follows:

§ 890.502 Employee withholdings.

* * * * *

(b)(1) If a seasonal employee, an on-call employee, a work-study employee, or other type of employee who is regularly placed in nonpay status as a condition of employment, is carried in nonpay status, or if the pay available for the health benefits withholdings is insufficient to cover the withholdings for a pay period, he/she is required to pay, on a current basis, both the Government and employee contributions for each pay period.

(2) Following completion of the period during which an enrollment continues without cost to the employee under § 890.303(e)(1) of this chapter, and for so long as the enrollment continues thereafter during nonpay status, or during pay periods in which the amount of salary available for health benefits withholdings is insufficient to cover the employee share, the employee is required to pay, on a current basis, the employee share for each pay period.

(3) At the time an employee is placed in a status under which he/she is required to make payments under this paragraph, or at the time such status is continued beyond the last pay period of 1981, the agency shall notify the employee that he/she will be required to pay either the employee share only or both the Government and employee contributions, as the case may be. The notice shall specifically inform the employee how, when and where the payments are to be submitted. The agency is responsible for collecting, accounting for and depositing in the Employees Health Benefits Fund all payments required. Payments are considered to be currently made if received by the agency within 3 months after the end of the pay period covered thereby. Failure to make the required payments currently is deemed to constitute a cancellation of the enrollment effective on the last day of the pay period for which payments were currently deposited, or, if later, at the end of the pay period during which coverage without cost to the employee ended under § 890.303(e)(1) of this chapter. However, coverage which is so canceled may be reinstated retroactively when in the judgment of the agency, the failure to make the required current payment was due to circumstances beyond the control of the employee, and if the required payments are made to the agency at the first opportunity. An employee whose enrollment is canceled under this paragraph is considerd to be automatically enrolled in the same plan and option as he/she had at the time of such cancellation, effective as of the first day of the first pay period in which the employee's available pay is again sufficient to cover the employee share.

(4) For the purposes of this part, a seasonal employee is one who is so designated by the employing agency or who is employed under conditions requiring a recurring period of employment of less that 2080 hours per year in which he/she is placed in a nonpay status in accordance with pre-established conditions of employment; an on-call employee in one who is a permanent career or career-conditional employee hired on a work-as-needed basis for service during periods of heavy workload with a minimum service period of at least 6 months each year; a work-study employee is one who has a career-conditional or career appointment or who is appointed under Schedule B of Part 213 of this chapter, who is employed under a cooperative work-study program of at least one year's duration which requires the employee to be in a pay status during not less than one-third of the total time required for completion of the program.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 81-32074 Filed 11-9-81; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Issuance of General License

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a general license to authorize uranium mill operators in Agreement States to possess and dispose of mill tailings. The general license is of a temporary nature and required by law to preclude the appearance of technical violations of the Atomic Energy Act of 1954, as amended.

DATES: The general license is effective November 8, 1981.

FOR FURTHER INFORMATION CONTACT: Robert L. Fonner, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8692.

SUPPLEMENTARY INFORMATION: Under the Surface Transportation Assistance Act Amendments of 1978 (Pub. L. 96-106, 93 Stat. 799 (1979)), section 204 of Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), was amended to clarify the respective jurisdictions of the Commission and Agreement States for the three year period commencing upon enactment of the latter Act (Nov. 8, 1978) and for the following years.

In particular, the 1979 amendment added a new section 204(h)(3) to UMTRCA which reads as follows:

> (3) Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274b. of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material, as defined in section 11e.(2) of such Act, the Commission shall not, until the end of the three-year period beginning on the date of the enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated, suspended, or amended to provide for such Federal licensing. If, at the end of such three-year period, a State has not entered into such an agreement with respect to byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material.

The last sentence of section 204(h)(3) states clearly that, absent an amendment to an existing Agreement, the Commission shall have authority over tailings in Agreement States as of November 8, 1981, the end of the three-year period referred to in section 204(h)(3). This consequence results from the operation of law, and the accession of statutory jurisdiction to the Commission requires no further positive action on the part of the Commission or the Agreement State to become effective.

Accordingly, in view of the fact that none of the affected Agreement States (Washington, Colorado, Texas, and New Mexico) has executed an amendment to its Sec. 274 Agreement providing for relinquishment of Federal licensing and regulatory authority over mill tailings and assumption thereof by the State, the Nuclear Regulatory Commission will have licensing and regulatory authority over such material as of November 8, 1981. The new Commission jurisdiction relates only to the tailings and does not affect State licensing and regulation of the processing of source material under current effective Agreements.

Current Commission regulations make no provision for the unlicensed possession of tailings. A consequence of this is that Agreement State uranium mill operators would be technically in violation of Section 81 of the AE Act, and technically could be subject to both criminal penalties under section 223 of the AE Act, and civil penalties under

section 234 of the AE Act if the Commission fails to take some affirmative action. In addition, the Commission needs to establish a legal basis for taking future action, if necessary. In order to avoid any implication of wrongful conduct on the part of uranium mill operators in Agreement States and to provide a basis for future Commission action, the Commission is authorizing Agreement State uranium mill operators to possess and dispose of byproduct material produced in the course of processing source material ore for its uranium content under current Agreement State licenses by the issuance of an immediately effective general license subject to the condition that the operator shall comply with all conditions in its Agreement State license for management and disposal of byproduct material.

Because it is anticipated that the Agreement States will most likely secure amendments to their Agreements, the general license is also conditioned to terminate for each general licensee in a given State when such an amendment is executed.

The general license is intended to fill the gap between November 8, 1981, when the Commission gains jurisdiction over uranium mill tailings in Agreement States, and the time that the affected Agreement States and the Commission execute amendments to existing Agreements adding uranium mill tailings to the categories of nuclear materials already included in the Agreement. Four states are actively seeking such an amendment—Washington, Colorado, Texas, and New Mexico. Barring unforeseen obstacles, the Commission anticipates that an amendment to the Agreement will be executed in late November for Washington, in December for Colorado, and early in 1982 for Texas. Since complete amendment documentation has not yet been received from New Mexico it is not possible to forecast when an amendment can be executed.

In addition the Commission is aware that proposals have been introduced in the Congress of the United States to defer full implementation of the Uranium Mill Tailings Act Agreement State provisions for about one year, including a deferral of the Commission's accession to jurisdiction. These proposals have been attached to NRC appropriations legislation that is near completion. Nonetheless, the Commisson believes that it is desirable to clarify the legal status of uranium mill operators in Agreement States and their relationship to the Federal Government and to preclude the possibility of a time gap during which the waste disposal activities of such operators are arguably unregulated.

In view of the above the general license is conditioned to terminate in any Agreement State when an amendment to the Agreement covering tailings is executed. The general license is not conditioned to terminate upon enactment of current legislative proposals because it is not clear at this time whether those proposals will change the legal structure of the Uranium Mill Tailings Radiation Control Act, or simply preclude the expenditure of appropriated funds on implementation of the Commission's program in Agreement States based upon the codified regulations in Appendix A to 10 CFR Part 40. If the Congress alters the legal structure now existing in UMTRCA and defers Commission accession to jurisdiction in Agreement States, then the general license will be of no force and effect by virtue of the Congressional action; thus there is not need for the Commission to cover that contingency in the general license.

In making the general license dependent upon compliance with waste disposal conditions in State issued source material licenses the Commission is not implying or concluding that such State licenses are adequate or inadequate with respect to regulation of mill tailings. The general license is a temporary measure to fill a legal void and not a validation or rejection of existing State programs. The evaluation and validation of State programs for mill tailings regulation is part of the process of reviewing such programs for the purpose of executing amendments to Agreements. That process is now proceeding independently of this action.

The Commission notes that the general license imposes no new reporting or recording keeping requirements on the general licensees, nor does it impose any other discernible economic burden on Agreement State source material licensees. Accordingly, the Commission certifies under the Regulatory Flexibility Act of 1980, that the general license will not have a significant impact on a substantial number of small entities. There are no more than a dozen affected persons, each a corporation of substance.

The general license is being made effective immediately. Notice and public procedure are impracticable because of the immediate need to provide a legal basis for the affected Agreement State mill operators to possess and dispose of tailings. Notice and public procedure are also unnecessary because the purpose of the general license is to remove an inference of illegality in the activities of state licensed mill operators. The general license continues the status quo and imposes no added burden on Agreement State licensees. For the same reasons the Commission is also exercising its authority to dispense with the usual 30-day notice period required by 5 U.S.C. 553(d).

Therefore, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 40, is published as a document subject to codification.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 83, 84, 161, 182, 183, 68 Stat. 932, 933, 948, 953, 954, as amended (42 U.S.C. 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233); sec. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846), unless otherwise noted.

(Sec. 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273) § 40.41(c) issued under sec. 161b., 68 Stat. 948 (42 U.S.C. 2201(b)) and §§ 40.23(e)(3), 40.61 and 40.62 issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)))

(Sec. 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152))

2. A new § 40.27 is added to Part 40 to read as follows:

§ 40.27. General license to posses and dispose of byproduct material.

(a) A general license is hereby issued to receive title to, own, possess, and receive byproduct material as defined in this Part without regard to form or quantity.

(b) The general license in paragraph (a) of this section applies only to persons in Agreement States who hold current Agreement State specific licenses authorizing activities that result in the production of byproduct material, including byproduct material possessed or stored at a State authorized disposal containment area or transported incident to such authorized activity.

(c) Each general licensee shall comply with all conditions concerning byproduct material contained in the specific license issued by the Agreement State and with all applicable State regulations.

(d) The general license issued in this section shall terminate as to general

licensees in any given Agreement State upon either of the following events taking place:

(1) Execution of an amendment to the State Agreement relinquishing Commission jurisdiction over such by-product material.

(2) Upon the date fixed by the Commission in a notice issued to the general licensees in an Agreement State based upon a Commission determination that it will not execute an amendment to a State Agreement relinquishing Commission authority and that such byproduct material should be licensed under a specific license issued by the Commission.

Dated at Washington, D.C. this 6th day of November, 1981.

For the Nuclear Regulatory Commission.

Samuel Chilk,

Secretary of the Commission.

[FR Doc. 81-32611 Filed 11-6-81; 2:19 pm]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 707

Advisory Committees; Removal

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule removes 10 CFR Part 707, entitled "Advisory Committees", of the Department of Energy regulations. The regulations contained in Part 707 substantially reiterate the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix I, and are, therefore, unnecessary.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Georgia Hildreth, Chief, Advisory Committee Management Branch, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585, 202-252-5187.

SUPPLEMENTARY INFORMATION: These regulations are being removed from the Code of Federal Regulations in accordance with President Reagan's agenda for regulatory relief. Pursuant to section 501(c) of the Department of Energy Organization Act (DOEOA), I have determined that no substantial issue of fact or law exists and that this action will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, the Department of Energy is not bound by the prior notice and hearing requirements of section 501 (b), (c), and (d) of the DOEOA, and may promulgate this rule in accordance with section 553 of Title 5, United States Code. This action, however, does not require compliance with the rulemaking procedures outlined in 5 U.S.C. 553 because Part 707: (1) Primarily addresses matters relating to agency management or personnel, which are exempted by 5 U.S.C. 553(a)(2), and (2) reiterates existing rights, accorded by the FACA and the Office of Management and Budget's Circular A-63, that are unaffected by the removal of these regulations. The Department finds, therefore, in accordance with 5 U.S.C. 553(b)(3)(B) that notice and public procedure thereon are unnecessary. Finally, 5 U.S.C. 553(d) provides that the required publication of a substantive rule be made at least 30 days before its effective date; however, the Department of Energy has determined that the removal of these regulations from the Code of Federal Regulations does not constitute a substantive rule.

This action has been reviewed in accordance with Executive Order 12291, issued February 17, 1981, and it has been determined that it does not constitute a major rule within the meaning of the Executive Order.

In consideration of the foregoing, Part 707 of Chapter II, Title 10 of the Code of Federal Regulations is hereby removed.

Issued in Washington, D.C., November 2, 1981.

James B. Edwards,

Secretary.

PART 707—ADVISORY COMMITTEES [REMOVED]

For the reasons set out in the preamble, Part 707, Chapter II of Title 10 of the Code of Federal Regulations is hereby removed.

(Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565) (42 U.S.C. 7251, 7254))

[FR Doc. 81-32563 Filed 11-9-81; 8:45 am]

BILLING CODE 6450-01-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0021]

Ceiling Rates for 26-Week Money Market Certificates

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Technical amendment to final rule.

SUMMARY: This technical amendment clarifies that depository institutions may not round any interest rate to the next higher rate in connection with paying interest on 26-week money market certificates ("MMCs"). Additionally, this technical amendment clarifies that interest may not be compounded on MMCs during the term of the deposit and that the optional ceiling rate is determined on the basis of the average of the four bill rates (auction average on a discount basis) for U.S. Treasury bills with maturities of 26 weeks established and announced at the four auctions held immediately prior to the date of the MMC deposit.

EFFECTIVE DATE: November 1, 1981.

FOR FURTHER INFORMATION CONTACT: Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798); John Harry Jorgenson, Senior Attorney, Board of Governors of the Federal Reserve System (202/452-3778); F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4324); Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446); or David Ansell, Attorney, Office of the Comptroller of the Currency (202/447-1880).

SUPPLEMENTARY INFORMATION: On September 22, 1981, the Committee adopted a final rule, effective November 1, 1981, concerning the maximum interest payable on MMCs. The rule provides that depository institutions may pay interest on any nonnegotiable time deposit of $10,000 or more with a maturity of 26 weeks at a fixed interest rate ceiling indexed to the higher of either (a) The rate for 26-week United States Treasury bills auctioned immediately prior to the date of deposit, or (b) a moving average of the discount rate based on the four auction average rates (discount basis) for 26-week U.S. Treasury bills established and announced at the four auctions held immediately prior to the date of deposit. The Committee adopted this rule to provide an alternative method of calculating MMC rate ceilings to enable depository institutions to be more competitive with money market mutual funds and other market instruments, especially during a period of declining rates.

This amendment is intended to clarify the intent of the Committee that the other rules concerning MMCs remain in effect. Consequently, depository institutions may not round any interest rate to the next higher rate, and the prohibition on compounding interest on MMCs during the term of the deposit also continues. These provisions were omitted inadvertently in the **Federal Register** document previously published

on this matter. Finally, the rule is amended to make clear that the optional ceiling rate provided to depository institutions is based on the average of the four most recent Treasury bill rates and not on an average of the four most recent MMC ceiling rates established under this section.

Because this is a technical amendment that clarifies the Committee's earlier action, the Committee finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action would be contrary to the public interest, and that good cause exists for making this action effective November 1, 1981.

Pursuant to its authority under Title II of Pub. L. 96-221, 94 Stat. 142 (12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations and mutual savings banks, effective November 1, 1981, the Committee revises § 1204.104 of 12 CFR Part 1204 to read as follows:

PART 1204—INTEREST ON DEPOSITS

§ 1204.104 26-week money market time deposits of less than $100,000.

Commercial banks, mutual savings banks, and savings and loan associations may pay interest on any nonnegotiable time deposit of $10,000 or more, with a maturity of 26 weeks, at a rate not to exceed the ceiling rates set forth below. The ceiling rate shall be based on the higher of either (1) the rate established and announced (auction average on a discount basis) for U.S. Treasury bills with maturities of 26 weeks at the auction held immediately prior to the date of deposit ("Bill Rate"), or (2) the average of the four rates established and announced (auction average on a discount basis) for U.S. Treasury bills with maturities of 26 weeks at the four auctions held immediately prior to the date of deposit ("Four-Week Average Bill Rate"). Rounding any rate to the next higher rate is not permitted, and interest may not be compounded during the term of this deposit.

Bill rate or four-week average bill rate	Interest rate ceiling
Commercial Banks	
7.50 per cent or below	7.75 per cent.
Above 7.50 per cent	One-quarter of one percentage point plus the higher of the Bill Rate or Four-Week Average Bill Rate.
Mutual Savings Banks and Savings and Loan Associations	
7.25 per cent or below	7.75 per cent.
Above 7.25 per cent, but below 8.50 per cent.	One-half of one percentage plus the higher of the Bill Rate or Four-Week Average Bill Rate.
8.50 per cent or above, but below 8.75 per cent.	9 per cent.
8.75 per cent or above	One-quarter of one per centage point plus the higher of the Bill Rate or Four-Week Average Bill Rate.

By order of the Committee, October 30, 1981.

Steven L. Skancke,

Executive Secretary.

[FR Doc. 81-32496 Filed 11-9-81; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 390

Removal of § 390.5, General Order Revoking Validated Licenses for Export to South Vietnam and Cambodia

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations by removing and reserving § 390.5, General order revoking validated licenses for export to South Vietnam and Cambodia. This change neither expands nor limits the provisions of the Regulations, and only removes § 390.5 because it is obsolete. Current U.S. export policy toward Vietnam and Cambodia (Kampuchea) is now covered in § 385.1, Country Group Z; North Korea, Vietnam, Kampuchea and Cuba.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public coments on this regulation are welcome on a continuing basis.

PART 390—GENERAL ORDERS

§ 390.5 [Reserved]

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are amended by removing and reserving § 390.5.

(Secs. 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: October 22, 1981.

William V. Skidmore,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-32498 Filed 11-9-81; 8:45 am]

BILLING CODE 3510-25-M

15 CFR Part 399

Amendments of the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends one entry on the Commodity Control List to clarify references to two footnotes. It also amends another entry to clarify the coverage of a note.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Room 1623, Office of Export Administration, Washington, D.C. 20230, (Telephone: 202-377-4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that to the extent practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because this regulation does not impose new controls on exports. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and it is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Substance of the Regulation

On November 19, 1980 (45 FR 76435–76436), Entry No. 6499G on the Commodity Control List (Supplement No. 1 to § 399.1) was revised to add a footnote concerning exports to the Republic of South Africa and Namibia. However, in the January 1, 1981 issue of the Code of Federal Regulations, the wrong footnote was cited. This regulation corrects that citation.

Entry No. 1529A contains a note to define "user accessible reprogramming capability". The placement of this note at the end of the entry has caused some confusion regarding the applicability of the note to the various sub-entries. Therefore, the entry is amended to place the note immediately following 1529(b)(5), the sub-entry to which it applies.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Supplement No. 1 to § 399.1 [Amended]

Accordingly, the Commodity Control List (15 CFR Supp. No. 1 to § 399.1) is amended as follows:

1. Entry No. 6499G is revised to read as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV dollarvalue limits T&V	Processing code	Reason for control
6499G [2,3] Other transportation equipment, n.e.s.; and parts and accessories, n.e.s.		SZ [2,3]		MG	3

[2] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled, or used by or for these entities. See § 371.2(c)(11) and § 385.4(a).

[3] A validated license also is required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in conduct of, in support of, or visually identified with the 1980 Summer Olympic Games which began in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.

2. Entry No. 1529A is amended by revising (b)(5), the note to (b)(5), and (h) to read as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV dollar value limits T&V	Processing code	Reason for control
1529A Electronic measuring, calibrating counting, testing, and/or time interval measuring equipment, whether or not incorporating frequency standards, having any of the following characteristics.	No	PQSTVWYZ	1,000	EE	

* * * * * * *

(b) Instruments, as follows:

* * * * * * *

(5) Incorporating computing facilities with user accessible reprograming capability and an alterable memory of more than 8,192 bits;

("User accessible reprograming capability" as used in this entry means:

(i) The instrument contains a computing facility, *e.g.*, a microprocessor; and

(ii) The user has the ability to alter the computing program through external controls *e.g.*, switches, keyboards, digital buses, etc.)

* * * * * * *

(h) Specially designed parts and accessories therefor.

(Specify by name and model number)

(Secs. 3, 5, 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: October 23, 1981.
William V. Skidmore,
Director, Office of Export Administration, International Trade Administration.
[FR Doc. 81-32499 Filed 11-9-81; 8:45 am]
BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 251

[Release No. 35-22259]

Interpretative Release; Lease Transactions Under Economic Recovery Tax Act of 1981

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation of certain lease transactions.

SUMMARY: The Economic Recovery Tax Act of 1981 (Pub. L. No. 97-34), an amendment to the Internal Revenue Code, which became law August 13, 1981, among other things, liberalized prior limitations on tax benefits though sale and leaseback to finance new plant and equipment. Inquiries have been received regarding the effect of the amendments on lease transactions under the Public Utility Holding Company Act of 1935 ("Act"), and this interpretive release is published here in response. Amended section 168(f)(8) and the Temporary Regulations thereunder issued by the Internal Revenue Service on October 20, 1981, include the principal changes relevant here.

DATE: November 4, 1981.

FOR FURTHER INFORMATION CONTACT: Aaron Levy, Director, Division of Corporate Regulation, (202) 523-5691, Grant G. Guthrie, Associate Director, (202) 523-5156, or James E. Lurie, Special Counsel, (202) 523-5683, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 7(d), adopted May 31, 1973 (HCAR No. 17980), relates to the financing of utility facilities by sale and leaseback. It exempts the lessor, as owner of the utility facilities, which are leased back to the public utility company, from the definition of "electric utility company" or "gas utility company" in sections 2(a)(3) or 2(a)(4) of the Act. Without this exemption, the lessor as such owner would be a public utility company,[1] and its parent company a holding company as defined in section 2(a)(7), for which, in the typical financing lease, no exemption from registration under the Act is available.

Under the Code, prior to the recent amendments, it was necessary for tax purposes that the lessor finance the full cost of the utility facility and for the lessee to pay as rent, during the term of the lease, the cost to the lessor that includes a return on invested capital. Upon the expiration of the lease, the lessor was required to be the sole owner of the facility, who might sell the facility to the lessee at not less than its then fair market value.

As amended, the code permits, without requiring, the lessee to acquire the facility at the end of the lease for a specified price. It also permits the lessee to assume part of the lease financing by accepting a debt obligation of the lessor for part of the price, provided that the lessor have an maintain an investment of at least 10% of the tax basis of the facility. The Temporary Regulations [2] note, as an illustration, the case in which the lessor acquires the facility for 20% of the price in cash and a note to the lessee for 80%, with the terms of payment, principal and interest, exactly matching the rent to be paid by the lessee for the term of the lease.[3] The qualified lease under section 168(f)(8) continues to require a transfer or sale and a leaseback of the facilities to the public utility company, but the emphasis is on entitlement to the tax benefits associated with the facilities. The Temporary Regulations permit the lessee to have legal title for purposes of local law and retain the "burdens, benefits, and incidents of ownership."[4]

The Commission does not consider the lessor's interest of sufficient magnitude to deem the lessor an owner under sections 2(a)(3) or 2(a)(4) of the Act, if (1) a qualified lease under section 168(f) vests full possession and use of the utility facilities in the lessee during the term thereof and (2) there is no requirement for payments by the lessee to the lessor during the term or on expiration thereof other than equal or offsetting payments. A lessor under a lease such as this does not need the exemption under Rule 7(d) provided that in substantive effect the lease complies with these conditions. The lessor's status is unaffected by formal or technical variations in such leases, or by provisions for contingencies, including remedies on default.

If a sale and lease transaction involves a public utility company in a registered holding-company system, there are several provisions of the Act that might apply to the lessee. The terms "sale" in section 2(a)(23) and "acquisition" in section 2(a)(22) include a disposition or acquisition by lease. A sale of the utility facility to the lessor may be subject to section 12(d), and the lease to the public utility might be an acquisition subject to sections 9(a)(1) and 10, which also would apply to a note from the lessor for payment on the sale to the lessor. But, if under the terms of the lease, as specified above, the lessor is not a statutory owner under sections 2(a)(3) or 2(a)(4), the related transactions affecting the lessee do not constitute a statutory sale or acquisition that, as indicated, might or would otherwise apply.

PART 251—INTERPRETATIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

Accordingly, 17 CFR Part 251 is amended by adding this release thereto.

By the Commission.
Dated: November 4, 1981.
George A. Fitzsimmons,
Secretary.
[FR Doc. 81-32516 Filed 11-9-81; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 79C-0450]

Listing of Color Additives Subject to Certification; D&C Violet No. 2; Confirmation of Effective Date; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 81-27729 appearing at page 47216 in the **Federal Register** of Friday, September 25, 1981, the following change is made: the heading "LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION; D&C VIOLET NO. 2;

[1] Section 2(a)(3) defines an electric utility company as a company which "*owns* or operates" electric utility facilities, and a gas utility company is one that "*owns* or operates" facilities specified in section 2(a)(4). (emphases added.)

[2] *Special rules for leases under the Economic Recovery Tax Act of 1981*, 46 FR 51907 (October 32, 1981).

[3] See Temporary Regulations § 5c.168(f) (8)-1(e), Example (2).

[4] See Temporary Regulations § 5c.168(f) (8)-1(e)(2).

CONFIRMATION OF EFFECTIVE DATE" should read, "LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION; D&C VIOLET NO. 2; CONFIRMATION OF EFFECTIVE DATE."

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

Dated: November 3, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-32307 Filed 11-9-81; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[PH-FRL-1980-5; FAP 1H5303/R87]

Diatomaceous Earth; Establishment of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation permitting the use of the insecticide diatomaceous earth in spot and/or crack and crevice treatments in food processing and food storage areas.

EFFECTIVE DATE: Effective on November 10, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of July 1, 1981 (46 FR 34416) that International Diatoms Industries Ltd., 904 West 23rd St., Yankton, SD has filed a food additive petition with EPA. This petition proposed that 21 CFR Part 193 be amended by establishing a regulation permitting the use of diatomaceous earth in spot and/or crack and crevice treatments in food processing and food storage areas. On September 16, 1981, the petitioner amended its proposal by expanding the exemption request to include the use of diatomaceous earth for spot and/or crack and crevice treatments in feed processing and feed storage areas pursuant to 21 CFR Part 561. Also on October 6, 1981, the petitioner amended the proposal by deleting the requirement that diatomaceous earth be used only in conjunction with pyrethrin and piperonyl butoxide. A related document establishing a regulation for feed handling establishments appears elsewhere in this issue of the **Federal Register.**

No comments or requests for referral to an advisory committee were received in response to the notice of filing.

The data reported in the petition and other relevant material have been evaluated. Although no residue chemistry data were submitted, the nature of the residue is understood and would consist primarily of silicon dioxide. Little, if any, residues of diatomaceous earth in or on food or feed from the proposed use is expected. The proposed use is not likely to result in secondary residues in meat, milk, poultry or eggs.

In further support of this proposal, diatomaceous earth has been exempted as an active ingredient from the requirement of a tolerance for use against insects in stored grains pursuant to 40 CFR 180.1017. It has also been cleared under § 180.1001(c), wherein residues of adjuvant materials are exempted from the requirement of a tolerance when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Other relevant clearances include: 21 CFR 182.90 (substances migrating to food from paper and paperboard used to package foodstuffs), 21 CFR 573.340 (animal feeds as an inert anticaking agent), 21 CFR 240.1051 (clarifying agent in fruit juices, drinking water, etc.), and 21 CFR 172.480 (anticaking agent in food).

The fate of the pesticide is adequately understood and an adequate analytical method for silica (AOAC, 12th Edition, Method 3.005 (1975), with microscopic identification of diatoms) is available for enforcement purposes.

No actions are pending against continued registration of the pesticide, nor are any other relevant considerations involved in establishing the regulation.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136). Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before December 10, 1981, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, (A-110), 401 M St., SW., Washington, DC 20460. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: November 10, 1981.

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Dated: October 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 193 is amended by adding a new § 193.135 to read as follows:

§ 193.135 Diatomaceous earth.

The food additive diatomaceous earth may be safely used in accordance with the following conditions. Application shall be limited solely to spot and/or crack and crevice treatments in food processing and food storage areas in accordance with the prescribed conditions:

(a) It is used or intended for use for control of insects in food processing and food storage areas: *Provided*, That the food is removed or covered prior to such use.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 81-32619 Filed 11-9-81; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

Drugs: Information Commonly Known; Revocation of Labeling Exemption

CFR Correction

In Title 21, Code of Federal Regulations, Parts 200 to 299, revised as of April 1, 1981, in Part 201, § 201.160 appearing on page 42, should be removed.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[PH-FRL-1980-4; FAP 1H5303/R86]

Diatomaceous Earth; Establishment of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation permitting the use of the insecticide diatomaceous earth in spot and/or crack and crevice treatments in feed processing and feed storage areas.

EFFECTIVE DATE: Effective on November 10, 1981.

ADDRESS: Written objections may be submitted to the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of July 1, 1981 (46 FR 34416) that International Diatoms Industries Ltd., 904 West 23rd St., Yankton, SD, has filed a food additive petition with EPA. This petition proposed that 21 CFR Part 193 be amended by establishing a regulation permitting the use of diatomaceous earth in spot and/or crack and crevice treatments in food processing and food storage areas. On September 16, 1981, the petitioner amended its proposal by expanding the exemption request to include the use of diatomaceous earth for spot and/or crack and crevice treatments in feed processing and feed storage areas pursuant to 21 CFR Part 561. Also on October 6, 1981, the petitioner amended the original proposal by deleting the requirement that diatomaceous earth be used only in conjunction with pyrethrin and piperonyl butoxide. A related document establishing a regulation for food handling establishments appears elsewhere in this issue of the **Federal Register**.

No comments or requests for referral to an advisory committee were received in response to this notice of filing.

The data reported in the petition and other relevant material have been evaluated. Although no residue chemistry data were submitted, the nature of residue is understood and would consist primarily of silicon dioxide. Little, if any, residues of diatomaceous earth in or on food or feed from the proposed use is expected. The proposed use is not likely to result in secondary residues in meat, milk, poultry or eggs.

In further support of this proposal, diatomaceous earth has been exempted as an active ingredient from the requirement of a tolerance for use against insects in stored grains pursuant to 40 CFR 180.1017. It has also been cleared under § 180.1001(c), wherein residues of adjuvant materials are exempted from the requirement of a tolerance when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Other relevant clearances include: 21 CFR 182.90 (substances migrating to food from paper and paperboard used to package foodstuffs), 21 CFR 573.340 (animal feeds as an inert anticaking agent), 21 CFR 240.1051 (clarifying agent in fruit juices, drinking water, etc.), and 21 CFR 172.480 (anticaking agent in food).

The fate of the pesticide is adequately understood and an adequate analytical method for silica (AOAC, 12th Edition, Method 3.005 (1975), with microscopic identification of diatoms) is available for enforcement purposes.

No actions are pending against continued registration of the pesticide, nor are any other relevant considerations involved in establishing the regulation.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before December 10, 1981, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, (A-110), 401 M St., SW., Washington, DC 20460. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities.

A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: November 10, 1981.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: October 29, 1981.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by adding a new § 561.145 to read as follows:

§ 561.145 Diatomaceous earth.

The feed additive diatomaceous earth may be safely used in accordance with the following conditions. Application shall be limited solely to spot and/or crack and crevice treatments in feed processing and feed storage areas in

accordance with the prescribed conditions:

(a) It is used or intended for use for control of insects in feed processing and feed storage areas: *Provided*, That the feed is removed or covered prior to such use.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 81-32620 Filed 11-9-81; 8:45 am]
BILLING CODE 6560-32-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 46

[Dept. Reg. 108.811]

Additional Requirements in the Case of Certain Nonimmigrant Aliens

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: Section 46.8 which was added to Part 46 of Title 22 of the Code of Federal Regulations on April 7, 1980 to impose certain additional requirements on nationals of Iran, other than Iranian Government officials travelling on Government business to the United Nations, is revoked in view of the release of the American hostages by the government of Iran.

EFFECTIVE DATE: This rule becomes effective November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Services, Bureau of Consular Affairs, Department of State, (202) 632-1980.

SUPPLEMENTARY INFORMATION: In view of the release of the hostages by the Government of Iran, it is no longer in the national interest to review outstanding visas issued to nationals of Iran prior to April 7, 1980 or to restrict the entry into the United States of Iranians holding valid visas issued by consular officers of the United States. Because the regulations in this order are issued with respect to a foreign affairs function of the United States, the exemptions under section 1(a)(2) of the Executive Order 12291 of February 17, 1981 are applicable to these regulations. In addition, compliance with the provisions of the Administrative Procedures Act is unnecessary because the regulations remove restrictions previously imposed on certain classes of aliens. In light of these circumstances § 46.8 of Title 22 is revoked.

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

§ 46.8 [Removed]

Accordingly, 22 CFR Part 46 is amended by removing § 46.8.

(Sec. 215(a)(1) 92 Stat. 971; 8 U.S.C. 1185)

Dated: September 3, 1981.

Alexander M. Haig, Jr.,

Secretary of State.

Dated: September 22, 1981.

William French Smith,

Attorney General.

[FR Doc. 81-32508 Filed 11-9-81; 8:45 am]
BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 6a

[T.D. 7794]

Mortgage Subsidy Bonds; Temporary Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the tax-exempt status of interest on mortgage subsidy bonds. These regulations affect all purchasers and governmental issuers of tax-exempt housing bonds. The changes made by these regulations are necessary to modify certain provisions contained in the present temporary regulations. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATE: These temporary regulations are effective for governmental obligations issued after April 24, 1979.

FOR FURTHER INFORMATION CONTACT: Harold T. Flanagan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to mortgage subsidy bonds under section 103A of the Internal Revenue Code of 1954. These amendments modify Treasury Decision 7780, published in the **Federal Register** for July 1, 1981 (46 FR 34311), which provided regulations under section 103A of the Code. Section 103A was enacted by the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499, 94 Stat. 2660). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 103A of the Internal Revenue Code of 1954 provides that a mortgage subsidy bond shall be treated as an obligation not described in section 103(a) (1) or (2). As such, the interest on a mortgage subsidy bond is not excludable from gross income. However, under section 103A(b)(2) a qualified mortgage bond and a qualified veterans' mortgage bond shall not be treated as a mortgage subsidy bond, and the interest thereon is excludable from gross income.

The definition of the term "proceeds" provided in § 6a.103A-1(b)(5) is amended so as to treat participation fees paid by a financial institution and retained by the issuer as original proceeds of the issue. Section 6a.103A-2(i)(3)(iv) is correspondingly amended by deleting the rule which treats such fees as investment proceeds of nonmortgage assets. An issuer, rather than rebating such fees to the mortgagors, may use the fees for any purpose for which original proceeds may be used, including payment of debt service or financing of owner-occupied residences. Accordingly, such fees and the earnings from the investment of the fees are subject to all of the requirements of section 103A. Further, the fees are subject to the requirements of section 103(c).

The temporary regulations relating to mortgage eligibility requirements are amended by providing that compliance with certain administrative procedures, such as examination of an applicant's income tax returns and receipt of an affidavit from an applicant, will be considered to satisfy the requirements of § 6a.103A-2(c)(1)(ii). These "safe harbors" will allow issuers to rely conclusively on the information received from the applicant at the time that the mortgage is executed or assumed. Further, if, after such execution or assumption, additional information demonstrates the failure of such mortgage to comply with the mortgage eligibility requirements there will be no retroactive effect for purposes of § 6a.103A-2(c)(1)(ii).

Section 6a.103A-2(d)(3) is amended by providing new rules for determining whether a residence is used in a trade or business. A residence which is primarily

intended to be used in a trade or business does not meet the requirements of paragraph (d). Any use, however, which fails to give rise to a deduction allowable for certain expenses incurred in connection with the business use of a home pursuant to section 280A shall not be treated as use in a trade or business. Further, if more than 15 percent of the total area of a residence is expected to be used primarily in a trade or business then such residence does not meet the requirements of paragraph (d).

Finally, the definition of "temporary initial financing" provided in § 6a.103A–2(j)(2) is amended by increasing the maximum term of such financings from 6 months to 24 months.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public. These regulations will not impose substantial new reporting or recordkeeping requirements.

Drafting Information

The principal author of these temporary regulations is Harold T. Flanagan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Adoption of Amendments to the Regulations

The amendments to the temporary regulations contained in 26 CFR Part 6a are as follows:

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Paragraph 1. Paragraph (b)(5) of § 6a.103A–1 is revised to read as follows:

§ 6a.103A–1 Interest on mortgage subsidy bonds.

* * * * *

(b) *Definitions.* * * *

(5) *Proceeds.* The term "proceeds" includes original proceeds and investment proceeds. The terms "original proceeds" and "investment proceeds" shall have the same meaning as in § 1.103–13(b)(2). Unless otherwise provided in § 6a.103A–2 or this section, however, amounts earned from the investment of proceeds which are derived from qualified mortgage bonds in nonmortgage investments may not be commingled for the purposes of accounting for expenditures with other non-bond amounts, and such proceeds are investment proceeds even though not treated as investment proceeds for purposes of section 103(c). Repayments of principal on mortgages shall be treated as proceeds of an issue. Amounts (such as State appropriations or surplus funds) which are provided by the issuer or a private lender in conjunction with a qualified mortgage bond or a qualified veterans' mortgage bond shall not be treated as proceeds of a mortgage subsidy bond under this section. However, fees which are paid by a participating financial institution pursuant to an agreement with the issuer whereby such institution receives the right to originate or service mortgages and which are retained by an issuer are treated as original proceeds of the issue. Amounts provided by the issuer or a private lender may be treated as proceeds of an issue for purposes of section 103(c).

* * * * *

Par. 2. Section 6a.103A–2 is amended by revising paragraph (c)(1)(ii) and example (1) of paragraph (c)(1)(iv) and by adding new example (4) to paragraph (c)(1)(iv), by revising paragraph (d)(3), by revising paragraph (i)(3)(iv), and by revising paragraph (j)(2). These revised and new provisions read as follows:

§ 6a.103A–2 Qualified mortgage bonds.

* * * * *

(c) *Good faith compliance efforts*—(1) *Mortgage eligibility requirements.* * * *

(ii) Ninety-five percent or more of the lendable proceeds (as defined in § 6a.103A–2(b)(1)) that were devoted to owner financing were devoted to residences with respect to which, at the time the mortgages were executed or assumed, all such requirements were met. In determining whether the proceeds are devoted to owner financing which meets such requirements, the issuer may rely on an affidavit of the mortgagor that the property is located within the issuer's jurisdiction and an affidavit of the mortgagor and the seller that the requirements of § 6a.103A–2(f) are met. The issuer may also rely on his own or his agent's examination of copies of income tax returns which were filed with the Internal Revenue Service and which are provided by the mortgagor or obtained by the issuer or loan originator in accordance with the procedures set forth in § 301.6103(c)–1 which indicate that, during the preceding 3 years, the mortgagor did not claim deductions for taxes or interest on indebtness with respect to real property constituting his principal residence, in addition to an affidavit of the mortgagor that the requirements of § 6a.103A–2(e) are met. The mortgagor may also provide the issuer or his agent with an affidavit that the mortgagor was not required to file such return in accordance with section 6012 during one or all of the preceding 3 years. Where a particular mortgage fails to meet more than one of these requirements, the amount of the mortgage will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in the mortgage must be corrected pursuant to paragraph (c)(1)(iii) of this section.

* * * * *

(iv) *Examples.* The following examples illustrate the application of paragraph (c)(1) of this section:

Example (1). State X issues obligations to be used to provide mortgages for owner-occupied residences. X contracts with bank M to originate and service the mortgages. The trust indenture and participation agreement require that the mortgages meet the mortgage eligibility requirements referred to in paragraph (c)(1). In addition, pursuant to procedures established by X, M obtains a signed affidavit from each applicant that the applicant intends to occupy the property as his or her principal residence within 60 days after the final closing and thereafter to maintain the property as his or her principal residence. Further, M obtains from each applicant copies certified by the Internal Revenue Service of the applicant's Federal tax returns for the preceding 3 years and examines each statement to determine whether the applicant has claimed a deduction for taxes on real property which was the applicant's principal residence pursuant to section 164(a)(1) or a deduction pursuant to section 163 for interest paid on a mortgage secured by real property which was the applicant's principal residence. Also in accordance with X's procedures, M obtains from each applicant a signed affidavit as to facts that are sufficient for M to determine whether the residence is located within X's jurisdiction and affidavits from the seller and the buyer that the purchase price and the new mortgage requirements have been met, and neither M nor X knows or has reason to believe that such affidavits are false. The mortgage instrument provides that the mortgage may not be assumed by another person unless X determines that the principal residence, 3-year, and purchase price requirements are met at the time of the assumption. These facts are sufficient evidence of the good faith of the issuer and meet the requirements of paragraph (c)(1)(i). Further, if 95 percent of the lendable proceeds are devoted to owner financing which according to these procedures meet the requirements of paragraphs (d), (e), (f), and (i), then the issue meets the requirements of paragraph (c)(1)(ii).

* * * * *

Example (4). The facts are the same as in Example (1), except that the issuer requires copies of the applicant's signed tax returns that were filed with the Internal Revenue

Service for the preceding 3 years but does not require that such returns be certified. If 95 percent of the lendable proceeds are devoted to owner financing which according to these procedures meet the requirements of paragraphs (d), (e), (f), and (i), then the issue meets the requirements of paragraph (c)(1)(ii).

* * * * *

(d) *Residence requirements.* * * *

(3) *Principal residence.* Whether a residence is used as a principal residence depends upon all the facts and circumstances of each case, including the good faith of the mortgagor. A residence which is primarily intended to be used in a trade or business shall not satisfy the requirements of this paragraph. For purposes of the preceding sentence, any use of a residence which does not qualify for a deduction allowable for certain expenses incurred in connection with the business use of a home under section 280A shall not be considered as a use in a trade or business. Except for certain owner-occupied residences described in paragraph (b)(6) of § 6a.103A–1, a residence more than 15 percent of the total area of which is reasonably expected to be used primarily in a trade or business does not satisfy the requirements of this subparagraph. Further, a residence used as an investment property or a recreational home does not satisfy the requirements of this subparagraph.

* * * * *

(i) *Arbitrage and investment gain.* * * *

(3) *Nonmortgage investment.* * * *

(iv) *Nonmortgage investments.* A nonmortgage investment is any investment other than an investment in a qualified mortgage. For example, a mortgage-secured certificate or obligation is a nonmortgage investment. Investment earnings from participation fees (described in § 6a.103A–1(b)(5)) are treated as investment proceeds on nonmortgage investments unless such fees are used to pay debt service or to finance owner occupied residences.

* * * * *

(j) *New mortgages.* * * *

(2) *Exceptions.* For purposes of this paragraph, the replacement of—

(i) Construction period loans,

(ii) Bridge loans or similar temporary initial financing, and

(iii) In the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less.

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)).

Dated: November 4, 1981

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 81-32480 Filed 11-6-81; 11:48 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2643

Variances for Sale of Assets; Procedures for Individual and Class Variances or Exemptions; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: In a document published September 17, 1981, 46 FR 46127, regarding Variances for Sale of Assets, Part 2643, language regarding approval of the reporting requirements by the Office of Management and Budget was inadvertently omitted. This document corrects that omission.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning, Suite 7300, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4862. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION: At p. 46127, column 3, add a fourth paragraph to the SUMMARY section, to read as follows: "In accordance with the Paperwork Reduction Act, the Office of Management and Budget has approved the reporting requirements of Part 2643 for use through 9–30–83. OMB No. 1212–0021."

Issued in Washington, D.C. on this 5th day of November, 1981.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81-32550 Filed 11-9-81; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)—Amendment No. 9

AGENCY: Office of the Secretary, Defense.

ACTION: Amendment of final rule.

SUMMARY: This amends DoD Regulation 6010.8–R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This amendment implements language contained in Department of Defense Appropriations Act, FY 1981, Pub. L. 96–527. The amendment will allow benefit consideration for postmastectomy reconstruction of the breast when the mastectomy was performed as a result of carcinoma, fibrocystic disease, other nonmalignant tumors, or traumatic injuries.

EFFECTIVE DATE: This amendment is retroactively effective to services rendered on or after October 1, 1980.

FOR FURTHER INFORMATION CONTACT: James N. Snipe, Chief, Policy Division, OCHAMPUS, telephone (303) 361–8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Breast reconstruction following mastectomy was, in the past, an uncommon and controversial procedure. Professional concern about the possibility of disease recurrence, a high rate of complication and the technical difficulties imposed by radical mastectomy militated against widespread acceptance of the reconstructive procedure.

In recent years, however, there has been a change in attitude regarding management of breast disease. At one time, radical mastectomy was the procedure of choice for breast cancer. Improved diagnostic techniques, including educational programs encouraging self-examination which enable earlier diagnosis and treatment have led to the development of less radical procedures. Furthermore, women

in increasing numbers are refusing to accept radical mastectomy simply because it is recommended.

The less radical mastectomy procedures have made reconstruction technically feasible. There is also a greater awareness that the possibility of reconstruction has made women better able to accept amputation of a breast when medically indicated.

It seems reasonable to assume that better identification of persons at risk, and improved methods of diagnosis combined with the greater acceptability of mastectomy because of subsequent reconstruction, may lead to early treatment which should result in an increase in cures. More cures reduce morbidity and mortality and, ultimately, costs, even when the additional costs of reconstruction are considered. These factors have helped to remove most of the professional concerns about the appropriateness of postmastectomy breast reconstruction and this change in the professional environment is reflected in the third party benefits available for this procedure.

As a result, the Department of Defense Appropriations Act, 1981, (Pub. L. 96-527) authorizes CHAMPUS coverage of postmastectomy breast reconstructive surgery to overcome the effects of trauma or disease.

Section 199.10 (e)(8)(i) of this part sets forth the limited CHAMPUS benefits provided in connection with cosmetic, reconstructive and/or plastic surgery as follows:

1. Correction of a congenital anomaly; or

2. Restoration of body form following an accidental injury; or

3. Revision of disfiguring and extensive scars resulting from neoplastic surgery.

As a result of the enactment of Pub. L. 96-527, paragraph (e)(8)(i) must be amended to include postmastectomy reconstructive surgery to overcome the effects of trauma or disease.

Finally, in order to avoid any potential conflict in interpretation, paragraph (e)(8)(v)(*c*) of this section is also amended.

As authorized under Title 5, United States Code, section 553(b)(B), the final regulation is being published and no previous public comment has been requested. It was determined that the benefit has been expanded through Congressional legislation in December 1980, and it is not in the public interest to delay the implementation through the publication of a proposed rule.

PART 199—IMPLEMENTATION OF THE CIVILIAN AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Accordingly, 32 CFR Part 199 is amended reading as follows:

Section 199.10 is amended as follows:

a. By removing the existing paragraph (e)(8)(i)(*d*) and adding a new paragraph (e)(8)(i)(*d*).

b. By adding a new paragraph (e)(8)(i)(*e*).

c. By removing the existing paragraph (e)(8)(ii)(*c*) and adding a new paragraph (e)(8)(ii)(*c*).

d. By removing the existing paragraph (e)(8)(v)(*c*) and adding a new paragraph (e)(8)(v)(*c*).

§ 199.10 Basic program benefits.

* * * * *

(e) * * *

(8) * * *

(i) * * *

(*d*) Reconstructive breast surgery following a medically necessary mastectomy performed for the treatment of carcinoma, fibrocystic disease, other nonmalignant tumors, or traumatic injuries.

(*e*) Generally, benefits are limited to those cosmetic, reconstructive and/or plastic surgery procedures performed no later than December 31 of the year following the year in which the related accidental injury or surgical trauma occurred, except for authorized post-mastectomy breast reconstruction which may be delayed up to three (3) years post mastectomy. Also, special consideration for exception will be given to cases involving children who may require a growth period.

(ii) * * *

(*c*) In addition to whether or not they would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty (except as specifically authorized in (e)(8)(i)(*d*) of this section), surgical insertion of prosthetic testicles and the penile implant procedure are specifically excluded.

* * * * *

(v) * * *

(*c*) Augmentation mammoplasties, except for those performed as a part of post-mastectomy breast reconstruction as specifically authorized in (e)(8)(i)(*d*) of this section.

* * * * *

(10 U.S.C. 1086, 5 U.S.C. 301)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 5, 1981.

[FR Doc. 81-32551 Filed 11-9-81; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

33 CFR Parts 257, 265, 266, 305, 380, and 384

[ER 1105-2-32; ER 1105-2-81; ER 1105-2-82; ER 1105-2-460; ER 1105-2-800; ER 1105-2-811]

Internal Water Resources Planning; Cancellation of Regulations

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule; revocation.

SUMMARY: On March 27, 1981, the Civil Works Planning Division, Office of the Chief of Engineers completed an audit of all its internal water resources planning regulations as a first phase of a Regulation Reform Action Program (RRAP). The objectives of RRAP are to streamline and consolidate planning guidance. As a result of the work accomplished in Phase II, the US Army Corps of Engineers, DOD hereby gives notice that its regulations covering approval of Phase I general design memoranda, planning assistance, project deauthorization, cultural resources, public involvement policies, and A-95 coordination are revoked and removed.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Johnson, Planning Division, Directorate of Civil Works, US Army Corps of Engineers, HQ, USACE (DAEN-CWP), WASH, DC 20314, telephone (202) 272-0146.

SUPPLEMENTARY INFORMATION:

33 CFR Part 257, Approval of Phase I General Design Memoranda, delegates authority for approval. The Phase I General Design Memorandum has been discontinued as a reporting requirement except when specifically authorized by Congress. An engineer regulation on approval authority is no longer required.

33 CFR Part 265, Planning Assistance to States, provides guidance for implementation of section 22, Pub. L. 93-251. This regulation is no longer required. The programs that provide planning assistance to States will be continued through the normal budgetary process.

33 CFR Part 266, Project Deauthorization Review Program, provides guidance for implementation of section 12, Pub. L. 93–251. This regulation is no longer required. The annual reporting requirement for division commanders to submit recommendations to Commander, USACE will be reestablished in an abbreviated Form in FY 1982.

33 CFR Part 305, Identification and Administration of Cultural Resources, provides detailed procedures for identification, preservation, and mitigation of losses of cultural resources related to water resources development. This level of detail has been determined inappropriate as directive guidance. A new regulation, which will contain a minimum of directive guidance and which will be result-oriented, will be issued in FY 1982. Pending the issuance of the new regulation, FOAs shall continue to comply with the laws and executive orders on cultural resources matters.

33 CFR Part 380, Public Involvement: General Policies, establishes general policy for public involvement in Civil Works planning. General policies on public involvement are contained in the Water Resources Council Principles and Standards for Water and Related Land Resources (18 CFR Part 711). Since the WRC rule is applicable to Corps feasibility studies, this regulation is no longer required.

33 CFR Part 384, A–95 Clearinghouse Coordination, provides procedural guidance for coordinating planning activities with state and areawide clearinghouses. Since OMB Circular A–95 contains substantial guidance on coordination with A–95 Clearinghouses, and since Part II of the Circular is applicable to Corps planning activities, FOAs will use the Circular directly in determining appropriate coordination to meet the requirements and intent of the OMB guidance. This regulation is no longer required.

The authority citations for these removed parts are as follows:

For Part 257:

(R.S. 161; 5 U.S.C. 301)

For Part 265:

(Sec. 22, Pub. L. 93–251, Water Resources Development Act of 1974 (88 Stat. 20))

For Part 266:

(Sec 22, Pub. L. 93–251, Water Resources Development Act of 1974 (88 Stat. 16))

For Part 305:

(Pub. L. 93–291) Preservation of Historic and Archeological Data (88 Stat. 174); Pub. L. 89–655, National Historic Preservation Act of 1966 (80 Stat. 915))

For Part 380:

(Water Resources Council, Principles and Standards for Planning Water and Related Land Resources, (18 FR 24778, Sept. 10, 1973))

For Part 384:

(Office of Management and Budget Circular A–95 (revised) dated Jan. 2, 1976, (41 FR 2052, Jan. 13, 1976))

PART 257—APPROVAL OF PHASE I GENERAL DESIGN MEMORANDA [RESERVED]

PART 265—PLANNING ASSISTANCE TO STATES [RESERVED]

PART 266—PROJECT DEAUTHORIZATION REVIEW PROGRAM [RESERVED]

PART 305—IDENTIFICATION AND ADMINISTRATION OF CULTURAL RESOURCES [RESERVED]

PART 380—PUBLIC INVOLVEMENT: GENERAL POLICIES [RESERVED]

PART 384—A–95 CLEARINGHOUSE COORDINATION [RESERVED]

Therefore, 33 CFR Parts 257, 265, 266, 305, 380 and 384 are hereby removed and reserved.

Dated: October 28, 1981.

For the Chief of Engineers.

Richard T. Robinson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 81–32584 Filed 11–9–81; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–1963–5]

Approval and Promulgation of Implementation Plans; Alabama: Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice gives approval to Alabama's prevention of significant deterioration (PSD) regulations, which were proposed for approval on July 22, 1981 (46 FR 37723). Such regulations were required of all States by EPA's promulgation of revised PSD regulations on August 7, 1980 (45 FR 52676). Alabama's regulations comply with the latest guidance issued by EPA to assist States in preparing State implementation plan (SIP) revisions for PSD.

EFFECTIVE DATE: December 10, 1981.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: W. W. Jones, EPA Region IV, Air Programs Branch, at the above listed address and phone 404/881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On December 5, 1974, EPA published regulations under the 1970 version of the Clean Air Act for the prevention of significant air quality deterioration (PSD). These regulations established a program for protecting areas with air quality cleaner than the national ambient air quality standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain immediately effective changes in EPA's PSD regulations, the new Clean Air Act, in sections 160–169, contains comprehensive new PSD requirements. These are to be incorporated by States into their implementation plans. On June 19, 1978 (43 FR 26380), EPA promulgated further guidance. On August 7, 1980 (45 FR 52676) EPA promulgated the latest guidance to assist States in preparing State implementation plan (SIP) revisions meeting the new requirements. The State has complied with these requirements by adopting additions to Chapter 16 of the Alabama Air Pollution Control Commission's Rules and Regulations; these additions were submitted to EPA for approval as a SIP revision on January 29, 1981. After thorough review by EPA, the Alabama PSD regulations have been determined to be equivalent to EPA's PSD regulations. In addition, the State has full delegation of authority under these same regulations to carry out the PSD program in Alabama.

Approval of Alabama's PSD regulations was proposed on July 22, 1981 (46 FR 37723); no comments were received in response.

Action

EPA is today approving the Alabama submittal as satisfying the requirements of an acceptable plan for implementing PSD.

Under section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this revision is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before January 11, 1982. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely ratifies State actions and imposes no new burden on sources.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Note.—Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 161, Clean Air Act (42 U.S.C. 7410 and 7471))

Dated: November 3, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart B—Alabama

1. Section 52.50, is amended by adding paragraph (c)(32) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(32) Regulations providing for prevention of significant deterioration (additions to Chapter 16 of the Alabama regulations), submitted on January 29, 1981, by the Alabama Air Pollution Control Commission.

§ 52.60 [Amended]

2. In § 52.60, *Significant deterioration of air quality*, paragraphs (a) and (b) are removed and reserved.

[FR Doc. 81-32468 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-FRL-1958-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri submitted revisions to its State Implementation Plan (SIP) on February 12, 1981. These revisions addressed two conditions previously promulgated by EPA. One of these conditions required the East-West Gateway Coordinating Council (EWGCC) to complete an analysis of alternative transportation measures and to secure commitments from responsible agencies to specific transportation strategies which will achieve emission reductions for motor vehicle-related pollutants in the St. Louis nonattainment area. The other condition required EWGCC to provide the results of the requisite carbon monoxide (CO) dispersion model.

On July 10, 1981, EPA published a notice proposing to approve the state's submission. One commentor responded to the notice. EPA is taking final action today to approve these revisions to the Missouri SIP.

EFFECTIVE DATE: This promulgation is effective December 10, 1981.

ADDRESSES: Copies of the state submission, the EPA-prepared technical evaluation and the comments received, are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460; Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101; East-West Gateway Coordinating Council, 112 North Fourth Street, St. Louis, Missouri 63102. A copy of the state submission is also available at the Office of the **Federal Register**, 1100 L Street, N.W., Room 8401, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at (816) 374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: On April 9, 1980, EPA conditionally approved certain elements of Missouri's SIP with regard to the requirements of Part D of the Clean Air Act, as amended. The reader is referred to the **Federal Register** notice published on that date (45 FR 24140) for a detailed discussion of that action. In the April 9 rulemaking, EPA approved an extension until 1987 for attainment of the carbon monoxide (CO) and ozone standards in the St. Louis area. As a result, the State will be required to submit a SIP revision in 1982 which demonstrates attainment of these standards by 1987. This 1982 SIP revision is in addition to the submission required to meet the April 9 conditions on approval of the SIP.

Section 172(b)(11)(C) requires the SIP to identify specific measures necessary for attainment of the CO and ozone air quality standards, as necessary, by 1987. This includes transportation control measures as specified in section 110(a)(3)(D). One of the conditions promulgated by EPA in the April 9, 1980, action required EWGCC to complete an analysis of alternative transportation measures and to secure commitments from responsible agencies to specific transportation strategies which will achieve the emission reductions of 6.45% specified in the SIP for the St. Louis nonattainment area. The other condition required EWGCC to provide the results of the requisite CO dispersion modeling committed to in the approved section 175 (transportation control planning grant) work plan. These conditions were due January 31, 1981.

On February 12, 1981, a package of transportation measures and commitments, as well as a draft report containing the results of the CO dispersion modeling, were submitted to EPA. (The final CO dispersion modeling report was submitted on April 28, 1981, and is substantially similar to the draft.) For a further discussion of the submission, the reader should consult EPA's proposed rulemaking of July 10, 1981 (46 FR 35686). One comment was received in response to the proposed rulemaking and a detailed response is included in the technical support document.

Among the transportation projects which EWGCC submitted were traffic flow improvements including traffic signal modifications, intersection and interchange improvements, construction of new highway facilities, widening of existing roads and highways, resurfacing of existing roads, and

railroad grade separations. The submission provides an estimate of the average vehicle speed increases that will result from these traffic flow improvement projects. Based upon these projected speed increases, the submission provides an evaluation of the overall resultant emission reductions. In the proposed rulemaking of July 10, EPA noted that EWGCC had not made a project-specific determination of emission benefits. Subsequently, EWGCC has agreed to submit the appropriate analyses as part of the 1982 SIP revision. A more detailed discussion of this agreement has been incorporated into the technical support document.

Action

EPA approves the overall demonstration of 6.5% reduction in emissions outlined in the February 12, 1981 SIP submission as meeting the two conditions, explained earlier in the present notice, on the 1979 SIP.

If the air quality benefits of these measures cannot be demonstrated adequately, other measures which demonstrate quantifiable air quality benefits must be provided for the 1982 SIP.

There are other conditions promulgated by EPA which must be addressed by the state before the Missouri SIP can be fully approved. Until all conditions are met, conditional approval of the SIP will continue.

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not "major" because it only approves state actions and imposes no additional substantive requirements which are not currently applicable under state law. Hence it is unlikely to have an annual effect on the economy of $100 million or more, or to have other significant adverse impacts on the national economy.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Note.—Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. The reason for this determination is that it only approves a state action. It imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Secs. 110 and 172, Clean Air Act, as amended)

Dated: November 3, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart AA—Missouri

1. Section 52.1320 is amended by adding paragraph (c)(31) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified:

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(31) A report from the East-West Gateway Coordinating Council outlining commitments to transportation control measures, an analysis of those measures, and the results of the carbon monoxide dispersion modeling, submitted on February 12 and April 28, 1981, is approved as meeting the applicable condition on the SIP.

§ 52.1324 [Amended]

2. Section 52.1324 is amended by removing paragraphs (c)(1) and (c)(1)(iii) (A) and (B).

[FR Doc. 81-32689 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 120

[FRL 1935-6]

Water Quality Standards; Welch Creek, North Carolina; Withdrawal of Regulation

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of a rule.

SUMMARY: EPA is withdrawing a rule that established Federal water quality standards for a segment of Welch Creek located near Plymouth, North Carolina. EPA believes that revisions to North Carolina water quality standards which reinstate the prior State regulation make the Federally promulgated rule unnecessary.

DATE: This withdrawal is effective December 10, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. R. F. McGhee, EPA, Region IV, 345 Courtland Street, Atlanta, GA 30365, (404) 881-4793.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1979, EPA proposed a dissolved oxygen criterion for Welch Creek (44 FR 59565). The Agency proposed to nullify the zero dissolved oxygen criterion assigned by the State of North Carolina to the subject segment of Welch Creek and, in effect, reestablish the State's previous criterion of 5 mg/l average, 4 mg/l minimum (with the provision that swamp waters may have lower values if caused by natural conditions). The final rule was promulgated on April 1, 1980 (45 FR 21246).

On June 12, 1980, the North Carolina Division of Environmental Management reinstated the Statewide oxygen criterion (average of 5 mg/l-minimum 4 mg/l) for Welch Creek. This revision was approved by EPA Region IV on August 18, 1980. Accordingly EPA is withdrawing 40 CFR 120.43, the rule that reinstated the oxygen criterion for Welch Creek because it is now duplicative of the State criterion.

Availability of Record

The administrative record for the consideration of North Carolina's revised water quality standards is available for public inspection and copying at the Environmental Protection Agency, Region IV Office, Water Division, 345 Courtland Street, N.E. Atlanta, Georgia 30308 during normal weekday business hours of 8:00 a.m. to 4:30 p.m. The approved North Carolina water quality standards and the State's administrative record is available for inspection and copying from the Criteria and Standards Division (WH-585), 401 M Street, S.W., Washington, D.C. 20460 in Room 2818 of the Mall.

Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulatory action is not major because it withdraws a Federal regulation that now duplicates a State regulation. It imposes no new regulatory requirements.

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Administrative Procedure

Because the State of North Carolina has promulgated identical standards to those which are withdrawn by this regulatory action, the Agency has determined that notice and public procedure on this action are unnecessary. See 5 U.S.C. 553(b)(B).

(Sec. 303 (33 U.S.C. 1313), Clean Water Act (Pub. L. 92-500, as amended (33 U.S.C. 1251 *et seq.*))

Dated: October 23, 1981.

Anne M. Gorsuch,

Administrator.

PART 120—WATER QUALITY STANDARDS

§ 120.43 North Carolina [Reserved]

Section 120.43 of Part 120 of Chapter I, Title 40 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 81-32514 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Docket No. 20990; RM-1617; RM-2152; RM-2223; FCC 81-509]

Radio Frequency Devices; Amendment To Provide for Remote Control and Security Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order expands the present low power rules for radio control and security alarm devices. The new rules are in response to industry petition requesting greater flexibility of the Commission's rules for operation of low power communication devices in remote control and security applications. The new rules will provide for the following control and security alarm applications: radio control door opener, camera shutter, remote operation of lights, radio control of a fire, burglar, security, or other emergency alarm systems, and others.

DATES: Effective: December 10, 1981.

ADDRESS: Federal Communications Commission.

FOR FURTHER INFORMATION CONTACT: Mr. Sydney P. Bradfield, Office of Science and Technology, RF Devices Branch, Washington, DC 20554, (202) 653-8247, Room 8313.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: October 22, 1981.

Released: November 3, 1981.

1. A Notice of Proposed Rule Making (NPRM) in this proceeding was adopted on November 10, 1976 and released on November 24, 1976.[1] This NPRM specified that comments be submitted on or before December 27, 1976, and reply comments on or before January 6, 1977. These dates were extended several times in response to numerous requests for additional time to file comments. The final date for reply comments was extended to and including September 28, 1977 by Order of the Commission on July 20, 1977. The Commission received many comments in response to the NPRM largely from the Security and Garage Door Opener Industries.[2]

2. For the reasons discussed herein, this Report and Order adopts new regulations for radio control devices. A major application of radio control is found in wireless security alarm systems. Accordingly, the new rules provide for radio control of a security alarm in addition to the numerous other applications for radio control such as the opening and closing of a door or camera shutter, remote operation of lights, etc.

Background of This Proceeding

3. The NPRM in this proceeding was issued in response to three petitions which requested amendment of Part 15 of the FCC Rules to allow operation of limited range, wireless security devices.[3] The Security Equipment Industry Association (SEIA) and Stanley Works petitions basically stated that the present Part 15 rules do not provide for the requirements of a wireless security system which is typically composed of transmitters located at fire or burglar sensors around a home or business. When activated during an emergency condition, these transmitters emit an encoded radio frequency signal to a central receiver. The receiver extracts information from the signal about the type of emergency and initiates an alarm and/or an automatic telephone dialer. Personal alert transmitters carried by individuals can also be a part of this security system. Use of transmitters for radio control purposes reduces the cost of a security system since the costly installation of wiring is avoided. Radio Control also makes the operation of personal alert systems possible.

4. The petition filed by the Property Protection Service of America was quite different from the other two. This petition requested that the Commission provide for a system, called "Alarmtrace", which is composed of a miniaturized transmitter hidden within a valuable to be protected such as a stack of bank bills. If the valuable is displaced, the transmitter is activated and a continuous signal is emitted for 4 to 6 hours so that the criminal can be tracked and apprehended. Considering that the Commission has recently considered and authorized tracking systems in a separate proceeding, additional special provisions for the "Alarmtrace" will not be considered herein and the Property Protection Service of America petition is accordingly denied.[4]

5. The Commission's Rules in Part 15 Subpart D allow operation of general application low power communication devices (transmitters) without an individual license subject to certain conditions. For transmitters operating above 70 MHz, these conditions are set out in § 15.120 which specifies an emission limit and a restriction of the transmission time to a duration of one (1) second with a mandatory silent period of 30 seconds between transmissions. This duty cycle requirement was imposed to reduce the interference potential since transmitters operated continuously have a higher potential for causing interference to licensed services.

6. In its petitions, the wireless security alarm industry has pointed out that the duty cycle provision presents problems for security radio control transmitters. In security alarm systems, reliability is hampered because these systems must maintain a silent period of 30 seconds between transmissions. If a transmission was not received then the transmitter must wait 30 seconds before another transmission can be made. Further, expensive special circuitry must be incorporated into these transmitters to guarantee an off time of 30 seconds between transmissions. The problem is particularly acute in the case of medical alert systems used in health care and other kinds of portable emergency transmitters. Medical alert devices are generally worn by the sick, handicapped, or elderly in their homes to alert relatives or medical personnel of an emergency condition. The transmitters are activated either manually or automatically, and send a signal to a central receiver for initiation

[1] 41 FR 52705; 61 FCC 2d 10, Page 1174.

[2] A list of parties who filed comments in this proceeding is attached as Appendix A.

[3] RM-1617, filed by the Property Protection Service of America; RM-2152, filed by the Security Equipment Industry Association (SEIA); RM-2223, filed by Stanley Works.

[4] Report and Order in PR Docket 80-9 adopted by the Commission January 8, 1981 (FCC 81-1).

of an alarm or activation of an automatic telephone dialer. The difficulty is that during the one second permitted for transmission, the transmitter may be in a bad position or other conditions may exist where the signal does not get through. The Commission has issued waivers of the duty cycle restriction for certain medical alert systems during the pendency of this proceeding.[5]

7. The Commission, under Part 15 Subpart E, provides for the radio control operation of a garage door.[6] Many individuals and companies have requested that radio control devices used for other purposes, such as turning on lights remotely, operating a camera shutter, etc., be allowed to operate under the standards for garage door openers. These standards permit transmission for each activation of the transmit switch at a higher signal level than is currently allowed under § 15.120 which governs operation above 70 MHz generally. SEIA, supported by Stanley Works, asked that security systems also be allowed to operate at the emission levels of garage door openers to improve reliability. To further improve reliability, SEIA also requested provision in the rules so that periodic self-testing or supervision of security systems could be performed.

8. The Commission issued an NPRM in response to the petitions which proposed to delete § 15.120 and the existing provisions for garage door openers and to establish a set of requirements for radio control and security alarm devices. The NPRM proposed among other things specific bands for use by these devices and prohibited non-intermittent emissions such as voice, data, and periodic transmissions at regular predetermined intervals.

Comments in Response to NPRM

9. A total of 44 parties filed comments and 7 parties filed reply comments in this proceeding. The majority of the commenters, especially those representing the security and garage door opener industries, accused the Commission of being overly conservative and much too stringent in the proposals. Manufacturers of garage door openers commenting in this proceeding unanimously objected to the proposed reduction of available frequencies and emission levels from the existing requirements for garage door openers so that all radio control applications including security could be accommodated. For the most part, commenters from the security device industry alleged that the proposed regulations are not receptive to the need of the industry to deliver a low-cost means of protection to the public. While we acknowledge that the proposal may have been more conservative than the present rules (with exception of the duty cycle restriction), we felt it was justified at the time because of the expected new uses and proliferation of radiocontrol devices. Considering the comments, however, and the report and letters from NTIA (discussed in paragraph 13 below), we now believe the proposals can be relaxed to conform to the present technical requirements. There are a few exceptions, which are discussed below. The primary issues of the comments deal with emission limits, operating frequency bands, the requirement for intermittent operation and measurement of emission. These significant points in the comments are addressed in the following paragraphs along with the Commission's response to them.

Emission Limits

10. In the NPRM, the Commission proposed a maximum level of radiation on the fundamental frequency for each of the 10 frequency bands proposed for radio control and security alarm devices. The majority of the commenters objected to the proposed levels, particularly those levels in the 200–400 MHz band, by arguing that this consists of an effective reduction in field strength over that now in the rules. The contention is that the range of radio control equipment would be reduced to an unusable value. SEIA requests increased transmitter radiation levels over that proposed in the NPRM since the threat of interference is small due to the intermittent nature of the transmissions and signal attenuation from obstructing objects such as walls. The majority of the security industry commenters also argue that the reliability of the equipment would be threatened if the reduced radiation levels proposed are adopted. The garage door opener commenters state that there is no need to reduce the radiation emission levels of garage door opener transmitters currently allowed by the Rules since no harmful interference has occurred. The Door & Operator Dealers

[5] *Order Granting Waiver in Part* adopted March 27, 1980 (FCC 80–149) in response to petition for waiver filed by American Microlert, Inc.; *Order Waiving Duty Cycle for Invalid Security Alert System* (January 17, 1979, FCC 79–17).

[6] 47 CFR 15.181–15.187. The present rules for garage door openers were adopted in the Second Report and Order of FCC Docket No. 15657 (36 FR 6504, April 6, 1971), subsequently revised in a Memorandum Opinion and Order (36 FR 12905, July 9, 1971).

of America (DODA) and most of the garage door opener manufacturers who commented allege that the range restriction which would be brought about by the proposed radiation levels may render garage door openers useless as the current range and radiation standards are minimally adequate.

11. It should be made clear that devices which are permitted to operate without an individual license under Part 15, must operate on a secondary basis to licensed radio communication services. That is, Part 15 equipment may not cause harmful interference to licensed or government stations, and must accept any interference received. In setting standards for Part 15 devices, the viability of the device is secondary when it is determined that exceeding a certain level of emissions poses a high potential for interference. The radiated emissions levels for garage door opener transmitters were set to minimize the potential of interference to licensed communication services while providing for such operation.

12. Although the Commission proposed relatively higher levels of radiation above 900 MHz to encourage utilization of the lesser-used microwave frequencies, the security and door opener industries alleged that operation in the microwave region is not economically feasible at this time. Stanley Works supports the Commission's reasoning; however, Stanley believes that technology has not improved to the point to make systems operating above 900 MHz competitive in cost. According to the burglar alarm industry, cost is an extremely significant consideration because affordable security systems are needed for the general public.

13. The Office of Telecommunications Policy (OTP), now the National Telecommunications and Information Administration (NTIA), submitted a report dated November 1977 which recommended that the existing field strength emission limits for garage door openers be applied to all radio control and security devices with the exception of periodic emissions which should meet the levels set out in § 15.120.[7] In a letter dated May 22, 1981, the Commission was notified that NTIA still views the technical comments made in the OT Technical Memorandum 77-244 to be valid.[8] In view of the NTIA position and the comments, the Commission will permit all radio control devices including those in security applications to radiate on the fundamental frequency the field strength currently allowed for garage door openers. For periodic transmissions at regular predetermined intervals, the Commission agrees with NTIA that such emissions should be limited to lower levels and is adopting separate provisions for such devices in line with § 15.120. It is evident that periodic emissions have a greater potential for interference than do the intermittent non-regular signals transmitted in instances such as a security alarm; hence lower emission levels are called for.

Spurious and Harmonic Emissions

14. In the case of spurious and harmonic emissions, most of the comments were opposed to establishing limits. The existing rules for garage door openers and also § 15.120 do not specify a different set of limits for spurious and harmonic emissions. Those rules require that all emissions including the fundamental along with all spurious and harmonic meet one table of limits. The Door Operator and Remote Control Manufacturers Association (DORCMA) opposes any restriction of harmonic radiation below the current levels which it says already assures non-interference. The Commission in the NPRM proposed that out-of-band emissions be 20 dB down from the maximum allowed fundamental emission. Some manufacturers point out in the comments that this proposed out of band limit for spurious and harmonic emissions will require filtering of the type of oscillator used in these radio control devices generating extra cost with no benefit of interference reduction. It was also pointed out in the comments that the proposed out of band levels for the transmitter are actually lower than the proposed limits for receiver radiation. This situation was labelled as unfair since the receiver will operate continuously resulting in a greater interference potential as compared to the intermittent transmitter. The Communications Division of the Electronic Industries Association (EIA/CD) recommends that out of band emissions be limited to the level allowed for FM and TV receivers. OTP/NTIA recommended that out of band emissions meet the levels currently specified under § 15.120 for periodic transmissions. Each of these set of limits

[7] U.S. Department of Commerce/Office of Telecommunications, OT Technical Memorandum 77-244, "An Analysis of Remote Control and Security Devices in the 225-400 MHz Band", November 1977. Hereafter this memorandum will be referred to as OTP/NTIA recommendation.

[8] Letter from Leo A. Buss, Director, Office of Spectrum Plans and Policies, NTIA, to Robert L. Cutts, Chief, Spectrum Management Division, FCC; May 22, 1981. Hereafter this letter will be referred to as the NTIA letter.

allow higher levels of emissions for higher order harmonics, which only serve to pollute the spectrum further.

15. With the expected proliferation of low power transmitters brought about by expanding these Rules to include new uses of radio control devices, the Commission deems it necessary to place a limit on spurious and harmonic emissions. A limit that is 20 dB below the maximum allowed level on the fundamental is not an overly strict regulation for out of band spurious and harmonic emissions. For example, field disturbance sensors operating under Part 15 are required to limit spurious and harmonic emissions to a value that is 40 dB below the maximum allowed level on the fundamental. In addition, since the Commission is allowing control devices to operate on any frequency above 70 MHz with the exclusion of certain restricted bands (see discussion regarding bands in paragraphs 26–30), tighter control is needed on spurious and harmonic emissions that have a potential for causing interference. A radiation level below 15 μV/m at 3 meters will be considered to meet the transmitter and receiver emission requirement in the restricted bands on frequencies below 1000 MHz. This is a relaxation from the existing restricted band limit of 15 μV/m at 1 meter for garage door opener devices.

Receiver Emission

16. Most of the comments from the security and garage door opener industries were opposed to the Commission's proposal to reduce the radiated emission requirement for receivers associated with control devices in the NPRM. DORCMA states that emissions from garage door opener receivers are significantly attenuated by the garage building. Most of the comments state that existing levels for receiver emissions are sufficient to avoid harmful interference.

17. The Commission is very concerned about the emissions from radio control receivers because most receivers used in control applications will be of the superregenerative type. Such receivers emit RF energy over a wide band of frequencies and have the potential for causing harmful interference to radio communications. In addition, these receivers emit a greater level of RF energy than other types of receivers. This and the fact that the receivers are on continuously was recognized when special, more restrictive requirements were imposed on door opener control receivers in § 15.63(d).[9] With the additional proliferation of such receivers in other control applications such as security alarms, the Commission proposed in the NPRM an even greater restriction of radiation.

18. The American Radio Relay League (ARRL) and Chester L. Smith, P.E. commented against the use of superregenerative receivers since those receivers emit a much higher level of radiation than other types of receivers such as superheterodyne, direct conversion, or TRF (Tuned Radio Frequency) receivers. OTP/NTIA and Transcience Industries, Inc. agree that limits on receivers should be tightened; however, Transcience objects to the banning of superregenerative receivers. The garage door opener industry has used superregenerative receivers because receivers of that type are very inexpensive due to a relatively small number of parts needed for construction and exhibit good receiver sensitivity. SEIA and Rollins, among others, state that interference potential is the central issue and that a reduction in receiver limits below those for garage door opener control receivers is unnecessary due to a lack of interference problems in the past.

19. Emissions from any receiver are completely undesired, serve no useful purpose and may be a source of harmful interference to radio communications. The Commission's radiation limits for receivers are designed to minimize this interference potential. Limits are established based on a number of closely interrelated factors: expected proliferation of the receiver, the susceptibility of the device that will receive the interference, location or distance separating the interfering and susceptible device, and frequency spectra of the radiating receiver.

20. Due to the expected proliferation of superregenerative receivers used in radio control applications generally, such receivers should meet more stringent limits as compared to other receivers. The Commission is persuaded by the comments that the existing relatively tighter emission levels in § 15.63(d) for garage door opener receivers are adequate for control and security alarm receivers and further restriction as proposed in the NPRM does not seem warranted at this time. The Commission's intent is to permit manufacturers to use whatever receiver design they find cost effective and at the same time place minimum standards on their operation to avoid interference.

[9] Footnote 6: 2nd Report and Order and Memorandum Opinion and Order of Docket 15857.

Measurement of Emission

21. In the NPRM, the Commission proposed to require peak measurements of the emission from both the transmitter and receiver of a radio control device and specified emission levels in terms of peak. The Commission also proposed that the measurement procedure T–7001 [10] would be modified to accommodate peak measurements.

22. However, almost all commenters who responded to this issue, particularly SEIA, DORCMA, Stanley Works, and OTP/NTIA, objected to limits in terms of peak and urged the Commission to retain average emission limits. OTP/NTIA in particular states that use of the average limit results in more useful parameters for analysis purposes and is more indicative of interference potential.

23. SEIA and Rollins Protective Services (RPS) argue that a change to peak measurements should give rise to higher emission levels so that a reasonable correlation exists between the peak levels established and the average levels previously allowed. Many of the commenters state that the proposed levels are much more restrictive than the Commission's intent in the NPRM since measured values using a peak detector are much higher than average measured levels. ADEMCO favors peak measurements but states that the measurement procedure could yield any number of different values. ADEMCO contends that a clear relationship exists between peak and average values; however, a measurement bandwidth must be defined.

24. The Commission proposed going to peak levels so that a peak-reading spectrum analyzer which is widely available could be utilized in taking measurements. However, since the comments were overwhelmingly in favor of retaining average limits, the Commission is persuaded to specify all emissions from both the receiver and transmitter in terms of average levels. Manufacturers will be given the option of using a spectrum analyzer in the measurement procedure if they can show correlation to an average reading instrument.

25. Only a few comments were submitted which proposed a detailed measurement procedure for control and security alarm devices. Most of the comments recommended that the existing measurement procedure (T–

[10] FCC Report No. T–7001, "Procedure for Measurement of the Level of RF Energy Emitted by a Radio Control for a Door Opener", October 1, 1970.

7001) be retained. The Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) suggests a horizontal distance of 3 meters between the unit and measuring antenna. The Commission agrees with this and modifies the measurement procedure accordingly. In addition, all emission limits are to be specified at a distance of 3 meters. Gould Inc. states that measurement heights should reflect a typical installation height or a standard height. In the measurement procedure in Appendix C, a standard measurement height is specified for all control devices and associated receivers since actual installation heights can vary widely with the different types of control applications. The FCC measurement procedure for determining compliance of a control or security alarm device is attached to this Report and Order as Appendix C. The measurement procedure is to be published as FCC Measurement Procedure MP 1 and is entitled "FCC Methods of Measurements For Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers". The procedure is basically a revision to the existing procedure T-7001.

Frequency Bands

26. The security and garage door opener industries complain that the bands proposed by the Commission in the NPRM for remote control and security alarm devices are totally inadequate. The comments from these industries bascially state that mutual interference will result due to overcrowding of control devices especially garage door openers and security alarm devices into small frequency bands. DODA contends that deletion of frequencies for garage door openers will conflict with the growing need for openers in high density residential areas that require off-street parking. In addition, EIA/CD believes that jamming of security alarm devices by intruders could occur due to the band limitations. The Central Station Electrical Protection Association (CSEPA), which is a national association of operators of central station type alarm systems, recommends that some frequency bands be reserved for security devices only.

27. Scientific Atlanta and others suggest that the Commission keep its current practice of allowing operation on any frequency above 70 MHz with no restrictions to specific bands. All of the garage door opener manufacturers commenting are in favor of retaining the existing frequencies available for garage door openers. Both the security alarm and garage door opener industries note that the record of non-interference performance is good. Thus it is argued that the proposed reduction in available frequencies is unwarranted.

28. A few comments were in favor of the proposed more restrictive frequency bands for control equipment. EIA/CEG, which represents all major U.S. manufacturers of TV receivers and some manufacturers of FM broadcast receivers, supports the Commission's proposals in the NPRM especially the proposal to limit available frequencies of operation to specific bands. However, ARRL objects to the number of proposed frequency bands which are within the spectrum assigned to the Amateur Radio Service.

29. OTP/NTIA states in its report that the Commission was much too restrictive in the proposal. OTP/NTIA contends that from an interference reduction standpoint it would be better for these radio control devices to be spread throughout the frequency spectrum above 70 MHz. According to OTP/NTIA, in order to reduce the interference potential, caused by the cumulative effects of many control devices in a given area, it is more desirable to have such devices operate over a wide band as opposed to the relatively narrow bands proposed. However, OTP/NTIA recommends that operation of control devices be prohibited in certain sensitive frequency bands utilized by the government. In the 225 to 400 MHz band in which the study by OTP/NTIA was performed, 240 to 272 MHz and 328.6 to 335.4 MHz were recommended for exclusion from use by radio control equipment. In its May 1981 letter, NTIA has pointed out that the private sector does not have enough information concerning government use of the frequency spectrum. Manufacturers of radio control and security alarm devices must be made aware of the susceptibility issue and avoid frequency bands allocated for high powered government operation such as 420 to 450 MHz and 902 to 928 MHz, utilized for government radar operation. In this respect, NTIA strongly supports including Government allocations and footnotes in Part 2 of the FCC Rules. In addition, at NTIA's request, the Commission is including a provision (§ 15.204) in the new rules for control and security alarm equipment to bring this concern of susceptibility to the attention of manufacturers in this field and provide them with a means of obtaining information on government operations.

30. In light of the position by NTIA and the comments, the Commission is amenable to allowing radio control and security alarm devices to operate on any frequency above 70 MHz with the exception of certain frequency bands—similar to the restrictions in the persent garage door opener provisions. In addition, the Commission will allow the 40.66 to 40.7 MHz band to be used by radio control devices as proposed in the NPRM. Because of the intermittent nature of emission, the potential for interference should be minimal. Also, by not restricting operation to a few small frequency bands for these devices, the susceptibility of a control or security device to intentional jamming and interference should be minimized.

Bandwidth

31. With respect to bandwidth considerations, many commenters from the security alarm and garage door opener organizations are opposed to the proposed restriction on transmitter bandwidth of 100 kHz. Mallard Manufacturing Corporation suggests expansion of 100 kHz to a bandwidth of at least 5 MHz since it is not possible to control transmitter emission to a 100 kHz bandwidth because of frequency drift. DORCMA sees no need to control transmitter bandwidth. OTP/NTIA suggests that the Commission allow wideband operation for radio control and security alarm devices for two reasons. First, a certain emission level spread over a wider frequency range will yield a lower level in any portion of the signal bandwidth. Secondly, according to OTP/NTIA, the performance of security devices will suffer as a result of bandwidth restrictions since wideband digitally encoded signals can give freedom from false alarm problems as well as reduce susceptibility to government operation. Comments filed by CSEPA and the National Burglar and Fire Alarm Association (NBFAA) propose relaxing the modulation bandwidth standard to 0.2% of center frequency.

32. The Commission is studying the issue of broadband or spread spectrum devices in a separate proceeding.[11] Accordingly, until the broadband issue has been thoroughly evaluated in that proceeding, the Commission feels that a restriction must be placed on signal bandwidth. In the NPRM, the Commission proposed a bandwidth of 5 MHz above 900 MHz which did not appear to be a controversial issue in the comments. Greater signal bandwidths can be accommodated in the higher frequencies and is allowed in the rules

[11] Notice of Inquiry in Gen. Docket 81-413 adopted June 30, 1981 (FCC 81-289).

adopted herein. These rules provide a gradual increase in bandwidth with frequency rather than a large abrupt change from 100 kHz to 5 MHz as had been proposed in the notice. In effect, the Commission is adopting a bandwidth requirement in line with that proposed by CSEPA and NBFAA. A bandwidth of 0.25% of center frequency is allowed for devices operating below 900 MHz and 0.5% of center frequency above 900 MHz. This bandwidth should be more than sufficient in providing for digitally encoded signals for control purposes and in reducing susceptibility to interfering signals which can cause false alarms. It must be noted that this is a signal bandwidth requirement and not a frequency drift requirement. Since we are allowing operation at any frequency above 70 MHz, frequency drift has less importance and no requirement for this is adopted except for the 40.66 to 40.7 MHz band. However, it must be remembered that signals from radio control systems must not drift into the excluded bands set out in the amended rules (Section 15.205(a)). In the case of the 40.66 to 40.7 MHz band, emission bandwidth must be contained within the band edges.

Duty Cycle

33. Microlert, Transcience, SEIA and others indicate in their comments that no duty cycle should be required in the case of manually operated emergency or personal alert transmitters. Transcience states that a spring return on/off switch is adequate and no time limit on transmission is needed. EIA/CD, Rollins, Scientific Atlanta and almost all other security alarm manufacturers and organizations recommend that transmissions be continuous as long as danger to person and property exists in order to increase reliability. In other cases, transmission duration may be limited to 5 seconds.

34. The security alarm industry has also indicated in the comments that periodic transmissions at regular predetermined intervals should be allowed for polling or testing purposes to insure system reliability. Polling assures that the security system is working properly by testing all remote transmitters and sensor battery condition, etc. Honeywell requests periodic transmission for supervision purposes in energy management systems with a relaxed duty cycle. Transcience states that one way timed audio verification should be allowed. OTP/NTIA recommends that the Commission provide for periodic transmissions but at a lower emission level.

35. Because alarms in emergency situations will occur very infrequently and reliability is very important at those times, the Commission will allow transmissions to be continuous during an emergency whether activated by a manual or automatic means. For general purpose manually operated radio control transmitters such as garage door openers, the Commission will henceforth require that a switch be used that will automatically deactivate the transmitter when released. And, in the case of a transmitter activated automatically for purposes other than emergencies, transmission must cease within 5 seconds after activation.

36. The Commission intends the new provisions for control and security alarm devices to be used for intermittent operation, and hence transmissions such as voice and data communications and signals emitted on a regular or continuous basis are prohibited. The prohibition against data transmission is not meant to disallow digital coding of signals for control purposes and this is clarified in the Rules. The Commission makes an exception in regards to the ban on periodic transmissions in the case of polling to check security system performance. By avoiding the use of wires in a security alarm system, the radio frequency transmission link between the radio control transmitters located at burglar or other security sensors and the central receiver in the home or business must be checked or polled periodically to guarantee that in the case of a true emergency the transmission will be received. If a transmission is not received during this periodic self-testing or polling process, the central receiver will activate an alarm or automatic telephone dialer to notify personnel that a problem exists in the security system. The Commission has been informally advised that Underwriters Laboratory (UL) will specify the acceptable rate of polling or self-testing in a wireless security system. In its further supplemental comments, SEIA states that a polling or monitoring rate of one transmission up to 5 seconds in length every 8 hours was found to be acceptable at a meeting sponsored by SEIA and attended by representatives of the security industry. With the lack of information on UL's position, the SEIA proposal of a five second transmission in any 8 hour period for polling will be allowed by the Commission. As for other applications for periodic operation, the Commission retains a provision in Subpart D of Part 15 similar to Section 15.120 but with a relaxed duty cycle and new limits on bandwidth and spurious/harmonic emissions.

Summary and Conclusions

37. The Commission believes that the new Rules set forth herein respond to the needs of the public and the control and security alarm industries yet still maintain control over the interference potential of these devices. Due to the rapid increase in crime in the United States and the attendant public concern, the Commission appriciates the desirability of low cost security alarm systems. And it agrees with the National Crime Prevention Association that affordable security alarm systems are important aids in crime prevention. However, it must be stressed that Part 15 was not established to provide reliable operation. Under Part 15, operation is on a suffrance basis to licensed radio communication services and government radio operation. In this connection, manufacturers and the public must be aware that devices operating without an individual license under Part 15 must not cause interference and also must accept any interference generated by operation of a licensed service. A label is required to be attached to the equipment to warn of this operation on a secondary basis. In addition, a non-interference requirement is set forth in § 15.203 of the amended rules for radio control and security alarm devices. This requirement basically states that operation of a control or security alarm device must cease if harmful interference occurs to a licensed radio service until the interference problem has been resolved. NTIA is concerned about susceptibility of control and security alarm equipment to high power government operation and recommends that manufacturers avoid frequencies that are used by high power radars, etc. The Commission also encourages manufacturers of control and security alarm devices to be aware of radio operation by both the government and the private sector and to avoid sensitive frequencies. Section 15.204 in the adopted rules warns manufacturers of receiver susceptibility to operation of government radio services and invites manufacturers to obtain information from NTIA on government operations. Accordingly, manufacturers can use this information in designing equipment and selecting frequencies for operation to minimize susceptibility. Manufacturers are also urged to reduce susceptibility of their devices by utilizing coding of control signals and this practice is highly recommended by the Commission. Certain frequency bands used by the Government for extremely important functions such as military

communications, satellite and radionavigation operations are restricted from use by control and security alarm equipment.

38. In the amended rules, the Commission has basically left the garage door opener provisions intact with a few revisions and has opened these provisions to other control applications such as security alarms. Due to the good record of certificated garage door openers, the Commission agrees with NTIA that the existing limits and available frequencies for garage door openers can be made available for all radio control and security use. The Commission is however excluding radio control toys from operating under these provisions since the operating range provided for by these emission limits is not needed in the case of toys and the bands available under § 15.117 have been sufficient in accommodating radio control toys. With the concurrence of the government users of the spectrum, the FCC has relaxed its original proposals, and the rules adopted herein should make available low cost security alarm systems to the public and should minimize the impact on existing industries such as the garage door opener industry. The Commission believes that the standards adopted herein are the minimum regulations necessary to avoid interference. This position is consistent with the Commission's objectives to allow industry to operate to the maximum extent possible in an unregulated competitive marketplace.

39. The rules as adopted are set out in Appendix B. The Commission will phase out the existing provisions for garage door openers and § 15.120. Sufficient time is given to manufacturers to dispose of existing stock and to obtain an FCC equipment authorization under the new provisions. We do not expect existing equipment to require much redesign to operate under the new standards for periodic operation in § 15.122 and the new requirements for control and security alarm devices in §§ 15.201 through 15.215, inclusive.

40. We are designating certification as the applicable equipment authorization procedure for radio control and security alarm devices. With the expected growth of new manufacturers in this area, it appears that the Commission must maintain the control of certification over the equipment marketed under the new rules until manufacturers have become aware of acceptable measurement practices to determine compliance with the technical standards. However, 18 months after the effective date of these rules, the Commission will evaluate the record of industry under certification and may consider an Order to place these devices under the less stringent verification program.[12] NTIA is aware of the Commission's move toward deregulation but recommends that manufacturers as a minimum submit a letter to the Commission confirming the verification of their products.[13]

41. Pursuant to the authority contained in sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that effective December 10, 1981, Part 15 is amended as set out in Appendix B, attached. It is further ordered that this proceeding is hereby terminated.

42. For further information about this ORDER, contact Mr. Sydney P. Bradfield, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, phone 202–653–8247.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

I. Comments in this proceeding regarding the Rules proposed for remote control and security devices were received from:

Mallard Manufacturing Corporation
Door Operator and Remote Controls Manufacturers Association (DORCMA)
American Radio Relay League Inc. (ARRL)
Microlert Systems International
Chester L. Smith
Holmes Hally Industries
Edwards Distributing Corporation
Lido Doors, Inc.
Jack A. Rains-Garage Doors
Botta's Garage Door Service
The Stanley Works
Transcience Industries, Inc.
JBH Electronic Systems, Inc.
B&B Service, Burke V. Waldron
Ez-O-Matic Manufacturing Company
Lee W. Lewton Company
B-Safe Systems, Inc.
Chris Rollins, Inc.
Door & Operator Dealers of America (DODA)
Multi-Elmac Company
Gould, Inc.
Central Station Electrical Protection Association (CSEPA)
Security Equipment Industry Association (SEIA)
Scientific-Atlanta, Inc.
Household Data Services, Inc.
American District Telegraph Company (ADT)
Honeywell, Inc.
Property Protection Service of America/Milton F. Allen, dba Alarmtrace
Consumer Electronics Group of the Electronic Industries Association (EIA/CEG)
Communications Division of the Electronic Industries Association (EIA/CD)
Office of Telecommunications Policy/National Telecommunications and Information Administration (OTP/NTIA)
Alliance Manufacturing Company, Inc.
Alarm Device Manufacturing Company (ADEMCO)
National Burglar and Fire Alarm Association (NBFAA)
Rollins Protective Services Company (RPS)
Chamberlain Manufacturing Corporation
Whirlpool Corporation
Napco Security Systems, Inc.
National Crime Prevention Association (NCPA)
Irving Haymes
GTE Sylvania
Barrett Electronics Corporation
A.R.F. Products, Inc.

II. Reply Comments were received from:

Rollins Protective Services Company (RPS)
Door Operator and Remote Controls Manufacturers Association (DORCMA)
Security Equipment Industry Association (SEIA)
Wackenhut Electronic Systems Corporation (WESC)
Alliance Manufacturing Company, Inc.
Alarm Device Manufacturing Company (ADEMCO)
Scientific-Atlanta, Inc.

Appendix B

PART 15—RADIO FREQUENCY DEVICES

Part 15 is amended as follows:

1. Paragraph (d) of § 15.63 is revised to read as follows:

§ 15.63 Radiation Interference Limits.

* * * * *

[12] Both certification and verification require the manufacturer to measure the emissions from the equipment. Under certification, this data is submitted to the Commission for review. Marketing is prohibited until the Commission has issued a Grant of Certification. Under verification no submission to the Commission is required and the equipment may be marketed as soon as the manufacturer satisfies himself that the equipment complies.

[13] Letter from Leo A. Buss, Director, Office of Spectrum Plans and Policies, NTIA, to Robert L. Cutts, Chief, Spectrum Management Division, FCC; July 31, 1981.

(d) Notwithstanding the provisions of paragraph (a) of this section, the level of emission of RF energy from a receiver associated with a transmitter operating under §§ 15.122, 15.184 or 15.201 through 15.215 shall not exceed the values listed below. The measurement techniques in FCC Measurement Procedure MP 1 "FCC Methods of Measurements For Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers" is used by the FCC to determine compliance with the technical requirements.

Frequency (MHz)	Field strength at 3m (μV/m)
25 to 70	320
70 to 200	500
200 to 1500	[1] 500-5000
Over 1500	5000

[1] Linear interpolation.

2. Section 15.120 is amended by revising the introductory text to read as follows:

§ 15.120 Interim requirements for operation above 70 MHz.

Manufacture and importation of a low power communications device complying with all the provisions of paragraphs (a) through (c) of this section shall cease September 1, 1983. Applications for certification of such a device will not be accepted by the Commission after June 15, 1983.

* * * * *

3. A new § 15.122 is added as follows:

§ 15.122 Periodic operation in the bands 40.66–40.70 MHz and above 70 MHz.

A low power communication device may be operated in the band 40.66–40.70 MHz or at any frequency above 70 MHz subject to the following conditions:

(a) The emission of RF energy on the fundamental frequency as well as spurious and harmonic emissions shall not exceed the field strength in the following table:

Fundamental frequency (MHz)	Field strength of fundamental (μV/m at 3m)	Field strength harmonics and spurious (μV/m at 3m)
40.66 to 40.70	1000	100
70 to 130	500	50
130 to 174	[1] 500-1500	[1] 50-150
174 to 260	1500	150
260 to 470	[1] 1500-5000	[1] 150-500
470 and above	5000	500

[1] Linear interpolation.

(b) The device is provided with a means for automatically limiting operation so that the duration of each transmission shall not be greater than one second and the silent period between transmissions shall be at least 30 times the transmission duration but in no case less than 10 seconds.

(c) For operation in the band 40.66 to 40.70 MHz, the bandwidth of the emission shall be confined within the band edges and the frequency tolerance of the carrier shall be ±0.01%. This tolerance shall be maintained for a temperature variation of −20° to +50°C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20°C.

(d) The bandwidth of the emission shall be no wider than 0.25% of the center frequency for devices operating above 70 MHz and below 900 MHz. For devices operating above 900 MHz, the emission shall be no wider than .5% of the center frequency.

Note.—Bandwidth is determined at the points 20dB down from the modulated carrier.

(e) If the device is to be operated from public utility lines, the RF energy fed back into the power lines shall not exceed 250 microvolts at any frequency between 450 kHz and 30 MHz.

4. In § 15.141, paragraph (c) is revised to read as follows:

§ 15.141 Measurement procedure.

* * * * *

(c) The measurement techniques set out in FCC Measurement Procedure MP 1 "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers" is used by the FCC to determine compliance of devices operating under § 15.122 with the technical specifications.

§ 15.142 [Amended]

5. The table in § 15.142 is amended by adding the frequency band "40.66 to 40.70 MHz" between the bands designated "26.97 to 27.27 MHz" and "49.82 to 49.90 MHz". The entry for the lowest frequency in the table for the 40.66 to 40.70 MHz bands is "Lowest frequency generated in the device or 25 MHz, whichever is lower" and the entry for the highest frequency is "1000 MHz".

§§ 15.182 and 15.183 [Removed]

6. The present text and title of §§ 15.182 and 15.183 are removed.

7. Section 15.184 is amended by revising the title and introductory text to read as follows:

§ 15.184 Interim requirements for operation above 70 MHz.

Manufacture and importation of a radio control for a door opener complying with all the provisions of this Section shall cease September 1, 1983. Applications for certification of devices operating under this Section will not be accepted by the Commission after June 15, 1983.

* * * * *

§ 15.185 [Amended]

8. Section 15.185 is amended in paragraph (a) by substituting the phrase "under § 15.184" for the phrase "above 70 MHz manufactured after March 24, 1971" and removing and reserving, of paragraph (b).

9. A new undesignated heading and new §§ 15.201–15.215, inclusive, are added to Subpart E to read as follows:

Subpart E—Low Power Communication Devices: Specific Devices

* * * * *

Control and Security Alarm Devices

Sec.

Control and Security Alarm Devices

§ 15.201 Scope.

A device that uses radio frequency energy for control or security alarm applications excluding radio control of toys may be operated without an individual license under these provisions. Examples of such devices include, but are not limited to, radio control of a fire, burglar, security, or other emergency alarm; control of a door opener, control of a remote switch, etc. Radio controlled toys and games are not allowed to operate under these provisions.

(a) Devices operating under this section may not be used for continuous transmission. The following transmissions are not permitted:

(1) Voice communications.

(2) Data communications regardless of modulation. This prohibition is not intended to prohibit digital coding of transmissions for radio control or security alarm purposes.

(3) Periodic transmissions at regular predetermined intervals. Polling or supervision to determine security system integrity is allowed at a rate of not more than one transmission of less than 5 seconds duration in any 8 hour period.

(b) A transmitter operated manually must employ a switch that will automatically deactivate the transmitter when released. A transmitter activated automatically must cease transmission

within 5 seconds after activation. One exception is permitted: a transmitter employed for remote control purposes in emergencies such as fire, security, safety, etc., whether activated manually or automatically, may operate continuously during the alarm condition.

§ 15.202 Cross reference.

A control or security alarm device may operate in any of the frequency bands listed under Subpart D of this Part, pursuant to the provisions therein.

§ 15.203 Non-interference requirement.

Notwithstanding the compliance with the technical specifications in this Part, the operation of control and security alarm devices is subject to the general conditions of § 15.3. The operator of a control or security alarm device may be required to stop operating his device upon a finding that the device is causing harmful interference and it is in the public interest to stop operation until the interference problem has been corrected.

§ 15.204 Receiver susceptibility to interference.

(a) As stated in § 15.203, a low power communication receiver must operate on a sufferance basis; that is, it is not offered any protection by the Commission should an authorized high power (government or non-government) radio station cause undesired operation of the receiver. Manufacturers are therefore encouraged to consider the susceptibility of the receiver in the design of their systems, particularly for those systems that operate in the frequency bands identified in Section 2.106 of this Chapter for government operations.

(b) Manufacturers may obtain information on government operations and use it to reduce the susceptibility of their equipment to authorized government stations. Such information may be obtained from: Director, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce, Washington, DC 20230.

§ 15.205 Technical standards.

(a) Emission of RF energy from the transmitter as well as the receiver part of the control shall not fall within any of the bands listed below:

Megahertz	Megahertz	Gigahertz
73 to 75.4	608-614	10.68-10.70
108 to 118	960-1215	15.35-15.4
121.4 to 121.6	1400-1427	19.3-19.4
156.7 to 156.9		
240 to 285	1535-1670	31.3-31.5
328.6 to 335.4	2690-2700	88-90
404 to 406.2	4200-4400	
	4990-5250	

Note.—A radiation level below 15 μV/m at 3 meters will be considered to meet this requirement for emissions on frequencies below 1000 MHz.

(b) Subject to the limitation in paragraph (a) of this section, emission of RF energy on the fundamental frequency and spurious and harmonic emissions from the transmitter shall not exceed the levels in the following table:

Fundamental frequency (MHz)	Field strength of fundamental (μV/m at 3m)	Field strength harmonics and spurious (μV/m at 3m)
40.66 to 40.70	2250	225
70 to 130	[1] 1250-3750	[1] 125-375
130 to 174	1250	125
174 to 260	3750	375
260 to 470	[1] 3750-12500	[1] 375-1250
470 and above	12500	1250

[1] Linear interpolation.

(c) For operation in the band 40.66 to 40.7 MHz, the bandwidth of the emission shall be confined within the band edges and the frequency tolerance of the carrier shall be ±0.01%. This tolerance shall be maintained for a temperature variation of −20° to +50°C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20°C.

(d) The bandwidth of the emission shall be no wider than 0.25% of the center frequency for devices operating above 70 MHz and below 900 MHz. For devices operating above 900 MHz, the emission shall be no wider than 0.5% of the center frequency.

Note.—Bandwidth is determined at the points 20dB down from the modulated carrier.

(e) If the device is to be operated from public utility lines, the RF energy conducted back into the power lines shall not exceed 250 microvolts at any frequency between 450 kHz and 30 MHz.

§ 15.207 Certification.

(a) A radio control or security alarm device operating under the provisions of § 15.203 shall be certificated pursuant to Subpart B of Part 15.

(b) The receiver part of a control device shall be certificated pursuant to Subpart B of Part 15 to show compliance with the technical standards for receivers in Supart C of Part 15.

§ 15.211 Identification.

(a) A radio control or security alarm device and its associated receiver shall be identified pursuant to §§ 2.925 and 2.1045 of this Chapter. The FCC

Identifier for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label shall also bear the following statement:

This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

§ 15.213 Measurement procedure.

The measurement techniques set out in FCC Measurement Procedure MP 1 "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers" is used by the FCC to determine compliance with the technical requirements for a control or security alarm device and its associated receiver. Manufacturers are encouraged to follow this procedure in determining compliance.

§ 15.215 Report of measurements.

The report of measurements for a radio control or security alarm device operating under § 15.203 shall cover the range of frequencies in § 15.142 of this part and shall contain the information required by § 15.143.

Appendix C.—FCC Measurement Procedure MP 1

FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers

Index

FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers

1.0 Introduction

The FCC recently amended Part 15 of its rules to permit the operation of a low power radio control or security alarm transmitter without an individual license. These rules, in §§ 15.201 through 15.215, are in addition to the provisions for other low power communication devices in Subparts D and E of Part 15. Section 15.122 in Subpart D provides for transmitters which emit periodic transmissions. Devices operating under § 15.122 should also use this procedure in determining compliance. The requirements for the receiver are in Subpart C of Part 15. In addition to meeting certain technical requirements, the radio control transmitter and receiver must also be certificated by the Commission in accordance with the procedures in Subpart B of Part 15 and Subpart J of Part 2. Certification by the Commission is a prerequisite for marketing the equipment pursuant to Subpart I of Part 2.

2.0 Scope

This standard sets forth the methods for measuring both the radio control transmitter and its associated receiver to show compliance with the new technical requirements. Both radiated and conducted measurements are covered in this procedure. This standard shall also be used for determining compliance of the receiver.

3.0 Definitions

3.1 Ambient Level

The magnitude of radiated or conducted signals and noise existing at a specific test location and time.

3.2 Conducted radio noise

Radio-noise propagated from the device back into the public electrical power network via the supply cord.

3.3 Emission

Electromagnetic energy produced by a device which is radiated into space or conducted along wires and is capable of being measured.

3.4 Equipment Under Test (EUT)

The representative unit of a system or component of a system being tested or evaluated.

3.5 Radio Frequency (RF) Energy

Electromagnetic energy at any frequency in the radio spectrum between 10 kHz and 3,000,000 MHz.

4.0 General Test Conditions

4.1 Test Standards

A radio control transmitter and its associated receiver must be measured at a test facility which assures valid repeatable measurement results. A measurement is valid to the extent that it is true representation of the characteristic being measured and when the same procedure yields repeatable results. Radiated measurements shall be made in an open field. (See 4.1.1) Alternatively, radiated

measurements may be made at a facility which produces results that are correlateable to the open field results. Pursuant to § 15.38 of FCC Rules, a description of the measurement facility must be either, on file with the Commission, or filed with the application for certification. To determine the suitability of a particular facility for making radiated tests, a site calibration curve may be required with the description required by § 15.38.

Note.—A rulemaking proceeding in Docket 21371 proposes to replace § 15.38 with a new section in Part 2 of FCC Rules. The new section will include revised and expanded requirements including a measurement of the site attenuation of an open field test site. The method of making site attenuation measurements is also covered in Docket 21371.

4.1.1 Open-Field Tests

Radiated measurements shall be made in an open, flat area characteristic of cleared, level terrain. Such test sites shall be void of buildings, electric lines, fences, trees, etc., and free from underground cables, pipelines, etc., except as required to supply and operate the EUT. The ambient radio-noise levels and other undesired signals shall be sufficiently low so as not to interfere with the measurements. A suggested layout of an open-field test site is shown in Figure 1, where all reflecting objects lie outside the perimeter of the enclosure elongated circle. (Note: A metal fence or large reflecting object shall be sufficiently far from the perimeter of the circle so as not to introduce additional unknown factors.) The distance from the EUT and measuring antenna shall be measured from the center of the rotating platform.

4.1.2 Electrical Power

Power lines to both EUT and test instrumentation shall be kept as short as possible. Although not mandatory, electrical power to the test site should be buried. Adequate isolation shall be incorporated to prevent coupling signals into the test instrumentation via the power lines. Electrical service shall be maintained within 5% of nominal voltage.

4.1.3 EUT Placement

The EUT shall be set on a wooden or other non-conducting table/framework in an orientation which yields maximum radiation. If possible, the table shall be mounted on a platform which is capable of being rotated about its vertical axis and remotely controlled from the measuring position. Electrical service to the EUT shall be routed up the center of the table. If a rotatable platform is not used, provisions shall be made for manually orientating the supporting structure. The height of the EUT above the ground shall be one (1) meter.

4.2 Measuring Instrumentation

Radiated and conducted measurements shall be made with a radio-noise meter that conforms with the American National Standard Specifications for Electromagnetic Interference and Field Strength Instrumentation 10 kHz to 1 GHz, C63.2 (1980). Alternatively, a spectrum analyzer may be used, provided the results obtained can be accurately reproduced with a suitable radio-noise meter. If a spectrum analyzer is used care must be taken to avoid measurement of spurious emissions produced by the instrument. Several application notes explaining the proper use of a spectrum analyzer for making EMI measurements are available from Hewlett-Packard, Tektronix and other reputable spectrum analyzer manufacturers.

4.2.1 Measuring Instrument Calibration

The calibration of the measuring instrument shall be checked frequently enough to assure its accuracy. Adjustments shall be made and correction factors applied in accordance with instructions contained in the manual for the measuring instrument.

4.2.2 Detector-Function Selection

For radio-noise meters or spectrum analyzers which include weighting circuits, the detector shall function in an average reading mode. Post detector video filters may be used in the case of peak reading spectrum analyzers if correlation can be shown to an average reading radio-noise meter.

4.2.3 Units of Measurements

Measurements of radiated interference shall be reported in terms of microvolts per meter at a specified distance. The indicated readings on the spectrum analyzer or the radio-noise meter shall be converted to microvolts per meter by use of appropriate conversion factors. Measurements of conducted interference shall be reported in terms of microvolts.

4.2.4 Antennas

A calibrated, tuned, half-wavelength dipole antenna shall be used for measuring the level of radiated emissions. Other linearly polarized antennas are acceptable provided the results obtained with such antennas are correlateable to levels obtained with a tuned dipole. The antenna shall be capable of measuring both horizontal and vertical polarizations and being varied in height from 1 to 4 meters.

4.2.5 Preliminary Testing and Monitoring

Preliminary radiated measurements should be made inside, preferably in an enclosure, at a closer distance than specified for compliance to determine the emission characteristics of the EUT. If a spectrum analyzer is not used, radio-noise measurements should be monitored using either a headset or loudspeaker as an aid in detecting ambient signals and selecting problem frequencies. Precautions shall be taken to ascertain that the use of a headset or speaker does not affect the radio-noise meter indication during testing.

4.3 Frequency Range to be Scanned

For radiated measurements, the frequency range from 30 MHz to 1000 MHz shall be searched and all emissions from the EUT that are within 10 dB of the appropriate limit shall be measured and reported. For conducted measurements, the frequency range of 450 kHz to 30 MHz shall be searched and all emissions from the EUT that are within 10 dB

of the appropriate limit shall be measured and reported. To facilitate testing with a radio-noise meter, the frequency range covered in the particular test should be scanned while monitoring with a headset or speaker. If any indicated peaks appear while scanning, readings shall be taken at the frequencies where they occur. The scan rate shall be such that noise signals above radio-noise meter sensitivity are not omitted from detection.

Note.—Automatic scan techniques are acceptable but the maximum scan speed is limited by the response time of the measurement system and the repetition rate of the radio-noise to be measured.

4.4 Data-Reporting Format

The measurement results expressed in accordance with 4.2.3, and specific limits where applicable, shall be presented in tabular and/or graphical forms showing level vs. frequency. Instrumentation, instrument and bandwidth settings, detector function, EUT arrangements, sample calculation with all conversion factors and all other pertinent details shall be included along with the measurement results.

4.5 Radiated Test Procedure

The transmitter and its associated receiver shall be tested separately. The EUT complete with its antenna shall be placed on supporting table at the specified height and oriented on the table for maximum radiation. (See Figure 1) After the EUT and test equipment is warmed up and operating, the table shall be rotated either automatically or manually until maximum radiation is indicated on the test instrumentation which has been tuned to the frequency being measured. The height of the measuring antenna shall also be varied between 1 and 4 meters (measured to the center of the antenna) for both horizontal and vertical polarization. The maximum reading shall be recorded. The transmitter shall operate continuously for the purpose of those measurements.

4.6 Conducted Test Procedure

Measurement of radio frequency energy conducted from the EUT back into the electrical supply shall be made in accordance with conducted powerline measurements specified in the FCC measurement procedure entitled "FCC Methods of Measurements of Radio Noise Emissions from Computing Devices" set out in Appendix A of Part 15. The input signal to the receiver during these tests should be at a level of 1000 μV and be modulated in a manner similar to its associated transmitter. Where it is impractical to connect directly to the receiver from a standard signal generator, the input signal to the receiver may be established by radiating a signal of sufficient strength to induce approximately 1000 μV in the antenna system of the receiver.

BILLING CODE 6712-01-M

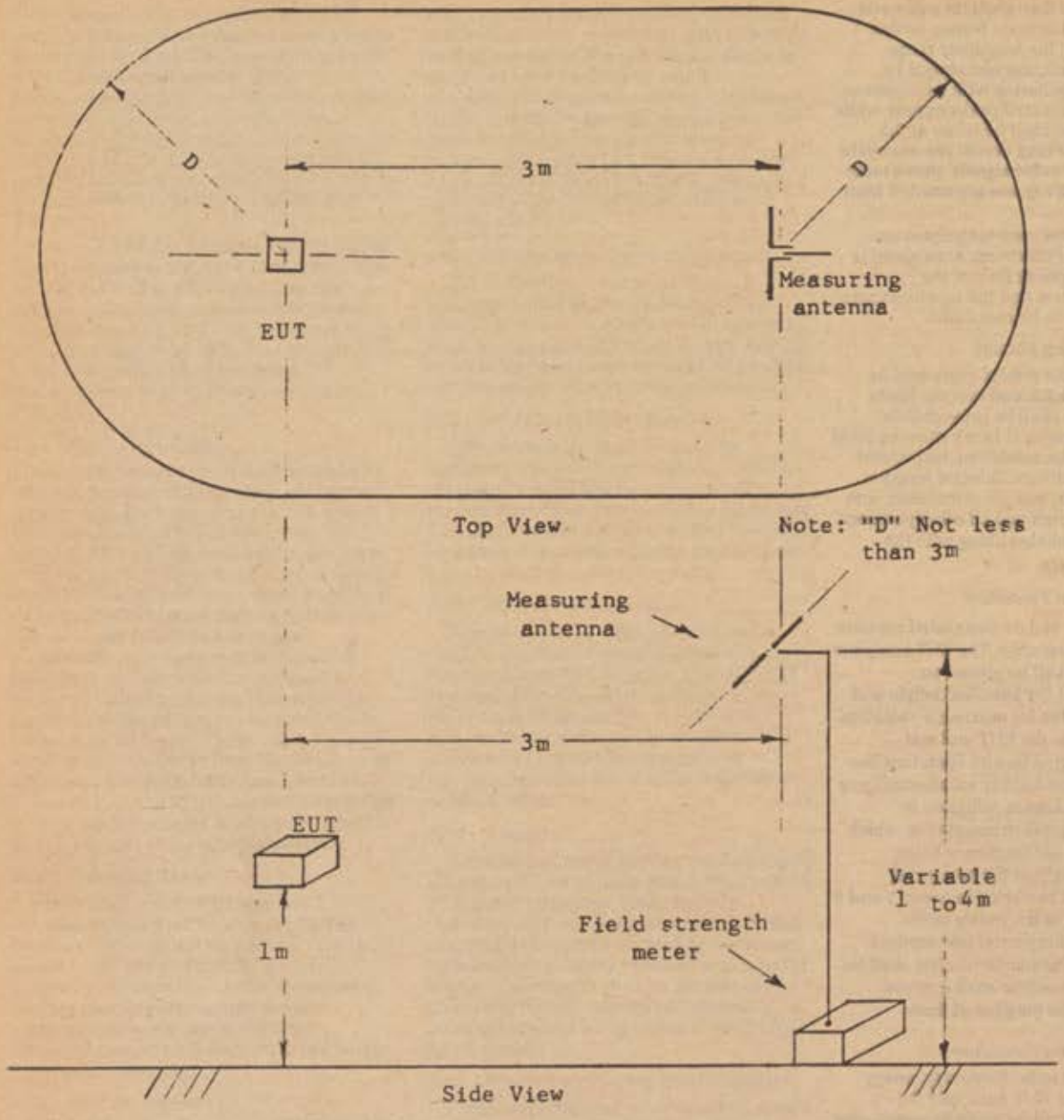

Figure 1. Test-site and Equipment Arrangement

[FR Doc. 81-32247 Filed 11-9-81; 8:45 am]
BILLING CODE 6712-01-C

Proposed Rules

Federal Register
Vol. 46, No. 217
Tuesday, November 10, 1981

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Semiannual Agenda of Regulations; Delay in Publication Date

AGENCY: Office of Personnel Management.

ACTION: Notice of delay in publication date of regulatory agenda.

SUMMARY: E.O. 12291, Federal Regulation, and the Regulatory Flexibility Act require publication of semiannual agenda in April and October of each year. Because of the need for additional time to complete a thorough review of OPM regulations development, the Office of Personnel Management's semiannual agenda under the new requirements will be delayed for publication until November or December 1981.

FOR FURTHER INFORMATION CONTACT: Beverly McCain Jones, Issuance System Manager, (202) 254-7086.

SUPPLEMENTARY INFORMATION: I have requested that an additional review of the agenda be made to be sure all items reflect the Administration's desire to reduce the number of regulations issued to the absolute minimum necessary to carry on personnel management functions in the civil service.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 81-32557 Filed 11-9-81; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0370]

Credit by Brokers and Dealers; Proposal To Permit Use of Letters of Credit as the Required Deposit When Securities are Borrowed

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed amendment.

SUMMARY: The Board proposes to amend § 220.6(h) of Regulation T, which regulates brokers and dealers when they borrow or lend securities. The present regulation requires a deposit of cash as collateral. The proposed amendment permits irrevocable letters of credit and United States government securities to be used, and specifies that the deposit must at all times be equal in value to the current market value of the borrowed securities. The existing limitations in the rule on the occasions when securities may be borrowed are to be retained. This action is being taken in response to requests and is intended to provide alternative types of deposits which lenders and borrowers of securities may agree to use.

DATE: Comments should be received on or before January 5, 1982.

ADDRESS: Comments, which should refer to Docket No. R-0370, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Bruce Brett, Securities Regulation Analyst, Securities Regulation Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2781).

SUPPLEMENTARY INFORMATION: The Board has been requested by a major brokerage house and others to amend § 220.6(h) in order to permit the use of letters of credit as the deposit required when securities are borrowed either to complete short sales or to settle transactions where there has been a failure to receive the securities required to be delivered. It has been suggested that the use of letters of credit (1) provides a less cumbersome system than the use of cash during times of high interest rates (when the earnings of the cash are often divided between the borrower and the lender) and (2) is regarded by fiduciaries who lend securities as a safer system in the event of failure of the borrowing broker or dealer. The proposed language also adds as an alternative deposit "United States government securities." This would codify an existing industry practice. The language has also been changed to clarify that deposits should be "marked to the market." The Board believes there will be no adverse economic consequences from the proposed amendment; and, for the purpose of 5 U.S.C. 605(b), the Board certifies that the rule would not have significant economic impact on a substantial number of small entities.

PART 220—CREDIT BY BROKERS AND DEALERS

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g, 78w), the Board proposes to revise § 220.6(h) of Regulation T, to read as follows:

§ 220.6 Certain technical details.

* * * * *

(h) *Borrowing and lending securities.* Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of cash, United States government securities or an irrevocable letter of credit issued by a bank insured by the Federal Deposit Insurance Corporation. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 4, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-32552 Filed 11-9-81 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Agenda

AGENCY: Small Business Administration.

ACTION: Publication of the Semiannual Agenda of Regulations under review or development by the Small Business Administration.

SUMMARY: SBA has previously published four semiannual regulatory agendas pursuant to EO 12044 "Improving Government Regulations." Although not a regulatory Agency, SBA has attempted to draft agendas that met both the criteria and the spirit of the EO and furthered the regulatory review process. This is its second agenda published pursuant to EO 12291, effective February 17, 1981, and the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Pub. L. 96-354, effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT: For further information on agenda items, the public is encouraged to contact the individual Agency official listed for the particular item.

For information concerning SBA's overall Regulatory Review and Development Program or general semiannual agenda questions, contact Martin D. Teckler, Assistant General Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202/653-6662.

SUPPLEMENTARY INFORMATION: SBA's agenda contains many regulations which are limited in public impact, but are included to increase public awareness of SBA's regulatory activities and public participation in the review and development process. Comments received on SBA's previous agendas have been general, and all were positive. None were directed at specific contents, nor were any changes suggested or recommended.

Part I of the Agenda, Regulations Under Review and Development, includes proposed and final regulations issued by SBA since last agenda's publication. Part II, Existing Regulations Selected for Review, informs the public of current regulation review within the Agency. The format for the agenda is:

Part I: Regulations Under Review and Development contains:

A. A summary of all proposed or final rules published since May 1981, which includes the rule's objectives and its legal basis. If a listed rule is a major rule within the meaning of EO 12291 or will have a significant impact on a substantial number of small entities, it will be so designated.

B. The approximate schedule for completing action on each rule listed.

C. The name and phone number of an Agency official knowledgeable on each listed rule.

Part II: Existing Regulations Selected for Review contains:

A. A list of existing regulations to be reviewed or promulgated under the terms of EO 12291 and the Regulatory Flexibility Act. In this regard, we have designated existing regulations which are being periodically reviewed pursuant to section 610(c) of the Regulatory Flexibility Act, and section 5(a)(3) of EO 12291.

B. A summary of such rule's nature and legal basis and an approximate timetable for completing action.

C. The name and phone number of an Agency official knowledgeable on each such rule.

Publication of this agenda does not impose any binding obligation on SBA with regard to any specific item found in the agenda. Additional regulatory action not listed on the agenda is not precluded.

Dated: November 3, 1981.

Michael Cardenas,

Administrator.

I. REGULATIONS UNDER REVIEW AND DEVELOPMENT

Date published and Federal Register cite	Nature of publication	Subject of publication	Approx. date of completion	Knowledgeable official	Legal basis
Aug. 17, 1981, 46 FR 41523	Proposed Rule	Business Loan Policy; Small Business Lending Companies, 13 CFR Part 120.4.	Spring of 1982	Robert C. Hull (202) 653-7894.	15 U.S.C. 634(b)(6).
Jan. 5, 1981, 46 FR 931	do	Rules governing policy against discrimination against the handicapped in administration of SBA programs, 13 CFR Part 113.	do	Doris A. Dockett (202) 653-6054.	Section 504 of Rehabilitation Act of 1978 and 15 U.S.C. 634.
Mar. 10, 1980, 45 FR 15442	Advance Notice of Proposed Rulemaking.	Size Standards, Complete Revision, 13 CFR 121.3.	July 1982	Kaloel C. Sheira (202) 653-6373.	15 U.S.C. 632.
May 4, 1981, 46 FR 24931	Final Rule	Rules governing SBA's interest rates relative to SBA's pollution control bond program, 13 CFR Part 111.	May 4, 181	Vincent A. Fragnito (703) 235-2902.	15 U.S.C. 687(c).
Sept. 17, 1981, 46 FR 46113	do	Rules governing SBA's surety bond guarantee program, 13 CFR Part 115.	September 17, 1981	Howard F. Huegel (703) 235-2907.	15 U.S.C. 687(c) and 15 U.S.C. 694 (a) and (b).
June 16, 1981, 46 FR 31899	Proposed Rule	Rules governing Minority Small Business and Capital Ownership Development Advance Payments, 13 CFR Part 124.	October 1981	Charlie Dean (202) 653-6699.	15 U.S.C. 634(b)(6) and 637(a).
June 1, 1981, 46 FR 29276	do	Rules governing MSB/COD Assistance Fixed Program Participation Term, 13 CFR Part 124.	do	do	15 U.S.C. 634(b)(6) and 637(a).
June 1, 1981, 46 FR 29251	Interim Rule	Rules governing MSB/COD Fixed Program Participation Term, 13 CFR Part 124.	June 1981	do	15 U.S.C. 634(b)(6) and 637(a).
Feb. 3, 1981, 46 FR 10501	Proposed Rule	Rules governing challenges to determinations made in SBA's subcontracting program, 13 CFR Part 124.	October 1981	Susan K. Zagame (202) 653-6589.	15 U.S.C. 634(b)(6) and 637(a).
Dec. 1, 1980, 45 FR 79406	do	Rules governing eligibility criteria for SBA's minority small business contracting program, 13 CFR Part 124.	November 1981	Carl Ellison (202) 653-5688	15 U.S.C. 634(b)(6) and 637(a).
Dec. 1, 1980, 45 FR 79413	Interim Rule	Rules governing eligibility for SBA's minority small business contracting program, 13 CFR Part 124.	do	do	15 U.S.C. 634(b)(6) and 637(a).
June 22, 1981, 46 FR 32259	Proposed Rule	Extensive revision of SBA's Standards of Conduct Regulations, 13 CFR Part 105.	October 1, 1981	Donald W. Farrell (202) 653-6660 or Robert M. Peterson (202) 653-6477.	15 U.S.C 634(b)(6).

I. REGULATIONS UNDER REVIEW AND DEVELOPMENT—Continued

Date published and Federal Register cite	Nature of publication	Subject of publication	Approx. date of completion	Knowledgeable official	Legal basis
Jan. 12, 1981, 46 FR 2591	Final Rule	Clarifying and procedural provisions applicable to SBA determination of the maximum size a business can be and remain eligible for SBA programs; 13 CFR Part 121.	Jan. 12, 1981	Stephen A. Klein (202) 653-6782.	15 U.S.C. 634(b)(6).

II. EXISTING REGULATIONS SELECTED FOR REVIEW

Regulation	Basis for rule	Nature of rule	Timetable for completion	Agency official
13 CFR Part 125.5	15 U.S.C. 637(b)(7)	Certificate of Competency Program [1] [2].	Proposed rule expected to be published by Spring 1982.	Robert Moffitt (202) 653-6582.
13 CFR Part 122 *et seq*	15 U.S.C. 636(a) and 634(b)(6)	Business Loan Policy, Miscellaneous Revisions based on Pub. L. 97-35 [2].	Proposed rule expected to be published by Summer 1982.	Robert H. Bartlett (202) 653-6470.
13 CFR Part 123 *et seq*	15 U.S.C. 636(b) and 634(b)(6)	Disaster Loans, Miscellaneous Revisions based on Pub. L. 96-302 and Pub. L. 97-35 [2].	Proposed rule expected to be published by December 1981.	Brenard Kulik (202) 653-6679.
13 CFR Part 107	15 U.S.C. 687(c), (d) and (g)	Complete Revision of Rules governing small business investment companies [2].	Proposed rule expected to be published in Fall 1981.	Howard Cooper (202) 653-6561.
13 CFR Part 107, Appendices A, B, and C.	15 U.S.C. 687(c), (d) and (g)	Modification of appendices prescribing accounting methods, auditing guidelines and account classification to include provisions for partnership SBIC's.	....do	Peter F. McNeish (202) 653-6848.
13 CFR Part 108	15 U.S.C. 695 and 696	Loans to State and Local Development Companies.	Proposed rule expected to be published by Spring 1982.	Robert H. Bartlett (202) 653-6470.
13 CFR Part 116	15 U.S.C. 636, 15 U.S.C. 634(b)(7)	Policies of General Application to SBA's Financial Assistance Programs.	....do	Robert H. Bartlett (202) 653-6470.
13 CFR Part 118	15 U.S.C. 636 as amended by section 1902 of Pub. L. 97-35.	Handicapped Assistance Loans, Miscellaneous Revisions based on Pub. L. 97-35.	....do	Robert H. Bartlett (202) 653-6470.
13 CFR Part 119	15 U.S.C. 636 as amended by section 1902 of Pub. L. 97-35.	Economic Opportunity Loan Program, Miscellaneous Revisions based on Pub. L. 97-35.	....do	Robert H. Bartlett (202) 653-6470.
13 CFR Part 120	15 U.S.C. 634(b)(6)	Business Loan Policy, Miscellaneous Revisions based on Pub. L. 97-35.	....do	Robert H. Bartlett (202) 653-6470.
13 CFR Part 130	15 U.S.C. 636 as amended by section 1902 of Pub. L. 97-35.	Small Business Energy Loans Miscellaneous Revisions based on Pub. L. 97-35.	....do	Robert H. Bartlett (202) 653-6470.
13 CFR Part 124	15 U.S.C. 637(a)	Partial Revision of rules governing the Minority Small Business and Capital Ownership Development Program.	....do	Robert L. Wright (202) 653-6407.
13 CFR Part 132	15 U.S.C. 634(b) and 5 U.S.C. 504	New Regulations to implement the Equal Access to Justice Act.	Interim Regulations expected to be published October 1981.	Martin D. Teckler (202) 653-6797.

[1] Denotes significant or major rule for purposes of E.O. 12291.
[2] Denotes a rule being considered for revision pursuant to section 610(c) of the Regulatory Flexibility Act and section 5(a)(3) of Executive Order 12291.

[FR Doc. 81-32370 Filed 11-9-81; 8:45 am]
BILLING CODE 6025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. RM81-38]

Construction Work in Progress for Public Utilities; Inclusion of Material in the Public Record

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inclusion of material in the public record.

SUMMARY: The Commission staff is placing in the public record of the rulemaking proceeding in Docket No. RM81-38 (46 FR 39445, August 6, 1981) materials relating to the inclusion of construction work in progress (CWIP) in the rate base of public utilities. The public and participants in the proceeding are invited to comment on any of these materials.

DATES: Any comments should be filed on or before November 25, 1981.

ADDRESS: All materials are available for inspection during regular business hours at the Commission's Division of Public Information, Room 1000, 825 N. Capitol Street, N.E., Washington, D.C.

Send comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Ronald Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8186.

SUPPLEMENTARY INFORMATION: November 3, 1981.

In the matter of construction work in progress for public utilities; inclusion of material in the public file and service on parties to the proceeding.

The Commission staff, on this date, is placing in the public record of this proceeding the materials listed in the appendix to this Notice. In addition, the Commission staff will serve to all parties indicated on the service list for this proceeding one of the documents cited above, namely, information about certain computer models developed by staff to evaluate the impacts of alternative CWIP policies.

These documents will be available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., N.E., Washington, D.C., during regular business hours. Any

comments on these materials are due on or before November 25, 1981.

Kenneth F. Plumb,

Secretary.

Appendix

The following document is to be placed on public file and served on parties to this proceeding:

1. Proposed Computer Models for Evaluating Impacts of Alternative CWIP Policies.

The following documents are placed in the public file:

1. Summary of August 19 Technical Conference on CWIP between FERC Staff and Professors Jerome Hass and Gerald Pogue.

2. "Federal Energy Regulatory Commission Needs to Act on the Construction-Work-In-Progress Issue", Report by the U.S. General Accounting Office (EMD-81-123), September 23, 1981.

3. "Construction Work in Progress Issue Needs Improved Regulatory Response for Utilities and Consumers," Report by the Comptroller General of the United States (EMD-80-75), June 23, 1980.

4. "Profiles in Electricity Issues: Should CWIP be Included in an Electric Utility's Rate Base?" Electricity Consumers Resource Council, July 1981.

5. Direct Testimony of Bruce H. Fairchild before the Public Utility Commission of Texas in Docket No. 1903 (Re: Application of Texas Electric Service Company for Authority to Change Rates), August 1978.

6. "Some Thoughts on the Rate of Return to Public Utility Companies" by Bruce H. Fairchild and William E. Avera, Public Utility Commission of Texas, 1978.

7. Direct Testimony of Bruce H. Fairchild before the Public Utility Commission of Texas in Docket No. 2572 (Re: Application of Dallas Power and Light Company for Authority to Change Rates), August 1979.

8. Prepared Testimony of John D. Stewart before the State of New York Public Service Commission in the Matter of Case 27679 (Investigation of Financing Plans of Major Combination Gas and Electric Companies), undated.

9. Testimony of James A. Rothchild before the State of New York Public Service Commission in the Matter of Case 27679 (Investigation of Financing Plans of Major Combination Gas and Electric Companies), May 8, 1981.

10. Testimony of Herman Roseman before the State of New York Public Service Commission in the Matter of Case 27679 (Investigation of Financing Plans of Major Combination Gas and Electric Companies) pages 12-44 only, undated.

11. "Allowance for Funds Used During Construction and the Value of Public Utility Equities" by Howard E. Thompson, University of Wisconsin-Madison, Working Paper, October 1978.

12. "The Effect of AFUDC on the Investors' Capitalization Rates" by Anil K. Makhija (Graduate School of Business, University of Pittsburgh) and Howard E. Thompson (Graduate School of Business, University of Wisconsin-Madison), May 1981.

13. "Comparsion of Alternative Models for Estimating the Cost of Equity Capital for Electric Utilities" by Anil K. Makhija and Howard E. Thompson, July 1981.

14. Testimony and Exhibits of Michael Holmes before the Michigan Public Service Commission (MPSC) in Case No. U-5281, (In the matter, on the Commission's own motion, of proceedings on the appropriate treatment, for accounting and rate making purposes, of the direct and indirect costs of construction for regulated gas, electric and telephone utilities and their effect on income taxes applicable to Michigan Regulated Utilities), undated.

15. Testimony and Exhibits of Joseph C. Barden before the MPSC in Case No. U-5281, undated.

16. Testimony of Donald W. Johns before the MPSC in Case No. U-5281, undated.

17. Exhibit One of Donald W. Johns entitled "Test of Linear Relationship Between Utility Bond Ratings and the Cost of Debt" before the MPSC in Case No. U-5281, undated.

18. "Staff Report on 'Range of Proposals'" By Joseph C. Barden before the MPSC in Case No. U-5281, June 30, 1977.

19. Surrebuttal Testimony and Exhibits of Donald W. Johns before the MPSC in Case No. U-5281, January 23, 1978.

20. Surrebuttal Exhibit of D.W. Johns "Computation of Tax Factor Savings Due to a Change in Interest Coverage Resulting from Inclusion of Construction Work in Progress in the Rate Case" before the MPSC in Case No. U-5281, undated.

21. Surrebuttal Exhibits of D.W. Johns "1976 Equity Capital Study Utilizing a Price to Book Model for 96 Electric Utilities" before the MPSC in Case No. U-5281, undated.

22. Surrebuttal Testimony and Exhibits of Joseph C. Barden before the MPSC in Case No. U-5281, January 23, 1981.

23. Surrebuttal Case "Summary of the Results of the Staff Study of the Effect on Revenue Requirements and on the Present Value of Funds of Eliminating AFUDC and Including CWIP in the Rate Base Assuming an Ongoing Rate Base and Construction Program" by Joseph C. Barden before the MPSC in Case No. U-5281, undated.

24. Surrebuttal Case "Staff Study of the Impact on Revenue Requirements and on the Present Value of Funds of Flowing Through the Carrying Charge Related to CWIP" by Joseph C. Barden before the MPSC in Case No. U-5281 (3 parts), undated.

25. Staff Report entitled "A study of the impact on revenue requirements and on the present value of the dollars involved of various changes in present accounting and ratemaking procedures concerning 'AFUDC' and 'CWIP' and the Income Tax effect of 'ICC'" by J. Barden before the MPSC in Case No. U-5281, undated.

26. Opinion and Order of Michigan Public Service Commission in Case U-5281, March 14, 1980.

[FR Doc. 81-32463 Filed 11-9-81; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 4

[Docket No. RM82-2]

Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less; Exemptions From Provisions of Federal Power Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend certain definitions in its regulations governing the exemption of small hydroelectric power projects from provisions of the Federal Power Act to enable diversion projects of a specified size to qualify for exemption on a case-by-case basis as so-called natural water feature projects. The proposed rule would also eliminate notices of intent to file a preliminary permit for such project, if a permit rather than an exemption is sought, and would require a project owner to file for exemption within a specified notice period, if another person previously filed for a permit.

The proposed rule would permit a greater number and variety of projects to be exempted from certain provisions of the Act. The rule would also expedite the filing and consideration of competing applications for exemptible projects.

DATE: Written comments must be filed with the Commission's Secretary by December 7, 1981.

ADDRESS: Comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. More information concerning the submittal of comments is found in Supplementary Information.

FOR FURTHER INFORMATION CONTACT:

James Hoecker, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357-9342

Ronald Corso, Director, Division of Hydropower Licensing, Office of Electric Power Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 376-9171

SUPPLEMENTARY INFORMATION:

October 29, 1981.

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations which now provide for case-specific exemption of small hydroelectric power projects from

certain provisions of Part I of the Federal Power Act (Act), including the licensing provisions. The proposed amendments define the characteristics of certain small hydroelectric power projects, known as natural water feature projects, so as to make specific kinds of projects exemptible under the terms of the Energy Security Act of 1980 (ESA).[1] The Commission may now exempt natural water feature projects under the Commission's procedures established in Order No. 106.[2] However, neither the statute nor the regulations define what is meant by a natural water feature other than to state the Commission's authority to exempt projects that utilize natural water features for electric power generation. The Commission proposes to exempt these projects only on a case-specific basis.

The proposed rule would also amend § 4.33 of the Commission's regulations to preclude the filing of notices of intent to file a preliminary permit application, if an application for a permit rather than for an exemption is filed for a natural water feature project. Section 4.104 would also be amended.

I. Natural Water Features

A. Background

The ESA contains a provision that amends the Public Utility Regulatory Policies Act of 1978 (PURPA) to authorize the Commission to exempt certain small hydroelectric power projects, on a case-by-case basis or by class or category of such projects, from all or part of Part I of the Act, including any licensing requirement.[3]

Section 408 of the ESA grants the Commission discretion to provide exemption under specified conditions.[4] In addition to the 5 megawatt limitation which the statute provides for the proposed installed capacity of any exemptible project, a project, to be exemptible, must utilize either the water power potential of an existing dam or that of a so-called "natural water feature," without the need for a dam or man-made impoundment. The statute provides little guidance about what is meant by a "natural water feature". Nor does the legislative history indicate the possible configurations of project works that could be considered exemptible under this statutory concept. In the Commission's view, a natural water feature could be an elevated natural lake or a waterway, the topographical features of which permit diversion of some waters for purposes of power generation.

All projects which meet the threshold criteria of section 408 of the ESA are eligible for exemption under the Order No. 106 procedures.[5] However, when those procedures were developed, the term "natural water feature" was not defined. This was because, at that time, the Commission had little information or experience as to the scope of this satutory term. Instead, the Commission used a broad definition of "dam" in § 4.102 of the exemption rules. This definition was designed to include among those exemptible projects that rely on existing dams for power generation any project that might utilize diversion or intake structures which could substantially obstruct a natural body of water, though in a manner different than a conventional impoundment-creating structure. This approach was developed pending further Commission consideration of the nature and scope of the so-called natural water feature project, as distinguished from a project which utilizes an existing dam (*i.e.*, a dam built on or before April 20, 1977 which will not require major alteration for power development).

It may be inferred from the statutory scheme and certain practical considerations that the "natural water feature" concept of section 408 of the ESA pertains to any project that uses naturally available hydraulic pressure. Such projects may have various configurations of project works. If a project were built to take advantage of the power potential of an elevated natural impoundment (a lake), the project's works would probably not include a dam but, instead, an intake structure and a penstock that convey water to the powerplant.[6] If a project were constructed to utilize a stream with a steep or precipitous gradient, including a waterfall, the project's works would in this case use a structure to divert water into a penstock to develop the naturally available hydraulic head differential between the diversion point and the location of the powerplant. Without construction of a diversion structure to direct water into a penstock, it would not be possible to take advantage of most natural water features for power generation.

B. The proposed rule

Section 408(c)(2) of the ESA specifically states that the Commission may determine how best to exempt natural water feature projects in order to achieve the purposes of Title IV of that Act. In the absence of express legislative guidance, the Commission proposes to revise in part the definition of "small hydroelectric power project" (§ 4.102(d)) to indicate the parameters of what the Commission will consider to be a natural water feature project not requiring an existing dam. Any diversion or intake structure utilized by such a project is limited to not more than six feet in height. Such structure may not create a pool larger than one acre-foot in volume.[7] In addition, the definition of "dam" (§ 4.102(a)) would be amended to exclude diversion structures which do not impound water so as to create artificially the hydraulic head used for power generation. Because a diversion

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[1] Pub. Law 96-294, 94 Stat. 611.

[2] "Exemption from All of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM80-65), issued November 7, 1981, 45 Fed. Reg. 76115, November 18, 1980. The case-specific procedures (18 C.F.R. §§ 4.101-4.108) are initiated by a qualified exemption applicant who files an application for exemption of a specific proposed project. The Commission then issues a notice of the application. The qualifications of the project for exemption, consistent with various environmental requirements and the public interest, are determined by the Commission in conjunction with review by Federal and state fish and wildlife agencies, Federal land management agencies, and other interested persons.

[3] The ESA amends section 408 of PURPA, as follows:

(c) Section 408 of such Act (as amended by subsection (a) of this section) is further amended—

(1) by inserting "(a)" before "For purposes of this title"; and "(B) *The requirement in subsection (a)(1) that a project be located at the site of an existing dam in order to qualify as a small hydroelectric power project,* and the other provisions of this title which require that a project be at or in connection with an existing dam (or utilize the potential of such dam) in order to be assisted under or included within such provisions, *shall not be construed to exclude*—

"(1) from the definition contained in such subsection (a)(1), or

"(2) from any other provision of this title, *any project which utilizes or proposes to utilize natural water features for the generation of electricity, without the need for any dam or impoundment, in a manner which (as determined by the Commission) will achieve the purposes of this title and will do so without any adverse effect upon such natural water features.". (Emphasis Added)*

[4] Certain environmental requirements which apply to projects which the Commission licenses will also apply to projects which it exempts from licensing, including the National Environmental Policy Act of 1969 and the consultation provisions in section 30 of the Federal Power Act.

[5] Order No. 106 contains a waiver provision (§ 4.103(d)) designed to address the additional limitations which the Commission places on case-specific exemptions (*e.g.*, a 5 MW or less project within an existing licensed project may not ordinarily be exempted).

[6] *See* diagrams attached to the mimeograph version of this notice available at the Commission's Division of Public Information during regular business hours. The diagrams are also filed as a part of the original document.

[7] The height limitation for diversion or intake structures and for pondage are based on the distinction drawn by the Congress for the National Program of Inspection of Dams, Act of August 8, 1972, 44 U.S.C. 467 *et seq.* However, the pondage limitation in the rule is one acre-foot, as opposed to 15 acre-feet in the statute.

structure will not be a dam within the meaning of the proposed rule, it need not be "existing" on or before April 20, 1977, in order to qualify a project for exemption.

The Commission's experience in licensing hydroelectric projects with a capacity of 5 MW or less and the record on case-specific exemptions under Order No. 106 demonstrate that by far the most feasible kind of natural water feature project is the project which removes by means of a diversion structure some water from a stream with a steep gradient. The diversion structure may be a log, rock piles, a submerged intake box, or a wood or concrete structure that spans all or part of the stream. All of these works serve the same basic function, that is, to remove some portion of the water from the streambed for delivery to a powerplant. Such structures are not designed to impound water for daily, weekly, monthly, or seasonal flow regulation, storage, or peaking operations.

Were the Commission to treat all diversion structures as dams and therefore require that, to be exemptible, such structures must have existed on or before April 20, 1977, very few, if any, natural water feature projects would be exemptible under section 408 of the ESA. Several factors indicate this. The technical and economic attractiveness of small diversion-type projects is a relatively recent phenomenon and few diversion structures otherwise qualified to be natural water feature projects were built before April 20, 1977. In addition, most exemptible natural water feature projects which utilize diversion structures would be located in the West and will frequently take advantage of seasonal heavy flows, thus standing idle for much of the year. Order No. 106 (*see* § 4.102(l) and (m)) requires that new or additional capacity be installed in order to qualify for exemption, but maximum feasible capacity is usually installed at these projects when they are developed; adding an increment of capacity to an existing project is therefore not economically feasible for such projects. This means that only new diversion projects will generally be exemptible. Moreover, the opportunities to utilize an elevated lake to develop the new or additional capacity required for exemptions are extremely limited.

The Commission believes that Congress did not intend that the authority provided the Commission to exempt natural water feature projects should be so narrowly applied as to become insignificant. A statute should be construed so that no clause, sentence, or word becomes superfluous, void, or insignificant.[8] Congress' specific reference to the exemptibility of any project which utilizes a natural water feature could become insignificant or superfluous, if diversion facilities were considered not to be natural water feature projects. In addition, unnecessarily narrow or strict interpretations of a statute granting administrative powers should not be allowed to defeat its obvious purpose.[9] A major purpose of Title IV of the ESA is "to provide further encouragement for the development of small hydroelectric power projects."[10] The approach proposed in this rulemaking would enable a greater number of projects with entirely new capacity to qualify for exemption and would thereby promote this statutory objective. A more restrictive approach would compel the developers of most such projects to seek a license and could frustrate the very statutory purpose for permitting the Commission to exempt natural water feature projects from provisions of the Act.

The rule also proposes to revise the definition of "dam", as it applies to exemptions, to distinguish diversion structures from other kinds of project works. The term "impoundment," when used in conjunction with "dam," connotes a project designed to obstruct the stream flow and, by backing up large quantities of water, create hydraulic pressure (head) behind the impoundment structure. As proposed, the revised definition of "small hydroelectric power project" is intended to convey the idea that diversion facilities do not restrain the quantity of stream flow necessary to create head. The power potential naturally present at such sites is made available for power generation merely by delivering the water in a manner which takes full advantage of *natural* topographical features. The minimum pondage necessary to force water into a penstock and create favorable hydraulic conditions, such as preventing air from entering the penstock, is not an impoundment as that term is normally understood.

C. Case-Specific Versus Categorical Exemption

At the time the Commission conducted hearings on the proposed categorical exemption rule in Docket No. RM81-7,[11] it received oral and written comment on the nature and location of natural water feature projects and whether such project could be defined in sufficiently precise terms for a categorical exemption. The Commission examined the plausibility of exempting all such projects by operation of a generic rule which would provide generic terms and conditions of exemption. It determined that categorical exemption of natural water feature projects is not feasible for various reasons.

First, the configuration and probable location of the project works which would be constructed to utilize a natural water feature are difficult to ascertain generically. This is partly because there are a variety of topographical circumstances where such projects could be developed. Second, the environmental concerns that would attend generic exemption procedures for such developments would be difficult to assess, thereby leading to generic terms and conditions that might be to extensive or otherwise inappropriate for any particular exemptible project. These problems suggest that case-specific exemption is both the most practical and efficient approach to the exemption of natural water feature projects.

The propriety of case-specific, as opposed to categorical, exemption for natural water feature projects is reinforced by the words of the statute which states that an exemption must be "without any adverse environmental effect upon such natural water feature". The case-specific procedures permit the Commission and the relevant state and Federal fish and wildlife agencies to ascertain whether the affected water feature would suffer adverse impacts which could not be mitigated by the design features of the proposed project works, adjustments to the operation of the proposed project, or by means of the terms and conditions of exemption. For example, sufficient stream flows or minimum diversions could be prescribed for particular projects under case-specific review to ensure continued protection of water quality and downstream fish and plant populations. Since review by appropriate environmental agencies will occur for each exemptible projects under the case-specific procedures, the Commission believes that the exemption rule will not result in adverse impacts on natural water features.

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[8] *See* generally, 2A (Sutherland) Statutes and Statutory Construction, (4th ed. 1973) at § 46.06.

[9] 3 Sutherland, at § 65.03.

[10] Section 402 of the ESA, 29 U.S.C. 7372.

[11] Notice of Proposed Rulemaking, "Exemption from Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less," issued December 22, 1980, 46 *Fed. Reg.* 1291, January 6, 1981. The Commission issued a Final Rule in this docket on October —, 1981, designated as Order No.?

With respect to environmental impacts, an examination of the physical relationships between the dam height, impoundment volume, and typical minimum flow restrictions shows the maximum stream segment affected, as well as the area more typically affected. For a stream which has a width of 50 feet, the maximum affected length of river segment covered by "pondage" behind a diversion structure would be 600 feet. This maximum impact would be associated with diverting flows on a stream with a gradient of 50 ft./mile, usually a highly uneconomical proposition. A more typical range of impacted stream lengths and impoundment volumes for the type of stream gradients of interest are as follows:

Stream width (feet)	Pondage volume (acre-feet)	Gradient (foot/mile)	Length affected (feet)
25	.25	100	[1] 310
50	.50	100	310
25	.03	2000	[2] 15
50	.06	2000	15

[1] Maximum case.
[2] Minimum case.

In addition, state agencies with responsibilities for managing fish and wildlife may prescribe, during case-specific consultations, minimum flow requirements at the diversion structure sufficient to protect the aquatic habitat in the stream between the points in the stream where water is diverted and where it is subsequently reintroduced after power production. The rate of flow downstream of the powerplant would be the same as would occur naturally. Examples of a minimum flow prescribed by an agency for the stream segment between the diversion and discharge points might be the continuous natural minimum flow of the stream or the flow equaled or exceeded at the site 85 or 90 percent of the time.

II. Other Revisions

A. Change in § 4.33(a)

The Commission proposes to amend § 4.33(a)(2) of its regulations, consistent with changes made in a recent order.[12] The amendment would preclude the filing of notices of intent to file a preliminary permit application for natural water feature projects but would also provide 30 days more for filing competing permit applications than notices of initial permit applications customarily provide for the filing of protests, interventions and competing applications. This provision is currently applied to projects located at existing dams. The so-called natural water feature projects, physically limited by the terms of § 4.102(1)(2), generally have the same conceptual simplicity as existing dam projects that makes it feasible to restrict somewhat the time available to competitors to prepare and file competing applications.

The proposed rule would also prevent one applicant from filing more than one notice of intent in a single proceeding.

B. Change in § 4.104

Section 4.104 of the Commission's regulations establishes definite relationships among exemptions, permits, licenses, and applications for any of these authorizations, if the subject of several applications and a Commission action pursuant to an application is the same hydroelectric power site or a mutually exclusive site. Paragraph (a)(2)(i) of § 4.104 addresses the appropriate timing of a competing exemption application when a preliminary permit application (and perhaps additional competing permit applications) have been filed. If there is more than one preliminary permit filed for a single site, it is unclear which public notice period (provided for each permit application) is the appropriate window for filing a competing exemption application. In other words, submittal of a second and competing permit application could, under § 4.104(a)(2)(i), afford a project owner sixty more days, in addition to the notice period on the initial permit application, to file an exemption application. This was not the Commission's intent. Competing applications for exemption or notices of intent to file such applications must be filed during the notice period for the initial permit application.

Section § 4.104(a)(2)(i) is amended to indicate that an application for exemption which competes with a first-filed preliminary permit application must be filed within the notice period for the "initial" permit application, without regard to any subsequently filed competing permit applications for which additional notice periods are provided.

III. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA) requires certain analysis of proposed agency rules that will have a "significant economic impact on a substantial number of small entities."

Pursuant to section 605(a) of the RFA, the Commission hereby finds that the analysis requirements set forth in the statute do not apply to this rulemaking.

The primary purpose of this proposal is to clarify exemption procedures already established for small hydroelectric power projects and to expand, to some extent, the kinds of projects which could be exempted under the rubric of "natural water feature projects." However, the Commission cannot estimate which entities will apply for exemption for natural water feature projects and therefore what the impact on small entities will be. Although the proposed exemption rule may assist small private developers or municipalities to obtain exemption, it will not assist this group any more or any less than others. Accordingly, on balance, there seems to be no significant impact.

If, in a final rule, the Commission were to provide for exemption of diversion-type projects, as this rule proposes, small entities which would otherwise be required to obtain a license for certain small hydroelectric power projects could resort to exemption. Moreover, by limiting the use of notices of intent for such projects, the Commission wishes to avoid delays occasioned by the filing of notices of intent to submit competing preliminary permit applications for certain projects, in those instances. Concededly, this latter proposal will require would-be project sponsors (including small private developers and small municipalities) to reach a decision quickly about filing a competing application; this may create some minimal additional burdens for small private and public developers, but these slight burdens should be more than offset by the advantages small developers will realize by virtue of a shorter, less costly application process and more rapid Commission decision making. Accordingly, any net economic impact of this change would benefit any small private or municipal developer.

In view of the minimal effects of the proposed changes in the Order No. 106 definitions and the restriction on notices of intent, the Commission believes that certification of no significant economic impact is appropriate.

IV. Comment Procedure

The Commission invites interested persons to submit written comments on the matters proposed in this notice. An original and 14 copies of such comments must be filed with the Commission not later than December 7, 1981. Comments submitted by mail should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should indicate the name, title, mailing address and

[12] Order No. 183, "Revisions to Regulations Governing Applications for Preliminary Permits and License for Water Power Projects" (Docket No. RM81-15), issued October 29, 1981.

telephone number of the person to whom communications concerning the proposal should be addressed. Comments should reference Docket No. RM82-2 on the outside of the envelope and on all documents therein. Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Division of Public Information, Room 1000, address above, during regular business hours. The Commission will consider all comments submitted before final action.

(Energy Security Act of 1980, Pub. L. 96-264, 94 Stat. 611; Federal Power Act, as amended, 16 U.S.C. 792-828c; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645; and the Department of Energy Organization Act, 42 U.S.C. 7101-7352; E. O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission proposes to amend Part 4 of the Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. Section 4.33 is amended by revising paragraph (a)(2) to read:

§ 4.33 Filing and disposition of conflicting applications.

(a) * * *

(2) A notice of intent to file a competing application for preliminary permit may not be submitted for any proposed major project—existing dam as defined in § 4.50(b)(5) of this chapter, any proposed minor water power project, as defined in § 4.60(b)(4) of this chapter, which utilizes an existing dam, or any water power project with an installed capacity of 5 megawatts or less which utilizes a natural water feature, as defined in § 4.102(1)(2). Any competing application for preliminary permit for a proposed major project—existing dam, minor water power project which utilizes an existing dam, or water power project 5MW or less which utilizes a natural water feature, must be submitted not later than 30 days after the last date for filing protests and petitions to intervene prescribed in the public notice issued under § 4.31(c)(2) of this chapter for the initial application. A competing applicant may file only one notice of intent for any project site during a license, permit, or exemption proceeding.

* * * * *

2. Section 4.102 is amended by revising paragraph (a) and paragraph (l)(2) to read as follows. The introductory text of paragraph (l) is shown for the convenience of the user.

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

* * * * *

§ 4.102 Definitions.

For purposes of this subpart—

(a) "Dam" means any structure for impounding water which is usable for electric power generation, if the impoundment supplies all, or the substantial part of, the total hydraulic pressure (head) developed for such generation.

* * * * *

(l) "Small hydroelectric power project" means any project in which capacity will be installed or increased after the date of application under this subpart and which will have a total installed capacity of not more than 5 megawatts and which:

* * * * *

(2) Would utilize for the generation of electricity a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for a dam and man-made impoundment, and contains a diversion or intake structure which:

(i) Does not exceed six feet in height from the lowest point of the natural streambed at the downstream toe of the structure to the lowest point on the crest of the structure; and

(ii) Does not create pondage of more than one acre-foot (1233.5 cubic meters) of water.

3. Section 4.104 is amended by revising paragraph (a)(2)(i) to read:

§ 4.104 Relationships among applications, exemptions, permits, and licenses.

* * * * *

(a) *Limitations on submission and acceptance of exemption applications.*

* * * * *

(2) *Pending permit or license application.* (i) *Pending permit application.* If a preliminary permit application for a project has been accepted for filing, an application for exemption of that project from licensing or a notice of intent to submit such an application may be submitted not later than the last date for filing protests or petitions to intervene prescribed in the public notice issued for the initial permit application under § 4.31(c)(2) of this chapter.

* * * * *

[FR Doc. 81-32564 Filed 11-9-81; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76 (Texas-14)]

High-Cost Gas Producted From Tight Formations; Wolfcamp Formation

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Wolfcamp Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 4, 1981. *Public Hearing:* No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 19, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8307, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued: November 4, 1981.

I. Background

On September 21, 1981, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Wolfcamp Formation in the Gomez, N.W. (Wolfcamp) Field in the northern portion

of Pecos County and in the Wolf (Wolfcamp) Field in the extreme southwest portion of Loving County, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Wolfcamp Formation in these two fields be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Gomez, N.W. (Wolfcamp) Field and the Wolf (Wolfcamp) Field where the Wolfcamp Formation is encountered be designated as a tight formation. The Gomez, N.W. (Wolfcamp) Field is located in northern Pecos County northwest of Fort Stockton, Texas, and contains approximately 24,457 acres. The Wolf (Wolfcamp) Field is located in the extreme southwestern portion of Loving County, between the town of Mentone, Texas, and the Pecos River in section 78, 79, 80, 81, 82 in Block 33, H&TC RR Company Survey. Both fields are part of Railroad Commission District 8.

The vertical interval requested for tight formation designation in the Gomez, N.W. (Wolfcamp) Field is that interval from 11,384 feet to 11,720 feet in the log of the Forest Oil Corporation No. 1 Garupa well. The zone has sands which were deposited in the submarine fan complex and are poorly sorted containing low values of porosity and permeability.

The gross thickness requested in the Wolf (Wolfcamp) Field is from 10,118 feet to 10,696 feet as measured in the log of the Cobb No. 1 Wolf well. The producing zone is a low permeability reservoir of detrital nature deposited in the deep Delaware Basin under low energy conditions.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Wolfcamp Formation in the Gomez, N.W. (Wolfcamp) Field and the Wolf (Wolfcamp) Field as described and delineated in Texas' recommendation as filed with the Commission be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before December 4, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Texas—14), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 19, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(74) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, subindexed as indicated, and is also located in the offical files of the jurisdictional agency that submitted the recommendation.

* * * * *

(56) through (73) [Reserved]

(74) *Wolfcamp Formation in Texas.* RM79-76 (Texas—14).

(i) *Gomez, N.W. (Wolfcamp) Field.*

(A) *Delineation of formation.* The Wolfcamp Formation in the Gomez, N.W., (Wolfcamp) Field is located in northern Pecos County, northwest of Fort Stockton, Texas, and contains approximately 24,457 acres.

(B) *Depths.* The top and base of the Wolfcamp Formation are found at the approximate depths of 11,384 feet and 11,720 feet, respectively as measured in the log of the Forest Oil Corporation No. 1 Garupa Well.

(ii) *Wolf (Wolfcamp) Field.*

(A) *Delineation of formation.* The Wolfcamp Formation in the Wolf (Wolfcamp) Field is located in extreme southwest Loving County between the town of Mentone, Texas, and the Pecos River in Sections 78, 79, 80, 81, 82, in Block 33, H&TC RR Company Survey.

(B) *Depths.* The top and base of the Wolfcamp Formation are found at the approximate depths of 10,118 feet and 10,696 feet, respectively, as measured in the log of the Cobb No. 1 Wolf Well.

[FR Doc. 81-32464 Filed 11-9-81; 8:45 am]

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18 CFR Parts 271, 273, and 274

[Docket No. RM80-38]

High-Cost Natural Gas Produced From Wells Drilled in Deep Water; Availability of Environmental Assessment

November 6, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Availability of environmental assessment.

SUMMARY: Notice is hereby given in Docket No. RM80-38 that on October 29, 1981, the Federal Energy Regulatory Commission (FERC) staff made available to the public an environmental assessment (EA) evaluating the proposed rule issued on July 11, 1980 (45 FR 47,863). This rule would establish an incentive price of 175 percent of the Natural Gas Policy Act (NGPA) section 102 price for natural gas produced offshore at a water depth of greater than 300 feet. Implementation of the proposed rule would encourage production of natural gas offshore in deep water—where extraordinary risks or costs are involved.

The EA concludes that implementation of the rule would not constitute a major Federal action significantly affecting the quality of the human environment.

DATE: The Commission invites all interested parties to file comments on this EA by December 10, 1981.

ADDRESS: File comments with: Kenneth F. Plumb, Secretary, FERC, 825 North Capitol Street, N.E., Washington, D.C. 20426.

This EA has been placed in the FERC's public files and is available for public inspection in the FERC's Office of Congressional and Public Affairs, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426. Copies are available in limited quantities upon request.

FOR FURTHER INFORMATION CONTACT:

Requests for further information should be addressed to Mr. George H. Taylor, Project Manager, FERC, Room 7102, 825 North Capitol Steet, N.E., Washington, D.C. 20426, telephone (202) 357-5365.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-32466 Filed 11-9-81; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 258

Indian Fishing—Hoopa Valley Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior is proposing to amend its conservation regulations governing Indian fishing on the Hoopa Valley Indian Reservation to prohibit the waste of fish and to alleviate some enforcement problems.

DATE: Comments must be received no later than December 10, 1981.

ADDRESS: Written comments should be addressed to the Area Director, Sacramento Area Office, Bureau of Indian Affairs, Federal Building, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Wilson Barber, Superintendent, Hoopa Agency, Bureau of Indian Affairs, P.O. Box 367, Hoopa, California 95546, telephone (916) 625-4285.

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9 and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection of Indian fishing rights.

Normally tribal governments are responsible for regulation of Indian fishing on a reservation. Tribal regulation on the Hoopa Valley Indian Reservation has not been possible because the reservation is shared by two tribes, one of which does not currently have a functioning government. The Bureau of Indian Affairs has made efforts to assist the Yurok Tribe in developing an organized government that will be able to participate with the Hoopa Valley Tribe in regulation of the Indian fishery. To date, however, these efforts have not met with success. While the efforts to resolve the organizational problems continue, the Department will continue to regulate the fishery to assure the continued existence of this valuable tribal asset.

Most of these proposed amendments were circulated in draft form among Indians of the Hoopa Valley Reservation beginning in April of this year and were discussed with the Indian community in meetings on the reservation. One proposed change requiring a court order to stay the sentence imposed on a person convicted of violating the regulations pending appeal received no adverse comment. That change was designed to prevent violators from deferring a suspension of their fishing rights beyond the current fishing season by filing frivolous appeals. It was considered the most important of the proposed changes. Since it was both important and not controversial, it was promulgated and made effective on an expedited basis by publication in the **Federal Register** on August 10, 1981, 46 FR 40510.

The only change being proposed in this document that was not included in the draft circulated earlier is the addition of a definition of "snag gear." The proposed definition is based on language in the regulations of the California Fish and Game Commission, 14 Calif. Admin. Code §§ 2.10 and 2.20. The additional definition is proposed so that eligible fishers will be on notice as to what types of gear are prohibited. The definition is based on California's regulations to avoid any confusion that might result from using a different definition and to enable the Indian court to use state court case law in deciding cases.

Another change expanding the Monday closure was included in the draft regulations but is being modified in response to comments. Under the existing regulations, all nets must be out of the water between the hours of noon and four p.m. on Monday of each week. The closure is designed to limit waste resulting from fish being left in nets for more than a week. The draft amendments provided that all nets would have to be out of the water on Monday. The closure was to be expanded to include all of Monday so that law enforcement officers would have enough time to check the rivers throughout the reservation to assure that no nets were in the water. Some commenters objected to the expanded hours on the ground that it would prohibit fishing on Sunday night after midnight when some persons who fish only on weekends normally fish. For that reason it is proposed to expand the closure to include only the daylight hours on Monday. Law enforcement officers should be able to cover the entire river even if they begin well after sunrise and stop well before sunset. The officers will be able to avoid disputes about the precise time of day, which have occurred when enforcing the present four-hour closure rule.

It is proposed to add a new provision requiring that all fish caught in a gill net be preserved or consumed before they

rot. This requirement is needed to reduce waste of the resource. At present, the only provision of the regulations addressing the waste problem is the Monday closure. Especially when water temperatures are higher, however, fish will rot in the water in much less than one week. This requirement is needed to assure that nets are checked as frequently as necessary to avoid waste.

When this proposal was circulated in draft form, several persons objected on the grounds that the proposal implicitly and falsely accused the Indian community of wasting fish. It is recognized that the vast majority of Indian fishers take care to remove all captured fish promptly. Given the precarious state of the resource, however, wasting fish is a serious matter. Those few individuals who do waste part of the resource in this manner should be penalized for their actions.

It is also proposed to prohibit any fisher from fishing any net that is not identified with his or her number and to forbid the fishing of nets with more than one identification number on them. These changes will make it easier to determine whether an eligible fisher is fishing more nets than the regulations allow and to prove who is responsible for a net that is being fished in an illegal manner. In the past there have been problems of proof when a single net had several identification numbers on it. Some persons objected to this provision when it appeared in the draft regulations on the ground it would inconvenience some fishers who fish legally but like to share the responsibility of tending the net among several persons. The need to alleviate the current enforcement problems, however, appears to justify this minor inconvenience. Disabled eligible fishers may have other eligible fishers attend their nets under the procedures established in the revisions made last year to 25 CFR 258.8(h). 45 FR 74687, 74691, (November 10, 1980). The proposed rule would not prohibit the owner of the net from placing his or her name on the net to indicate ownership while it is being fished by someone else. The owner's number, however, should be on the net only when it is the owner who is fishing the net.

Two other minor changes are being proposed. Responsibility for selling seized fish is being assigned to the BIA superintendent instead of to law enforcement officers. The superintendent and his staff are in a better position to arrange for the sales than are law enforcement officers. The U.S. Fish and Wildlife Service is being designated as the recipient of the logsheets to conform to the address preprinted on those forms. The Fish and Wildlife Service has the expertise to evaluate the information in those logsheets.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

It has been determined that this proposed rule is not a major rule as that term is defined in Executive Order 12291 of February 17, 1981, 46 FR 13193, because it will have a minimal economic impact on a small number of people.

It has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354 and the implementing regulations of the Interior Department, 43 CFR Part 14, 45 FR 85376.

PART 258—INDIAN FISHING HOOPA VALLEY INDIAN RESERVATION

It is proposed to amend 25 CFR Part 258 as follows:

1. By redesignating paragraphs (p), (q) and (r) of § 258.4 as paragraphs (q), (r) and (s) of that section respectively and by adding a new paragraph (p) to that section to read as follows:

§ 258.4 Definitions.

* * * * *

(p) Snag gear includes:

(1) Any hook with more than one point or more than one hook point attached directly or indirectly to one line.

(2) Any multiple hook with shortest distance between hook points greater than 1.25 inches or shank longer than two inches, and

(3) Any weight exceeding one-half ounces attached to any multiple hook or to the line, directly or indirectly, within 18 inches of any multiple hook.

* * * * *

2. By revising paragraph (d)(1) of § 258.6 to read as follows:

§ 258.6 Fisher identification card required.

* * * * *

(d)(1) Each eligible Indian who holds a fisher identification card must file monthly logsheets reporting catch data during the calendar year covered by the card. A report must be filed each month whether or not the person reporting caught any fish during that month. The logsheet shall be filed with the U.S. Fish and Wildlife Service's Fishery Assistance Office in Arcata, California, by the 15th day of the month following the month covered by the logsheet. Logsheet forms are provided to Indian fishers by the Bureau of Indian Affairs.

* * * * *

3. By revising paragraph (c) of § 258.7 to read as follows:

§ 258.7 Identification of gear.

* * * * *

(c) No eligible fisher may:

(1) Permit his or her identification number to be used on a net that is being attended or fished by someone else,

(2) Attend or fish a net that is not marked with his or her own identification number, or

(3) Attend or fish a net that has more than one identification number on it.

4. By revising paragraph (a) of § 258.8 and adding a new paragraph (e)(10) to that section to read as follows:

§ 258.8 Permissible and prohibited fishing.

(a) The Hoopa Valley Indian Reservation is open to the taking of salmon, steelhead and sturgeon by eligible Indians for subsistence and ceremonial purposes unless specifically closed by these regulations or by in-season and emergency regulations promulgated under § 258.11. Fishing is permitted seven days per week and 24 hours per day except that all nets must be out of the water between sunrise and sunset on Monday of each week.

* * * * *

(e) Restrictions on fishing * * *

(10) Eligible fishers shall cause any fish they catch in a gill net to be preserved or consumed before the fish rot.

* * * * *

5. By revising paragraph (b)(6) of § 258.14 to read as follows:

§ 258.14 Enforcement.

* * * * *

(b) * * *

(6) The Hoopa Agency Superintendent shall promptly sell all seized fish and hold the proceeds pending adjudication of the charge that was the basis for the seizure. Proceeds from sales of fish that are found, upon adjudication, to have been illegally taken shall be transferred to special Hoopa-Yurok Fund in the U.S. Treasury.

Dated: October 6, 1981.

Donald Paul Hodel,

Under Secretary of the Interior.

[FR Doc. 81-32486 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-10-81]

Mortgage Subsidy Bonds; Cross-Reference to Temporary Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing amendments to temporary income tax regulations that relate to mortgage subsidy bonds. The text of these amendments also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 11, 1982. The regulations are proposed to be effective for obligations issued after April 24, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-10-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Harold T. Flanagan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Temporary Regulations under Title 11 of the Omnibus Reconciliation Act of 1980 (26 CFR Part 6a) under section 103A of the Internal Revenue Code of 1954, which were published in the **Federal Register** for July 1, 1981 (46 FR 34311). The final regulations, which this document proposes to be based on amendments to the temporary regulations, would be added to Part 1 of Title 26 of the Code of Federal Regulations. For the text of the amendments to the temporary regulations, see FR Doc. 81-32480 (T.D. 7794) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the amendments to the regulations.

The temporary regulations as amended interpret the provisions of section 103A of the Internal Revenue Code of 1954 which provides that a mortgage subisdy bond shall be treated as an obligation not described in section 103(a) (1) or (2) the interest on which shall not be excludable from gross income. Section 103A allows exceptions to this general rule for qualified mortgage bonds and qualified veterans' mortgage bonds.

These regulations are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code (26 U.S.C. 7805; 68A Stat. 917).

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will published in the **Federal Register**.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 81-32481 Filed 11-5-81; 11:46 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[EE-169-78]

Certain Cash or Deferred Arrangements Under Employee Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to certain cash or deferred arrangements under employee plans. Changes in the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with the Act and would affect employees who are entitled to make elections under certain cash or deferred arrangements.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 11, 1982. The amendments are generally proposed to be effective for plan years beginning after December 31, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles M. Watkins of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(k) and section 402(a)(8) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 135 of the Revenue Act of 1978 (92 Stat. 2785) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

History

Prior to 1972, the Internal Revenue Service treatment of tax-qualified plans where employees had the option of receiving direct cash payments or having employers contribute an equal amount to the plans was illustrated in Revenue Ruling 56-497 (1956-2 C.B. 284), Revenue Ruling 63-180 (1963-2 C.B. 189), and Revenue Ruling 68-89 (1968-1 C.B. 402). Generally, employer contributions to these plans were not considered constructively received by the employees. Therefore, employees were not presently taxed on these contributions. If the plans met the other requirements for qualification, and if the cash or deferred arrangements with respect to the contributions made to the trusts forming part of the plans met the enumerated tests of these rulings, they would be considered qualified.

On December 6, 1972, the Internal Revenue Service issued proposed regulations which called into question the tax treatment of contributions made at the direction of employees under cash or deferred arrangements to these qualified plans. In order for Congress to have time to study this area, section 2006 of the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406, 88 Stat. 992) ("ERISA") was enacted. That

section provided that for those qualified plans in existence on or before June 27, 1974, the three above-mentioned revenue rulings would be controlling through December 31, 1976. Further, for plans coming into existence after June 27, 1974, contributions made at the direction of employees under cash or deferred arrangements were considered employee contributions and thus were presently taxable to the employee.

The status-quo treatment of ERISA section 2006 was extended through December 31, 1979, by section 1506 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1739) and by section 5 of the Foreign Earned Income Act of 1978 (Pub. L. 95-615, 92 Stat. 3097).

New Law—In General

For plan years beginning after December 31, 1979, section 135 of the Revenue Act of 1978 (Pub. L. 95-600, 92 Stat. 2785) provides two new rules relating to amounts that employees elect to defer under qualified cash or deferred arrangements.

First, the section specifically provides that if amounts deferred at an employee's election meet certain requirements relating to nonforfeitability and withdrawal, the deferred amounts will not be treated as made available to the employee or as employee contributions to the plan. the nonforfeitability requirement provides that amounts deferred under the arrangement, and the earnings on those amounts, must be nonforfeitable. The withdrawal limitation requires that no amounts may be distributed earlier than death, disability, retirement, separation from service, the attainment of age 59½ or upon a finding of hardship. In service distributions or withdrawals by reason of the completion of a stated period of participation or the lapse of a fixed number of years are prohibited.

Second, the new section adds detailed, mechanical antidiscrimination rules for cash or deferred arrangements. Under these rules, both the eligibility requirements in section 410(b)(1) and the antidiscrimination requirements in section 401(a)(4) are satisified with respect to those eligible employees who actually participate if the class of employees eligible to elect deferrals under the arrangement satisfies one of the tests in section 410(b)(1) and the ratios of the amounts deferred, as a percentage of compensation, by eligible employees are within the two standards enumerated in new Code section 401(k).

In general, the two deferral ratio tests involve a comparison of the amounts deferred by the highest paid one-third of eligible employees, as a percentage of compensation, to the amounts deferred by the remainder of the eligible employees.

Under one standard, the antidiscrimination requirement is satisfied if the average deferral by the highest paid one-third is not more than 1.5 times the average deferral by the other employees. For example, if lower paid employees elected to defer an average of 10 percent of their compensation, this standard would be satisfied if the highest paid one-third deferred an average of not more than 15 percent of their compensation.

The second standard involves a comparision of average deferral percentages in two steps. First, the average deferral for the highest paid one-third may not be more than three percentage points greater than the average deferral by the remainder of employees. Second, the average deferral for the highly paid cannot be more than 2.5 times the average deferral of the remainder of employees. For example, if the lower paid employees elected to defer an average of two percent of their compensation, then the second standard would be satisfied if the highest paid employees elected to defer an average of five percent of pay since (A) five percent is not more than three percentage points greater than two percent, and (B) five percent is not greater than 2.5 times the average deferral of the lower paid.

For purposes of determining these average deferral percentages, only those deferred amounts which satisfy the nonforfeitability and withdrawal rules applied under the qualified cash or deferred arrangement definition may be taken into account. Employer contributions under the Federal Insurance Contribution Act may not be taken into account for purposes of determining the deferral percentages.

Fail Safe Device

Neither the Revenue Act of 1978 nor the legislative history of the provision which became section 135 of that Act (H.R. Rep. No. 95-1445, 95th Cong., 2d Sess. 65 (1978); S. Rep. No. 95-1263, 95th Cong., 2d Sess. 76 (1978); H.R. Rep. No. 95-1800, 95th Cong., 2d Sess. 206 (1978)) require a provision for fail-safe devices or other mechanisms that will assure compliance with the antidiscrimination requirements applied to qualified cash or deferred arrangements. However, the proposed regulations incorporate a special rule which recognizes the need for an administrable and automatic procedure that satisfies the new requirements.

This rule allows employer contributions which were not subject to any employee election to be used in satisfying the deferral percentage tests. However, in order to be consistent with the principles of the cash or deferred provisions, only employer contributions which satisfy the nonforfeitability and withdrawal limitations applied to elected deferrals may be used in computing the percentage. This rule enables a plan sponsor to assure that one of the antidiscrimination tests always is satisfied. For example, if an employer contributes 5 percent of compensation of each eligible employee to a plan and also allows each eligible employee to elect to defer all or part of an additional 2.5 percent of compensation, then, assuming the classification of eligible employees satisfies section 410(b)(1) and all employer contributions satisfy the nonforfeitability and withdrawal requirements, the plan will always satisfy the antidiscrimination standard because even if all of the highest paid one-third elect deferral and all of the remainder of employees elect current cash, the average deferrals for the high paid (7.5 percent) cannot be more than 1.5 times the average deferrals for the other employees (5 percent).

Comments are requested as to any additional fail-safe devices that plans could utilize to satisfy the nondiscrimination requirements.

Scope of Deferral Rules

While the proposed regulations allow employer contributions made without an employee's election to be included in computing the deferral percentages, this device may not be used to circumvent the basic antidiscrimination rules applied to qualified profit sharing and stock bonus plans. Thus, the proposed regulations prohibit any arrangement attempting to take advantage of the mechanical antidiscrimination tests in section 401(k)(3) from providing a discriminatory level of contributions. For example, a plan could not use the antidiscrimination tests to provide a contribution, without election, equal to 10 percent of the compensation of rank and file employees while providing a contribution of 15 percent of compensation to the highly paid employees.

The proposed regulations indicate that an important element of a qualified cash or deferred arrangement is the total amount subject to deferral. Thus, as long as the total amount subject to deferral is nondiscriminatory, the plan will be allowed to apply the mechanical antidiscrimination tests. For example, a plan provides that the highly paid one-third may elect to have all or a portion of 15 percent of their compensation paid

in cash or deferred. The plan also provides that the remainder of employees will have 10 percent of their compensation contributed without being subject to an election, and that an additional five percent will be subject to the cash or deferred election. If the 10 percent contributed on behalf of the lower paid employees satisfies the nonforfeitability and withdrawal rules applied to elected deferrals, the plan will satisfy the antidiscrimination tests in section 401(k)(3) and will not be deemed to be discriminatory merely because of the difference in the amounts subject to the election.

Finally, the proposed regulations provide that the antidiscrimination tests, which are effectively safe harbors, apply only to amounts which satisfy the nonforfeitability and withdrawal requirements for elected deferrals. For example, additional employer contributions which "match" amounts used in computing deferral percentages but which are not fully vested and subject to withdrawal limitations would not be entitled to protection under the antidiscrimination tests in section 401(k)(3).

Salary Reduction

The proposed regulations specifically recognize that a qualified cash or deferred arrangement may be in the form of a salary reduction agreement. Under such an agreement an employee could elect, for example, to reduce his or her current compensation or to forgo an increase in compensation, and to have the forgone amounts contributed to the plan on his or her behalf.

Failure to Satisfy Requirements

The consequences of not satisfying the new requirements include the present inclusion of employer contributions deferred at the employee's election under the cash or deferred arrangement in the income of the employee, even if the rest of the plan remains qualified. Also, the special nondiscrimination rules may not be used if the other new requirements are not satisfied.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations was Leonard S. Hirsh of the Employee Plans and Exempt Organizations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new § 1.401(k)-1 is added immediately after § 1.401(j)-6:

§ 1.401(k)-1 Certain cash or deferred arrangements.

(a) *In general.* (1) *General rule.* Any profit-sharing or stock bonus plan shall not fail to satisfy the requirements of section 401(a) merely because the plan includes a qualified cash or deferred arrangement. For purposes of this section, a cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan under which an eligible employee may elect to have the employer contribute an amount to a trust under the plan or to have the amount paid to the employee in cash. The arrangement may also be in the form of a salary reduction agreement between an eligible employee and the employer under which a contribution will be made only if the employee elects to reduce his compensation or to forgo an increase in his compensation. The eligible employee may be given the option under the arrangement to have a portion of the amount that is subject to the election contributed to a trust under the plan and a portion of the amount paid to the eligible employee in cash. The plan of which the arrangement is a part may provide for contributions, both employer and employee, other than those subject to the election.

(2) *Treatment of contributions under the qualified arrangement.* Employer contributions to a plan under a qualified cash or deferred arrangement are not includible in the employee's gross income; see § 1.402(a)-1(d).

(3) *Nonqualified arrangement.* A profit-shairng or stock bonus plan that includes a cash or deferred arrangement that is not qualified may, nevertheless, be a qualified plan under section 401(a). Even if the plan satisfies the requirements of section 401(a), contributions to the plan made at the election of the employee for the plan year are includible in the employee's gross income; see § 1.402(a)-1(d).

(4) *Qualified arrangement.* A qualified cash or deferred arrangement is an arrangement which is part of a plan satisfying the requirements of section 401(a) and the additional requirements set forth in paragraphs (b), (c) and (d) of this section.

(b) *Coverage and discrimination requirements*—(1) *Arrangement alone.* This paragraph applies if a plan consists only of elective contributions. This plan shall satisfy this paragraph for a plan year if the plan satisfies either the general rules in paragraph (b)(3) or the special rules in paragraph (b)(4) of this section, for such plan year.

(2) *Combined plan.* This subparagraph applies if a plan consists of both elective contributions and non-elective contributions. This plan shall satisfy this paragraph if it satisfies either paragraph (b)(2)(i), (ii), or (iii) of this section.

(i) The combined elective and non-elective portions of the plan satisfy the general rules in paragraph (b)(3) of this section.

(ii) The non-elective portion of the plan satisfies the general rules in paragraph (b)(3) of this section and the elective portion of the plan satisfies the special rules in paragraph (b)(4) of this section.

(iii) The non-elective portion of the plan satisfies the general rules in paragraph (b)(3) of this section and the combined elective and non-elective portions of the plan satisfy the special rules in paragraph (b)(4) of this section.

(iv) In applying the test in paragraph (b)(2)(iii) of this section the non-elective portion of the plan may only be considered in applying the special rules to the extent that such contributions satisfy the requirements in paragraphs (c) and (d) of this section.

(3) *General cash or deferred discrimination rules.* A plan (or portion of a plan) will satisfy these rules if it satisfies the requirements of section

410(b)(1) and section 401(a)(4). In testing whether the requirements of section 410(b)(1) are satisfied, the employes who benefit from the plan may be either (i) the eligible employees or (ii) the covered employees. In testing for discrimination under section 401(a)(4), the eligible or covered employees will be considered depending on the group used to satisfy section 410(b)(1).

(4) *Special cash or deferred discrimination rules.* A plan (or portion of a plan) will satisfy these rules if the eligible employees satisfy section 410(b)(1) and the contributions satisfy one of the alternative actual deferral percentage tests in paragraph (5). For purposes of this subparagraph, in applying section 410(b)(1), all eligible employees are considered to benefit from the plan.

(5) *Actual deferral percentage test.* (i) The actual deferral percentage test is satisfied if either of the tests specified in paragraph (b)(5)(ii) or (iii) of this section is satisfied.

(ii) The actual deferral percentage for the eligible highly compensated employees (top ⅓) is not more than the actual deferral percentage of all other eligible employees (lower ⅔) multiplied by 1.5.

(iii) The excess of the actual deferral percentage for the top ⅓ over the lower ⅔ is not more than three percentage points, and the actual deferral percentage for the top ⅓ is not more than the actual deferral percentage of the lower ⅔ multiplied by 2.5.

(6) *Nondiscriminatory deferrals.* A plan will not satisfy this paragraph unless the total amounts subject to deferral on behalf of both the higher and lower paid employees is nondiscriminatory.

(7) *Time when contributions credited.* For purposes of applying the discrimination rules in paragraphs (b)(3) and (4) of this section for a particular plan year, a contribution will be considered for that plan year if it is allocated to the participant's account under the terms of the plan as of any date within that plan year. A contribution may be considered allocated as of any date within a plan year only if—

(i) Such allocation is not dependent upon participation in the plan as of any date subsequent to that date,

(ii) The non-elective contribution is actually made to the plan no later than the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the particular plan year ends, and

(iii) The elective contribution is actually made to the plan no later than 30 days after the end of the plan year.

(8) *Definitions.* For purposes of this section the following definitions shall apply:

(i) *Eligible employee.* In any year, eligible employees are those employees who are eligible for employer contributions under the plan for that year.

(ii) *Covered employee.* In any year, covered employees are those employees whose accounts are credited with a contribution under the plan for that year.

(iii) *Non-elective contribution.* Non-elective contributions are those which were not subject to the cash or deferred election.

(iv) *Elective contribution.* Elective contributions are those which were subject to the cash or deferred election and which were deferred.

(v) *Actual deferral percentage.* The actual deferral percentage for the top ⅓ and lower ⅔ for a plan year is the average of the ratios, calculated separately for each employee in such group, of the amount of employer contributions paid under the plan on behalf of each such employee for such plan year, to the employee's compensation for such plan year.

(vi) *Employee compensation.* An employee's compensation is the amount taken into account under the plan prior to calculating the contribution made on behalf of the employee under the deferral election. However, if such amount has the effect of discriminating against the lower ⅔, a nondiscriminatory definition shall be determined by the Commissioner. It is permissible for a plan to calculate plan compensation other than on a plan year basis if it is calculated on a reasonable and consistent basis.

(vii) *Highly compensated employee.* For purposes of the actual deferral percentage test, a highly compensated employee is any eligible employee who receives, with respect to the compensation taken into account for that plan year, more compensation than two-thirds of all other eligible employees. Both ⅓ and ⅔ of the eligible employees shall be rounded to the nearest integer.

(9) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). (i) Employees A, B, and C are the eligible employees and earn $30,000, $15,000 and $10,000 a year, respectively. These salary figures are used by the employer in determining contributions up to 10% of compensation to a profit-sharing plan under a qualified cash or deferred arrangement. Under the arrangement, each eligible employee may elect either to receive, in whole or in part, a direct cash payment of his allocated contribution, or to have the amount contributed by the employer to the plan. For a plan year A, B, and C make the following elections:

Employee	Compensation	Elected contribution to plan	Cash election
A	$30,000	$2,000	$1,000
B	15,000	750	750
C	10,000	400	600

(ii) The ratios of employer contributions to the trust on behalf of each eligible employee to the employee's compensation for the plan year (calculated separately for each employee) are:

Employee	Ratio of contribution to compensation	Individual's actual deferral percentage
A	2,000/30,000	6.7
B	750/15,000	5
C	400/10,000	4

(iii) The actual deferral percentage for the top ⅓ is 6.7 percent (2,000/30,000), and the actual deferral percentage for the lower ⅔ is 4.5 percent

$$\left(\frac{5\%+4\%}{2}\right)$$

Because 6.7 percent is less than 6.75 percent (4.5 percent multiplied by 1.5) the first percentage test is satisfied.

Example (2). (i) Employees 1 thru 9 are the eligible employees who earn compensation as indicated in the table below. Employer A contributes to a profit-sharing plan. Employer A makes elective contributions as well as non-elective contributions. Under the plan, Employer A contributes on behalf of each employee a non-elective contribution equal to three percent of compensation. Under the cash or deferred arrangement, each employee may elect either to receive up to six percent of compensation as a direct cash payment or to have that amount contributed by Employer A to the plan. For a plan year employees 1 thru 9 make the following elections:

Employee	Compensation	Non-elective contribution to plan	Elective contribution elected to be deferred under cash or deferred arrangement
1	$100,000	$3,000	$6,000
2	80,000	2,400	4,800
3	60,000	1,800	3,600
4	40,000	1,200	1,200
5	30,000	900	900
6	20,000	600	600
7	20,000	600	600
8	10,000	300	300
9	5,000	150	150

(ii) For the plan year under the cash or deferred arrangement the ratios of Employer

A's contributions on behalf of each employee to the employee's compensation are:

Employee	Ratio of elective contribution to compensation	Individual's actual deferral percentage
1	6,000/100,000	6
2	4,800/80,000	6
3	3,600/60,000	6
4	1,200/40,000	3
5	900/30,000	3
6	600/20,000	3
7	600/20,000	3
8	300/10,000	3
9	150/5,000	3

(iii) The actual deferral percentage for the top ⅓ (1, 2, 3) is 6% and the actual deferral percentage for the lower ⅔ (4 thru 9) is 3%. Because 6% is greater than 4.5% (3% multiplied by 1.5), the first percentage test is not satisfied. However, because 6% is not more than 3 percentage points greater than 3% and 6% is less than 7.5% (3% x 2.5), the second percentage test is satisfied.

Example 3. Employer B has a qualified profit-sharing plan which includes a qualified cash or deferred arrangement. The qualified cash or deferred arrangement in operation produces an actual deferral percentage for the top ⅓ of 5%. The actual deferral percentage for the lower ⅔ is 2%. This arrangement does not satisfy the first percentage test because 5% is greater than 3% (2% multiplied by 1.5). However, this arrangement does satisfy the second percentage test because the actual deferral percentage for the top ⅓ is not more than 3 percentage points in excess of the actual deferral percentage for the lower ⅔ (5%–2%) and 5% is not greater than 5% (2% multiplied by 2.5).

Example 4. Employer C has a stock bonus plan which includes a qualified cash or deferred arrangement. The cash or deferred arrangement in operation produces an actual deferral percentage for the top ⅓ of 12%. The actual deferral percentage for the lower ⅔ is 8%. This arrangement does not satisfy the second percentage test because 12% is more than three percentage points above 8%. However, this arrangement does satisfy the first percentage test because 12% for the top ⅓ is not greater than 12% (8% for the lower ⅔ multiplied by 1.5).

Example 5. (i) Employees 1 thru 9 are the only employees of Employer D. Employer D maintains and contributes to a profit-sharing plan the following amounts:

(A) Six percent of each employee's compensation, where such amounts do not satisfy paragraphs (c) and (d).

(B) Two percent of each employee's compensation, where such amounts do satisfy paragraphs (c) and (d), and

(C) Up to three percent of each employee's compensation which the employee may elect to receive as a direct cash payment or to have that amount contributed to the plan.

(ii) For a plan year, employees 1 thru 9 received compensation and deferred contributions as indicated in the table below:

Employee	Compensation	6 percent non-elective contribution	2 percent non-elective contribution	Elective contribution elected to be deferred
1	$100,000	$6,000	$2,000	$3,000
2	80,000	4,800	1,600	2,400
3	60,000	3,600	1,200	1,800
4	40,000	2,400	800	0
5	30,000	1,800	600	0
6	20,000	1,200	400	0
7	20,000	1,200	400	0
8	10,000	600	200	0
9	5,000	300	100	0

(iii) In this case, the eligible employees are all the employees of Employer D, and the eight percent non-elective contributions are made for every eligible employee. Thus, the non-elective portion of the plan satisfies the general rules in subparagraph (3).

(iv) However, the elective portion of the plan does not satisfy the special rules in subparagraph (4) because the actual deferral percentage for the top ⅓ is 3 percent and the actual deferral percentage for the lower ⅔ is zero. Nevertheless, as allowed by subparagraph (2) (iii) the 2 percent non-elective contributions may also be taken into account in applying the special rules because such contributions satisfy paragraphs (c) and (d).

(v) If these contributions are considered the actual deferral percentage for the top ⅓ is 5 percent and the actual deferral percentage for the lower ⅔ is 2 percent. Because 5 percent is not more than 3 percentage points greater than 2 percent and not more than 2 percent multiplied by 2.5, the alternative actual deferral percentage test in subparagraph (5) is satisfied. Thus, this plan satisfies paragraph (b).

(c) *Nonforfeitability*—(1) *General rule.* A cash or deferred arrangement is not qualified unless the employee's rights to the accrued benefit derived from elective contributions made on or after the effective date of this section and non-elective contributions considered under paragraph (b)(2)(iv) of this section—

(i) Are nonforfeitable within the meaning of section 411, without regard to section 411(a)(3),

(ii) Are disregarded, for purposes of applying section 411 (a) to other contributions, and

(iii) Remain nonforfeitable, even if there are other plan years in which there were no qualified deferrals under a cash or deferred arrangement.

(2) *Example.* This paragraph may be illustrated by the following example:

Example. Employee A is covered by X Company's qualified stock bonus plan and trust. The plan includes a qualified cash or deferred arrangement. Under the plan, an employer contribution equal to 3% of A's compensation is automatically contributed. A further amount equal to 2% of A's compensation is subject to A's election under the qualified cash or deferred arrangement. Those amounts up to 2% which A elects to have contributed by X Company to the trust under the qualified cash or deferred arrangement, adjusted pursuant to paragraph (e)(2), must be nonforfeitable at all times. The employer contribution of 3% of compensation, not subject to the election under the arrangement, is treated as an employer contribution for purposes of applying the vesting rules of section 411. Furthermore, in accordance with paragraph (c)(1)(ii), for purposes of applying the vesting requirements of section 411(a) to these non-elective contributions, an employee's right to the accrued benefit attributable to the contributions under the qualified cash or deferred arrangement must be disregarded.

(d) *Distribution limitation*—(1) *General rule.* A cash or deferred arrangement is not qualified unless amounts attributable to elective contributions made on or after the effective date of this section or non-elective contributions considered under paragraph (b)(2)(iv) of this section are not distributable earlier than upon one of the following events:

(i) The participant's retirement, death, disability, separation from service, or attainment of age 59½; or

(ii) The participant's hardship.

(2) *Definitions.* For purposes of this section, a distribution will be on accoun of hardship if the distribution is necessary in light of immediate and heavy financial needs of the employee. A distribution based upon financial hardship cannot exceed the amount required to meet the immediate financia need created by the hardship and not reasonably available from other resources of the employee. The determination of the existence of financial hardship and the amount required to be distributed to meet the need created by the hardship must be made in accordance with uniform and non-discriminatory standards set forth in the plan.

(3) *Impermissible distributions.* Elective contributions and non-elective contributions under paragraph (b)(2)(iv) of this section cannot be distributed merely by reason of completion of a state period of plan participation or by the lapse of a fixed period of time.

(e) *Other rules*—(1) *General rule.* All amounts held under a plan that has qualified cash or deferred arrangement (including amounts contributed for plan years beginning prior to January 1, 1980, contributions made other than on account of a deferral election, and contributions made for years when the cash or deferred arrangement is qualified) will be deemed to be attributable to contributions made pursuant to the employee's deferral election and therefore subject to the requirements of paragraphs (c) and (d) unless the requirements of paragraph (e)(2) of this section are satisfied.

(2) *Separate accounting.* The portion of an employee's accrued benefit that is subject to the requirements of paragraph (c) and (d) of this section determined by an acceptable separate accounting between such portion and any other benefits, by allocating investment gains and losses on a reasonable pro rata basis, and by adjusting account balances for withdrawals and contributions. The separate accounting is not acceptable unless gains, losses, withdrawals, forfeitures and other credits or charges are separately allocated to the accrued benefits subject to paragraphs (c) and (d) of this section and other benefits on a reasonable and consistent basis. A plan may allow for the designation of accounts when making withdrawals or the plan must specify from which accounts withdrawals will be made if there is no designation.

(f) *Effective date*—(1) *In general.* This section shall apply to plan years beginning after December 31, 1979.

(2) *Transitional rule.* In the case of cash or deferred arrangements in existence on June 27, 1974, see § 1.402(a)–1(d)(3) for transitional rule applicable to such arrangements.

Par. 2. Section 1.402(a)–1 is amended by adding a new paragraph (d) to read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

* * * * *

(d) *Salary reduction, cash or deferred arrangements*—(1) *Inclusion in income.* Whether a contribution to an exempt trust or plan described in section 401(a), 403(a), or 405(a) is made by the employer or the employee must be determined on the basis of the particular facts and circumstances of each individual case. An amount contributed to a plan or trust will, except as otherwise provided under paragraph (d)(2) of this section, be treated as contributed by the employee if such amount was so contributed at the employee's individual option. Any amount treated as contributed by the employee is currently included in the gross income of the employee. Thus, for example, if amounts are contributed to an exempt trust or plan by reason of a salary reduction agreement or cash or deferred arrangement, such amounts are includible in the gross income of the employee (except as provided under paragraph (d)(2) of this section).

(2) *Qualified cash or deferred arrangement.* Contributions for a plan year made by an employer on behalf of an employee to a trust under a qualified cash or deferred arrangement, as defined in section 401(k)(2), shall not be treated as distributed or made available to the employee, nor as employee contributions, merely because the employee has the election under the arrangement whether the contribution will be made to the trust or received by the employee in cash. Contributions made under a qualified cash or deferred arrangement may be made pursuant to a salary reduction agreement (see § 1.401(k)–1).

(3) *Effective date and transitional rule.* (i) In the case of a plan or trust that does not include a salary reduction or a cash or deferred arrangement in existence on June 27, 1974, this paragraph applies to taxable years ending after such date.

(ii) In the case of a plan or trust that includes a salary reduction or a cash or deferred arrangement in existence on June 27, 1974, this paragraph applies to plan years beginning after December 31, 1979. For such plans and trusts and for plan years beginning prior to January 1, 1980, the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust shall be determined in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).

(iii) A cash or deferred arrangement shall be considered as in existence on June 27, 1974, if, on or before such date, it was reduced to writing and adopted by the employer (including, in the case of a corporate employer, formal approval by the employer's board of directors and, if required, shareholders), even though no amounts had been contributed pursuant to the terms of the arrangement as of such date.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 81-32545 Filed 11-9-81; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 394; Re: Notice No. 362]

Alcohol Labeling and Advertising Regulations; Hearing

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of hearing.

SUMMARY: This notice announces the time and location the Bureau of Alcohol, Tobacco and Firearms (ATF) will hold a public hearing in California to gather testimony on issues relating to the proposed labeling and advertising regulation changes published in the **Federal Register** on December 19, 1980 (Notice No. 362, 45 FR 83530).

DATES: *Hearing dates:* December 10 and 11, 1981, at 9:00 a.m. until 4:30 p.m.—open to the public.

Requests to Testify: Requests to testify must be received on or before December 10, 1981.

ADDRESSES: *Hearing location:* Holiday Inn Civic Center, 50 Eighth Street (½ block south of Market), San Francisco, California 94106.

Requests to testify: Requests to testify must be submitted to Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 394).

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202–566–7626).

SUPPLEMENTARY INFORMATION:

Request to Testify; Rules Governing Public Hearings

Persons requesting to testify shall indicate a preference for the date and time they wish to testify. To the extent possible, ATF will honor these preferences. Requests to testify must contain the name of the person who will testify, the company/organization represented, if any, and address and telephone number where such person can be contacted. The request must also include an outline of the topic or topics on which the testimony will be based. Testimony will be limited to ten minutes per speaker, however, additional time may be granted for answering questions. Persons testifying should be prepared to respond to questions regarding their testimony, or to any matters relating to written comments which they may have

submitted. Persons not scheduled to testify may be allowed to do so at the conclusion of each hearing, if time permits.

ATF will notify all persons requesting to testify and will confirm the date and time. ATF will prepare an agenda listing all speakers for each hearing, and will make this agenda available at the hearing.

All public hearings held pursuant to this notice are open to the public and will be conducted under the procedural rules contained in 27 CFR 71.41(a)(3).

Notice of Proposed Rulemaking and Public Hearing

On December 19, 1980, ATF published Notice No. 362 to obtain comment on proposed regulatory changes regarding the labeling and advertising regulations for wine, distilled spirits, and malt beverages. A total of 396 individual comments were received on this notice. Although most commenters supported the Bureau's intent and purpose of the proposed changes, many commenters submitted substantial suggestions and possible modifications to the proposed regulatory language. Furthermore, a number of commenters suggested that public hearings be held to provide a full discussion of these issues.

ATF believes that hearings are essential in order that all possible information concerning the regulatory proposals be obtained and evaluated.

Therefore, ATF held hearings in Washington, DC, on September 9 and 10, 1981. In Notice No. 375 (46 FR 37282, July 20, 1981), ATF stated that depending upon requests and availability of funds, other hearings may be held. ATF received two requests to hold hearings on the West Coast. Since a large number of wine industry members are concentrated in this area, ATF believes these persons and other interested persons should be given an opportunity to present oral testimony. This will also ensure that all pertinent information is made available to ATF before any final decisions are reached.

ATF specifically requests testimony concerning the following issues:

(a) The proposed standards for the use of the word "light" or other phonetically similar words;

(b) The proposed definition of "natural";

(c) The use of athletes and athletic events;

(d) The guidelines proposed under which taste tests may be conducted for comparative advertising;

(e) The use of curative or therapeutic claims such as, relax and refresh;

(f) The proposed definitions for "false" and "disparaging"; and

(g) The use and definition of subliminal and similar techniques.

Although ATF specifically requests testimony on these issues, this is not to preclude anyone from testifying on any subject concerning the proposed regulations.

Disclosure of Comments

Copies of the notice of proposed rulemaking, all written comments, and the hearing transcripts will be available for public inspection at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel in the Bureau participated in the preparation of this document, both in matters of substance and style.

Authority and Issuance

This notice of hearing is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205.

Signed: October 27, 1981.

G. R. Dickerson,

Director.

Approved: November 3, 1981.

John P. Simpson,

Acting Assistant Secretary, Enforcement and Operations.

[FR Doc. 81-32344 Filed 11-9-81; 8:45 am]

BILLING CODE 4810-31-M

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Improving Government Regulations; Semiannual Agenda

AGENCY: Selective Service System.

ACTION: Publication of semiannual agenda.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Selective Service System that might affect the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). This information will allow the public to participate in the System's decisionmaking at an early stage.

FOR FURTHER INFORMATION CONTACT: Edward A. Frankle, Associate Director, Policy Development Directorate, Selective Service System, Washington, D.C. 20435, Telephone (202) 724-0844.

SUPPLEMENTARY INFORMATION: This agenda is published in accord with the requirements of E.O. 12291. Selective Service Regulations appear in 32 CFR Chapter XVI.

Subjects of Proposed Rulemaking

Considerations will be given to a comprehensive revision of Selective Service Regulations that deal with the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). Regulations for the administration by the System of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a) may also be revised.

Thomas K. Turnage,

Director of Selective Service.

November 4, 1981.

[FR Doc. 81-32558 Filed 11-9-81; 8:45 am]

BILLING CODE 8015-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-1959-2]

Approval and Promulgation of Implementation Plans; Georgia and South Carolina: Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On August 7, 1980 (45 FR 52676), EPA promulgated revised regulations for Prevention of Significant Air Quality Deterioration (PSD) and requirements for States to develop and submit revised regulations for PSD. The States of Georgia and South Carolina have responded and on December 18, 1980, and April 14, 1981, respectively, submitted to EPA revised regulations meeting EPA's requirements. EPA is today proposing to approve the PSD revisions submitted by Georgia and South Carolina.

DATES: To be considered, comments must be submitted on or before December 10, 1981.

ADDRESSES: Written comments should be addressed to Archie Lee of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Georgia and South Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Materials submitted by Georgia may also be examined at: Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, S.W., Atlanta, Georgia 30334

Materials submitted by South Carolina may also be examined at: South Carolina Department of Health, and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201

FOR FURTHER INFORMATION CONTACT: Archie Lee, EPA Region IV, Air Programs Branch, at the above listed address and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On December 5, 1974, EPA published regulations for PSD under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality cleaner than the national ambient air quality standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain immediately effective changes to EPA's PSD regulations, the new Clean Air Act, in sections 160-169, contains comprehensive new PSD requirements. These new requirements are to be incorporated by States into their implementation plans.

On June 19, 1978 (43 FR 26380), EPA promulgated further guidance. On August 7, 1980 (45 FR 52676), EPA promulgated the latest guidance to assist States in preparing State implementation plan (SIP) revisions meeting the new requirements.

The State of Georgia has complied with these requirements and has adopted and submitted a revised regulation, Rule 391-3-1-.02 Section (7), "Prevention of Significant Deterioration of Air Quality," which incorporates by reference the following provisions of EPA's PSD regulations at 40 CFR 52.21: Subsections (b)-(e), (h)-(r), (v) and (w). In its submittal, the State noted that the phrase "Director of EPD" should be substituted for "Administrator" in each instance where the latter word appeared in the federal PSD regulations adopted by reference. Subsequently, in a May 12, 1981, letter to EPA, the State clarified its intent that his substitution was not intended to apply to the PSD provisions at 40 CFR 52.21 (b)(17), (l) and (p), since the sustitution in those provisons would be inappropriate. In addition, with respect to 40 CFR 52.21(g), the State clarified its intent to follow the public participation provisions of 40 CFR 52.21(r) as in effect on June 19, 1978. Accordingly, the State has substantially complied with EPA's SIP guidance on PSD regulations. In addition, the State has full delegation of authority under these same regulations to carry out the PSD program in Georgia.

The State of South Carolina has also complied with these requirements and has adopted and submitted a revised regulation, Regulation 62.5, Standard No. 7, "Prevention of Significant Deterioration". EPA's review and analysis has shown that this equivalent to EPA's PSD regulations. In addition, the State has full delegation of authority under these same regulations to carry out the PSD program in South Carolina.

Action:

EPA has reviewed the submitted materials and found them to be equivalent to present EPA requirements. Therefore, EPA is today proposing to approve the Georgia and South Carolina submittals as satisfying the requirements of an acceptable plan for implementing PSD and is soliciting public comment on the regulation.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified (46 FR 8709) that the proposed rules will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These regulations are not major because they impose no new burden on sources.

These regulations were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Section 110 and 161 of the Clean Air Act (42 U.S.C. 7410 and 7471))

Dated: August 20, 1981.

John A. Little,

Acting Regional Administrator.

[FR Doc. 81-32515 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[AD, FRL-1982-5]

Interstate Pollution Abatement; Announcement of Receipt of Petition From the State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition under section 126 of the Clean Air Act.

SUMMARY: This notice announces EPA's receipt of a petition from the State of Maine under section 126 of the Clean Air Act. This petition requests consolidation with and names the same sources as the section 126 petitions filed by New York and Pennsylvania on December 19 and December 22, 1980, and January 16, 1981. See 46 FR 24602 (May 1, 1981). Maine's petition will be consolidated with these petitions and placed in the docket for the New York and Pennsylvania petitions (Docket A-81-09). Since Maine has waived a separate section 126 hearing on its petiton in order not to delay the New York and Pennsylvania proceedings, a public hearing on the Maine petition will not be held.

DATE: The public comment period on the material submitted by Maine will extend until January 4, 1982 to allow time for public review and comment.

ADDRESSES: The section 126 material submitted by Maine will be contained in the docket for New York and Pennsylvania section 126 petitions. This docket is numbered A-81-09 and is available at the EPA Central Docket Section (A-130), U.S. Environmental Protection Agency, Room 2902, 401 M Street, SW., Washington, D.C. 20460. Telephone number 202-755-0245. Comments should be submitted to this address.

FOR FURTHER INFORMATION CONTACT: William F. Hamilton, Control Programs Development Division (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, Telephone number 919-541-5551 or FTS 629-5551.

SUPPLEMENTARY INFORMATION: Section 126(b) of the Clean Air Act authorizes any State or political subdivision to "petition the Administrator [of the EPA] for a finding that any major source emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i)" of the Clean Air Act. That section prohibits "any stationary source within a State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under Part C [of the Act] to prevent significant deterioration of air quality or to protect visibility."

On December 22, 1980 and January 16, 1981, the State of New York, and on December 19, 1980, the State of Pennsylvania petitioned EPA, pursuant to section 126 (b) and (c) of the Clean

Air Act as amended in 1977 (42 U.S.C. 7401 et seq.) to make a finding that emissions from certain sources were causing or contributing to high concentrations of total suspended particulates and sulfur dioxide in these States and were otherwise in violation of Section 110(a)(2)(E)(i).

As announced in the **Federal Register** of May 1, 1981 (46 FR 24602), a public hearing on the New York and Pennyslvania petitions was held June 18–19, 1981 in Washington, D.C. Subsequent to this hearing, the public comment period on the New York and Pennsylvania petitions was extended to January 4, 1982 in order to allow sufficient time for public review and comment on the proceedings (see 46 FR 45383).

On October 7, 1981, the State of Maine submitted to EPA a petition under section 126 of the Clean Air Act. The Maine petition was filed against the same sources named in the New York and Pennsylvania petitions. These sources were described in 46 FR 24602 and 46 FR 45383 and include sources in the States of Ohio, West Virginia, Illinois, Indiana, Kentucky, Michigan, and Tennessee. The Maine petition requests consolidation with the petitions previously filed by New York and Pennsylvania. Therefore, the material submitted to EPA by Maine will be included in Docket A–81–09 which EPA has established for these proceedings. In addition, in order not to delay the New York and Pennsylvania actions, Maine has waived their right to a public hearing. Therefore, a public hearing on the Maine petition will not be held and the public comment period on the Maine submission will close on January 4, 1982, the date previously established for the close of the comment period on the New York and Pennsylvania petitions.

Dated: November 3, 1981.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-32531 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-26-M

Notices

Federal Register
Vol. 46, No. 217
Tuesday, November 10, 1981

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

Brucellosis Eradication Uniform Methods and Rules

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is considering amending the Brucellosis Eradication Uniform Methods and Rules, 1981 ed., (UM&R), which set forth the basis upon which APHIS cooperates with States in the control and eradication of brucellosis. The amendments under consideration are being widely circulated to livestock organizations, livestock producers, livestock marketing interests, State regulatory officials, and other interested persons for their comments. APHIS wants constructive comments from as many persons and organizations as possible before drafting the amendments to the Uniform Methods and Rules. Members of the public are invited to comment on the amendments under consideration and any other aspect of the UM&R they feel should be amended.

DATE: Comments must be received on or before December 8, 1981.

ADDRESS: Comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 805, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–5961.

FOR FURTHER INFORMATION CONTACT:

For further information and a copy of The Amendments to be Uniform Methods and Rules Under Consideration, Contact: Dr. A. D. Robb, USDA, APHIS, VS, Federal Building, Room 805, Hyattsville, Maryland 20782, 301–436–5961.

Done at Washington, D.C., this 3rd day of November, 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-32331 Filed 11-9-81; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service, announces the following meeting:

Name: Committee of Nine.
Date: December 2, 1981.
Time: 8:00 a.m.
Conference Room, Breckenridge King's Inn, 9600 Natural Bridge Road, St. Louis, Missouri 63134.
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.
Contact person for agenda and more information: Dr. Estel H. Cobb, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Washington, D.C. 20250, telephone: 202/447–4329.

Done at Washington, D.C., this 4th day of November 1981.

W. I. Thomas,

Acting Administrator, Cooperative State Research Service.

[FR Doc. 81-32546 Filed 11-9-81; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

Alpine Lakes Area Land Management Plan; Mt. Baker-Snoqualmie and Wenatchee National Forests; Chelan, King, Kittitas, and Snohomish Counties, Washington; Availability of Final Environmental Impact Statement and Record of Decision

As directed by the Alpine Lakes Area Management Act of 1976 (Pub. L. 94–357 July 12, 1976), the Department of agriculture, Forest Service, has prepared a plan for management of the Alpine Lakes Area which includes a management unit and the designated Wilderness.

The Final Environmental Impact Statement (FEIS) presents five alternatives for managing the 393,360-acre Wilderness and Intended Wilderness, and the 547,155-acre management unit. They offer different combinations of activities and constraints on uses. The estimated short and long-term effects of implementing each alternative are identified and evaluated. From among the five alternatives, Alternative E was selected as the preferred plan of management in the FEIS. Alternative E provides for a diversity of management approaches and a balance between goods and services available within the area. It is sensitive to a wide range of environmental needs and provides for a fairly stable social and economic environment to local communities. It also provides for an estimated long-term timber yield of about 67.6 million board feet per year, 5.9 million recreation visitor days per year in the management unit along with about one-half million recreation visitor days in the Wilderness. The plan ultimately provides for an additional 360 miles of road and an additional 21 miles of trail.

Public comment and involvement contributed significantly in shaping the five alternatives during the planning process. Public comment on the Apline Lakes Area Draft Environmental Impact Statement and the resulting changes made in the preferred alternative are summarized in the Final Environmental Impact Statement.

In accordance with the Alpine Lakes Act, the plan is being transmitted to the President and to the United State House of Representatives and to the Senate. The plan will take effect and will be implemented no earlier than 90 calendar days from the date of such transmittal.

As indicated in my Record of Decision, dated November 2, 1981, Alternative E is the plan for management of the Alpine Lakes Area. My decision is subject to administrative review pursuant to 36 CFR 211.19. A

notice of appeal must be filed with the Regional Forester, USDA Forest Service, P.O. Box 3623, Portland, OR 97208 within 45 calendar days of the date on the Record of Decision.

Copies of the Final Environmental Impact Statement and Record of Decision may be obtained from U.S. Forest Service, 1022 First Avenue, Seattle, WA 98104, phone (206) 442–5400.

Dated: November 2, 1981.

Claude R. Elton,

Acting Regional Forester.

[FR Doc. 81–32468 Filed 11–9–81; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Minnkota Power Cooperative, Inc.; Finding of No Significant Impact

The Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) in connection with the proposed financing assistance to Minnkota Power Cooperative, Inc., (Minnkota) of Grand Forks, North Dakota.

The proposed project consists of the construction of 69 kV transmission lines from Enderlin through Sheldon to Leonard, and from Sheldon to Anselm where a substation will be constructed. In addition, it is proposed to expand the Prairie Substation. The alternatives that were considered for this project were no action, alternative routes, the use of underground conductors, and the selected alternative described above.

A Borrower's Environmental Report (BER) was prepared by Minnkota on the proposed project, and REA prepared an Environmental Assessment (EA) on the proposed project.

After an independent evaluation of the BER, the EA and information from other sources, REA has concluded the proposed project will not have a significant impact on the quality of the human environment and has arrived at a FONSI. The FONSI, EA and BER may be reviewed in the office of the Director, Power Supply Division, Rural Electrification Administration, Room 0230, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382–1400 or at the office of the cooperative, Minnkota Power Coopertive, Inc., Grand Forks, North Dakota 58201, telephone (701) 795–4000.

This Program is listed in the catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 3rd day of November 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81–32493 Filed 11–9–81; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda and Notice of Open 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 Delaware Advisory Committee to the Commission will covene at 4:00 p.m. and will end at 6:00 p.m. on December 9, 1981, at the United States Custom House, 944 King Street, Room 3209, Wilmington, Delaware 19801. The purpose of this meeting is to discuss the information gathered from officials and organizations on State administration of the Federal Block Grant funding program.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Louise T. Conner, 1214 Faun Road, Graylyn Crest, Wilmington, Delaware 19803, (302) 478–3995 or the Mid-Atlantic Regional Office, 2120 L Street, N.W., Room 510, Washington, D.C. 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., on November 5, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81–32500 Filed 11–9–81; 8:45 am]

BILLING CODE 6335–01–M

Maine Advisory Committee; Agenda and Notice of Open 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 Maine Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m. on December 1, 1981, at the Teachers Association, Civic Center, 35 Community Drive, Augusta, Maine, 04330. The purpose of this meeting is to: (1) Discuss followup on Domestic Violence Project; (2) review draft of "Civil Rights Developments in Maine, 1981"; and (3) identify issues and priorities for 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Madeleine Giguere, 35 Orange Extension, Lewiston, Maine, 04240, (207) 784–9948/780–4100 or contact the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 3, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81–32501 Filed 11–9–81; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Cancelled 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 Montana Advisory Committee of the Commission originally scheduled for November 21, 1981, at Billings, Montana (FR Doc. 81–31571 on page 53736) has been canceled.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81–32502 Filed 11–9–81; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council, its Scientific and Statistical Committee and its Shrimp Resources Subpanel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established a Scientific and Statistical Committee (SSC) and a Shrimp Resources Subpanel (AP). The Council, its SSC and AP will hold separate public meetings. The Council will meet to review status reports on the development of various fishery management plans (FMP's); consider foreign fishing applications, if any, and conduct other fishery management business. Both the SSC and AP will meet to review monitoring information on the provisions of the Shrimp FMP which pertains to seasonal closure of waters off Texas.

DATES: The SSC will convene on Monday, December 7, 1981, at approximately 1 p.m., and adjourn at approximately 5 p.m. The AP meeting will convene on Tuesday, December 8,

1981, at approximately 8 a.m., and adjourn at approximately noon. The Council meeting will convene on Wednesday, December 9, 1981, at approximately 8:30 a.m., and adjourn at approximately 5 p.m.; reconvene on Thursday, December 10, 1981, at approximately 8:30 a.m., and adjourn at approximately noon.

ADDRESS: The public meeetings will take place at the Ramadas I and II, Ramada Inn, 3719 West Beach Boulevard, Biloxi, Mississippi.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228–2815.

Dated: November 5, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81-32552 Filed 11-9-81; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

New York Futures Exchange; Proposed Amendment Relating to the Domestic Bank Certificates of Deposit Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The New York Futures Exchange ("NYFE" or "Exchange") has submitted a proposal to amend the domestic bank certificates of deposit futures contract ("CD contract") in order to exclude last leg variable rate certificates of deposit from the standard grade of certificate deliverable on the contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that provision is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 1, 1981.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the New York Futures Exchange Rule 1002(a)(4)(ii).

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., (202) 254–7303; or Lawrence Dolins, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. (202) 254–8955.

SUPPLEMENTARY INFORMATION: The New York Futures Exchange is proposing to revise Rule 1002(a)(4) of its CD contract in response to indications that last leg variable rate certificates of deposit may trade at a discount relative to fixed rate certificates. In particular, the Exchange proposes to excise subparagraph (a)(4)(ii) from Rule 1002 in order to exclude last leg variable rate certificates of deposit from the standard grade of certificate deliverable on the contract.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12) (Supp. III 1979), the Commission has determined that this provision submitted by the NYFE concerning its CD futures contract is of major economic significance. Accordingly, the NYFE's proposed amendment to Rule 1002(a)(4) is printed below, using brackets to indicate deletions:

Standards

Rule 1002 (a) The standard grade for delivery under the CD Futures contract shall be certificates of deposit ("CDs") that:

(1) are issued by banks listed pursuant to paragraph (b) of this Rule;

(2) have an original issuance date which is no earlier than the first business day for the bank issuing the CD in the delivery half-month three calendar months prior to the first delivery day of the delivery half-month in which such CDs are delivered under the CD Futures Contract;

(3) mature on a day during a delivery half-month which (i) is three calendar months later (ii) is not less than 87 nor more than 95 days after the day such CDs are delivered under the CD Futures Contract and (iii) is a business day for the bank issuing the CDs; and

(4) are standard, negotiable CDs, in bearer form, each of which has a face value at maturity of one million dollars ($1,000,000) and which provide for the payment of interest [(i)] at fixed rate per annum payable at maturity, [or (ii) at a variable rate provided that the interest is payable at a fixed rate per annum during the period from the time the CD is delivered under the CD Futures Contract until the CD matures.]

* * * * *

Other materials submitted by the NYFE in support of the proposed rule amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 154.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by [twenty-one days after publication]. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on November 4, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-32487 Filed 11-9-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Deletion of System Notice

AGENCY: Department of the Defense (OSD).

ACTION: Deletion of system notice.

SUMMARY: The Office of the Secretary of Defense proposed to delete the notice for system of records: DHA 04, "Special Pay for Military Health Professionals—Data Management System" subject to the Privacy Act of 1974. It has been determined that the military personnel are adequately covered by the parent military services.

DATES: This deletion shall be effective December 10, 1981.

ADDRESS: Send any comments to the System Manager identified in the system notice (44 FR 74088) December 17, 1979.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C315, Pentagon, Washington, D.C. 20301. Telephone: (202) 695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems notices for records systems subject to the Privacy Act of 1974 (5

U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register.**

FR Doc. 81–897 (46 FR 6427) January 21, 1981
FR Doc. 81–5568 (46 FR 12772) February 18, 1981
FR Doc. 81–6246 (46 FR 14031) February 25, 1981
FR Doc. 81–6491 (46 FR 14154) February 26, 1981
FR Doc. 81–7597 (46 FR 16114) March 11, 1981
FR Doc. 81–8041 (46 FR 16926) March 16, 1981
FR Doc. 81–8127 (46 FR 17074) March 17, 1981
FR Doc. 81–8281 (46 FR 17243) March 18, 1981
FR Doc. 81–8282 (46 FR 17243) March 18, 1981
FR Doc. 81–10201 (46 FR 20260) April 3, 1981
FR Doc. 81–10722 (46 FR 21228) April 9, 1981
FR Doc. 81–11473 (46 FR 22257) April 16, 1981
FR Doc. 81–11765 (46 FR 22632) April 20, 1981
FR Doc. 81–12892 (46 FR 23967) April 29, 1981
FR Doc. 81–13225 (46 FR 24620) May 1, 1981
FR Doc. 81–14226 (46 FR 26365) May 12, 1981
FR Doc. 81–14406 (46 FR 26676) May 14, 1981
FR Doc. 81–14909 (46 FR 27373) May 19, 1981
FR Doc. 81–14975 (46 FR 27373) May 19, 1981
FR Doc. 81–15770 (46 FR 28470) May 27, 1981
FR Doc. 81–17763 (46 FR 31306) June 15, 1981
FR Doc. 81–19042 (46 FR 33074) June 26, 1981
FR Doc. 81–20404 (46 FR 35963) July 13, 1981
FR Doc. 81–21228 (46 FR 37306) July 20, 1981
FR Doc. 81–21498 (46 FR 37751) July 22, 1981
FR Doc. 81–23482 (46 FR 40788) August 12, 1981
FR Doc. 81–25853 (46 FR 44494) September 4, 1981
FR Doc. 81–28992 (46 FR 49177) October 6, 1981

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 5, 1981.

Deletion

DHA 04

System name: Special Pay for Military Health Professionals—Data Management System.

Reason: The military personnel are adequately covered by parent services.

[FR Doc. 81-32565 Filed 11-9-81; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Mobil Oil Corp.; Proposed Remedial Order and Opportunity, For Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Proposed Remedial Order to Mobil Oil Corporation and opportunity for objection.

I. Introduction

Pursuant to 10 CFR 205.192, the Office of Special Counsel of the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order issued to Mobil Oil Corporation, Fairfax, Virginia. In accordance with that section, a copy of the Proposed Remedial Order with confidential information, if any, deleted, may be obtained from the ERA.

II. The Proposed Remedial Order

Mobil is a refiner engaged in the production of crude oil, in refining, and in the marketing of petroleum products. Mobil was therefore subject to the Mandatory Petroleum Price and Allocation Regulations which were in effect until January 28, 1981.

These regulations generally permitted refiners to increase the price of covered petroleum products only by the amount which is necessary to recoup permissible increased costs on a dollar-for-dollar basis. Moreover, refiners were required to report their calculations of increased costs on a monthly basis.

The Office of Special Counsel (OSC) of the Department of Energy conducted an examination which focused on Mobil's support of its increased purchased product costs available for passthrough in prices charged for covered products during the period August 1973 through December 1976. As a result of this examination, OSC determined that Mobil failed to adequately support certain reported purchased product costs and that this failure in turn resulted in an overstatement of the increased purchased product costs available for passthrough in the prices charged for covered petroleum products in violation of 10 CFR 212.83(c)(2). OSC further determined that as a result of its overstatement of the increased purchased product costs available for recovery, Mobil potentially miscalculated the maximum allowable prices which it could lawfully charge for covered petroleum products and, therefore, may have overcharged its customers.

In view of the findings, OSC proposes that Mobil be required to reduce certain previously claimed increased product costs by $15,654,636 for the period August 1973 through December 1976, and provide such additional remedial relief as may be found to be appropriate.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the Proposed Remedial Order with the Office of Hearings and Appeals on or before November 25, 1981. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by § 205.193, the Proposed Remedial Order may be issued as a final order.

All Notices, Statements, Motions, Responses, and other documents required to be filed with the National Office of Hearings and Appeals should be sent to: Department of Energy, Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461.

No confidential information shall be included in a Notice of Objection.

Requests for copies of the Proposed Remedial Order with confidential information deleted should be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C. October 21, 1981.

Bethel Larey,

Acting Special Counsel.

[FR Doc. 81-32529 Filed 11-9-81; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Proposed Remedial Order and Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Proposed Remedial Order to Shell Oil Company and Opportunity for Objection.

I. Introduction

Pursuant to 10 CFR 205.192, the Office of Special Counsel (OSC), of the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives notice that a Proposed Remedial Order (PRO) was issued on October 28, 1981 to Shell Oil Company (Shell), One Shell Plaza, Post Office Box 2463, Houston, Texas 77001, and that any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before November 25, 1981.

II. The Proposed Remedial Order

Shell is a refiner engaged in the production of crude oil, in refining, and in the marketing of petroleum products subject to the DOE regulations. By this PRO, OSC sets forth proposed findings of fact and conclusions of law concerning Shell's computation and reporting of its month of measurement crude oil costs under the refiner price rules in 6 CFR Part 150 and 10 CFR Part 212, Subpart E, between August 1973 and December 1976. Shell is also charged with overstating its crude oil costs by assigning a cost to fee-free import licenses during the period September 1973 through April 1979, in

violation of 6 CFR 150.355 and 10 CFR 212.83 and 212.126(b). OSC's recalculations of Shell's crude oil costs for these periods alleges overstatements of costs totalling $11,658,047.

Specifically, 6 CFR 150.356 and 10 CFR 212.83 required a refiner to calculate its crude oil cost increases using the cost of crude oil purchased or landed by the refiner in the month of measurement, whether or not all of the crude purchased or landed was taken into a refinery during that month. Shell improperly calculated its month of measurement crude oil costs by treating all imported crude oil landed in the month of measurement as a refinery intake, whether or not that crude oil actually reached the refinery in that month. Any excess of refinery intakes over imported volumes was deemed by Shell to be domestic crude oil with a cost calculated by dividing the total volume of currently acquired domestic crude oil into the total cost of the same domestic crude oil to arrive at an average acquisition cost. This average acquisition cost was then multiplied by the volume of refinery intakes deemed to have been domestic crude oil in the month of measurement and used to compute Shell's increased cost of crude oil. Shell also inflated its costs of crude oil by assigning a value to fee-free import licenses obtained by its chemical division and transferred to it. Since no costs were actually incurred to obtain these licenses, the "phantom" values assigned by Shell upon the intra-company transfer are not allowable as part of the landed cost of imported crude oil.

As a remedy, Shell is directed to recompute its domestic crude oil costs based on actual purchases in each month of measurement; and to exclude from the imported crude oil costs the value of fee-free import licenses.

Requests for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to: Freedom of Information, Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, S.W., Washington, D.C. 20850.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the Proposed Remedial Order with the Office of Hearings and Appeals on or before November 25, 1981. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by § 205.193, the Proposed Remedial Order may be issued as a final order.

All Notices, Statements, Motions, Responses, and other documents required to be filed with the National Office of Hearings and Appeals should be sent to: Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461.

The Notice must be filed in duplicate. In addition, a copy of the Notice must, on the same day as filed, be served on Shell and on each of the following persons, pursuant to 10 CFR 205.193(c):

Deputy Chief Counsel, Southwest Refiner District, Office of Special Counsel, Department of Energy, One Allen Center, Suite 660, 500 Dallas Street, Houston, Texas 77002;

Gloria R. Sulton, Associate Solicitor, Office of Special Counsel, Department of Energy, Federal Building, Room 4111, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

No data or information which is confidential shall be included in any Notice of Objection.

Issued in Washington, D.C. October 30, 1981.

Bethel Larey,

Acting Director, Office of Special Counsel.

[FR Doc. 81-32527 Filed 11-9-81; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Proposed Remedial Order and Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Proposed Remedial Order to Shell Oil Company and opportunity for objection.

I. Introduction

Pursuant to 10 CFR 205.192, the Office of Special Counsel of the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order issued to Shell Oil Company, Houston, Texas. In accordance with that section, a copy of the Proposed Remedial Order with confidential information, if any, deleted, may be obtained from the ERA.

II. The Proposed Remedial Order

Shell is a refiner engaged in the production of crude oil, in refining, and in the marketing of petroleum products. Shell was therefore subject to the Mandatory Petroleum Price and Allocation Regulations which were in effect until January 28, 1981.

These regulations generally permitted refiners to increase the price of covered petroleum products only by the amount which is necessary to recoup permissible increased costs on a dollar-for-dollar basis. Moreover, refiners were required to report their calculations of increased costs on a monthly basis.

The Office of Special Counsel (OSC) of the Department of Energy conducted an examination which focused on Shell's support of its increased non-product costs available for passthrough in prices charged for covered products during the period January 1977 through February 1980. As a result of this examination, OSC determined that Shell failed to adequately support certain reported non-product costs and that this failure in turn resulted in an overstatement of the increased non-product costs available for passthrough in the prices charged for covered petroleum products in violation of 10 CFR 212.83(c)(2)(iii)(E). OSC further determined that as a result of its overstatement of the increased non-product costs available for recovery, Shell potentially miscalculated the maximum allowable prices which it could lawfully charge for covered petroleum products and, therefore, may have overcharged its customers.

In view of these findings, OSC proposes that Shell be required to reduce certain previously claimed increased non-product costs by $40,779,432 for the period January 1977 through February 1980, and provide such additional remedial relief as may be found to be appropriate.

III. Notice of Objection.

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the Proposed Remedial Order with the Office of Hearings and Appeals on or before November 25, 1981. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by § 205.193, the Proposed Remedial Order may be issued as a final order.

All Notices, Statements, Motions, Responses, and other documents required to be filed with the National Office of Hearings and Appeals should be sent to: Department of Energy, Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461.

No confidential information shall be included in a Notice of Objection.

Requests for copies of the Proposed Remedial Order with confidential information deleted should be directed to: Freedom of Information Reading Room, Forrestal Building, 1000

Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585.

Issued in Washington D.C. October 30, 1981.

Bethel Larey,

Acting Special Counsel.

[FR Doc. 81-32528 Filed 11-9-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL-1982-4; OPTS-51346]

Certain Chemicals; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of two PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-564—December 29, 1981. PMN 81-565—January 1, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51346]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460 (202-755-5687).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-564

Close of Review Period. January 28, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: Disubstitutedbenzene.

Use. The manufacturer states that the PMN substance will be used in a site-limited chemical intermediate.

PRODUCTION ESTIMATES

	Kilograms per year maximum
1st year	50,000
2d year	0
3d year	0

Physical/Chemical Properties

Boiling point—224°C.

Solubility: water—<0.1%; octanol—>10%.

Toxicity Data

Acute oral LD_{50} —600-700 mg/kg.

Acute dermal LD_{50} —2-5 ml/kg.

Skin irritation—Moderate.

Exposure. The manufacturer states that during manufacture and use up to 80 workers may experience dermal and inhalation exposure 0.2-0.5 hr/day, up to 10 days/yr during manual transfer and cleanup operations. Exposure level will average and peak at 0-1 parts per million (ppm).

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is by incineration.

PMN 81-565

Close of Review Period. January 31, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—Middle Atlantic region.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Isocyanate modified polyester.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	0	40,000
2d year	0	80,000
3d year	0	120,000

Physical/Chemical Properties

Flash point—190° F.

Viscosity—7.0 stokes.

Percent solids—27.1% @ 105° C.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture, processing and use 154 workers may experience dermal and inhalation exposure up to 8 hrs/day, up to 200 days/yr during sampling and testing, filling of storage and/or shipping containers and cleaning of the processing equipment.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water and from 100 to 10,000 kg/yr may be released to land. Disposal is by incineration.

Dated: November 3, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-32530 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-31-M

[A-10-FRL-1980-8]

Issuance of PSD Permit to ARCO Alaska, Inc. and Sohio Alaska Petroleum Company

Notice is hereby given that on September 29, 1981, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Arco Alaska, Inc. and Sohio Alaska Petroleum Company for approval to install additional gas-fired turbines and heaters in the oil field at Prudhoe Bay, Alaska.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today (January 11, 1982). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 521, Seattle, Washington 98101.

Dated: October 27, 1981.

John R. Spencer,

Regional Administrator.

[FR Doc. 81-32537 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[EN-9-FRL-1982-3]

Issuance of PSD Permit to California Department of Water Resources

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to California Department of Water Resources, Bottle Rock Geothermal Power Plant, Lake County, California, EPA project number NC 79-08.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Environmental Protection Assistant, E-4-1, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 15, 1981 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct a 55 megawatt geothermal power plant.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations and is subject to certain conditions including an allowable emission rate for hydrogen sulfide of 5 lbs/hr, 21.9 tons/yr.

Best Available Control Technology (BACT) requirements include surface condenser/stretford process, hydrogen peroxide secondary treatment, EIC process for pretreatment, and turbine bypass.

Continuous monitoring is not required and the source is not subject to New Source Performance Standards.

Dated: October 2, 1981.

Carl C. Kohnert, Jr.,

Acting Director, Enforcement Division, Region 9.

[FR Doc. 81-32532 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[A-10-FRL-1981-1]

Issuance of PSD Permit to Co-Gen, Inc.

Notice is hereby given that on September 29, 1981, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Co-Gen, Inc. for approval to construct a 24-megawatt wood waste-fired boiler near Coeur d'Alene, Idaho.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today (January 11, 1982). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 521, Seattle, Washington 98101.

Dated: October 27, 1981.

John R. Spencer,

Regional Administrator.

[FR Doc. 81-32536 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[EN-9-FRL-1982-1]

Issuance of PSD Permit to Chevron U.S.A., Inc.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Chevron U.S.A., Inc., Kern River Oil Field and Kern Front Oil Field north of Bakersfield, Kern County, California, EPA project number SJ 80-14.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Environmental Protection Assistant, E-4-1, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 9, 1981 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to consolidate 2 existing Approvals to Construct/Modify for 49 steam generators in the Kern River Oil Field and Kern Front Oil Field. The existing approvals were NSR 4-4-8/SJ 76-37, issued July 19, 1977, and NSR 4-4-8/SJ 78-34, issued February 28, 1978. The purpose of consolidation was for consistency of permit conditions.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations and is subject to certain conditions including allowable emission rates as follows: SO_2 at 0.10 lb/MMBtu, TSP at 0.56 lb/MMBtu, NO_x at 0.50 lb/MMBtu.

Best Available Control Technology (BACT) requirements include: scrubbers for SO_2 and and TSP, a hydrocarbon vapor recovery system for VOC. Air Quality Impact Modeling is required for SO_2, NOx_2 and TSP. Continuous monitoring is not required and the source is not subject to New Source Performance Standards.

Carl C. Kohnert, Jr.,

Acting Director, Enforcement Division, Region 9.

Dated: October 20, 1981.

[FR Doc. 81-32533 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[EN-9-FRL-1981-8]

Issuance of NSR Permit to Georgia-Pacific Corporation

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of New Source Review (NSR) permit to Georgia-Pacific Corporation, Fort Bragg, Mendocino County, California, EPA project number NC 79-07.

DATE: The NSR permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Environmental Protection Assistant, E-4-1, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 29, 1980 the Environmental Protection Agency issued a NSR permit to the applicant named above for approval to construct a hogged wood boiler, with capacity to burn fuel oil as a standby fuel.

This permit has been issued under EPA's New Source Review (40 CFR 51.18) regulations and is subject to certain conditions including allowable emission rates as follows: SO_x at 80.6 tons/yr, NO_x at 181 tons/yr, particulates at 49.5 tons/yr, CO at 89.9 tons/yr and VOC at 38.3 tons/yr.

Permit requirements include:

(1) Steam production limit on #5 hog fuel boiler of 140,000 lb/hr—24 hour average, 98,000 lb/hr—yearly average.

(2) Particulate matter:

0.03 gr/dscf @ 12% CO_2 (2 hr avg)

11.3 lb/hr (2 hr avg) @ 98,000 lb/hr steam production rate

(3) Fuel oil limit:

(A) fuel oil in #5 boiler) may not be used more than 438 hrs/yr

(B) fuel sulfur content < 1.75% on daily average, <1.55% on annual average

Continuous monitoring is not required.

Dated: October 1, 1981.

Carl C. Kohnert, Jr.,

Acting Director, Enforcement Division, Region 9.

[FR Doc. 81-32535 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[EN-9-FRL-1982-2]

Issuance of PSD Permit to Hawaiian Independent Refinery, Inc.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Hawaiian Independent Refinery, Inc., Campbell Industrial Park, Ewa Beach, Hawaii, EPA project number HI 81-01.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 11, 1982.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecilia Dougherty, Environmental Protection Assistant, E-4-1, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 18, 1981 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct one 110mmBTU/hr crude oil heater and one 125mmBTU/hr hydrogen generator.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations and is subject to certain conditions including allowable emission rates as follows: SO_2 at 60 lb/hr for the oil heater and 2.4 lb/hr for the hydrogen generator, NO_x at .4 lb/mmBTU for the oil heater and .2 lb/mmBTU for the hydrogen generator, and TSP at 6.1 lb/hr for the oil heater and 1.4 lb/hr for the hydrogen generator.

Best Available Control Technology (BACT) requirements include use of 0.5% fuel oil for the oil heater and "Low NO_x" burners. Air Quality Impact Modeling is required for SO_2, NO_x and TSP. Continuous monitoring is not required. The source is subject to New Source Performance Standards.

Dated: October 31, 1981

Carl C. Kohnert, Jr.,

Acting Director, Enforcement Division, Region 9.

[FR Doc. 81-32534 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

[A-10-FRL-1980-7]

Issuance of PSD Permit to Panorama Enercorp, Inc.

Notice is hereby given that on September 22, 1981, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Panorama Enercorp, Inc. for approval to construct a 37-megawatt wood waste-fired power plant near Kettle Falls, Washington.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today (January 11, 1982). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 521, Seattle, Washington 98101.

Dated: October 27, 1981.

John R. Spencer,

Regional Administrator.

[FR Doc. 81-32538 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF DEFENSE

ENVIRONMENTAL PROTECTION AGENCY

Corps of Engineer, Department of the Army

[ER-FRL-1980-6]

Jurisdiction of 404 Program; Extension of Memorandum of Understanding

AGENCY: Environmental Protection Agency and Corps of Engineers, DOD.

ACTION: Notice of agreement to extend Memorandum of Understanding on Geographical Jurisdiction of section 404 Program.

SUMMARY: Notice is hereby given that the Administrator of the Environmental Protection Agency and the Secretary of the Army have agreed to extend the April 23, 1980, Memorandum of Understanding (MOU) on Geographical Jurisdiction of the Section 404 Program from its original expiration date of October 23, 1981, to a new expiration date of September 30, 1982.

DATE: This MOU extension was consummated on October 22, 1981.

FOR FURTHER INFORMATION CONTACT:

John W. Meagher, Chief, 404 Program Branch, Office of Federal Activities (A-104), Environmental Protection Agency, Washington, D.C. 20460, (202) 472-2798, or

Bernie Goode, Chief, Regulatory Functions Branch, Headquarters, Department of the Army, DAEN-CWO-N, Washington, D.C. 20314, (202) 272-0199

SUPPLEMENTARY INFORMATION: The April 23, 1980, MOU on Geographical Jurisdiction of the section 404 Program was published in the **Federal Register** on July 2, 1980 (45 FR 45018). In accordance with the MOU and within twelve (12) months of its effective date, EPA and the Corps of Engineers were to institute a reviw of the agreement, consider any comments received, and make such revisions as the agencies deemed appropriate. Such revisions were to be published in the **Federal Register** within eighteen (18) months of the effective date.

EPA and the Corps of Engineers have conducted a review of the MOU and the comments received. However, because the Administration under the aegis of the Vice President's Task Force on Regulatory Reform is currently reviewing the Corps of Engineers' overall regulatory program, including jurisdictional aspects of the 404 program, we have decided to extend the MOU without revision at this time. The agreement to extend the MOU

recognizes that either agency may terminate the MOU at any time, that it will not continue beyond September 30, 1982, without mutual consent, and that it may be modified in the interim if inconsistencies result from new law, executive order, or deficiencies not now apparent in the MOU.

Dated: October 29, 1981.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 81-32543 Filed 11-9-81; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-7-IA-2]

Iowa Radiological Emergency Plan; Receipt of Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the State of Iowa has submitted its radiological emergency plans to the FEMA Regional Office. These plans support the Ft. Calhoun Nuclear Station located at Ft. Calhoun, Nebraska.

DATE PLANS RECEIVED: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Breheny, Regional Director, FEMA, Region VII, 911 Walnut, Room 300, Kansas City, Missouri 64106, (816) 374-5912.

Notice

In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," the Iowa Emergency Plan was received by the Federal Emergency Management Agency Region VII Office.

Included are plans for Harrison and Pottawattamie Counties which are wholly or partially within the plume exposure pathway emergency planning zones of the Ft. Calhoun plant.

Copies of the Plan are available for review at the FEMA Region VII Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 1135 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Patrick J. Breheny, Regional Director, at the above address on or before December 10, 1981.

Patrick J. Breheny,

Regional Director, Federal Emergency Management Agency—Region VII

October 23, 1981.

[FR Doc. 81-32482 Filed 11-9-81; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-648-DR]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Texas (FEMA-648-DR), dated October 23, 1981, and related determinations.

DATED: October 29, 1981.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0491.

NOTICE: The Notice of a major disaster for the State of Texas dated October 23, 1981, 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 October 23, 1981.

Grayson, Palo Pinto and Tarrant Counties for Individual Assistance only

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance)

John E. Dickey,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 81-32479 Filed 11-9-81 8:45 am]

BILLING CODE 6718-01-M

[Docket: FEMA-REP-3-VA-2]

Virginia Radiological Emergency Response Plan; Receipt of Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the Commonwealth of Virginia has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Virginia, and include those of local governments near the Virginia Electric Power Company's Surry Power Station located in Surry County.

DATE PLANS RECEIVED: October 27, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Adamcik, Acting Regional Director, FEMA, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-9416.

Notice

In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 FR 42341, the State Radiological Emergency Response Plan for the Commonwealth of Virginia was received by the Federal Emergency Management Agency Region III Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone of the nuclear plant. For the Surry Power Station, plans are included for Surry, Isle of Wight, James City and York Counties and the Cities of Williamsburg and Newport News. Also enclosed are the plans of Charles City and New Kent Counties and the Cities of Hampton and Poquosen. These political subdivisions serve as host areas to other jurisdictions.

Copies of the Plan are available for review at the FEMA Region III Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 2388 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Robert J. Adamcik, Acting Regional Director, at the above address on or before December 10, 1981.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to

approval of the plans. Details of this meeting will be announced in *The Daily Press/Times Herald*, Newport News at least two weeks prior to the scheduled meeting. Local radio and television stations will be requested to announce the meeting.

Robert J. Adamcik,

Acting Regional Director, Federal Emergency Management Agency—Region III.

October 29, 1981.

[FR Doc. 81-32463 Filed 11-9-81; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ageements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 30, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operate to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-1875-1.

Filing party: James J. Mason, Esquire, 1008 South Yakima, Tacoma, Washington 98405.

Summary: Agreement No. T-1875-1, between the Port of Tacoma (Port) and Kaiser Aluminum and Chemical Corporation (Kaiser), amends the parties' basic agreement providing for the preferential berthing of Kaiser's alumina vessels at Berth C of Pier 7 in the Port of Tacoma, Washington, as well as for crane operators provided by Port. The purpose of the amendment is to extend the basic agreement's term to November 1, 1999, with automatic renewal not to extend beyond October 31, 2009. Additionally, the agreement provides that the fees assessed per short ton of alumina for wharfage, services and facilities, and crane rental are increased, respectively, to $.18, $.05, and $.48, and are subject to adjustment on January 1, 1985, and every five years thereafter. The terms of the amendment are effective January 1, 1981.

Agreement No. T-3998.

Filing party: Mr. Randall V. Adams, Traffic/Accounting, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T-3998, between the Port of Palm Beach (Port) and Grand Bahama Hotel, Co., dba Williams Shipping Agency (Williams) provides for the five-year lease (with renewal options) for approximately 954 sq. ft. of office space and 4883 sq. ft. of warehouse space on the first and second floors of Warehouse A, Port of Palm Beach Terminal, Riviera Beach, Florida. The leased premises will be used for the purposes of office space and cargo storage.

As compensation, Williams shall pay Port a monthly rental of $1,211.33 during the first year of the initial term, plus applicable port tariff charges. The rental payments shall be adjusted based on the change of the cost-of-living index during the initial term and renewal term as provided for in the agreement. The parties further agree to provisions of indemnification, insurance, modification to improvements and other terms and conditions provided for in the agreement. This agreement will cancel Agreement No. T-3241.

Agreement No. 161-38.

Filing party: Howard A. Levy, Attorney at Law, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 161-38, among the member lines of the Gulf/United Kingdom Conference, amends Article 6 of the basic agreement to authorize appointment of a European resident representative to perform such functions as the Conference Chairman may assign and delete such as attending meetings of the Conference and presiding at meetings held in Europe. In particular, the European representative shall assist the Chairman in the implementation of shippers' requests and complaint procedures adopted and maintained in Europe by the Conference.

Agreement No. 10270-3.

Filing party: Howard A. Levy, Attorney at Law, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10270-3, among the member lines of the Gulf/European Freight Association, amends Article 12 of the basic agreement to authorize appointment of a European resident representative to perform such functions as the Association Chairman may assign and delegate, such as attending meetings of the Association and presiding at meetings held in Europe. In particular, the European representative shall assist the Chairman in the implementation of shippers' request and complaint procedures adopted and maintained in Europe by the Conference.

By order of the Federal Maritime Commission.

Dated: November 5, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-32464 Filed 11-9-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, December 10, 1981
Thursday, December 17, 1981

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the

labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202-632-9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

November 3, 1981.

[FR Doc. 81-32461 Filed 11-9-81; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views 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 a undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than December 1, 1981.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York (financing, trust company, investment advisory, and leasing activities; Arkansas, Louisiana, Mississippi, Oklahoma, and Texas): To engage through a *de novo* office of its subsidiary BT Southwest, Inc., in the following activities: the facilitation of and/or the making or acquiring for its own account or for the account of others, unsecured loans (including reat estate loans) and other extensions of credit (including issuing letters of credit and accepting drafts); servicing loans and other extensions of credit; and leasing real and personnel property and equipment or acting as agent, broker or advisor in leasing such property. The leases will serve as the functional equivalent of an extension of credit or such leases will be on a full payout basis. These activities will be conducted from an office in Dallas, Texas, serving the States of Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.

2. Chemical New York Corporation, New York, New York (leasing, financing, factoring and servicing activities; Minnesota, North Dakota, South Dakota, western Wisconsin, northern Iowa): To engage through its owned subsidiary, CHEMICAL BUSINESS CREDIT CORP., in the following activities: leasing real and personal property and equipment on a non-operating, full payout basis, and acting as agent, broker and advisor with respect to such leases; financing real and personnel property and equipment such as would be done by a commercial finance company, and servicing such extensions of credit; making or acquiring loans and other extensions of credit (including issuing letters of credit and accepting drafts) as would be made a factoring company. The activities of this branch office of Chemical Business Credit Corp. will be conducted from an office in Bloomington, Minnesota. The geographic area to be served by this office is the States of Minnesota, North Dakota, South Dakota, western Wisconsin and northern Iowa.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Maryland National Corporation, Balitmore, Maryland (leasing, insurance, and financing activities; New York and New Jersey): To engage through its subsidiary, Maryland National Leasing Corporation, in the following activities: engaging generally in the business of leasing real and personal property where the lease is the functional equivalent of an extension of credit (Personal property leased would include, but not be limited to, various types of equipment, machinery, vehicles, transportation equipment, and data processing equipment. The activity would also include conditional sales contracts and chattel mortgages); acting as adviser in real and personal property leasing transactions; originating, servicing, buying, selling, and otherwise dealing in personal property lease contracts as principal or agent; originating real property leases as principal or agent and servicing such leases for affiliated or nonaffiliated individuals, partnerships, corporations, and other entities; buying, selling, and otherwise dealing in real property leases as principal, agent, or broker; engaging in the sale, as agent or broker, of insurance similar in form and intent to credit life and or mortgage redemption insurance; engaging generally in commercial lending operations, including but not limited to secured and unsecured commercial loans and other extensions of credit to commercial enterprises; and acting as advisor or broker in commercial lending transactions. These activities would be conducted from and office in Manasguan, New Jersey, serving the States of New Jersey and New York.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Rainier Bancorporation, Seattle, Washington (investment advisory activities; United States): To engage through its subsidiary, Rainier Real Estate Advisors, Inc., in serving as an advisory company for trusts, pension and profit sharing funds, real estate investment trusts and other persons, firms or entities; serving as investment advisor as defined in section 2(a)(20) of the Investment Company Act of 1940 with respect to real estate related securities; and providing real estate investment advice to any person except where the real property is to be used in the trade or business of the person being advised. Rainier Real Estate Advisors, Inc. will limit its activities to rendering real estate investment or financial advice with respect ot real estate located in continental United States, Alaska, Hawaii, Puerto Rico, or in any commonwealth, territory or possession of the United States although such advice may be rendered to foreign persons as well as United States persons. These activities will be conducted from an office in Seattle, Washington.

D. Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, November 3, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-32404 Filed 11-9-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N-0257]

Studies of Effects of Marketed Drugs; Cooperative Agreements

Correction

In FR Doc. 81-28977 appearing at page 49206 in the issue for Tuesday, October 6, 1981, please make the following corrections:

(1) On page 49208 in the third column, in the second line from the top of the column, "BD-DDE-81-1".

(2) On page 49209, in the middle column in Appendix III, in table column 1B, in the seventh line, "I^{129}" should have read "I^{129}".

(3) Also in Appendix III, in table column 1C, in the entry for 1978, in the second line, "cefadoxil" should have read "cefadroxil".

BILLING CODE 1505-01-M

[Docket No. 81D-0274]

Topical Corticosteroids; Class Labeling Guideline

Correction

In FR Doc. 81-28974 appearing at page 49205 in the issue for Tuesday, October 6, 1981, please make the following corrections:

(1) In the heading of the document, "Project No. 81D-0274" should have read "Docket No. 81D-0274".

(2) On page 49206, in the first column, in the first full paragraph, in the list of drugs, in the sixth line, "Desoximethasone" should have read "Desoximetasone".

BILLING CODE 1505-01-M

[Docket No. 81F-0309]

Union Camp Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Camp Corp., Chemical Division, has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide resins derived from dimerized vegetable oil acids, azelaic acid, ethylenediamine, and piperazine as the basic resin in coatings for polypropylene film in contact with food.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B3384) has been filed by Union Camp Corp., Chemical Division, P.O. Box 2668, Savannah, GA 31402, proposing that the food additive regulations be amended to provide for the safe use of polyamide resins derived from dimerized vegetable oil acids, azelaic acid, ethylenediamine, and piperazine as the basic resin in coatings for polypropylene film in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: October 28, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-32285 Filed 11-9-81; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

Intent to Grant Exclusive Patent License; KFM Corporation, Inc.

Pursuant to 45 CFR 6.3 and 41 CFR Part 101-4, notice is hereby given of intent to grant to the KFM Corporation, Inc., an exclusive license to manufacture, use and sell an invention by Drs. Theodore R. Colburn and Bruce M. Smith, entitled "Activity Monitor for Ambulatory Subjects," which is described and claimed in application for Letters Patent of the United States Serial No. 790,988, filed April 26, 1977. A copy of the patent application may be obtained upon written request submitted to the Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Westwood Building, Room 5A03, Bethesda, MD 20205.

The proposed license will have a duration of (5) five years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. DHHS will grant the license unless, within (60) sixty days of this notice, the Chief, Patent Branch, whose address is given above, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(2) An application for a nonexclusive license to manufacture or sell the invention in the United States is submitted in accordance with 41 CFR 101-4-104-2, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

(45 CFR 6.3 and 41 CFR Part 101-4)

Dated: November 4, 1981.
Edward N. Brandt, Jr.,
Assistant Secretary for Health.
[FR Doc. 81-32492 Filed 11-9-81; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Classification Decision; Lease or Sale; Graham County, Arizona

The following described land has been reexamined and found suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741).

Gila and Salt River Meridian

Township 6 South, Range 26 East,
Sec. 32: Lot 3, 4.

The above described land is valuable for public purposes and is therefore considered chiefly valuable for public purposes. This classification is consistent with Land Use Plan for these lands.

These lands were previously classified in February 1967 and subsequently leased to the Safford Public School District as a future school site. This lease was relinquished in 1977.

Classification of the land under the provisions of the above-cited Act will segregate it from all forms of appropriation, including location under the mining laws, except applications under the mineral leasing laws and application under the recreation and Public Purposes Act.

Information concerning the proposed classification is available at the Safford District Office, 425 East 4th Street, Safford, Arizona 85546-2092.

Applications for lease or sale under the above cited Act may be filed within 18 months of issuance of this notice. Interested parties may contact the Safford District Manager at the address above.

Dated: August 30, 1981.
Lester K. Rosenkrance,
District Manager.
[FR Doc. 81-32469 Filed 11-9-81; 8:45 am]
BILLING CODE 4310-84-M

California Desert District; Eastern San Diego County Wilderness Study Areas; Hearing

AGENCY: Bureau of Land Management.

ACTION: Notice of a public hearing to explain a proposal for the future management of the Eastern San Diego County Wilderness Study Areas (WSAs) and to obtain information and advice from the public on these areas.

SUMMARY: The areas concerned include the San Ysidro Mountain WSA (CA-060-022), San Felipe Hills WSA (CA-060-023), Sawtooth Mountains WSA (CA-060-024-A, B, & C), Carrizo Gorge WSA (CA-060-025), and Table Mountain WSA (CA-060-026). The Eastern San Diego County WSAs collectively contain approximately 54,000 acres within San Diego County which are administered by the El Centro Resource Area Office of the United States Bureau of Land Management.

DATE: The hearing will be held on Monday, December 7, 1981, from 2:00 to 5:00 and from 7:00 to 10:00 p.m. in the Fine Arts Center, 8053 University Ave., La Mesa, CA 92041.

FOR FURTHER INFORMATION CONTACT: Area Manager, El Centro Resource Area, Bureau of Land Management, 333 S. Waterman Ave., El Centro, CA 92243.

SUPPLEMENTARY INFORMATION: The proposal for the WSAs is included in the Wilderness section of the Summary Map accompanying the presently available Eastern San Diego County Management Framework Plan Report. The map includes an overview of the Bureau of Land Management's land use plan for public lands in Eastern San Diego County. On the Summary Map, WSAs recommended as suitable for Wilderness designation are shown as Multiple Use Class C (green). WSAs recommended as non-suitable are also indicated on the map. Copies of the Eastern San Diego County Management Framework Plan Report and Summary Map will be sent to those requesting additional information. Written comments by those wishing to have their viewpoints included in the official record of the meeting must be received by January 15, 1982.

Bruce B. Ottenfeld,
Acting District Manager.
[FR Doc. 81-32459 Filed 11-9-81; 8:45 am]
BILLING CODE 4310-84-M

[U-40775]

Salt Lake District, Utah; Realty Action; Kennecott Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Salt Lake District office of the Bureau of Land Management is considering the possible environmental consequences of a proposed exchange of 1,357.492 acres of public land for 1,473.1 acres of private land between Kennecott Corporation (KC) and the United States. The public lands involved in that exchange are located in and around the Bingham Pit, in the lower portions of Butterfield Canyon north of the Butterfield Canyon road, and at Lakepoint. Adjacent private lands are owned by KC and used for mining operations. Private lands involved are all located within the boundaries of the Camp Williams Military Reservation.

Private (Offered) Lands:

Surface and mineral estates

T. 4 S., R. 2 W., SLM,
Sec. 29: Lot 3;
Sec. 33: NW¼NW¼.

Surface estate only

T. 4 S., R. 2 W., SLM,
Sec. 25: Lots 4, 5, 6, SE¼NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 26: Lots 5, 6, 7.
T. 4 S., R. 1 W., SLM,
Sec. 29: SW¼NW¼, NW¼SW¼;
Sec. 30: Lots 2, 3, 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 4 S., R. 1 W., SLM,
Sec. 19: Lot 20;
Sec. 20: NW¼SW¼.
T. 4 S., R. 2 W., SLM,
Sec. 23: Lots 9, 10, 12, 13;
Sec. 24: Lot 4.
T. 4 S., R. 1 W., SLM,
Sec. 29: SE¼NW¼, NE¼SW¼.
Total Private Lands = 1,473.1 acres.

Public (Selected) Lands:

Surface and Mineral Estates

Fifty-three (53) fragmented parcels (including Lot 62) located at and around the Bingham Pit, T. 3 & 4 S., R. 3 W., SLM (53.547 acres)
A portion of Parcel 8, Sections 18 & 19, T. 3 S., R. 2 W., SLM (38.963 acres)
An irregular portion of Parcel 8, Sections 18 & 19, T. 3 S., R. 2 W., SLM containing (85.743 acres)
Parcel 12, Sections 19, 30 & 31, T. 3 S., R. 2 W., SLM (201.685 acres)
Parcel 25, Sections 1, 2, 11 & 12, T. 4 S., R. 3 W., SLM (390.575 acres)
T. 1 S., R. 4 W.,
Sec. 25: S½NE¼, SE¼, NE¼SW¼ (Lakepoint public lands) 280 acres.
T. 1 S., R. 4 W., SLM,
Sec. 25: NE¼NE¼, SE¼SW¼, 80 acres.
T. 4 S., R. 2 W., SLM,
Sec. 6: Portions of Lots 3, 4, Lots 5, 6, 7, 8, 9
Sec. 7: Lot 1 (Nevada Tract) 226.979 acres.
Total Public Lands = 1,357.492 acres.

The value of the total lands to be exchanged is approximately equal, and money will be used to equalize the appraised values of the lands.

The purpose of this exchange is to acquire private inholdings within the main boundaries of the Camp Williams Millitary Reservation, improve the manageability and operational safety of military activities within the reservation boundaries, consolidate public and private land ownership and make available to KC lands which are needed for mineral related developments.

Detailed information concerning the exchange, including an environmental assessment, is available for your review at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, telephone number 524–5348. The BLM has determined that the proposed exchange would not have a significant impact on the environment.

For a period of 30 days, interested parties may review and comment on the environmental assessment at the District Office. During this comment period an open house-type public meeting will be held in Herriman, Utah. This will be at the Herriman Lions Community Center. The purpose of this meeting is not to accept formal comments, but rather to provide information about the proposed exchange to the public, and to answer questions. Formal comments should be made in writing to the District Manager at the above address. All comments will be evaluated and the findings of no significant impact may be vacated or modified.

Frank W. Snell,

District Manager.

[FR Doc. 81-32470 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-84-M

[NM 27237]

New Mexico; Order Providing for Opening of Public Lands

October 28, 1981.

In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (49 Stat. 1272, as amended, 43 U.S.C. 315g), the following lands have been reconveyed to the United States:

New Mexico Principal Meridian

Lincoln National Forest

T. 9 S., R. 11 E.,
Secs. 13 and 24, Cashier Lode Mining Claim, M.S. 639.
T. 9 S., R. 12 E.,
Secs. 13 and 14, Cashier Lode Mining Claim, M.S. 639.
T. 9 S., R. 12 E.,
Secs. 13 and 14, Grover Cleveland Lode Mining Claim, M.S. 723, portions not in conflict with M.S. 639 (Cashier Lode Mining Claim) and M.S. 568 (Diamond Crown Mining Claim).

The areas described aggregate 39.201 acres in the Nogal Mining District of Lincoln County.

Upon acceptance of title to such lands, they became part of the Lincoln National Forest and are subject to all the laws, rules and regulations applicable thereto.

At 10:00 a.m., on December 14, 1981, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the Regional Forester, 517 Gold St., S.W., Albuquerque, New Mexico 87102.

Robert E. Wilber,

Acting State Director.

[FR Doc. 81-32503 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-84-M

Boise District Office; Bruneau-Kuna Grazing Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Bruneau-Kuna Grazing Environmental Impact Statement. Notice of Intent to Prepare an Environmental Impact Statement and Invitation for Public Participation (Scoping).

SUMMARY: Notice is hereby given in accordance with 40 CFR 1501.7 that the Bureau of Land Management (BLM) will prepare an EIS for proposed livestock grazing management and vegetative allocation on approximately 2.3 milliion acres of public lands within the Bruneau and Owyhee Resource Areas, Boise District, BLM.

The lands under consideration are located primarily in Southwest Idaho, including portions of Ada, Elmore, and Owyhee Counties. A small portion of the area is located in North-Central Nevada, Elko County.

DATES: Two open houses will be held at the Boise District Office, 3948 Development Avenue, Boise, Idaho, from 1:00 p.m. to 8:00 p.m. on December 14, 1981, and December 15, 1981. Oral comments may be submitted at the open house or written comments may be mailed to the Boise District Office until January 15, 1982.

ADDRESS: Comments should be sent to: Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick, EIS Team Leader, Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, telephone (208) 334–1582.

SUPPLEMENTARY INFORMATION: The proposed action will be based on multiple use recommendations developed in the land use plans (Management Framework Plans) for the Bruneau Resource Area and portions of the Owyhee Resource Area. Vegetative allocation between consumptive and non-consumptive uses is proposed to maintain and/or improve soil, water, and vegetation resources. The construction of additional range management facilities (fencing, water development, etc.) and a vegetative treatment practices (burning, plowing, chemical, seeding, etc.) are also proposed.

Tentative alternatives to the proposed action which will be analyzed in the EIS are:

1. No change in present grazing practices or levels of livestock use.
2. No grazing.
3. Optimize livestock production within the capability of the resource base. Livestock use would be allocated at a higher level than in the proposed action.
4. Optimize wildlife and non-consumptive uses. The allocation of forage to livestock would be at a level less than in the proposed action.

A scoping process will be conducted to determine the significant issues to be analyzed in depth in the EIS and to eliminate the nonsignificant issues from detailed study. As part of the scoping process, the open houses will provide interested parties an opportunity to review the draft proposed action, alternatives, and previously identified issues. Participants will be encouraged to identify significant issues or additional issues and alternatives which should be addressed in the EIS. The open house will also allow the public an opportunity to review and comment on the draft land use plan for the study area.

Martin J. Zimmer,

District Manager.

[FR Doc. 81-32504 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-84-M

Oklahoma; Availability of Draft Environmental Assessment, Public Meeting, and Request for Comments on Fair Market Value

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of availability of draft environmental assessment; public meeting; and request for comments on fair market value.

SUMMARY: This notice will serve three purposes: (1) To advise the public that the Albuquerque, New Mexico, District Office of the Bureau of Land Management (BLM) has released a Draft Environmental Assessment (DEA) and opened the 30-day public review and comment period; (2) To notify the public of a meeting scheduled for November 19, 1981, to present the findings of the DEA and hear comments; and (3) To solicit

written public comment concerning the fair market value of the coal resources presented in the amendment.

FOR FURTHER INFORMATION CONTACT: Mark A. Butler, (405) 231–4481, Oklahoma Resource Area Office, Bureau of Land Management, Room 548, 200 NW. Fifth Street, Oklahoma City, Oklahoma 73102.

1. *Availability of Draft Environmental Assessment.* Prepared in response to a competitive lease application by Great National Corporation, the DEA covers a 415-acre area in LeFlore County, Oklahoma, 10 miles northeast of the City of Poteau, and is described as:

Township 8 North, Range 26 East of Indian Meridian, LeFlore County, Okla.
Section 12: NE SE SE S½ S½ SE SE SE SW
Section 13: N½ NW N½ SW NW N½ N½ NE SW NW NE
Section 14: S½ NE S½ NE NE SE NW NE
Township 8 North, Range 27 East of Indian Meridian, LeFlore County, Okla.
Section 7: SW SW S½ NE SW N½ SE SW SW SE SW S½ NW SE N½ SW SE
Section 18: NW NW NW

Application of unsuitability criteria (43 CFR, Part 3461), interrelationships with existing land use decision, coordination with other state and federal agencies, and analysis of those values that could be impacted by coal development have been addressed in the DEA. Comments on the DEA should be addressed to the Oklahoma Resource Area Office (address above) to arrive no later than 30 days from the date of this notice.

2. *Public Meeting.* A public meeting will be held Thursday, November 19, 1981, at 7:30 p.m. in the Poteau Civic Center in Poteau, Oklahoma. The purpose of the meeting is to present the findings of the Draft Environmental Assessment, application of unsuitability criteria, and to hear comments from the public on the proposal and analysis. During the public meeting, the U.S. Geological Survey will be available to answer questions on the economic evaluation and the mining methods to be used in recovery of the coal. Comments received at the meeting, both oral and written, will be considered in preparation of the final MFP amendment.

3. *Request for Public Comment on Fair Market Value of the Coal Resource.* The public is invited to submit written comments concerning the fair market value of the coal resource in the lease application area to the BLM and to the U.S. Geological Survey. Public comments will be used in establishing fair market value for the coal resources in the area described above. Comments should address specific factors related to fair market value including, but not limited to: the quantity and quality of the coal resource; the price that the mined coal would bring in the market place; the cost of producing the coal; the probable timing and rate of production; the interest rate at which anticipated income streams would be discounted; depreciation and other accounting factors; the expected rate of industry return; the value of the surface estate (if private surface); and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions may also be submitted at this time. These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63 and 43 CFR 3422.1–2. If any information submitted is considered proprietary by the person submitting it, the information should be labeled as such and stated in the first page of the submission. Comments on fair market value should be sent to both the State Director, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico, 87501, and to the Conservation Manager, South Central Region, Conservation Division, U.S. Geological Survey, P.O. Box 26124, Albuquerque, New Mexico, 87125, to arrive no later than December 10, 1981.

The coal resource to be evaluated consists of all the coal minable by surface methods in the 415-acre lease application area. The estimated total strippable reserves are 1,197,500 tons. The quality of the Lower Hartshorne coal bed is as follows: 13,120 Btu per pound, 1.4 percent sulfur, and 14.1 percent ash. The Lower Hartshorne coal bed averages 2.9 feet in thickness. Approximately 250 acres of the above-described lands are underlain by the Lower Hartshorne coal bed at depths of less than 150 feet.

L. Paul Applegate,

Albuquerque District Manager.

[FR Doc. 81-32505 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Auburn-Folsom South Unit, American River Division, Central Valley Project, Calif.; Intent to Prepare a Supplemental Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a supplement to the Final Environmental Statement, Auburn-Folsom South, American River Division—Central Valley Project, California. The proposed supplement will analyze and discuss the impacts of modifications to the authorized Auburn-Folsom South Unit.

The study will evaluate alternative plans to meet the water needs in the authorized Folsom South service area, including the availability of other supplemental sources of water supply. In addition, the study will review methods which will provide minimum flows in the Lower American River greater than those which are currently authorized. These additional flows will allow the enhanced fishery and recreation resources developed on the Lower American River to be maintained. Consideration also will be given to an enlarged and modernized salmon and steelhead fish hatchery at the existing Nimbus Hatchery site.

Sufficient water supplies are not currently available from the American River to meet all desired uses. Alternatives exist which either singly or in combination could be utilized to better serve the needs of the communities impacted by Auburn Folsom South Unit. Some of these are: (1) Development of additional water supplies from other sources; (2) reduction or elimination of all or part of the uses currently contemplated; or (3) recapture and reuse of water after it has served one purpose so that it could be used for another purpose.

There will be two scoping sessions to solicit information from all interested public entities and persons to assist in determining the variety of issues to be addressed and to identify the significant issues related to the proposed action. Scoping sessions will be held in Stockton, California on Wednesday, December 2, 1981, and Sacramento, California on Thursday, December 3, 1981. The time and place of these scoping sessions will be announced in the local media two weeks prior to each session. Additional written notification will be provided to all known interested entities.

For this supplement to the environmental statement, the contact person will be: Charles R. Long, Office of Environmental Quality, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4792.

Dated: November 4, 1981.

Aldon D. Nielsen,

Acting Assistant Commissioner.

[FR Doc. 81-32525 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-09-M

Contract Negotiations with the City of Yuma and the Gila Project Contractors, Ariz.; Intent to Begin Contract Negotiations To Amend Contract No. 14-06-W-106

The Department of the Interior, through the Bureau of Reclamation, intends to initiate negotiations with the city of Yuma (city) and the Gila Project Contractors to amend the city's water service contract. The amendatory contract would allow the city to divert part of its annual entitlement of 50,000 acre-feet of Colorado River water from the Gila Project's Yuma Mesa Unit "A" Canal. The Gila Project Contractors include the following irrigation districts: North Gila Valley Irrigation District, Yuma Irrigation District, Yuma Mesa Irrigation and Drainage District, Wellton-Mohawk Irrigation and Drainage District, and Unit B Irrigation and Drainage District. The proposed amendatory contract would be made pursuant to the Miscellaneous Purposes Act of February 25, 1920 (41 Stat. 451).

The city is requesting a maximum diversion of 3,613 acre-feet per year subject to the limitation that such delivery will not exceed 5 cubic feet per second at any one time at Imperial Dam. Under terms of the city's existing water service contract the city is obtaining its water from the Yuma Project's Colorado River Siphon outlet located adjacent to the city's water treatment facilities. Due to growth to the city, it has become necessary for the city to construct a treatment plant east of the city on the Yuma Mesa. There is no other practicable source of delivery of water to satisfy the domestic needs of the eastern portion of the city that does not entail substantial expenses by way of condemnation to construct diversion canals and facilities to deliver water from the current point of diversion to the new treatment plant.

Payment for the water will be negotiated among the parties to the amendatory contract. The city will continue to pay the United States $0.25 per acre-foot for Colorado River water as provided in the 1944 contract between the United States and the State of Arizona. However, payment will not start until the water ordered and delivered is in excess of 2,333 acre-feet, the annual diversion which was provided in the amended miscellaneous present and perfected rights contract, No. 14-06-W-106, executed pursuant to the January 9, 1979, Supreme Court Decree.

The public may observe any meeting scheduled by the Bureau of Reclamation for the purpose of discussing terms and conditions of the proposed amendatory contract. Advance notice of such meetings will be furnished to those parties making a written request to the office identified below at least 1 week prior to any meetings. All written correspondence concerning the proposed amendatory contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act of September 6, 1966 (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract no later than 30 days after the completed draft contract is declared to be available to the public. In the event little or no public interest is evidenced in the negotiations, as gauged by the response to this notice and local news releases or announcements, the availability of the proposed form of contract for public review and comment will not be formally publicized through the **Federal Register** or other media.

For further information about scheduled negotiations and a copy of the draft contract when available, please contact Mr. Steve Hvinden, Contracts and Repayment Branch, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, or telephone (702) 293-8651.

Dated: November 2, 1981.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 81-32526 Filed 11-9-81; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

Grand Junction District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Grand Junction District Grazing Advisory Board will be held on Friday, December 11, 1981.

The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 50629 West Highway 6 and 24, Glenwood Springs, Colorado. The agenda for the meeting will include (1) Minutes of the previous meeting, (2) follow-up report on the Sunnyside Allotment, (3) discussion of BLM's new range improvement policy, (4) distribution of advisory board funds in Routt and Eagle Counties, (5) discussion of the proposed agreement on project funding with the Moab BLM District, (6) use of advisory board funds for predator control, (7) status of current range improvement projects and proposed fiscal year 82 work, (8) new project proposals and (9) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:30 and 4:00 p.m., or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501, by December 8, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243-6552.

David A. Jones,

District Manager.

[FR Doc. 81-32705 Filed 11-9-81; 11:28 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public

need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-212

Decided: October 30, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 144953 (Sub-12), filed October 19, 1981. Applicant: MULLEN TRUCKING LTD., P.O. Box 8009, Station F, Calgary, Alberta, Canada T2J 4B4. Representative: John T. Wirth, 717 17th Street 2600, Denver, CO 80202, 303-892-6700. Transporting *mercer commodities*, between ports of entry on the international boundary line between the U.S. and Canada at points in WA, ID, MT and ND, on the one hand, and, on the other, points in MO, OH, IL, PA, IN and LA.

MC 146442 (Sub-2), filed October 19, 1981. Applicant: CLEARFIELD TRANSPORTATION COMPANY, INC., P.O. Box 313, Clinton, MO 64735. Representative: Mark J. Andrews, Suite 1100, 1660 L Street NW., Washington, DC 20036, 202-452-7400. Transporting *rubber products*, between points in the U.S., under continuing contract(s) with Hercules Tire & Rubber Co., Inc., of Findlay, OH.

MC 148183 (Sub-45), filed October 23, 1981. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, (202) 737-2188. Transporting *machinery*, between points in Hall County, GA, on the one hand, and, on the other, points in VA, KY, WV, MD, DE, NJ, CT, MA, VT, NH, ME, RI, NY, PA, MN, IA, MO, AR, OK, KS, NE, SD, ND, MT, ID, WY, CO, NM, AZ, UT, NV, WA, OR, CA, and DC.

MC 154432, filed October 19, 1981. Applicant: FORTY EIGHT TRANSPORT, INC., 17135 Westview, South Holland, IL 60473. Representative: Philip A. Lee, 120 W. Madison, Chicago, IL 60602. Transporting *foundry facings, ground coal, petroleum pitch, coal tar pitch, bagging machines, iron wire, glass units and related commodities, ranges, ovens, cookers, stoves, water coolers, sound warning signals, horns, auto lamps and fixtures, electric controllers, bells, fire alarms, cleaning compounds and related commodities*, between points in the U.S. (except AK and HI).

MC 155893, filed October 20, 1981. Applicant: D & M CARTAGE, INC., P.O. Box 433, Brookings, SD 57006. Representative: A. J. Swanson, P.O. Box 1103, 226 North Phillips Ave., Sioux Falls, SD 57101, (605) 335-1777. Transporting (I) over irregular routes, *metal products*, between points in Brookings County, SD, on the one hand, and, on the other, points in the U.S.; and (II) over regular routes, *general commodities* (except classes A and B explosives), (1) between Brookings and Huron, SD, over U.S. Hwy 14, (2) between Sioux Falls and Desmet, SD: from Sioux Falls over U.S. Hwy 77 to junction SD Hwy 34, then over SD Hwy 34 to junction SD Hwy 25, then over SD Hwy 25 to Desmet, and return over the same route, (3) between Sioux Falls and Watertown, SD: from Sioux Falls over U.S. Hwy 77 to junction U.S. 212, then over U.S. Hwy 212 to Watertown, and return over the same route, (4) between Watertown and Arlington, SD, over U.S. Hwy 81, and (5) serving in connection with routes (1) through (4) above all intermediate points, and points in Minnehaha, Moody, Lake, Miner, Beadle, Kingsbury, Brookings, Hamlin, Deuel, Codington, and Grant Counties, SD, as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 158683, filed October 8, 1981. Applicant: JET CONCRETE, INC., d.b.a. ROCKET TRUCKING, 112 West Brooks, North Las Vegas, NV 89030. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, 702-882-5649. Transporting *commodities in bulk*, between points in and south of Monterey, Kings, Tulare, and Inyo Counties, CA, Clark, Lincoln, Nye, Esmeralda, and White Pine Counties, NV, Mohave County, AZ, and Iron, Kane, Garfield, Millard, and Beaver Counties, UT.

Volume No. OPY-2-213

Decided: November 2, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 1743 (Sub-3), filed October 23, 1981. Applicant: WICKER TRUCKING, INC., 311 Porter Ave., Scottdale, PA 15683. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219, (412) 281-9494. Transporting *electric power transformers, machinery, foundry supplies, and iron and steel articles*, between points in Westmoreland, Allegheny, and Fayette Counties, PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 13313 (Sub-5), filed October 16, 1981. Applicant: CUMMINGS TRANSFER CO., 740 29th Ave. West, Albany, OR 97321. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, 503-226-3755. Transporting *petroleum, natural gas and their products, and chemicals and related products*, between points in OR, WA, and ID.

MC 94842 (Sub-9), filed October 23, 1981. Applicant: ROBERT CROCKET, INC., 102 Crescent Ave., Chelsea, MA 02150. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *those commodities which because of their size or weight require the use of special handling or equipment*, between points in the U.S.

MC 134783 (Sub-80), filed October 16, 1981. Applicant: DIRECT SERVICE, INC., P.O. Box 2481, Lubbock, TX 79408. Representative: Charles M. Williams, 1600 Sherman St. #665, Denver, CO 80203, 303-839-5856. Transporting (1) *chemical and related products*, and (2) *such commodities* as are dealt in or used by manufacturers and distributors

of toilet preparations, beauty aids, cosmetics, cleaning compounds, deodorizers, drugs, and store displays, between points in the U.S.

MC 139043 (Sub-6), filed October 23, 1981. Applicant: S A C TRANSPORTATION, INC., E. 4010 Main, Spokane, WA 99202. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055–3259, (206) 235–4730. Transporting *general commodities* (except classes A and B explosives), between points in CA, ID, MT, OR and WA.

MC 145773 (Sub-15), filed October 26, 1981. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Rd., Sidney, OH 45365. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except household goods, commodities in bulk, and explosives), between points in the U.S., under continuing contract(s) with A. O. Smith Corporation, of Milwaukee, WI.

MC 147932 (Sub-4), filed October 16, 1981. Applicant: COWEN TRUCK LINE, INC., Rt. 2, Perrysville, OH 44864. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, 614–464–4103. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of appliances and transportation equipment, between Akron, OH and points in Richland County, OH, on the one hand, and, on the other, points in the U.S.

MC 148412 (Sub-7), filed October 26, 1981. Applicant: GRIBBLE TRUCKING, INC., RD 3, Rockwood, PA. 15557. Representative: John Fullerton, 407 N. Front St., Harrisburg, PA 17101, (717) 236–9318. Transporting *iron and steel forgings* between points in the U.S., under continuing contract(s) with Meadville Forging Co., of Meadville, PA.

MC 149382 (Sub-1), filed October 23, 1981. Applicant: BURT TRANSPORT, INC., North Hwy 81, Geneva, NE 68361. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *such commodities* as are dealt in or used by agricultural equipment dealers, between points in the U.S., under contract(s) with (a) Adams Equipment, Inc., of Adams, NE, (b) William Chevrolet, Inc., of Pawnee City, NE, (c) Superior Implement, Inc., of Superior, NE, and (e) Stansbury Implement Co., Inc., of Humboldt, NE.

MC 149522 (Sub-2), filed October 19, 1981. Applicant: LARRY MUNGER, d.b.a. LARRY MUNGER ENTERPRISES, P.O. Box 25831, Salt Lake City, UT 84125. Representative: Larry Munger (same address as applicant), (801) 966–4702. Transporting *Mercer Commodities, clay, concrete, glass or stone products, contractors and construction materials, equipment, and supplies*, between points in WA, OR, CA, NV, UT, AZ, WY, MT, CO, NM, OK, TX, LA, MO, IL, ID, ND, SD, IA, NE, KS, OH, WI, MN, AR, AL, TN, and MI.

MC 151193 (Sub-18), filed October 16, 1981. Applicant: PAULS TRUCKING CORPORATION, 286 Homestead Ave., Avenel, NJ 07001. Representative: Michael A. Beam (same address as applicant), 201–499–3869. Transporting (1) *such commodities* as are dealt in and sold by supermarkets, and (2) *meats, packing house products, and meat byproducts*, between points in the U.S., under continuing contract(s) with Kenosha Beef International and Birchwood Meat and Provision Company, both of Kenosha, WI.

MC 152212, filed October 23, 1981. Applicant: SCENIC HYWAY TOURS, INC., P.O. Box 14315, San Francisco, CA 94114. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209, (703) 522–0900. Transporting *passengers and their baggage, in the same vehicle with passengers*, in special and charter operations, beginning and ending at points in San Francisco and Alameda Counties, CA, and extending to points in the U.S. (including AK but excluding HI).

MC 157973, filed October 23, 1981. Applicant: EDWARD D. OWENS, P.O. Box 25, Rice Lake, WI 54868. Representative: Harold O. Orlofske, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *such commodities* as are dealt in or used by (1) food service distributors, under continuing contract(s) with Upper Lake Foods, of Cloquet, MN, and (2) beer and wine wholesalers, under continuing contract(s) with Renerio Beverage, of Ashland, WI, between points in the U.S.

MC 158512, filed October 16, 1981. Applicant: NICHOLSON & SON EXPRESS, INC., 2037 West Farragut Ave., Chicago, IL 60625. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603, 312–263–2306. Transporting *automotive supplies, pulp, paper and related products, and trailers*, between Chicago, IL, on the one hand, and, on the other, points in IL, IN, IA, MI, and WI.

MC 158802, filed October 13, 1981. Applicant: RICHARD HANDS, d.b.a. ASSOCIATED SHIPPERS SERVICE, P.O. Box 149, Newfoundland, NJ 07435. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, 212–263–2078. Transporting *those commodities which because of their size or weight require the use of special handling or equipment, metal products, stone products, machinery, machinery parts, pipe, and air conditioners*, between points in the U.S. (except AK and HI).

Volume No. OPY–5–194

Decided: November 2, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 113119 (Sub-16), filed October 20, 1981. Applicant: C.S.I., INC., d.b.a. CONTRACT SERVICE, INC., Trewingtown Rd., Colmar, PA 18915. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 562–1202. Transporting *clay, concrete, glass or stone products*, between points in Addison and Rutland Counties, VT, and York County, PA, on the one hand, and, on the other, points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN to the international boundary line between the United States and Canada.

MC 119399 (Sub-150), filed October 26, 1981. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Blvd., Joplin, MO 64802. Representative: Keith R. McCoy (same address as applicant), 417–623–5229. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in the U.S. on the one hand, and, on the other, points in the U.S.

MC 136899 (Sub-58), filed October 23, 1981. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 637, Richland Center, WI 53581. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, 608–256–7444. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. on the one hand, and, on the other, points in the U.S.

MC 142288 (Sub-10), filed October 23, 1981. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral, Tulsa, OK 74116. Representative: Michael H. Lennox, 531 N. Portland, P.O. Box 75613, Oklahoma City, OK 73147, 405–943–2722. Transporting *commodities in bulk*, between points in OK, on the one hand, and, on the other, points in

AL, AR, CA, CO, DE, FL, GA, IA, ID, IL, IN, KS, LA, MA, MD, ME, MN, MO, MS, MT, NJ, NM, NY, OH, PA, SD, TX, VA, WA, and WV.

MC 143699 (Sub-8), filed October 26, 1981. Applicant: QUALITY CONTRACT CARRIERS, INC., 1009 West Edgewood Ave., Indianapolis, IN 46217. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, (402) 392–1220. Transporting *such merchandise* as is dealt in or used by wholesale and retail grocery business houses, between points in the U.S., under continuing contract(s) with The Kroger Co., of Cincinnati, OH.

MC 145429 (Sub-4), filed October 23, 1981. Applicant: MEL'S EXPRESS LTD., 90 Dissette St., P.O. Box 479, Bradford, Ontario Canada L0G 1CO. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. Transporting *toys and toy parts* between points in Erie and Orleans Counties, NY, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada.

MC 147649 (Sub-4), filed October 23, 1981. Applicant: AMERICAN CONTAINER TRANSPORT, INC., 7350 West Marginal Way SW., Seattle, WA 98106. Representative: James T. Johnson, 1610 IMB Bldg., Seattle, WA 98101, 206–624–2832. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in WA, OR, CA, UT, and MT.

MC 148569 (Sub-8), filed October 23, 1981. Applicant: JAMES BRUCE LEE AND STANLEY LEE d.b.a LEE CONTRACT CARRIERS, P.O. Box 48, Pontiac, IL 61764. Representative: Edward F. Stanula, 900 East 612nd St., South Holland, IL 60473, 312–596–8575. Transporting *lawn and weed equipment and metal products*, between points in Livingston County, IL, on the one hand, and, on the other, points in the U.S.

MC 148899 (Sub-4), filed October 23, 1981. Applicant: BARLOW TRUCK LINES, INC., Box 224, Faucett, MO 64448. Representative: Patricia F. Scott, 20 East Franklin, P.O. Box 258, Liberty, MO 64068–0258, (816) 781–6000. Transporting *food and related products* between points in Orange County, CA, and Buchanan County, MO, on the one hand, and, on the other, those points in the U.S. in and east of AR, IA, LA, MN, and MO.

MC 149368 filed October 23, 1981. Applicant: MILLER'S SPECIAL DELIVERY SERVICE, 61390 Bremen Highway, Mishawaka, IN 46544. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 So. Second St., Elkhart, IN 46516, 219–293–3597. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk), between Chicago, IL, points in IN, and those in MI on and south of MI State Hwy 46 on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 151039 (Sub-1), filed October 26, 1981. Applicant: CABARRUS CONSOLIDATING AND MANAGEMENT COMPANY, P.O. Box 1212, Concord, NC 28025. Representative: John N. Fountain, P.O. Box 2246, Raleigh, NC 27602, 919–828–0731. Transporting *textiles and related commodities*, between points in the U.S.

MC 152509 (Sub-17), filed October 23, 1981. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same address as applicant), (216) 566–2677. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Richway, Inc., a division of Federated Dept. Stores, of Atlanta, GA.

MC 152509 (Sub-18), filed October 23, 1981. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same address as applicant), (216) 566–2677. Transporting (1) *paper, pulp and related products*, and (2) *lumber and wood products*, between points in the U.S., under continuing contract(s) with Weyerhaeuser Company of Tacoma, WA.

MC 153788, filed October 26, 1981. Applicant: G & G COMPANY, INC., P.O. Box 5753, Longview, TX 75608. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *sand, rock and gravel* between points in Choctaw and McCurtain Counties, OK, on the one hand, and, on the other, those points in TX on and east of Interstate Hwy 35.

MC 153829 (Sub-1), filed October 23, 1981. Applicant: UNITED SHIPPING COMPANY, P.O. Box 21186, St. Paul, MN 55121. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102, (612) 227–7731. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in the U.S.

MC 153929 (Sub-1), filed October 22, 1981. Applicant: MONROE LEASING COMPANY, INC., 3434 Akron-Cleveland Road, Cuyahoga Falls, OH 43223. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting (1) *transportation equipment*, and (2) *rubber and plastic products*, between points in the U.S., under continuing contract(s) with North Gateway Tire Co., Inc., of Medina, OH.

MC 156498 (Sub-1), filed October 16, 1981. Applicant: MORRIS W. VICE, d.b.a. ROYAL GREAT LAKES TOURS, 2008 West Goguac Street, Battle Creek, MI 48015. Representative: William R. Ralls, 118 West Ottawa St., Lansing, MI 48933, 517–372–8622. To engage in operations, in interstate or foreign commerce as a *broker*, at Battle Creek, MI, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in charter or special operations, between Battle Creek, MI, on the one hand, and on the other, points in the U.S.

MC 157689, filed October 16, 1981. Applicant: T & L EXPRESS, LTD., 1211 Majestic Way, Webster, NY 14580. Representative: John F. O'DONNELL, 60 Adams St., P.O. Box 238, Milton, MA 02187, (617) 696–7810. Transporting (1) *food and related products*, (2) *pulp, paper, and related products*, (3) *rubber and plastic products*, (4) *chemicals and related products*, and (5) *metal products*, between points in CT, DE, IA, IL, IN, KY, MA, MD, MI, MO, NJ, NY, OH, PA, RI, VA, WI, WV, and DC.

MC 158879, filed October 19, 1981. Applicant: SAIN TRANSPORT, A Division of Sain Enterprises, Inc., 115 East 2nd Street, Freeport, TX 77541. Representative: Donald J. Sain (same address as applicant), (713) 233–2608. Transporting (1) *clay, concrete, glass or stone products*, (2) *metal products*, (3) *rubber and plastic products*, and (4) *lumber and wood products*, between points in AR, AZ, CA, CO, ID, IL, KS, LA, MO, MT, NE, ND, NM, NV, OK, OR, TX, UT, and WY.

MC 158919, filed October 21, 1981. Applicant: PARWEL INDUSTRIES, INC., 473 Milverton Blvd., Toronto, Ontario, Canada M4C 1X4. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, 703–522–0900. To operate as a *broker*, at Boston, MA, in arranging for the transportation of *passengers and their baggage*, between points in the U.S.

Note.—Applicant also intends to operate at Toronto, Ontario, Canada, a point beyond the jurisdiction of the Interstate Commerce Commission.

MC 158928, filed October 22, 1981. Applicant: D. J. WALTERS

TRANSPORT CO., P.O. Box 416, Kearney, NE 68847. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761. Transporting *petroleum products* between points in the U.S., under continuing contract(s) with Spohn Oil Company, J & D Oil Co., and Landmark of Nebraska, Inc., all of Kearney, NE.

MC 158929, filed October 21, 1981. Applicant: RICHARD P. KOVACS, d.b.a. RICHARD P. KOVACS LIMOUSINE SERVICE, 70½ West St., Danbury, CT 06810. Representative: Richard P. Kovacs (same address as applicant), (203) 748-0550. Transporting *passengers and their baggage*, in special operations, between points in CT, on the one hand, and, on the other, the John F. Kennedy Airport and La Guardia Airport at New York, NY, and the Newark International Airport at Newark, NJ.

Volume No. OPY-5-195

Decided: November 3, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 41098 (Sub-68), filed October 27, 1981. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street N.W., Washington, DC 20006, 202-833-8884. Transporting *such commodities* as are dealt in by retail stores between points in King County, WA on the one hand, and, on the other, points in CO, IA, MN, MO, NE, OK, TN, TX and WI.

MC 56679 (Sub-181), filed October 27, 1981. Applicant: BROWN TRANSPORT CORP., 352 University Ave. SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant), 404-752-5151. Transporting *general commodities* (except classes A and B explosives), between points in WA, OR, NV, ID, WY, UT, MT, ND, SD, ME, NH, VT, CT, RI, Upper Peninsula MI, Dallas, TX, Oklahoma City, OK, Kansas City, MO, and Omaha, NE.

MC 107478 (Sub-91), filed September 22, 1981. This application was published initially in the **Federal Register** on October 9, 1981. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. Box 2006, 1791 Westchester Dr., High Point, NC 27261. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20014, (301) 986-1410. Transporting *general commodities* (except classes A and B explosives), between the facilities of Xerox Corporation at points in the U.S., on the one hand, and, on the other, points in the U.S. This application is republished to show the complete authority requested by applicant.

MC 112989 (Sub-151), filed October 28, 1981. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans (same address as applicant), (503) 747-1283. Transporting *containers and container closures* between points in the U.S.

MC 134548 (Sub-11), filed October 26, 1981. Applicant: ZENITH TRANSPORT, LTD., 2381 Rogers Ave., Coquitlam, B.C., Canada V3K 5Y2. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104, (206) 622-3220. Transporting *pulp, paper and related products* between ports of entry on the international boundary line between the U.S. and Canada in WA, ID, and MT, on the one hand, and, on the other, points in WA, OR, CA, ID, MT, WY, CO, UT, NM, AZ, and NV.

MC 145129 (Sub-8), filed October 9, 1981. Applicant: WHITAKER TRANSPORTATION COMPANY, INC., 2909 South Hickory St., Chattanooga, TN 37407. Representative: M. C. Ellis, % Chattanooga Freight Bureau, Inc., 1001 Market St., Chattanooga, TN 37402, (615) 756-3620. Transporting *glass containers*, (1) between points in FL, IL, KS, MD, MS, MO, OH, PA, TN, TX, and WV, and (2) between points in (1) above on the one hand, and, on the other, points in AL, GA, KY, MS, NC, SC, TN, and VA.

MC 145129 (Sub-9), filed October 16, 1981. Applicant: WHITAKER TRANSPORTATION COMPANY, INC., 2909 South Hickory St., Chattanooga, TN 37407. Representative: M. C. Ellis, % Chattanooga Freight Bureau, Inc., 1001 Market St., Chattanooga, TN 37402, (615) 756-3620. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in AL, GA, and TN, on the one hand, and, on the other, points in AL, GA, and TN.

MC 146449 (Sub-3), filed October 28, 1981. Applicant: ALL CITIES TRANSFER, INC., 1567 East Hamilton Ave., East Point, GA 30344. Representative: William J. McCann (same address as applicant), (404) 768-7780. Transporting *industrial and plastic containers*, between points in Clayton County, GA and Dallas County, TX, on the one hand, and, on the other, points in the U.S.

MC 151748 (Sub-2), filed October 23, 1981. Applicant: GRAPHIC ARTS PUBLISHING CO., INC., d.b.a. GAP TRUCKING, 2285 Warm Springs Ave., Boise, ID 83706. Representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, WA 99201, 509-455-9200. Transporting *office furniture, materials, supplies, and equipment and related products* between points in the U.S. under continuing contract(s) with Equipment Distributors, Inc., of Boise, ID.

MC 155409, filed October 26, 1981. Applicant: MICHALETZ TRUCKING, INC., 3302 Park Drive, Owatonna, MN 55060. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, 612-937-8500. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. under continuing contract(s) with Brown Printing Company, Inc., of Waseca, MN.

MC 156079 (Sub-5), filed October 28, 1981. Applicant: CIRCLE "C" CARRIERS, INC., P.O. Box 6158, Little Rock, AR 72216. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., 315 Union St., Nashville, TN 37201, (615) 244-2926. Transporting *food and related products*, between points in White County, AR, and Lake County, IN, on the one hand, and on the other, points in the U.S.

MC 157309, filed October 26, 1981. Applicant: WALTER C. TECHMEIER, 620 N. Michigan St., De Pere, WI 54115. Representative: Walter C. Techmeier (same as applicant), 414-337-0103. Transporting *such commodities* as are dealt in, or used by, truck, trailer, and diesel engine repair shops, between points in the U.S. under continuing contract(s) with Diesel Specialists, Inc. and Green Bay Maintenance, Inc. both of Green Bay, WI.

MC 158589, filed October 1, 1981. Applicant: RAINBOW MOTOR LINES, INC., 220 River Drive, Lake Hiawatha, NJ 07034. Representative: Peter Scrivani (same address as applicant), (201) 334-1939. Transporting *olives* between points in the U.S., under continuing contract(s) with Tee-Pee Olive, Inc., of Scarsdale, NY.

MC 158619, filed October 5, 1981. Applicant: JOHN ROSS EXPRESS, INC., P.O. Box 17643, El Paso, TX 79917. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102, (817) 335-2505. Transporting (1) *building materials* (except in bulk), and (2) *construction machinery, equipment, and supplies*, between points in El Paso County, TX, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MO, NV, NM, NC, OK, OR, SC, TN, TX, UT, VA, and MS.

MC 158739, filed October 28, 1981. Applicant: JIM RUSHING TRUCKING, INC., RT # 4 P.O. Box 177, Union City, TN 38261. Representative: Ronald M.

Lowell, 618 United American Bank Bldg., Nashville, TN, 615–244–8100. Transporting *commodities in bulk* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Kinkead Industries, Inc. of Downers Grove, IL.

MC 158759, filed October 13, 1981. Applicant: TRANSTEEL, INC., 1452 Hawthorne St., Grosse Pointe Woods, MI 48236. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167, (313) 349–3980. Transporting (1) *automobile parts*, (2) *materials* used in the manufacture and production of motor vehicles, and (3) *such commodities* as are dealt in or used by manufacturers and dealers of agricultural and construction equipment, between points in MI, OH, PA, IN, IL, WI, MO, and KY.

MC 158968, filed October 26, 1981. Applicant: STERLING TOURS, INC., d.b.a. PLAZA CASINO TOURS, 207 Powell St., Suite 200, San Francisco, CA 94102. Representative: John Paul Fischer, 256 Montgomery St., San Francisco, CA 94104, (415) 421–6743. To engage in operations, as a *broker* at San Francisco, Oakland, and San Jose, CA, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, beginning and ending at points in CA, and extending to points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-32373 Filed 11-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OPY-5-196]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: November 3, 1981.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

MC 158958, filed October 26, 1981. Applicant: JOE EVANS EXPRESS, 4623 Ebony St., Orlando, FL 32805. Representative: Hughan R. H. Smith, 26 Kenwood Pl., Lawrence, MA 01841, 617–241–8296. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158989, filed October 28, 1981. Applicant: EASTERN GILLETTE, INC., 20 Paulina St., Somerville, MA 02144. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, (212) 239–4610. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

[FR Doc. 81-32374 Filed 11-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 194]

Motor Carriers: Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: November 3, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority,

compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 9655 (Sub-6)X, filed October 23, 1981. Applicant: J. R. BUTLER, INC., 5950 Fisher Rd., P.O. Box 487, East Syracuse, NY 13057. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666. Sub-4 certificate, Broaden (1) general commodities (exceptions) to "general commodities (except classes A and B explosives); (2) expand Buffalo, Rochester, Syracuse, Utica, Elmira, and Binghamton to Erie, Monroe, Onondaga, Oneida, Chemung, and Broome Counties, NY; and (3) remove ex-rail restriction.

MC 42326 (Sub-1)X, filed October 19, 1981. Applicant: ROLAND D. SELLERS, d.b.a. SELLERS TRUCK LINE, RFD #2, Box 9, Salina, KS 67401. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Lead certificate. Broaden regular routes (1) general commodities (with exeptions) to "general commodities (except classes A and B explosives and household goods as defined by the Commission); (2) authorize service at all intermediate points (3) off route points of Minneapolis, Delphos and Lincoln to Ottawa and Lincoln Counties, KS.

MC 115554 (Sub-42)X, filed October 21, 1981. Applicant: HEARTLAND EXPRESS, INC. OF IOWA, P.O. Box 89B, R.R. #6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Lead and Subs 3, 5, 6, 7, 8, 10, 11, 13G, 14, 15F, 16F, 19F, 23F, 24F, 25F, 27F,28F, 29F, 30F, 31F, 32F, 35F, and 36F. Broaden (1) to (a) "food and related products" from malt beverages Sub 3 and Sub 5; from feed lead and Sub 5; from feedstock, bakery supplies, peaches, and watermelons Sub 5; (b) "lumber and wood products and metal products" from fencing materials and iron and steel articles in lead and from fencing Sub 5; (c) "textile mill products" from binder twine and wool and twine Sub 5; (d) "petroleum, natural gas and their products" from petroleum products Sub 5; (e) "machinery and metal products" from pumps, windmills, windmill towers, iron pipe an fittings and pump parts lead; chicken and pig brooders poultry nests, poultry and livestock feeders, water tanks, tank heaters, and agricultural and poultry hand utensils, hardware and agricultural machinery and parts thereof Sub 5, heat exchangers and equalizers for air, gas, or liquid and machinery and equipment therefor and parts, materials, equipment and supplies therefor Sub 14; (f) "farm products and such commodities as are dealt in by the agricultural industry" from agricultrual commodities Sub 5; (g) "food and related products and waste or scrap materials not identified by industry producing" from hides and scrap metal lead; hides and rendering plant products Sub 5; (h) "metal products" from wire and wire products Sub 3; iron and steel articles and materials, equipment and supplies used in the manufacture and processing thereof Sub 7; wire cases Sub 11; and containers Sub 33F; (i) "waste or scrap materials not identified by producing industry" from junk Sub 5; (j) "farm products" from livestock Sub 5 and lead; nursery stock and supplies lead; seeds, and soy beans Sub 5; (k) "chemicals and related products and containers therefor" from acid and empty acid carboys lead; (l) "chemicals and related products" from fertilizer, tankage and paint lead; and agricultural and industrial pesticides and chemicals, Sub 24F; (m) "coal and coal products" from coal lead and Sub 5; (n) "petroleum, natural gas and their products and chemicals and related products" from lubricating oil and cleaners' solvent lead; (o) "pulp, paper and related products" from wall paper lead; and insulation materials Sub 36F; (p) "furniture and fixtures" from furniture and new and old furniture and commodities such as are dealt in by retail furniture stores Sub 5; (q) "machinery" from agricultrual implements and parts lead, and Sub 3; refrigerators, refrigeration equipment and parts and materials therefor Sub 3; farm equipment and parts thereof, bakery supplies and equipment, and washing machines and parts therefor and materials used in the manufacture thereof in Sub 5; refrigerators, refrigeration, cooling, heating and electrical equipment, and appliances, Subs 8, 10, 13G, and 15F; electric motors, grinders, buffers, dental lathes, dust collectors, and pedestals, parts, accessories and attachments and materials, equipment, and supplies used in the manufacture and distribution thereof Subs 16F and 29F; electric motors, electric generators and parts therefor Sub 25F; gas and electrical appliances, parts therefor and materials, equipment and supplies used in the manufacture, distribution and repair thereof Subs 19F and 27F; electric motors Sub 28F; telephones, telephone sets and telephone equipment and materials, equipment, and supplies used in the manufacture, distribution, installation, or operation thereof Subs 23F, 31F and 35F; refrigeration equipment, electrical equipment and electrical appliances, materials and supplies used in the manufacture, repair and distribution thereof Sub 30F; (2) authorize service at all intermediate points in regular-route authorities lead and Sub 5; (3) expand off-route points to county-wide authority: lead, Johnson, Muscatine, Cedar, Linn, Iowa and Washington Counties, IA (within 25 miles of Iowa City, IA); Sub 5, Lewis (Maywood and Monticello) and Shelby (Leonard) Counties, MO; Davis, Monroe, Wapello, Appanoose and Van Buren Counties, IA and Schuyler and Scotland Counties, MO (within 15 miles of Bloomfield, IA); Wayne, Decatur, Clarke, Lucas, Monroe, Appanoose, Marion and Warren Counties, IA (within 30 miles of Chariton, IA); (4) irregular-route, lead, Johnson County, IA (Iowa City), Lake County, IN (East Chicago), De Kalb, Winnebago, and Rock Island Counties, IL (Sanwich, Rockford, Rock Island, Moline), Cedar and Linn Counties, IA (Tipton, Stanwood, London, Ely and Mechanicsville), La Salle County, IL (Ottawa and Marseilles); Rock Island County, IL (Coal Valley), Cedar County, IA (Tipton, IA) Clinton, Cedar, Johnson, Muscatine, Jones, Jackson, Dubuque, Delaware, and Linn Counties, IA (DeWitt, Clinton, Mechanicsville, Solon, West Branch, Wilton Junction, Tipton, Monticello, Anamosa, Maquoketa, Walford, Bennett, Iowa City, Oxford, Farley, Earlville, Manchester, Central City, and Cascade), Lake County, IN (Hammond), Cedar County, IA (Tipton), Linn, Clinton, Louisa, Muscatine, Scott, Jackson, Cedar, Jones, Washington, and Johnson Counties, IA and Rock Island County, IL (Tipton and points within 35 miles thereof), Buchanan, Linn, Benton, Tama, Poweshiek, Wapello, Mahaska, Keokuk, Jefferson, Henry, Louisa, Muscatine, Scott, Clinton, Delaware, Black Hawk, Cedar, Jones, Washington, Johnson, and Iowa Counties, IA (Oxford and points within 50 miles thereof), Lake County, IN (East Chicago, Gary, Hammon and Whiting), Johnson, Jones, Muscatine, Louisa, Cedar, Keokuk, Benton, Linn, Iowa and Washington Counties, IA (Iowa City and points within 25 miles thereof), Bureau County, IL (Princeton), Will County, IL (Joliet), Kane County, IL (Aurora), Cedar County, IA (Durant); Sub 3, Iowa County, IA (Amana), Linn County, IA (Cedar Rapids), Hancock County, IL (Warsaw), Whiteside County, IL (Sterling), Johnson County, IA (Oxford), Tazewell, Rock Island, and La Salle Counties, IL (Morton, Rock Island, and

Streator); Sub 5, Fulton, Rock Island and Whiteside Counties, IL (Canton, Moline, East Moline, Rock Falls, and Rock Island), Marion, Lucas, Wayne, Appanoose, Davis, Wapello, Monroe, Keokuk and Mahaska Counties, IA (Albia and points within 25 miles thereof), Knox County, IL (Galesburg), Story, Monroe, Poweshiek, Jasper, Wapello, Appanoose, Wayne, Keokuk, Iowa, Marion, and Mahaska Counties, IA (Ames, Colfax, Grinnell, Centerville, Corydon, Oskaloosa), Lucas, Muscatine, Cedar, Jones, Linn, Buchanan, Johnson, Chickasaw, Floyd, Kossuth, Woodbury, Monona, Ida, Palo Alto, Delaware, Fayette, Bremer, Butler, Cerro Gordo, Hancock, Humboldt, Pocahontas, Sac, Crawford, Shelby, Harrison, Pottawattamie, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoose, Davis, Van Buren, Jackson, Scott, Lee, Des Moines, Henry, Jefferson, Wapello, Monroe, Clarke, Union, Adams, Montgomery, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Louisa, Johnson, Iowa, Poweshiek, Jasper, Polk, Dallas, Guthrie, Audubon, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Black Hawk, Grundy, Hardin, Buena Vista, Hamilton, Webster, Calhoun, Wright, Franklin, and Dubuque Counties, IA (Chariton and points in IA within 150 miles thereof), Wapello County, IA (Eddyville), Knox County, IL (Galesburg), Mahaska, Monroe, Wapello, Iowa, Marion, Keokuk, Jasper, and Poweshiek Counties, IA (Oskaloosa, IA and points within 25 miles thereof), Monroe County, IA (Albia), Adams County, IL (Quincy), Van Buren, Davis, Lucas, and Wayne Counties, IA (Koesauqua, Bloomfield, Chariton, and Corydon, IA); Rock Island and Mercer Counties, IL (Rock Island and Keithsburg), Howell and Oregon Counties, MO (Koshkonong, MO and points within 10 miles thereof), Monroe, Wapello, Keokuk, Appanoose, Davis, Mahaska, Marion, Lucas and Wayne Counties, IA (Albia and points within 25 miles thereof), Henderson and Warren Counties, IL (Monmouth and points within 10 miles thereof), Lee County, IA (Fort Madison); Wapello County, IA (Ottumwa), Jefferson County, IA (Fairfield), Stark, Crawford, and Trumbull Counties, OH (Alliance, Galion, and Warren), Monroe, Polk, Warren, Madison, and Dallas Counties, IA (Albia and points within 12 miles of the central post office, Des Moines); Sub 6, Porter County, IN (Burns Harbor, IN); Sub 8, Iowa County, IA (Amana); Sub 11, Linn County, IA (Cedar Rapids); Sub 15F, Fond Du Lac County, WI, White County, AR, Calhoun County, MI, Chattanooga, TN, and Hopkins County, KY (Ripon, WI, Searcy, AR, Albion, MI, Chattanooga, TN, and Madisonville, KY); Sub 16F, Lowndes County, MS (Columbus), Sebastian County, AR (Fort Smith); Sub 23F, Sedgwick County, KS (Goddard), Sub 24F, Freeborn County, MN (Albert Lea) and Page County, IA (Shenandoah); Sub 25F, Henderson and Warren Counties, TN (Lexington and McMinnville); Sub 28F, De Kalb County, IL (De Kalb), Rutherford County, TN (Murfreesboro); Sub 29F, Lowndes County, MS (Columbus), Sebastian County, AR (Fort Smith); Sub 30F, Iowa County, IA (Amana); Sub 31F, Sedgwick County, KS (Goddard); Sub 32F, Washington County, AL (McIntosh), East Baton Rouge and West Baton Rouge Parishes, LA (Baton Rouge, Port Allen and St. Gabriel); and Sub 36F, Bell County, TX (Rogers); (5) remove: (a) facilities restrictions in Subs-6, 7, 15F, 19F, 23F, 24F, 25F, 30F, 31F, and 33F; (b) exceptions in the general commodity authority description "except those of unusual value", "commodities requiring special equipment and those injurious or contaminating to other lading", Subs 5, and 6; (c) limitations "in truckload lots", "to pick-up only" and "in containers"; (d) the exception "commodities which because of size or weight require the use of special equipment"; (e) originating at and destined to restrictions, Subs-6, 7, 14, 23F, 29F, 31F and 35F.

MC 117565 (Sub-105)X, filed October 22, 1981. Applicant: MOTOR SERVICE COMPANY, INC., P.O. Box 448, Coshocton, OH 43012. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20879. Subs-29, 69, 70, 82, 88 and 101 certificates and MC-135701 Sub-1 permit. Broaden (1) from (a) motor homes, in truckaway service, and camper coaches to "transportation equipment", (Sub 29); (b) steel shot, grit, and machines and parts of machines used for the application of steel shot and grit, and machines used for the application of steel shot and grit, to "metal products and Machinery", (Sub 59); (c) polystyrene articles (except in bulk) to "chemicals and related products, and rubber and plastic products", (Sub 70); (d) plywood and plywood panels to "lumber and wood products", (Sub 82); (e) bins, dryers, tanks, air moving equipment, heaters, vaporizers, ladders, steps, and hardware, supplies, parts and accessories used in the installation, operation, and maintenance thereof, except those commodities which are dealt in by retail discount stores to "metal products, machinery, and lumber and wood products", (Sub 88); (f) roof cement, waterproofing compounds, paint, caulking, adhesives, sealants, and coatings to "petroleum or coal products and chemicals or related products", (Sub 101); (g) remove the except commodities in bulk exception (Sub 1 Permit); (2) to radial authority (subs-69, 70, 82, and 88); (3) to between points in the U.S. under continuing contract(s) with shipper (Sub-1 permit); (4) Adrian to Lenawee County, MI, (Sub 69); Troy to Miami County, OH, (Sub 70); facilities at or near New Orleans, LA to Orleans, Lafourche, Jefferson, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany and Tangipahoa Parishes, LA, (Sub 82); and Marengo to McHenry County, IL (Sub-88).

MC 134064 (Sub-54)X, filed September 11, 1981, previously, noticed in the Federal Register of October 1, 1981, republished as follows: Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30505. Representative: Charles M. Williams, 665 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Applicant seeks to broaden citywide authority to countywide authority in Sub-No. 42 as follows: Bergen, Hudson, Passaic, Middlesex, Essex, and Union Counties, NJ, and Richmond, Kings, Queens, New York, and Bronx Counties, NY, from Jersey City, NJ.

MC 141737 (Sub-2)X, filed October 23, 1981. Applicant: WALKER FREIGHT LINE, INC., P.O. Box 241, Black Hawk, SD 57718. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Lead certificate: (1) remove the exception "those of unusual value" from general commodities (with exceptions); (2) authorize service on all intermediate points; and (3) expand off-route point Chadron to Dawes County, NE.

MC 144606 (Sub-23)X, filed October 16, 1981. Applicant: DUNCAN & SON LINES, INC., 714 East Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 North 12th St., Phoenix, AZ 85014. Subs 2, 3F, 9F, 11F, 17F, 18F and 19 certificates: (A) broaden (1) from (a) Sub 2, steel and plastic pipe and guard rails to "metal products and rubber and plastic products"; (b) Sub 3F, expanded plastic bottles to "rubber and plastic products"; (c) Sub 9F, expanded plastic bottles, plastic articles plastic bags, and components, to "rubber and plastic products"; non-alcoholic beverages and canned goods and foodstuffs to "food and related products"; building materials, cement, lime, roof and roofing materials, wallboard and sheetrock, to "building materials and supplies"; (d) Sub 11F, iron and steel articles to "metal

products"; and (e) Sub 18F, plastic and plastic articles to "rubber and plastic products"; (2) to county-wide authority: (a) Sub 2, Maricopa County, AZ (facilities—West Van Buren, Phoenix); (b) Subs 3 and 9 (part 5) Maricopa County, AZ (Phoenix); (c) Sub 9 (part 4b), El Paso County, TX (El Paso); (d) Sub 11, Maricopa County, AZ (facilities—Phoenix); (e) Sub 17, Maricopa County, AZ (Buckeye) and Los Angeles County, CA (Los Angeles); (f) Sub 18, Los Angeles County, CA (Monrovia); and (g) Sub 19, Adams, Arapahoe, Jefferson, and Denver Counties, CO (Denver); Davis County, UT (Salt Lake City); and Bernalillo County, NM (Albuquerque); (B) remove the restriction prohibiting the transportation of specified and in bulk commodities from, to or between named points, Sub 9; and (C) broaden to radial authority, Subs 2, 3, 9 (parts 3, 4b, and 5), 11 and 18.

MC 144701 (Sub-3)X, filed October 23, 1981. Applicant: BLACKSHEAR REFRIGERATED TRANSPORT, INC., 1178 Wright Ave., Camden, NJ 08102. Representative: James H. Sweeney, 468 Kentucky Ave., Williamstown, NJ 08094.MC–110752 and MC–144701 (Sub-1): (1) Broaden to (a) "food and related products" (part 1 regular route), and "such commodities requiring temperature control, and materials, equipment and supplies used in the manufacture and distribution thereof" (part 2 regular route) from frest meats, eggs, butter, cheese, and other articles requiring refrigerated equipment and animal glue (part 1), and from such commodities as require refrigeration, and empty containers (MC–110752) (part 2); (b) "food and related products, and materials, equipment and supplies used in the manufacture and distribution thereof", from (irregular route) frozen fruits and vegetables, damaged or rejected shipments therefor, fish ice cream, etc., packing-house products and empty containers therefor, and feed and foodstuffs (exceptions) (both authorities); (2) authorize service at all intermediate points (MC–110752, regular route); (3) expand Camden, Trenton, New Brunswick, and Newark, NJ, and points in NJ within 25 miles of Newark, to Camden, Mercer, Middlesex, Essex, Bergen, Passaic, Morris, Hudson, Union, Somerset, and Monmouth Counties, NJ; points in PA and NJ within 35 miles of Philadelphia, PA, to Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia Counties, PA, and Atlantic, Burlington, Camden, Cumberland, Glocester, Hunterdon, Mercer, Monmouth, Middlesex, Ocean, Salem and Somerset Counties, NJ; Frederick, Smithburg, and Hagerstown to Frederick and Washington Counties, MD; Grozet to Albermarle County, Va; Island Pond to Essex Counties, VT; Columbia to Richland County, SC; Bridgeport to Fairfield County, CT; Haddonfield to Camden County, NJ; Vineland to Cumberland County, NJ; Columbia to Lancaster County, PA; and Chambersburg to Franklin County, PA (MC–110752); (4) to radial (both authorities).

MC 144757 (Sub-3)X, filed October 16, 1981. Applicant: AIR FREIGHT, INC., Box No. 2, Casper, WY 82602. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. Sub 2F (1) remove all exceptions to its general commodities authority except classes A & B explosives, (2) remove ex-air restriction.

[FR Doc. 81-32475 Filed 11-9-81 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29737]

Railroad Abandonment; Burlington Northern Railroad Co.; Exemption; Abandonment of Certain Trackage in City of Minneapolis, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts the abandonment of a 3.6 mile segment of rail line of Burlington Northern Railroad Company, in Minneapolis, MN, from the rquirements of prior approval under 49 U.S.C. 10903.

DATES: Exemption effective November 10, 1981. Petitions for reconsideration must be filed on or before November 30, 1981.

ADDRESSES: Send pleading to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., Washington, D.C. 20423.

(2) Petitioner's representative: Douglas J. Babb, Law Department, Burlington Northern Railroad Company, 176 East Fifth Street, St. Paul, MN 55101.

Pleadings should refer to Finance Docket No. 29737.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Copies of the complete decision may be obtained from Room 2227 at the Commission's Headquarters at 12th and Constitution Avenue, NW., Washington, D.C., 20423, or by calling the Commission's toll-free number for copies at 800–424–5403. The decision is being served concurrently with this publication.

Dated: November 2, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-32476 Filed 11-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29746]

Rail Carriers; VIA Rail Canada Inc.; Exemption; Discontinuance of Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempt from the requirement of prior approval under Chapter 109 of Title 49, United States Code, the discontinuance by VIA Rail Canada, Inc. of that portion of its passenger train operations between Halifax, Nova Scotia and Montreal, Quebec which are conducted within Maine.

DATES: This exemption was effective on the date the Commission served its decision November 10, 1981. This exemption may be exercised on or after November 15, 1981. Petitions to reopen must be filed within 20 days after this publication.

ADDRESSES: Send petitions to reopen to:

(1) Interstate Commerce Commission, Section of Finance, Room 5417, Washington, D.C. 20423.

(2) Petitioner's representatives: Sander M. Bieber, 888 Seventeenth St., N.W., Washington, D.C. 20006, (202) 872–8600. and Richard J. Flynn, 1730 Pennsyvlania Ave., N.W., Washington, D.C. 20006, (202) 624–9000.

For copies of the full decision: Write to: Interstate Commerce Commission, Room 2227, 12th & Constitution Ave., N.W., Washington, D.C. 20423, or call toll-free: (800) 424–5403.

Pleadings should refer to Finance Docket No. 29746.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275–7245 or Ernest B. Abbott, (202) 275–3002.

SUPPLEMENTAL INFORMATION: For further information, see decision served concurrently in Finance Docket No. 29746.

Decided: November 2, 1981.

By the Commission, Chairman Taylor, Vice-Chairman Clapp, Commissioners Gresham and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-32477 Filed 11-9-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

National Institute of Corrections; Cancellation of Project

Notice is hereby given that the National Institute of Corrections has cancelled project number 1-82-03, "Implementation of Inmate Grievance Procedure" as set forth in the July 1981 *Request for Proposals, Fiscal Year 1982.*

Allen F. Breed,

Director.

[FR Doc. 81-32506 Filed 11-9-81; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations 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 herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 26-30, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-11,250; Harry Fisher Corp., Philadelphia, PA

TA-W-11,510; Hoover-NSK Bearing Co., Ann Arbor, MI

TA-W-12,042; Jewel Trend Button Corp., New York, NY

TA-W-10,980; Shakeproof Div., Illinois Tool Works, Inc., Russellville, KY

TA-W-10,979; Jeffrey Chain, Dresser Industries, Inc., Morristown, TN

TA-W-9188; American Hose Corp., Winchester, IN

TA-W-11,711; Vonscot Industries, Inc., Clarence, NY

TA-W-11,886, 12,723, 12,724, & 12,725; Norris Industries, Inc., McIntosh Div., Berne, IN, Kendallville, IN, Bluffton, OH, and Upper Sandusky, OH

TA-W-11,040; Donnelly Mirrors, Inc., Holland, MI

TA-W-10,658 & 10,653; Aileen, Inc., Sewing Plant, McKenney, VA and Shipping Plant, Woodstock, VA

TA-W-10,876; Taffy Apple, Inc., Hialeah, FL

TA-W-10,894; The Lamson and Sessions Co., Denison Ave. Plant, Cleveland, OH

TA-W-10,571; Philbert Sportswear, Inc., New York, NY

TA-W-10,546; Uniroyal, Inc., Consumer Products Div., Middlebury, CT

TA-W-11,995; Julius Berger & Co., Inc., West Orange, NJ

TA-W-11,370 & 11,373; Modern Textile, Inc., Altamont, IL and Clarksville, Mo

TA-W-12,765 & 12,766; Norrwock Shoe Co., Norridgewock and Skowhegan, ME

TA-W-11,369; Mount Vernon Mills, Inc., Columbia Div., Columbia, SC

TA-W-11,976; U.S. Steel Corp., Central Furnaces, Cuyahoga Works, Cleveland, OH

TA-W-12,005; Mallory Capaciator Co., Huntsville, AL

TA-W-11,864; Allen Logging, Forks, WA

TA-W-11,000; Dresser Industries, Inc., Defiance, OH

TA-W-11,272; Holcroft & Co., Livonia, MI

TA-W-11,826; Co Ed Sportswear Co., Tuscaloosa, AL

In each of the following cases the investigation revealed that criterion (3) has not been met for the reason(s) specified.

TA-W-11,929; E.M. Lawrence, Ltd., Jersey City, NJ

With respect to workers producing children's slacks and skirts, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to workers producing ladies' sweaters, the investigation revealed that criterion (2) has not been met.

TA-W-11,560 & 11,561; D-M-E Co., Youngwood and Darlington, PA

Aggregate U.S. imports of die mold sets and mold bases did not increase as required for certification.

TA-W-10,219; Ironton Coke Corp., Ironton, OH

Aggregate U.S. imports of coke did not increase as require for certification.

TA-W-10,674; Brookfield Clothes, Inc., Long Island city, NY

Aggregate U.S. imports of mens' and boy's tailored suits, dress coats, and sportscoats did not increase as required for certification.

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-11,591-11,594; J.I. Case Co., Racine, WI, Burlington, IA, Bettendorf, IA, and Rock Island, IL

TA-W-11,419; CM American McKees Rocks, PA

TA-W-12,292; Choice Corp., Warren, MI

TA-W-12,754; Combustion Engineering, Inc., Power Systems Group, Chattanooga, TN

TA-W-11,003; Mepco/Electra, Inc., Canandaigua, NY

TA-W-12,617 & 12,618; Transport Oil Co., Menasha and Antigo, WI

TA-W-12,127; R&S Garments, Inc., Passaic, NJ

In each of the following cases the investigation revealed that criterion (2) has not been met.

TA-W-12,822; Filler Systems Div., Barry-Wehmiller Co., Clearwater, FL

TA-W-12,464; Mona Lisa Coat Co., Hoboken, NJ

In the following case the investigation revealed that workers engaged in the sale and servicing of cars and trucks do not produce an article within the meaning of section 222(3) of the Act.

TA-W-12,535; Chrysler Corp., Chrysler Manhattan Dealership, New York, NY

Affirmative Determination

TA-W-10,711; Keller Stamping, Inc., Swainsboro, GA

A certification was issued for a petition received on September 5, 1980, covering all workers of the firm separated on or after September 2, 1979.

TA-W-11,519; Sharpe Mfg. Co., Inc., Brainerd, MN

A certification was issued for a petition received on October 24, 1980, covering all workers of the firm separated on or after October 18, 1979.

TA-W-11,482; Mica Products Corp., of America, Wingdale, NY

A certification was issued for petition received on October 22, 1980, covering all workers separated on or after October 21, 1979 and before December 31, 1980.

TA-W-11,228; Paktron, A Div. of Illinois Tool Works, Inc., Vienna, VA

A certification was issued for a petition received on October 3, 1980, covering all workers of the firm separated on or after September 29, 1979.

TA-W-11,190; TMX, Ltd., Bayamon, Puerto Rico

A certification was issued for a petition received on Septembr 16, 1980, covering all workers separated on or after September 1, 1980.

TA-W-11,657; Gerald Leather Goods Corp., Newburgh, NY

A certification was issued for a petition received on November 6, 1980, covering all workers separated on or after November 3, 1979 and before September 30, 1980.

TA-W-10,961; Paceco, Inc., Alameda, CA

A certification was issued for a petition received on September 17, 1980, covering all workers of the firm separated on or after October 12, 1980.

TA-W-10,681, 10,681A, & 11,053; Garden State Tanning, Inc., Fleetwood, PA, W.D. Byron and Sons, Inc., Williamsport, MD, and Chestnut Operating Co., Reading, PA

A certification was issued for a petition received on September 2, 1980, covering all workers of the firm separated on or after August 28, 1979.

TA-W-10,956; RHW, Inc., Collier Div., Colliers, WV

A certification was issued for a petition received on September 17, 1980, covering all workers of the firm engaged in employment related to the production of caulking guns separated on or after September 11, 1979.

TA-W-10,027; Levi Strauss & Co., Youthwear Div., Rock Island, TN

A certification was issued for a petition received on July 25, 1980, covering all workers of the firm separated on or after March 1, 1980.

TA-W-321; Sheperd Industries, Inc., Lenexa, KS

A certification was issued for a petition received on August 14, 1980, covering all workers of the firm separated on or after August 4, 1979.

TA-W-304; Fleetline Industries, Inc. (d.b.a. Brunswick of Lumberton), Lumberton, NC

A certification was issued for a petition received on August 11, 1980, covering all workers of the firm separated on or after August 7, 1979.

TA-W-11,669 & 11,670; Regal Bag Co., Inc., Newburgh, NY

A certification was issued for a petition received on November 6, 1980, covering all workers of the firm separated on or after November 3, 1979.

TA-W-12,151; Philips ECG, Inc. (formerly GTE Sylvania, Inc.), Tube Yoke Plant, Emporium, PA

A certification was issued for a petition received on January 21, 1981, covering all workers of the firm separated on or after January 14, 1980.

TA-W-11,922; Rawlings Sporting Goods, Co., Willow Springs, MO

A certification was issued for a petition received on December 10, 1980, covering all workers of the firm separated on or after December 8, 1979.

TA-W-12,387; Howard B. Wolf, Inc., Bowie, TX

A certification was issued for a petition received on March 2, 1981, covering all workers of the firm separated on or after July 14, 1980 and before June 15, 1981.

TA-W-12,731; Consumer Technology, Inc., Sunnyvale, CA

A certification was issued for a petition received on May 29, 1981, covering all workers of the firm separated on or after July 1, 1980.

TA-W-11,128 & 11,128A; Utica Cutlery Co., Inc., Utica and New York Mills, NY

A certification was issued for a petition received on September 24, 1980, covering all workers of the firm engaged in employment related to the production of fixed blade cutlery separated on or after June 1, 1980.

With respect to pocket knives, the investigation revealed that increased imports did not contribute importantly to the declines in production and employment at the subject firm. With respect to stainless steel flatware, the investigation revealed that criterion (2) has not been met.

TA-W-11,659 & 11,659A-E; Styl-Rite Optics, Inc. and Subsidiaries, Flushing, NY; Miami, FL; Atlanta, GA; Los Angeles, CA; Chicago, IL; and Dallas, TX

A certification was issued for a petition received on November 6, 1980, covering all workers of Styl-Rite Optics, Inc. and Subsidiaries, Flushing, NY, Atlanta, GA, Los Angeles, CA, Chicago, IL, and Dallas, TX separated on or after November 3, 1979.

A certification was issued covering all workers of the Miami, FL plant of Styl-Rite Optics, Inc. separated on or after November 3, 1979 and before June 1, 1981.

TA-W-12,157; Acro, Inc., Stoneham, MA

A certification was issued for a petition received on January 21, 1981, covering all workers of the firm separated on or after January 10, 1981.

I hereby certify that the aforementioned determinations were issued during the period October 26–30, 1981. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 3, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-32511 Filed 11-9-81; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 42 and 65 to Facility Operating License Nos. DPR-71 and DPR-62 issued to Carolina Power & Light Company (the licensee) which revised the Licenses for operation of the Brunswick Steam Electric Plant, Units Nos. 1 and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance.

These changes reflect the addition of North Carolina Municipal Power Agency Number 3 as a co-owner of the facility. Exclusive responsibility for the operation and maintenance and the construction of capital additions to the facility will be retained by the licensee.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The

Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated September 3, 1981, as supplemented October 19, 1981, (2) Amendment Nos. 42 and 65 to License Nos. DPR-71 and DPR-62, and (3) the Commission's letter to the licensee dated November 2, 1981. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon requested addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of November 1981.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-32517 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The Nuclear Regulatory Commission (The Commission) has granted relief from certain requirements of the ASME Code, Section XI, "rules for Inservice Inspection of Nuclear Power Plant Components" to the Connecticut Yankee Atomic Power Company. The relief relates to the Inservice Inspection Program for the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief allows postponement of inservice inspection requirements involving disassembly and inspection of six-inch check valves, pursuant to 10 CFR 50.55a(g)(6)(i) of the Commission's regulations.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief.

The Commission has determined that the granting of relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this acton.

For further details with respect to this action, see (1) the licensee's letter dated October 7, 1981, (2) the Commission's letter to the licensee dated November 3, 1981, which contains the Commission's related evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of November, 1981.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 81-32518 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 102, 102, and 99 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications (TSs) for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the TSs to reflect current calculated string errors used in determining the Reactor Protective System setpoints and upgrade the format of the Operational Safety Instrumentation Table.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated September 8 and September 10, 1981, (2) Amendments Nos. 102, 102, and 99 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of November 1981.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 81-32519 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 103, 103, and 100 to the Facility Operating Licenses

Nos. DPR–38, DPR–47 and DPR–55, respectively, issued to Duke Power Company, which revised the Technical Specifications (TSs) for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the TSs to allow full power operation of Oconee Nuclear Station Unit 2 with the Axial Power Shaping Rods in the fully inserted position.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated October 28, 1981, as supplemented on October 29, 1981, (2) Amendments Nos. 103, 103, and 100 to Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Reglatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of November 1981.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 81-32520 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL STN 50-499 OL]

Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Prehearing Conference and Evidentiary Hearing

November 4, 1981.

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Board's Memorandum and Order of October 30, 1981, an evidentiary hearing concerning near-term construction activities will convene on December 8–10, 1981, in Austin, Texas, at the Austin Public Library Auditorium, Fourth Floor, 800 Guadalupe, Austin, Texas 78701. To the extent necessary, a prehearing conference will be held immediately prior to the hearing. The sessions will commence at 9:30 a.m. on December 8, and will continue (to the extent necessary) at 9:15 a.m. on December 9 and 10.

Dated at Bethesda, Maryland this 4th day of November 1981.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 81-32521 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG–D9, "Design Aspects of Radiological Protection for Nuclear Power Plants," has been developed. An IAEA working group, consisting of Mr. R. Hock from the Federal Republic of Germany; Mr. B. F. Chamany from India; and Mr. P. A. Solari from the United Kingdom, developed this guide from an IAEA collation. The working group draft was modified by the IAEA Technical Review Committee, and we are now soliciting public comment on this draft (Rev. 5, 9/14/81). Comments received by December 18, 1981, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 2nd day of November 1981.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 81-32522 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395-OL]

South Carolina Electric & Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1); Reconvening Hearing

November 4, 1981.

Please take notice that the evidentiary hearing will reconvene at 9:00 a.m. on December 14, 1981 in Room 101 of the Solomon Blatt Building, Capitol Complex, Pendleton and Assembly Streets, Columbia, South Carolina 29202. The public is invited to attend.

The NRC Staff is directed to pre-file its prospective testimony responding to the reports of the Board witnesses on seismology by December 4, 1981, and to deliver the Board copies of the Board Chairman's office by 3:00 p.m. on that date.

By order of the Board.

Dated at Bethesda, Maryland, this 4th day of November 1981.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 81-32523 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445, 50-446]

Texas Utilities Generating Co., et al., (Comanche Peak Steam Electric Station, Units 1 and 2); Application for Operating License; Amended Notice of Evidentiary Hearing and Prehearing Conference (Change of Location)

November 4, 1981.

On September 23, 1981, notice was given that an evidentiary hearing would be held in this proceeding commencing on December 2, 1981. A prehearing conference and opportunity for some oral limited appearance statements was also noticed for the previous day, December 1, 1981 (46 FR 47033).

Due to the unavailability of the space described as the location of such hearings, it is necessary to hold these hearings on the same dates at the following location commencing at 9:00 a.m., local time: Fritz Lanham Federal Building, Room 9A35, 819 Taylor Street, Fort Worth, Texas 76102.

It is so ordered.

Dated at Bethesda, Maryland, this 4th day of November, 1981.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 81-32524 Filed 11-9-81; 8:45 am]

BILLING CODE 7590-01

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board Members

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: James DeFrance, Chief, Policy Development Branch, Office of Personnel and EEO, Office of Personnel Management, 1900 "E" Street, NW, Washington, DC 20415 (202-632-5430).

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Donald J. Devine,

Director.

The Members of the Performance Review Board Are

1. Frederick A. Kistler (Chairman) Assistant Director for Budget and Management.
2. S. B. Pranger (Vice-Chairman), Associate Director for Agency Relations.
3. Michael R. Frost, Associate Director for Workforce Effectiveness and Development.
4. Patrick A. Korten, Assistant Director for Public Affairs.
5. Joseph A. Morris, Acting General Counsel.
6. James W. Morrison, Jr., Associate Director for Compensation.
7. Ann Brassier, Deputy Assistant Director for Budget and Management.
8. George Nesterczuk, Associate Director for Executive Personnel and Management Development.
9. Gerald K. Hinch, Director, Mid-Continent Region.
10. Robert P. Smith, Director of Personnel and Training, Department of Transportation (ad hoc member).

[FR Doc. 81-32462 Filed 11-9-81; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 3, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

The Coleman Company, Common Stock, $1 Par Value (File No. 7-6068)
Commerce Southwest Incorporated, Common Stock, $1 Par Value (File No. 7-6069)
Floating Point Systems Incorporated, Common Stock, No Par Value (File No. 7-6070)
United Cable Television Corporation, Common Stock, $.01 Par Value (File No. 7-6071)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 25, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-32548 Filed 11-9-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18230; File No. SR-MSRB-81-16]

Municipal Securities Rulemaking Board; Proposed Rule Change By Self-Regulatory Organization

In the matter of proposed rule change relating to uniform practice and customer confirmations. Comments requested on or before December 1, 1981.

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 October 23, 1981, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing herewith amendments to rules G-12 on uniform practice and G-15 on customer confirmations. The text of the proposed rule changes is as follows:

Rule G-12.[1] Uniform Practice

(a) and (b) No change.

[1] *Italics* indicate new language; [brackets] indicate deletions.

(c) Dealer Confirmations.

(i) through (iv) No change.

(v) Each confirmation shall contain the following information:

(A) through (N) No change.

The confirmation for a transaction in securities traded on a discounted basis (other than discounted securities traded on a yield-equivalent basis) shall not be required to show the pricing information specified in subparagraph (I) nor the accrued interst specified in subparagraph (K). Such confirmation shall, however, contain the rate of discount and resulting dollar price. Such confirmation may, in lieu of the resulting dollar price and the extended principal amount specified in subparagraph (L), show the total dollar amount of the discount. The initial confirmation for a "when, as and if issued" transaction shall not be required to contain the information specified in subparagraphs (H), (K), (L), and (M) [of this paragraph] or the resulting dollar price as specified in subparagraph (I).

(vi) No change.

(d) through (l) No change.

Rule G–15 Customer Confirmations

(a) through (c) No change.

(d) The confirmation for a transaction in securities traded on a discounted basis (other than discounted securities traded on a yield-equivalent basis) shall not be required to show the yield and dollar price information specified in subparagraph (viii) of paragraph (a) nor the accrued interest specified in subparagraph (ix) of paragraph (a). Such confirmation shall, however, contain the rate of discount and resulting dollar price. Such confirmation may, in lieu of the resulting dollar price and the extended principal amount specified in subparagraph (x) of paragraph (a), show the total dollar amount of the discount.

[(d)] through [(h)] renumbered as (e) through (i). No substantive change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rule G–15 sets forth certain requirements concerning the information to be set forth on customer confirmations of transactions in municipal securities; rule G–12(c) sets forth comparable requirements concerning inter-dealer confirmations. Among other items, both rules require that confirmations contain information concerning the yield of the transaction[2] and detail of the principal and interest dollar amounts.

While the vast majority of municipal securities are traded on the basis of a yield or dollar price, the Board is aware that certain municipal notes are traded on a discounted basis. For example, this method of pricing is frequently used in connection with transactions in certain short-term notes which have been characterized as municipal "commercial paper." The proposed rule changes establish appropriate confirmation requirments for municipal securities traded on this price basis.

The proposed rule changes establish the following requirements:

1. The proposed rule changes eliminate the requirement that confirmations of such transactions show yield and accrued interest, and substitute a requirement that such confirmations show the rate of discount and resulting dollar price. The Board is of the view that the rate of discount, rather than the yield, is the appropriate disclosure for such confirmations. The Board notes that this is the price basis on which the transactions are effected, and also that the rate of discount provides a common means of evaluating these investment instruments against the other alternatives with which they are likely to be compared (*e.g.*, corporate commercial paper).

Since the return on a discounted security is received in the form of an accretion of the discount to par, there is no "accrued interest" on such securities. Accordingly, the Board proposes to exempt confirmations of transactions in such securities from the requirement to disclose accrued interest.

2. The proposed rule changes permit an alternative method of showing the total transaction dollar amount computation. Normal confirmation practice on municipal securities transactions shows this computation as an addition of the extended principal (the par value multiplied by the dollar price) and the accrued interest to derive the total dollar amount of the transaction. Since there is not accrued interest on a discounted security, the comparable confirmation disclosure would simply show the extended principal (the par value multiplied by the dollar price derived from the rate of discount), which is equal to the total dollar amount of the transaction.

The Board is aware that a somewhat different format for presenting the total dollar amount computation is used for certain discounted municipal securities, as well as for other discounted instruments. This format presents the computation as a subtraction of the total dollar amount of the discount from the par value of the securities to derive the total dollar amount of the transaction. The Board believes that this method of confirmation presentation is also satisfactory and that requiring use of a different confirmation format would impose expensive and unnecessary confirmation and reprogramming changes on dealers currently using this method. Accordingly, the proposed rule changes permit use of this format.

3. The proposed rule changes apply only to certain transactions in discounted securities. Some transactions in discounted securities are effected on a yield-equivalent basis, that is, the rate of discount is converted to its yield equivalent and the transaction is confirmed at this price.[3] For this type of transaction the existing confirmation rules are appropriate and are in accord with existing confirmation practice. Accordingly, the proposed rule changes would not apply to this type of transaction, but would apply solely to transactions effected on the basis of a rate of discount.

(b) The proposed rule changes are adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules—

> designed * * * to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

The Board believes that the proposed rule changes will ensure that investors and other parties to transactions in discounted securities will be provided with confirmations which accurately reflect the terms of such transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board is of the opinion that the proposed rule changes will not impose any burdens on competition, inasmuch as the proposed rule changes establish general confirmation requirements that will apply equally to all municipal securities brokers and municipal

[2] Rule G–12 requires disclosure of the yield only if the yield is the price basis of the transaction.

[3] This method is more commonly used with discounted securities that are more closely comparable to the traditional municipal note.

securities dealers effecting transactions in discounted securities. The Board believes that the proposed rule changes may act to remove a burden on competition, since they eliminate the need for confirmation and programming changes to conform to existing confirmation requirements.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule changes from members of the municipal securities industry or the general public.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before December 15, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes 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, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing also will 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 on or before December 1, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 2, 1981.

[FR Doc. 81-32547 Filed 11-9-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18233; File No. SR-MSRB-81-17]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Proposed Rule Change

In the matter of proposed rule change relating to uniform practice comments requested on or before December 1, 1981.

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 October 23, 1981, the Municipal Securities Rulemaking Board 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

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith an amendment to rule G-12 relating to uniform practice. The text of the proposed rule change is as follows:

Rule G-12.[1] Uniform Practice.

(a) Through (d) No change.

(e) Delivery of Securities. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) Through (xiv) No change.

(xv) Money Differences. The following money differences shall not be sufficient to cause rejection of delivery:

Par value	Maximum differences per transaction
$1,000 to $24,999	$10
$25,000 to $99,999	25
$100,000 to $249,999	60
$250,000 to $999,999	250
$1,000,000 and over	500

The calculations of the seller shall be utilized in determining the maximum permissible differences and amount of payment to be made upon delivery. *However, if the money difference is due to the computation by one party of the formula required under rule G-33 directly to the settlement date of the transaction, and the use by the other party of another computation method (including the dollar price interpolation method permitted under subparagraph (b)(i)(D) of rule G-33), the calculations of the party computing directly to the settlement date shall be deemed accurate, and payment made in accordance with such calculations.* The parties shall seek to reconcile any such money differences within ten business days following settlement.

(f) Through (l) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-12 sets forth uniform practices to be followed by all municipal securities brokers and municipal securities dealers, including standards governing the delivery of securities on municipal securities transactions. Among other matters, the rule establishes a schedule of money differences, and specifies that a delivery on which there is a difference between the contract moneys shown by the selling dealer and the contract moneys known by the purchasing dealer shall be accepted if the difference is less than or equal to the applicable amount established in the schedule. The parties to the transaction are required to resolve the money difference and to take steps to ensure that the correct moneys have been paid within ten business days of the delivery date.

On September 4, 1981, the Board filed with the Commission proposed rule G-33 (File No. SR-MSRB-81-14), which prescribes standard formulas for the computation of accrued interest, dollar price, and yield, and also sets other standards for related calculations areas. Among other matters, the proposed rule would permit the use of the "interpolation" method of deriving a dollar price from a yield until January 1, 1984. After that time municipal securities brokers and dealers would be required to use the "direct pricing" method; that is, they would have to compute the dollar price directly to the settlement date of the transaction. In the filing the Board noted, however, that many municipal securities brokers and dealers already compute the dollar price

[1] Italics indicate new language.

directly to the settlement date of the transaction.

The Board believes that many of the minor money differences and discrepancies on transactions are the result of differences in the computational methods used by the two parties to the transaction. In particular, a significant number of these may result from the use by one party of the "interpolation" method of computing a dollar price, and the use by the other party of the "direct pricing" method. While the Board believes that both methods should continue to be permissible at the present time for confirmation processing purposes (so as to permit sufficient time for the necessary computer and calculator reprogramming), the Board is also of the view that the "direct pricing" method is the more correct method, and that the dealer using the "direct pricing" method should be deemed to have the correct calculations. Accordingly, the proposed rule change provides that, if the money difference on a transaction is due to the use by the two parties of different computational methods, with one party using the "direct pricing" method, and the other party using a different method (including the "interpolation" method permitted until January 1, 1984 under subparagraph (b)(i)(D) of proposed rule G–33), the calculations of the party using the "direct pricing" method shall be deemed accurate for purposes of the reconciliation of the money difference.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules which are:

> designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities * * *

The Board believes that the proposed rule change will further the purposes of the Act inasmuch as it will help to ensure prompt and equitable resolution of money differences on transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will have any effect on competition inasmuch as it simply establishes a standard that will assist all municipal securities brokers and dealers in the prompt resolution of money differences on settled transactions.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change. The Board included in the August 15, 1980 exposure draft of rule G–33 and indication that it intended to adopt a provision similar to the proposed rule change. In response, one commentator asserted that this suggestion was not "practical." The Board believes that the proposed rule change will be easily complied with, since municipal securities brokers and dealers will know or be able to determine easily if they use the "direct pricing" method of dollar price computation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before December 14, 1981 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing also will 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 on or before December 1, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 3, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-32540 Filed 11-9-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18231; File No. SR-MSRB-81-10]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Changes

In the matter of proposed rule change relating to uniform practice comments requested on or before December 1, 1981.

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 October 23, 1981, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith an amendment (the "proposed amendment") to the proposed rule changes to rule G–12 relating to uniform practice contained in File No. SR–MSRB–81–10 (the "proposed rule changes"). The proposed rule changes, as modified by the proposed amendment, are, in pertinent part, as follows:

Rule G–12.* Uniform Practice

(a) through (c) No change.

(d) Comparison and Verification of Confirmations; Unrecognized Transactions.

(i) Through (vi) No change.

(vii) In the event a party has submitted a transaction for comparison through the facilities of a registered clearing agency but such transaction fails to compare, the submitting party shall, within one business day after final notification of the failure to compare is received from the clearing agency, initiate the procedures required by paragraph (iii) of this section; *provided, however, that if the submitting party initiates within such time period, in*

* *Italics* indicate new language.

accordance with the rules of a registered clearing agency, a post-original-comparison procedure on the uncompared transaction, which requires affirmative action of the contra-party, the submitting party shall not be required to follow the procedures required by paragraph (iii) of this section.

(viii) And (ix) No change.

(e) Through (l) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Rule G–12 sets forth uniform practices to be followed by all municipal securities brokers and municipal securities dealers including procedures relating to the clearance and settlement of municipal securities transactions. Presently, rule G–12 excludes from its application transactions which are "compared, cleared and settled through the facilities of a clearing agency registered with the Commission." On June 1, 1981 the Board filed the proposed rule changes, which would modify this exemptive provision, and incorporate into the rule other provisions concerning transactions submitted to registered clearing agencies for comparison and clearance. Among other matters, the proposed rule changes would establish a verification procedure for transactions which are submitted to a registered clearing agency for comparison but fail to compare.

The National Securities Clearing Corporation ("NSCC"), a registered clearing agency which offers automated comparison and clearance services for municipal securities transactions, has advised the Board that it intends to offer participants a special procedure for comparison of certain municipal securities transactions. Under this procedure, a dealer who had previously submitted a transaction for comparison which had failed to compare could resubmit such transaction, not earlier than the fourth business day following the trade date, on a basis which would provide that, if the named contra-party did not respond on the transaction within a specified time period, the transaction would be deemed compared as submitted by the confirming dealer. If the named contra-party does not know the transaction, it would have to submit instructions to NSCC advising that it "DK's" the trade.

As is the case with the verification procedure prescribed under paragraph (d)(iii) of the Board's rule, this post-original comparison procedure requires the non-confirming party to respond in some fashion to the advice of the transaction. Since the procedure contemplated by NSCC accomplishes the desired end of fostering timely comparison of transactions, and makes use of the efficiencies offered by a clearing agency, the Board believes that it is a satisfactory alternative to the procedure required under paragraph (d)(iii). Accordingly, the proposed amendment would specify that, if a dealer submits a trade for comparison through the clearing agency but such trade does not compare, the submitting dealer need not follow the procedure required under paragraph (d)(iii) if the dealer initiates this special post-original comparison procedure through the clearing agency within the required time period.

(b) The Board has adopted the proposed amendment pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which establishes the Board's general authority to adopt rules

> to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in municipal securities * * *

The proposed amendment and the proposed rule changes also will facilitate implementation of automated clearing systems consistent with the objectives of Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed amendment and the proposed rule changes will not impose any burden on competition since they provide technical adjustments to coordinate the standards and requirements of the Board's rule regarding clearance and settlement with the procedures normally used by registered clearing agencies.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Board neither solicited nor received comments on the proposed amendment. Certain aspects of the proposed amendment were discussed previously with representatives of the National Securities Clearing Corporation.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before December 14, 1981 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes 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, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing also will 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 on or before December 1, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 2, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–32542 Filed 11–9–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22258 (70–6663)]

Philadelphia Electric Power Co.; Proposed Issuance and Sale of Promissory Notes to Banks

November 3, 1981.

Philadelphia Electric Power Company ("PEPCo"), 2301 Market Street, Philadelphia, Pa. 19101, a registered holding company and a subsidiary

company of Philadelphia Electric Company ("PECo"), an exempt holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

PEPCo proposes through December 31, 1983, to issue and sell to a group of banks up to $7,000,000 of short-term notes outstanding at any one time. The interest on such notes is to be at the prime commercial rate in effect at the time of their issuance or renewal. There are no specific requirements for compensating balances in conjunction with the proposed bank loans; however, the holding company, PECo, maintains deposits with banks for working funds for normal operations. The $7,000,000 represents approximately 14½% of the principal amount and par value of PEPCo's other securities outstanding. PEPCo had outstanding bank loans of $3,900,000 as of August 31, 1981. The proceeds of the notes will be used by PEPCo for interest payments on its debentures, to met sinking fund obligations on its debentures, and for common stock dividend payments to PECo.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 30, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-32541 Filed 11-9-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1-B]

Delegation of Authority; Interagency Agreements

I. Pursuant to the authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, the following authority is hereby delegated as shown below:

A. The positions listed below, in addition to the Administrator, are hereby delegated authority to sign interagency agreements with other Government agencies:

Deputy Administrator
Associate Deputy Administrator

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as acting in one of the positions shown above.

Effective Date: November 10, 1981.

Dated: November 3, 1981.

Michael Cardenas,

Administrator.

[FR Doc. 81-32554 Filed 11-9-81; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2014]

Michigan; Declaration of Disaster Loan Area

Genesee and Oakland Counties and adjacent counties constitute a disaster area as a result of flooding caused by heavy rains which occurred on September 30 and October 1, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 4, 1982, and for economic injury until the close of business on August 3, 1982, at the following address: Small Business Administration, District Office, 477 Michigan Avenue, Detroit, Michigan 48226 or other locally announced locations.

Information on recent regulatory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above mentioned office.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 3, 1981.

Michael Cardenas,

Administrator.

[FR Doc. 81-32556 Filed 11-9-81; 8:45 am]

BILLING CODE 8025-01-M

Statutory Changes in Disaster Loan Assistance

Notice is hereby given that pursuant to Pub. L. 97-35, the Small Business Administration's disaster loan making authority has been changed.

Disaster Home/Personal Property Loans: Effective August 13, 1981, a "credit elsewhere" test will be applied to applicants for disaster home/personal property loans to determine the interest rate to be charged.

If an applicant is determined to be able to obtain credit elsewhere, the interest rate on the loan will be the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per year as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum.

If the applicant is determined to be unable to obtain credit elsewhere, the interest rate to be charged will be the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge not to exceed 1 per centum per year as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per year.

Disaster Business Loans: Effective August 13, 1981, applicants for disaster business loans which are determined to be unable to obtain credit elsewhere, will be charged an interest rate not to exceed 8 per centum per year.

For disaster business loan applicants which are determined to be able to obtain credit elsewhere, the interest rate will not exceed the rate prevailing in the

private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under Section 7(a) of the Small Business Act. These loans will be limited to a maximum term of three years.

Disaster loans to businesses will be limited to 85 percent of the verified loss. Disaster loans to businesses will not exceed $500,000, unless the applicant is determined by the Administration to be a "Major Source of Employment."

Applicants for Economic Injury Disaster Loans will be charged an interest rate not to exceed 8 per centum per year, with a maximum loan limit of $500,000.

Non-Physical Disaster Loans: Effective October 1, 1981, Sections 7(b)(3) through 7(b)(9) and 7(g)(1) of the Small Business Act, are repealed.

The legislation further mandates that any business applicant for assistance pursuant to paragraph (1), (2) or (4) of Section 7(b) of the Small Business Act, whose application was received but not approved by the Agency on or before March 19, 1981, and who was declined for assistance, or received only partial loan assistance, may be offered loan assistance by SBA. The appropriate applicants affected by this mandate are being notified individually by the Agency. Questions regarding assistance under this mandate should be directed to the local SBA office.

For further information: Deputy Associate Administrator for Disaster Assistance, Room 820, Small Business Administration, 1441 L St., NW., Washington, D.C. 20416, (202) 653-6879.

Dated: November 3, 1981.

Michael Cardenas,

Administrator.

[FR Doc. 81-32555 Filed 11-9-81; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 217
Tuesday, November 10, 1981

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).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From November 5th Special Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the November 5, 1981, Special Open Meeting and previously listed in the Commission's Public Notice of October 22, 1981.

Agenda, Item No., and Subject

Cable Television—1—*Title: Report and Order in Docket 18891. Summary:* Amendment of Part 76, subpart J, of the Commission's rules regarding diversification of control of community antenna television stations.

Cable Television—2—*Title: Report and Order in Docket 20423. Summary:* Amendment of Part 76, subpart J, of the Commission's rules regarding postponement of the divestiture requirement of section 76.501 relative to prohibitied cross-ownership in existence on or before July 1, 1970.

Issued: November 4, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1689-81 Filed 11-6-81; 10:24 am]

BILLING CODE 6712-01-M

2

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 19, 1981, 9 a.m., Open Session.
November 20, 1981, 8:30 a.m., Open Session; 9:30 a.m. Closed Session.

PLACE: National Science Foundation, 1800 G Street, N.W., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS: Thursday, November 19, 9 a.m.:

1. Minutes—Open Session—230th Meeting.
2. Chairman's Items.
3. Director's Report:
a. Report on Grant and Contract Activity—10/15-11/18/81.
b. Organizational and Staff Changes.
c. Congressional and Legislative Matters.
d. NSF Budget for Fiscal Year 1982.
4. NSF Advisory Groups and Other Events.
5. Program Review—Earth Sciences.

Friday, November 20, 8:30 a.m. (Conclusion of Open Session):

6. Reports on Meetings of Board Committees.
7. Other Business.
8. Next Meeting—National Science Board—January 21-22, 1982.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION: Friday, November 20, 9:30 a.m.:

A. Minutes—Closed Session—230th Meeting.
B. Grants, Contracts, and Programs.
C. NSF Budget Requests for Fiscal Year 1983 and Subsequent Years.
D. NSB Annual Reports.
E. Draft Report of Congressional Research Service, Library of Congress, to House Committee on Science and Technology.
F. NSB and NSF Staff Nominees.

CONTACT PERSON FOR MORE INFORMATION: Miss Catherine Flynn, NSB Staff Assistant, (202) 357-9582.

[S-1691-81 Filed 11-6-81; 2:47 pm]

BILLING CODE 7555-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 16, 1981, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, November 17, 1981, at 10:00 a.m. and on Thursday, November 19, 1981, following the 2:30 p.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Loomis, Evans, Thomas, and Longstreth voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 17, 1981, at 10:00 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.
Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Freedom of Information Act appeals.
Regulatory matter regarding financial institution.

The subject matter of the closed meeting scheduled for Thursday, November 9, 1981, following the 2:30 p.m. open meeting, will be:

Opinion.

The subject matter of the open meeting scheduled for Thursday, November 19, 1981, at 2:30 p.m., will be:

1. Consideration of whether to adopt Rule 180 under the Securities Act of 1933 which would exempt from the registration requirements of the Act interests and participations issued in connection with H.R. 10 plans that meet the criteria set forth in the rule. For further information, please contact Paul Roye at (202) 272-3014.

2. Consideration of whether to authorize the Office of the General Counsel to arrange for the transfer of past Commissioners' files to a repository of historic Commission materials being established by the Georgetown University Law Center and to commit the Commission to continue to transfer the files of each Commissioner as he or she leaves the Commission, subject to the retention for ten years of confidential information contained in a Commissioner's files. For further information, please contact Theodore Bloch at (202) 272-2454.

3. Consideration of whether to authorize the publication of a release proposing for public comment rules that would (1) specify the currency in which the financial statements of foreign issuers must be stated, (2) require a history of exchange rates, and (3) require information concerning the effect of changing prices for certain foreign registrants. For further information, please contact Carl Bodolus at (202) 272-3250.

4. Consideration of whether to authorize the publication of a release proposing for public comment (1) an integrated disclosure system for foreign private issuers that would involve three forms under the Securities Act of 1933 and related rules; (2) revisions to Form 20-F, a consolidated registration and

annual report form under the Securities Exchange Act of 1934; and (3) a rule relating to the age of financial statements in filings by foreign private issuers. For further information, please contact Ronald Adee at (202) 272–3250.

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: Paul Siegelbaum at (202) 272–2468.

November 5, 1981.

[S-1090-81 Filed 11-6-81; 1:09 pm]

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federal register

Tuesday
November 10, 1981

Part II

Department of Health and Human Services

Semi-Annual Agenda of Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

20 CFR Ch. III

21 CFR Ch. I

42 CFR Chs. I–IV

45 CFR Subtitle A, Chs. II, III, and XIII

Semi-Annual Agenda of Regulations

AGENCY: Department of Health and Human Services.

ACTION: Publication of semi-annual agenda of regulations (Executive Order 12291 and the Regulatory Flexibility Act of 1980).

SUMMARY: The President's February 17, 1981, Executive Order on Regulations (Executive Order 12291) and the Regulatory Flexibility Act of 1980 require the Department to publish an agenda of significant regulations being developed and an indication of those regulatory actions that are being analyzed for their effect on small businesses. The Department published its last agenda on April 30, 1981.

FOR FURTHER INFORMATION CONTACT: For further inquiries or comments related to specific regulations listed in the agenda, the public is encouraged to contact the appropriate responsible individual.

Questions or comments on the overall agenda should be sent to: John Casciotti, Deputy Executive Secretary, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201, Telephone: (202) 245–7462.

Dated: October 30, 1981.

Robert S. Schweiker,

Secretary of Health and Human Services.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST

Title	Summary	Contact
	Office of the Secretary	
OCR-1—Nondiscrimination on the Basis of Age in Federally Assisted Programs.	A. *Description:* The regulation will prohibit age discrimination in programs and activities that receive financial assistance from the Department. B. *Why Significant:* The regulation will set forth the specific responsibilities of recipients and will protect individuals from age descrimination in HHS-assisted programs and activities. C. *Regulatory Analysis:* Not required D. *Need:* Pursuant to the Act the Secretary is required to promulgate agency-specific regulations setting forth the responsibilities of its recipients. E. *Legal Basis:* 42 U.S.C. 6101 *et seq* F. *Chronology:* Government-wide final regulations to implement the Act were published by the Department in the FEDERAL REGISTER on June 12, 1979 (44 FR 33768). The Department's agency-specific NPRM was published September 24, 1979 (44 FR 55108). Comment period ended November 23, 1979. G. *Regulatory Flexibility Analysis Required:* No	George Lyon, Office of the General Counsel, Civil Rights Division, (202) 245-6246, 330 Independence Ave. SW., Washington, D.C. 20201.
Cost Allocation Plans for Public Assistance Programs.	A. *Description:* Revision and Consolidation of current program regulations on submission and approval of cost allocation plans used by State agencies to claim administrative costs on public assistance programs (e.g. Medicaid, AFDC etc.). B. *Why Significant:* Regulation would provide comprehensive guidance on the submission and approval of cost allocation plans required to claim administrative cost on all HHS financed public assistance programs. C. *Regulatory Analysis:* Not required D. *Need:* To clarify requirements, eliminate duplicative coverage in individual program regulations, provide more definitive guidance, and simplify appeals procedures related to "cross-cutting" cost disallowances. E. *Legal Basis:* Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302 F. *Chronology:* NPRM Published 1/81 G. Regulatory Flexibility Analysis Required: No	Edward Tracy, Office of Grant and Contract Financial Management, Room 533-H, Humphrey Bldg., 200 Independence Avenue SW., Washington, D.C. 20201, 202-755-7633.
Equipment Acquired Under Public Assistance Programs.	A. Description: Revision and consolidation of current program regulations on the allowability of equipment costs under public assistance programs (e.g., Medicaid, AFDC, etc.) and on the management and disposition of equipment under the programs. B. *Why Significant:* Regulation would substantially liberalize and simplify current regulations on the subject. C. *Regulatory Analysis:* Not required D. *Need:* To establish a more realistic threshold for determining whether equipment costs can be claimed at the time of purchase or must be depreciated. Also needed to eliminate duplicative coverage in individual program regulations, and to simplify and clarify regulations. E. *Legal Basis:* Sec. 1102, 49 Stat. 647, 45 U.S.C. 1302 F. *Chronology:* NPRM Published 7/81 G. *Regulatory Flexibility Analysis Required:* No	Edward Tracy, Office of Grant and Contract Financial Management, Room 533-H, Humphrey Bldg., 200 Independence Avenue SW., Washington, D.C. 20201, 202-755-7633.
Payments With Checks-Paid Letters of Credit and Delay-of-Drawdown Letters of Credit.	A. *Description:* The regulations will require that certain recipient organizations adopt the checks-paid letter of credit technique or the alternative delay-of-drawdown technique. B. *Why Significant:* Provides as a regulatory base that a uniform funding method be used in making funds available to DHHS recipient organizations. The funding method will insure that any recipient organization which draws an advance of Federal funds, using a letter of credit, will have their funds as they need them, but not far in advance of their need. C. *Regulatory Analysis:* Not required D. *Need:* While the statute does not mandate regulations, the magnitude of advance payments to recipient organizations require that more sophiscated funding mechanisms be utilized. E. *Legal Basis:* 42 U.S.C. 4213 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	David Dukes, Deputy Assistant Secretary for Finance, Room 705D Hubert Humphrey Building, 200 Independence Ave. SW., Washington, D.C. 20201, (202) 254-7084.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
	Social Security Administration	
Supplemental Security Income Program: Eligibility; 20 CFR Part 416 Subpart B.	A. *Description:* These regulations will clarify the requirements for individuals to be eligible for SSI benefits. B. *Why Significant:* The basic rules on eligibility under the SSI program will be described in clear language. C. *Regulatory Impact Analysis:* Not required D. *Need:* These regulations are being reviewed to consider the possible need for policy revisions, additions, or deletions. They are being rewritten to make them clearer and easier to understand. E. *Legal Basis:* 42 U.S.C. 1302, 1361a, 1382c, 1383, and 1383b F. *Chronology:* A Notice of Decision to Regulate was published March 27, 1979 (44 FR 18237). An NPRM was published on September 4, 1980 (45 FR 58503). G. *Regulatory Flexibility Analysis Required:* No	Rita Hauth, (301) 594-7112, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Supplemental Security Income Program: Reductions, Suspensions, and Terminations; CFR Part 416, Subpart M.	A. *Description:* These proposed regulations will clarify the rules for reducing suspending and terminating an SSI recipient's benefits. B. *Why Significant:* The proposed rules will describe situations when a person may not receive all or part of his or her SSI benefits. C. *Regulatory Impact Analysis:* Not required D. *Need:* These regulations are being reviewed to consider the possible need for policy revisions, additions, or deletions. They are being rewritten to make them clearer and easier to understand. E. *Legal Basis:* 42 U.S.C. 1302, 1382, 1382c, 1382d, and 1383 F. *Chronology:* A Notice of Decision to Develop Regulations was published on June 19, 1979 (44 FR 35241). G. *Regulatory Flexibility Analysis Required:* No	Charles Campbell, (301) 597-3408, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Supplemental Security Income Program: Benefits for Severely Disabled Performing Substantial Gainful Activity; 20 CFR Part 416, Subpart B.	A. *Description:* These regulations will clarify how SSA will interpret and apply the unique eligibility factors which are necessary for status as a supplemental income recipient for purposes of Title XIX. They will also explain the eligibility factors which must be met to acquire and retain eligibility for special SSI payments while an individual is engaged in substantial gainful activity. B. *Why Significant:* This is a 3-year demonstration program which affects individuals who work despite disabling impairments. The demonstration provides Special SSI cash benefits to these people where certain requirements are met. Even when SSI cash benefits are no longer payable these people, if they meet certain eligibility factors, are considered as SSI recipients for purpose of Title XIX of the Social Security Act. C. *Regulatory Impact Analysis:* Not Required D. *Need:* Required by the section 201 of the Social Security Amendments of 1980 E. *Legal Basis:* Section 201(a) and (b) of Pub. L. 96-265 F. *Chronology:* Interim regulations were published on January 22, 1981 (46 FR 6903) G. *Regulatory Flexibility Analysis Required:* No	Fred Miranda, (201) 594-7341, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland
Supplemental Security Income Program; Age 18 Deeming and Alien Deeming; 20 CFR Part 416, Subpart K.	A. *Description:* (1) Deeming of parental income and resources to an eligible child ends when a child reaches age 18 unless a savings clause applies to children between 18 and 21; (2) A sponsor's income and resources are deemed to an alien for a period of three years after admission for aliens who first apply after September 30, 1980. B. *Why Significant:* (1) Eliminates different treatment of children aged 18 to 21 depending on status as students; (2) Assumes that sponsors will support aliens and sets more rigid rules than apply to other deeming categories. C. *Regulatory Impact Analysis:* None Required D. *Need:* (1) and (2) implement sections 203 and 504 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* (1) 42 U.S.C. 1382a; (2) 42 U.S.C. 1382c and 1382j F. *Chronology:* A Notice of Decision to Develop Regulations was published on November 14, 1980 (45 FR 75225). G. *Regulatory Flexibility Analysis Required:* No	
Supplemental Security Income Program; Sheltered Workshops (1) and Earned Income Tax Credits (2); 20 CFR Part 416, Subpart K.	A. *Description:* (1) Sheltered workshop remuneration is earned income as of 10/1/80; (2) Earned income tax credits are earned income as of January 1, 1980. B. *Why Significant:* (1) Eliminates need to determine whether sheltered workshops services are employment or therapy—thus earned or unearned income. Earned income is advantageous to beneficiary as it provides greater exclusions and higher benefits; (2) Earned income tax credits did not affect benefit prior to 1980. These credits would have been unearned income as of 1980 and would have resulted in lower benefits, if this law would not have been enacted. C. *Regulatory Impact Analysis:* Not required D. *Need:* The regulations will provide the criteria to carry out section 202 of Social Security Disability Amendments of 1980 and the Technical Corrections Act of 1979. E. *Legal Basis:* (1) 42 U.S.C. 1382a; (2) 42 U.S.C. 1382a F. *Chronology:* A Notice of Proposed Rulemaking was published on January 19, 1981 (46 FR 4949). G. *Regulatory Flexibility Analysis Required:* No	Rita Hauth, (301) 594-7112, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Aid to Families With Dependent Children; Disclosure of Information for Audits; 45 CFR 205.50.	A. *Description:* This interim regulation will permit HHS to disclose information concerning applicants and recipients under title IV-A of the Social Security Act. Disclosure is permitted for purposes of program audits conducted by any governmental entity authorized by law to conduct such audits. B. *Why Significant:* Clarifies existing guidelines on disclosure, so that all States and the Federal Government are consistent. C. *Regulatory Impact Analysis:* Not required D. *Need:* To implement section 403 of the Social Security Disability Amendments of 1980 E. *Legal Basis:* 94 Stat. 462, Pub. L. 96-265 F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
Old Age, Survivors and Disability Insurance and Supplemental Security Income Program Limitation on Prospective Life of Applications; 20 CFR Parts 404, Subparts G and J, and 416, Subparts C and N.	A. *Description:* Under these proposed regulations, if a person files an application for benefits before the first month he or she meets all requirements for entitlement, we will allow the claim only if he or she meets all requirements before a hearing decision or dismissal (if there is one) is issued. B. *Why Significant:* These rules should promote final resolution of cases at the hearing stage and help to reserve Appeals Council review more nearly for cases of a genuinely appellate nature. C. *Regulatory Impact Analysis:* Not required. D. *Need:* To conform our regulations to sec. 306 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 402(j)(2), 416(i)(2)(G), and 423(b) as amended by sect. 306 of Pub. L. 96-265. F. *Chronology:* A Notice of Decision to Develop Regulations was published on September 16, 1980 (45 FR 61315). G. *Regulatory Flexibility Analysis Required:* No.	Cliff Terry, (301) 594-7519, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Extension of Trial Work Period and Reinstatement of Benefits; 20 CFR Parts 404, Subpart P, and 416, Subpart I.	A. *Description:* These proposed regulations will provide persons to remain disabled and who have completed a trial work period with an additional period of 15 months in which to continue to test their ability to work. During this period a person may be paid benefits for all months in which he or she does not do substantial gainful activity. The regulations also extend the trial work period provisions (and the additional period) to widows, widowers, and surviving divorced wives. B. *Why Significant:* Persons who remain disabled and who have exhausted their trial work periods will be encouraged to continue their efforts to return to work. For the first time, the trial work period provisions are extended to widows, widowers, and surviving divorced wives. C. *Regulatory Impact Analysis:* Not required. D. *Need:* These regulations are needed to implement Section 303 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 402, 416, 422, 423, 1382, 1382c, and 1383. F. *Chronology:* A Notice of Decision To Develop Regulations were published on November 14, 1980. G. *Regulatory Flexibility Analysis Required:* No.	Harry Short, (301) 594-7337, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Deduction of Work Related Expenses, 20 CFR Parts 404, Subparts P, and 416, Subpart I.	A. *Description:* The proposed regulations will provide for the deduction from earnings of certain impairment related work expenses in determining: (1) Whether a disabled person has done substantial gainful activity; and (2) the amount of a disabled person's earned income for SSI purposes. B. *Why Significant:* The regulation will encourage disabled persons to work by enabling them to deduct certain work expenses. C. *Regulatory Impact Analysis:* Not required. D. *Need:* The proposed regulations are needed to implement Section 302 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 405, 423, 1302, 1382c, and 1383. F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No.	David Smith, (301) 594-7336, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Deductions, Reductions and Nonpayment of Benefits; 20 CFR Part 404, Subpart E, and 416, Subpart K.	A. *Description:* These regulations will provide that an individual's retroactive monthly social security will be reduced if the individual received SSI payments for the same period. B. *Why Significant:* These regulations will preclude the windfall payment of SSI benefits that would not have been made if the monthly social security benefits had been paid when regularly due rather than retroactively. C. *Regulatory Impact Analysis:* Not required. D. *Need:* Implements section 501 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 94 Stat. 469, 470 Pub. L. 96-265. F. *Chronology:* A Notice of Decision to Develop Regulations was published on October 20, 1980 (45 FR 69246). A Notice of Proposed Rulemaking was published on April 20, 1981 (46 FR 22609). G. *Regulatory Flexibility Analysis Required:* No.	Larry Dudar, (301) 594-6629, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors and Disability Insurance and Supplemental Security Income Programs; Experiments and Demonstration Projects Under Disability Insurance and SSI Programs; 20 CFR Parts 404, Subparts D and P, and 416, Subparts G and I.	A. *Description:* Amendments of 1980 authorize the Secretary to conduct experiments and demonstration projects under the OASDI and SSI programs. The proposed regulations will alter the requirements for disability benefits and the requirements for SSI benefits when a person has been selected to participate in an experiment or demonstration project under these amendments. B. *Why Significant:* Current regulations provide that in order to be eligible for title II and title XVI benefits, certain requirements must be met. The Social Security Disability Amendments of 1980 authorize the Secretary to waive compliance with benefit requirements for title II and title XVIII and waive any of the conditions, requirements, or limitations of title XVI. C. *Regulatory Impact Analysis:* Not required. D. *Need:* These regulations are needed to implement section 505 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 1310. F. *Chronology:* A Notice of Decision to Develop Regulations was published on January 6, 1981 (46 FR 2093). G. *Regulatory Flexibility Analysis Required:* No.	Henry Lerner, (301) 594-7414, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors, and Disability Insurance Program; Benefits for Certain Prisoners; 20 CFR Part 404, Subparts D, E, and P.	A. Description: The proposed regulations place certain restrictions on the payment of disability benefits to persons who have been convicted of a felony and are imprisoned. B. *Why Significant:* The proposed regulations are significant because they specify the conditions under which disability benefits will not be paid to an imprisoned felon and how a finding of disability may be affected. C. *Regulatory Impact Analysis:* Not required. D. *Need:* Required by Section 5 of the Amendments to the Social Security Program (Pub. L. 96-473). E. *Legal Basis:* Pub. L. 96-473. F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No.	William Ziegler, (301) 594-7415, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors and Disability Insurance Programs; Changes to the Retirement Test; 20 CFR Part 404, Subpart E.	A. *Description:* These regulations will contain the rules that will eliminate some of the harsh and unintended effects of the Social Security Amendments of 1977. They are retroactively effective as of January 1978. B. *Why Significant:* The provisions of the regulations (1) permit the use of the monthly earnings test to certain beneficiaries in the year that entitlement terminates for a reason other than death, (2) exclude for the purposes of the annual earnings test, self-employment income received in a year after the initial year of entitlement not attributable to services performed after the month of entitlement; and (3) provide all beneficiaries the use of the monthly earnings test in at least 1 year after 1977.	Clara Barrett Powell, (301) 594-7459, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
	C. *Regulatory Impact Analysis:* Not required D. *Need:* These regulations are needed so we can give the public clear rules and make them aware of the changes that are required by sections 1, 3, and 4 of the 1981 Amendments to the Social Security Program. E. *Legal Basis:* Secs. 1, 3, and 4 of Pub. L. 96-473, 94 Stat. 2263 F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No	
Supplemental Security Income Program; Income—Exclusions from Deemed Income (Circleback Deeming) Regulations No. 416, Subpart K.	A. Description: Excludes from deemed income the monies paid to an ineligible spouse or parent under a public program to provide in-home supportive care for an SSI beneficiary. B. *Why Significant:* Includes an additional exclusion from deemed income in the SSI program. C. *Regulatory Impact Analysis:* Not required D. *Need:* To revise existing policy E. *Legal Basis:* 42 U.S.C. 1302 F. *Chronology:* A Notice of Proposed Rulemaking was published on January 23, 1981 (46 FR 7393). G. *Regulatory Flexibility Analysis Required:* No	Rita Hauth, Phone: (301) 594-7112; Title: Legal Assistant; Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Aid to Families With Dependent Children; Adjustment for Federal Share for Uncashed Checks, 45 CFR 205.44.	A. *Description:* This regulation provides that the Federal share of checks cancelled or voided by a State public assistance agency must be returned promptly to the Federal government. B. *Why Significant:* There is a long-established policy that Federal financial participation in the Aid to Families with Dependent Children program is available only for actual expenditures of the States. C. *Regulatory Impact Analysis:* Not required D. *Need:* This regulation is needed to comply with a recommendation of the General Accounting Office that funds due the Federal government be returned promptly. E. *Legal Basis:* 42 U.S.C. 603 F. *Chronology:* A Notice of Decision to Develop Regulations was published on November 14, 1980 (45 FR 75243). G. *Regulatory Flexibility Analysis Required:* No	Jack Schanberger, Phone: (301) 594-6785, Title: Legal Assistant, Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Federal Coal Mine Health and Safety Act of 1969, Title IV—Black Lung Benefit (1969—); Withholding Part B Black Lung Benefits to Recover Part C Overpayments, Regulations 410, Subpart E.	A. *Description:* This regulation will authorize SSA to withhold Part B Black Lung Benefits to recover Part C benefits which were paid for periods for which Part B benefits were later determined payable. B. *Why Significant:* This regulation will enable recovery from recipients who usually are otherwise unable to repay large overpayments. C. *Regulatory Impact Analysis:* Not required D. *Need:* Many claims for Part B benefits are payable for the same months Part C benefits have been paid, thereby creating overpayments. E. *Legal Basis:* 42 U.S.C. 404, 30 U.S.C. 923 F. *Chronology:* Interim Regulation was published on September 16, 1981 (46 FR 45942) G. *Regulatory Flexibility Analysis Required:* No	Jack Schanberger, Phone: (301) 594-6785, Title: Legal Assistant, Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Supplemental Security Income for the Aged, Blind, and Disabled; Use of Regression Formula in Determining Federal Fiscal Liability, Regulations 416, Subpart T.	A. *Description:* This regulation will enable States to use a regression fromula in computing Federal fiscal liability where SSA administers State supplementation payments in the Supplemental Security Income Program. B. *Why Significant:* The regression formula will enable States to project individual errors found in a sample of cases to the total sample of cases. C. *Regulatory Impact Analysis:* Not required D. *Need:* The regulation will result in a statistically valid error rate for the total sample without rereviewing every case in the sample. E. *Legal Basis:* 42 U.S.C. 1383 F. *Chronology:* A Notice of Decision to Regulate was published on December 22, 1980 (45 FR 84807). An Interim Rule was published Januray 23, 1981 (46 FR 7269). G. *Regulatory Flexibility Analysis Required:* No	
OASDI—Changes in LSDP, Month of Entitlement, Mothers and Fathers Benefits and Student Benefits, Regulations No. 404, Subpart D.	A. *Description:* These regulations conform to certain Social Security provisions of the 1981 Omnibus Budget Reconciliation Act by changing the manner in which lump-sum death payments are made terminating mother's and father's benefits when the child becomes age 16, changing the first month of entitlement for certain benefits and changing the way benefits are payable to students. B. *Why Significant:* The proposed regulations make critical changes in the entitlement requirements for certain benefits. C. *Regulatory Impact Analysis:* Not needed D. *Need:* To conform regulations to certain provisions of Public Law 97-35 E. *Legal Basis:* 42 U.S.C. 402, 405, 416, and 1302 F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No	Dave Smith, Phone: (301) 594-7336, Title: Legal Assistant, Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Old-Age, Survivors and Disability Insurance Programs; Annual Earnings Test, Regulations No. 404, Subpart E.	A. *Description:* These proposed regulations delay from January 1982 until January 1983 (except certain fiscal year beneficiaries) full implementation of section 302(a), Pub. L. 95-216, which reduced from 72 to 70 the age at which social security benefits are no longer subject to an earnings test. B. *Why Significant:* Delays for one year the removal of all earnings test restrictions for workers at age 70. C. *Regulatory Impact Analysis:* Not required D. *Need:* To conform existing regulations to reflect new statutory provisions enacted by section 2204 of Pub. L. 97-35. E. *Legal Basis:* 42 U.S.C. 1302 F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No	Marval L. Cazer, Phone: (301) 594-7463, Title: Legal Assistant, Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Aid to Families With Dependent Children; Scheduled Redeterminations; 45 CFR Part 206.	A. *Description:* These proposed regulations will permit a variable length of time between AFDC redeterminations, rather than every 6 months as now required. B. *Why Significant:* Provides greater flexibility to the States based on certain error prone profile characteristics. C. *Regulatory Impact Analysis:* Not required D. *Need:* To effect a policy change to provide more flexibility to States E. *Legal Basis:* 42 U.S.C. 1302 F. *Chronology:* G. *Regulatory Flexibility Analysis Required:* No	Marval L. Cazer, Phone: (301) 594-7463, Title: Legal Assistant, Address: Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
Omnibus AFDC Regulations of 1981; 45 CFR 205.233, 206.234, 210.235.	A. *Description:* These interim regulations implement changes made in the AFDC program by Public Law 97-35 and represent a part of the President's economic recovery initiatives. B. *Why Significant:* These regulations are significant because they enable families to move from welfare dependency to job-based self sufficiency, target assistant to the neediest families; count certain previously excluded income in calculating need; and improve program administration. C. *Regulatory Impact Analysis:* Yes D. *Need:* The regulations are needed to implement AFDC provisions of Pub. L. 97-35 (Omnibus Reconciliation Act of 1981). E. *Legal Basis:* Section 1102 of the Social Security Act, as amended, 49 Stat. 647 as amended; 42 U.S.C. 1302. F. *Chronology:* Interim regulations were published on September 21, 1981 (46 FR 46750). G. *Regulatory Flexibility Analysis Required:* Yes	Marvel Cazer, Phone: (301) 594-7463, Title: Legal Assistant, Address: 6401 Security Boulevard, Baltimore, Maryland 21235.
Federal Old-Age, Survivors and Disability Insurance (1950—); Benefits for Remarried Widowers and Surviving Divorced Husbands, Regulations No. 404, Subpart D.	A. *Description:* These regulations provide widower's benefits for a widower remarried before age 60 if the marriage terminated before the time of application and to surviving divorced husband on his deceased former wife's earnings record. B. *Why Significant:* These regulations involve paying benefits to two new classes of beneficiaries and eliminate two gender-based distinction in the Social Security Act. C. *Regulatory Impact Analysis:* Not required D. *Need:* These regulations are needed to implement district court decisions which prevent implementation of two gender-based distinctions in the Social Security Act. E. *Legal Basis:* Section 205 and 1102 of the Social Security Act. F. *Chronology:* A Notice of Proposed Rulemaking was published on July 21, 1981 (46 FR 3752). G. *Regulatory Flexibility Analysis Required:* No.	Lawrence Dudar, Phone: (301) 594-6629, Title: Legal Assistant, Address: 6401 Security Blvd., Baltimore, Maryland 21235.
	Office of Child Support Enforcement	
OCSE-1—Office of Child Support Enforcement—Federal Financial Participation in the Costs of Cooperative Agreements with Courts, 45 CFR Part 304.	A. *Description:* These final regulations will expand the availability of Federal funding of the costs of courts under cooperative agreements with child support agencies to include costs associated with judicial determinations. The expanded funding will be available in costs that exceed calendar year 1978 costs. Federal funding of costs of the judicial decision-maker, however, will continue to be prohibited. B. *Why Significant:* The expanded Federal funding should encourage more courts to enter into cooperative agreements with child support enforcement agencies. C. *Regulatory Analysis:* Not required D. *Need:* To implement requirements of Section 404 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, which apply to court costs incurred on or after July 1, 1980. E. *Legal Basis:* Pub. L. 96-265, 42 U.S.C. 655(c) F. *Chronology:* A notice of proposed rulemaking was published in the FEDERAL REGISTER on June 4, 1981. The comment period closed on August 3, 1981. G. *Regulatory Flexibility Analysis Required:* No.	Eileen Brooks, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-2—Office of Child Support Enforcement—Withholding of Advance Funds for Not Reporting, 45 CFR Part 301.	A. *Description:* These final regulations will prohibit advance payment of the Federal share of State child support enforcement expenses for a calendar quarter unless the State submits expenditure and child support collection reports for all prior quarters except the two most recent quarters. B. *Why Significant:* These regulations could result in the withholding of quarterly advances of Federal child support funds from a State which failed to meet certain Federal reporting requirements. C. *Regulatory Analysis:* Not required D. *Need:* To implement the requirements of Section 407 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, which took effect in the quarter beginning January 1, 1981. E. *Legal Basis:* Pub. L. 96-265, 42 U.S.C. 655(d) F. *Chronology:* A notice of proposed rulemaking was published on January 6, 1981 (46 FR 1319). The comment period closed on March 9, 1981. G. *Regulatory Flexibility Analysis Required:* No.	Judith Hagopian, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-3—Office of Child Support Enforcement—Requests for Collection by the Secretary of the Treasury, 45 CFR Parts 302 and 303.	A. *Description:* The final regulations will extend the availability of child support collection services by the Internal Revenue Service (IRS) to families not receiving Aid to Families with Dependent Children (AFDC). In addition, they remove the State plan requirement for IRS collections, and instead place this regulation under 45 CFR Part 303, Standards for Program Operations. Several additional minor changes will be made to streamline the process of IRS collection. B. *Why Significant:* These regulations could be of significant benefit to non-AFDC families in the collection of child support because they permit the IRS to make collections on behalf of these families. C. *Regulatory Analysis:* Not required D. *Need:* To implement the requirements of Section 402 of Pub. L. 96-265, the Social Security Disability Amendments of 1980, which took effect on July 1, 1980. E. Legal Basis: Pub. L. 96-265, 42 U.S.C. 652(b) F. *Chronology:* A Notice of Proposed Rulemaking was published on January 6, 1981 G. *Regulatory Flexibility Analysis Required:* No.	Eileen Brooks, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-4—Office of Child Support Enforcement—Availability of Incentive Payments to States Which Enforce and Collect on Their Own Behalf, 45 CFR Part 302.	A. *Description:* These regulations will extend the availability of incentive payments on assigned child support collections to any State which makes these collections on its own behalf. B. *Why Significant:* The expanded availability of incentives to States will encourage States to improve their Child Support Enforcement programs. C. *Regulatory Analysis:* Not required D. *Need:* To implement the requirements of Section 307 of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, which took effect on June 17, 1980. E. *Legal Basis:* Pub. L. 96-272, 42 U.S.C. 658 F. *Chronology:* A notice of proosed rulemaking was published in the FEDERAL REGISTER on May 8, 1981. The comment period ended on July 7, 1981. G. *Regulatory Flexibility Analysis Required:* No.	Michael Fitzgerald, Program Specialist, (301) 443-5350, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
OCSE-5—Office of Child Support Enforcement—Recovery of Assigned Child Support Payments Received Directly and Retained by AFDC Recipients, 45 CFR Part 302 and 303.	A. *Description:* These proposed regulations will establish procedures for the recovery by IV-D agencies of assigned support payments which are received directly and retained by AFDC recipients. B. *Why Significant:* These proposed regulations will establish Federal policy in the area of recovery of direct payments, and will permit States the flexibility to handle these situations through either their IV-A or IV-D agencies. C. *Regulatory Analysis:* Not required D. *Need:* To clarify Federal policy in this matter in which the respective responsibilities of IV-A and IV-D agencies have been a source of some confusion among the States. E. *Legal Basis:* 42 U.S.C. 652(a), 42 U.S.C. 1302 F. *Chronology:* Interim instructions were provided by a joint action transmittal issued by OCSE and the Office of Family Assistance (SSA-AT-81-7 (OFA) and OCSE-AT-81-7, dated March 27, 1981). G. *Regulatory Flexibility Analysis Required:* No	Michael Fitzgerald, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-6—Office of Child Support Enforcement—Collection of Past-Due Support from Federal Tax Refunds.	A. *Description:* These interim final regulations will require child support enforcement agencies to have and use procedures to obtain payment of past-due support from overpayments of Federal income tax. These regulations will also contain procedures for agencies to follow in implementing this tax refund offset collection period. B. *Why Significant:* Collection of support by Federal tax refund offset should significantly increase support collections made via the Child Suport Enforcement program. C. *Regulatory Analysis:* Not required D. *Need:* To implement requirements of Section 2331 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. E. *Legal Basis:* Pub. L. 97-35, 42 U.S.C. 664 and 654(18) F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Eileen Brooks, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-7—Office of Child Support Enforcement—Collection of Support for Certain Adults.	A. *Description:* These interim final regulations will permit child support enforcement agencies to collect support for the spouse or former spouse with whom a child is living, if the spouse or former spouse is receiving AFDC and support is also being collected for the child. B. *Why Significant:* This collection of spousal support should result in increased offset of AFDC program costs. C. *Regulatory Analysis:* Not required D. *Need:* To implement requirements of Section 2332 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. E. *Legal Basis:* Pub. L. 97-35, 42 U.S.C. 651; 42 U.S.C. 652(a)(1), (7), (10)(C); 42 U.S.C. 652(b); 42 U.S.C. 653(c)(1); 42 U.S.C. 654(4)(B), (5), (9)(C), (ll), (16); 42 U.S.C. 657(b), (c); 42 U.S.C. 660. F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Elizabeth Matheson, (301) 443-5350, Program Specialist Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-8—Office of Child Support Enforcement—Cost of Collection and Other Services for Non-AFDC Families.	A. *Description:* These proposed regulations will prohibit child support enforcement agencies from charging an application fee when a non-AFDC family requests that the agency only collect the support which is due on its behalf. These regulations will also prohibit agencies from recovering costs from support collections made on behalf of non-AFDC families. Instead, the regulations will require agencies to collect a fee of 10 percent of the support obligation from the individual who owes the support to a non-AFDC family. No amounts collected may satisfy the fee owed until the total support obligation has been satisfied. B. *Why Significant:* These regulations would provide for a recovery of costs of collection of support for non-AFDC families from the individual owing the support rather than from the family. C. *Regulatory Analysis:* Not required D. *Need:* To implement requirements of Section 2333 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. E. *Legal Basis:* Pub. L. 97-35, 42 U.S.C. 654(6), (19); 42 U.S.C. 655(a) F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Michael Fitzgerald, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
OCSE-9—Office of Child Support Enforcement-Child Support Intercept of Unemployment Benefits.	A. *Description:* These proposed regulations would require child support enforcement agencies to collect unmet support obligations through the withholding of unemployment compensation benefits by State employment security agencies. The amount withheld would be determined by an agreement with the individual or through legal process. The child support enforcement agency will be required to reimburse the State employment security agency for the administrative costs of carrying out the withholding activities. B. *Why Significant:* This new procedure should result in increased collections of support C. *Regulatory Analysis:* Not required D. *Need:* To implement requirements of Section 2335 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. E. *Legal Basis:* Pub. L. 97-35, 42 U.S.C. 654(20) F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Eileen Brooks, (301) 443-5350, Program Specialist, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 1010, Rockville, Maryland 20852.
Health Care Financing Administration		
HCFA—Health Care institution Certifications and Surveys.	A. *Description:* Hospitals, nursing homes and other institutional health care providers are subject to frequent surveys and reviews. Many of these reviews are a result of the Federal Government's role in insuring the health and safety of patients. Given an expanding role and improved performance of some State and local governments and voluntary organizations in this area, as reassessment of the appropriate Federal role is warranted. B. *Why Significant:* Survey and certification requirements affect thousands of health care providers and are critical to ensuring health and safety of patients. Effective monitoring may be accomplished with greater flexibility to States without loss of quality of health services. C. *Regulatory Impact Analysis:* Yes D. *Need:* To promote State flexibility, reduce costs, and maintain quality standards E. *Legal Basis:* Titles XVIII and XIX of the Social Security Act F. *Chronology:* Review announced by Vice President on March 25, 1981. These HHS regulations are slated for review by the President's Task Force on Regulatory Relief. G. *Regulatory Flexibility Analysis Required:* Yes	Paul Willging, M.D., Deputy Administrator, Health Care Financing Admin., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6726.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HCFA—Medicaid Regulations Affecting States.	A. *Description:* At present a variety of regulations impose significant administrative requirements on States. States contend that these regulations hamper their ability to provide services to needy people at reasonable funding levels. In addition, the President has promised States that regulatory relief will accompany his proposal to limit Federal Medicaid expenditures. For these reasons, a thorough review is needed. B. *Why Significant:* These regulations would provide greater flexibility to States in meeting the medical needs of Medicaid patients at reduced cost. C. *Regulatory Impact Analysis:* Under consideration. D. *Need:* To reduce regulatory burdens on States and promote program efficiency. E. *Legal Basis:* Title XIX of the Social Security Act. F. *Chronology:* Review announced by Vice President on March 25, 1981. These HHS regulations are slated for review by the President's Task Force on Regulatory Relief. G. *Regulatory Flexibility Analysis Needed:* Under consideration.	Paul Willging, M.D., Deputy Administrator, Health Care Financing Admin., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6726.
HCFA—Medicare Program: Differential Reimbursement.	A. *Description:* This regulation will authorize reimbursement at the State Medicaid intermediate care facility or skilled nursing facility rate where the patient requires a lower level of care, but is inappropriately placed in a hospital. B. *Why Significant:* This regulation will refine institutional reimbursement policies to assure more efficient delivery of needed health care. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 902 (a) and (b) of P.L. 96-499, "Omnibus Reconciliation Act of 1980", and section 2102 of the "Omnibus Reconiliation Act of 1981". E. *Legal Basis:* Secs. 1158, 1161, 1861(v)(1)(G), 1883, 1902 and 1913 of the Social Security Act. Secs. 902 and 904 of P.L. 96-499. F. *Chronology:* The final rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration.	Bill Goeller, ORP, DISR, RPB, Branch Chief, Room 1-D-1 ELR 6401 Security Blvd., Baltimore, MD 21207, 301-597-1802.
HCFA—Medicare/Medicaid Programs: Exclusion of Health Care Professionals.	A. *Description:* This regulation will amend the current rule that excludes physicians and practitioners convicted of crimes from participation in the Medicare and Medicaid programs. This regulation will broaden this rule so that the provisions would also apply to other categories of health professionals, such as administrators of health care institutions. B. *Why Significant:* This regulation will clarify HCFA's authority to bar certain professionals from participation in the Medicare and Medicaid programs. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 913 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Secs. 1128, 1862(e), 1902(a)(39), and 2003(d)(1) of the Social Security Act, Pub. L. 95-142 and Pub. L. 96-499. F. *Chronology:* The final rule with comment period is currently under review. When the review is completed. It will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	James F. Patton, Director, DVPS, OPV, BOC, Rm. 2-E-5 ELR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-8213.
HCFA—Medicaid/Medicare Program: Alternatives to Decertification of Long Term Care Facilities.	A. *Description:* This regulation will set forth provisions under Medicare and Medicaid for alternatives to the decertification of long term care facilities (skilled nursing facilities and intermediate care facilities) that are out of compliance with the conditions of participation. The regulation will also authorize HCFA to "look behind" State agency surveys on compliance where the adequacy of the State's determination is questionable. This regulation is part of HCFA's regulatory reform activity. B. *Why Significant:* This regulation will make penalties for non-compliance more reasonable. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 916 (a), (b) and (c) of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Secs. 1866, 1902, and 1910 of the Social Security Act. F. *Chronology:* The proposed rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Analysis Needed:* No.	Robert Javec, Program Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-3314.
HCFA—Medicare Program: Home Health Agency Bonding.	A. *Description:* This regulation will set forth requirements (including the establishment of bonding or escrow accounts) that home health agencies must meet in order to minimize financial risk. B. *Why Significant:* This regulation will assure that home health agencies are financially viable enough to participate in the program. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 930(n) of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1861 of the Social Security Act and Sec. 930 of Pub. L. 96-499. F. *Chronology:* The proposed rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Analysis Needed: Under consideration.*	Bill Goeller, Branch Chief, RPB, Room 1-D-1 ELR, 6401 Security Blvd., Baltimore, MD 21207, 301-597-1802.
HCFA—Medicare Program: Preadmission Diagnostic Testing; Different Hospital; Physician's Office.	A. *Description:* This regulation would cover diagnostic testing in the outpatient department of another hospital or in a physician's office within 7 days prior to the patient's admission as an outpatient. B. *Why Significant:* This regulation would provide incentives for delivering services in lower cost settings. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 932 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1833 of the Social Security Act and Sec. 932 of Pub. L. 96-499. F. *Chronology:* The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Analysis Needed:* No.	Henry Hehir, Director, DMSCP, BPP, Room 489 EHR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-8561.
HCFA—Medicare Program: Outpatient Surgery.	A. *Description:* This regulation will provide for 100 percent reimbursement for surgical services performed in free-standing ambulatory surgical centers and in physicians' offices subject to certain restrictions. It will also set forth health and safety standards for ambulatory surgical centers participating in the Medicare program. B. *Why Significant:* This regulation would provide incentives for delivering services in lower cost settings. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Secs. 934 (a) and (b) of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Secs. 1832, 1833, 1863 and 1864 of the Social Security Act and Sec. 934 of Pub. L. 96-499. F. *Chronology:* The final rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Analysis Needed:* No.	Robert Streimer, Chief, DARS, BPP, Room 1-A-1 EHR, 6401 Security Blvd., Baltimore, MD 21207, 301-597-1337.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HFCA—Medicare Program: Optometrists' Service.	A. *Description:* This regulation would provide coverage for previously uncovered service furnished by optometrists relataed to the condition of aphakia (absence of the natural lens of the eye). B. *Why Significant:* This regulation would extend coverage to a previously uncovered service. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 937 of Pub. L. 95-499, "Omibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1661(j)4 of the Social Security Act and Sec. 937 of Pub. L. 96-499. F. *Chronology:* The proposed rule in currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Henry Hehir, Director, DMSCP, BPP, Room 489 EHR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-8561.
HFCA—Medicare Program: Payment Service Date.	A. *Description:* This regulation will provide that the determination of Medicare reasonable charges for physician services be based on the date the medical service was furninshed rather than the date on which the claim was processed. B. *Why Significant:* This regulation will adjust payment levels to those in effect when services were furnished. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 946 of Pub. L. 96-499, "Omibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1642 of the Social Security Act and Sec. 946 of Pub. L. 96-499. F. *Chronology:* The interim final rule with comment period rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Paul Riesel, Branch Chief, PPRB, BPP, Room 1-A-1 ELR, 6401 Security Blvd., Baltimore, MD 21207, 301-597-1843.
HFCA—Medicare/Medicaid Program: Reimbursement of Physician's Services in Teaching Hospitals.	A. *Description:* This regulation would permit reasonable charge reimbursement to physicians in teaching hospitals under certain circumstances, and would allow cost reimbursement to hospitals where all physicians elect it, it would also provide for computation of reasonable charges for purposes of Medicare reimbursement. B. *Why Significant:* This regulation would clarify and refine physician charge reimbursement policies. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 948 of Pub. L. 95-499, "Omibus Reconciliation Act of 1980". E. *Legal Basis:* Secs. 1832, 1842, and 1861 of the Social Security Act and Sec. 948 of Pub. L. 96-499. F. *Chronology:* The proposed rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Bill Birnie, Chief, PPRS, PPRB, BPP, Room 1-E-5 ELR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-5431.
HFCA—Medicare Program: Access to Books and Records to Subcontractors.	A. *Description:* This regulation would prohibit Medicare reimbursement to providers for services furnished under contracts (whose cost or value over 12 months is $10,000 or more) to subcontractors unless the Secretary has access to books and records necessary to verify costs. B. *Why Significant:* This regulation would strengthen HFCA's capacity to effectively preclude or detect fraud and abuse and conform Medicare practice to that of other Federal agencies which buy services. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 952 of Pub. L. 96-499, "Omibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1861(v)(I) of the Social Security Act, Pub. L. 96-499. F. *Chronology:* The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration.	James F. Patton, Director, DVPS, OPV, BOC, Room 2-E-5 ELR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-8213.
HFCA—Medicare Program: Provider Reimbursement Review Board (PRRB) Expedited Judicial.	A. *Description:* This regulation will require the PRRB to determine within 30 days whether it has jurisdiction over an issue brought before it by a provider and authorize judicial review without further administrative review where the Board decides it lacks jurisdiction. B. *Why Significant:* This regulation will expedite the administrative appeals process. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 955 of Pub. L. 96-499, "Omibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1878 of the Social Security Act and Sec. 955 of Pub. L. 96-499. F. *Chronology:* The final rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Stanley Katz, Chief, DTPL, BPP, 2nd Floor, Dogwood West Bldg., 1848 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-9595.
HFCA—Medicare Program: Beneficiary Not at Fault.	A. *Description:* This regulation would require that payment be made for inpatient services under Part A where a beneficiary requiring a higher level of care is erroneously placed in a distinct part of an institution that provides a lower level of care. B. *Why Significant:* This regulation would reimburse at the appropriate level when a beneficiary received covered care but was in an erroneous placement through no fault of his own. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 958 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1879 of the Social Security Act and Sec. 956 of Pub. L. 96-499. F. Chronology: The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Stanley Katz, Chief, DTPL, BPP, 2nd Floor, Dogwood West Bldg., 1848 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-9595.
HFCA—Medicare Program: Disputed Medicaid Claims; Interest Charge on Final Determination.	A. *Description:* This regulation would set forth the requirement for interest payments on disputed Medicaid funds after a final determination of allowability. B. *Why Significant:* This regulation would establish the payment of interest as an equitable solution to the use of funds pending a final determination of allowability. It would also expedite the processing of State appeals from notices of disallowances. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sec. 961 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1903(d) of the Social Security Act. F. Chronology: The proposed rule in currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	David McNally, Director, DFO, OPA, BPO, Rm. 350, Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 301-597-1397.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HCFA—Medicare/Medicaid Program: Nurse-Midwife Services.	A. *Description:* This regulation will specify Federal requirements under Medicaid (title XIX of the Social Security Act) for the provision of nurse-midwife services. This regulation will define nurse-midwife services and specify how States are to provide for these service. B. *Why Significant:* Revised requirements will improve access to a cost-effective source of maternity care. C. *Regulatory Analysis:* Not required D. *Need:* To implement Sec. 965 of Pub. L. 86-499, "Omnibus Reconciliation Act of 1980" E. *Legal Basis:* Sec. 1906 of the Social Security Act and Sec. 965 of Pub. L. 96-400 F. *Chronology:* The final rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration	Marinos Svalos, Deputy Director, DIMSCP, BPP, Room 489 EHR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-6719.
HCFA—Medicaid Program: Expanded Phase Out Provisions of Intermediate Care Facilities for the Mentally Retarded (ICF/MR); Correction Plans.	A. *Description:* This regulation extends compliance deadlines currently in regulations if ICF's MR can show good faith effort. B. *Why Significant:* This regulation protects facilities from unnecessary disruption of Federal funding. C. *Regulatory Analysis:* Not required D. *Need:* To provide incentives for deinstitutionalization of residents in ICFs/MR and ensure that the health and safety of residents remaining in ICFs/MR is protected. E. *Legal Basis:* Secs. 1102, 1905(c) and (d) of the Social Security Act (42 U.S.C. 1302, 1396d(c) and d(d). F. *Chronology:* The final rule is currently under review. When the review is completed it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Wayne Smith, Program Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 20207, 301-594-7651.
HCFA—Transfer of Assets	A. *Description:* This regulation will impose a new eligibility requirement on aged, blind, and disabled applicants for Medicaid. It will allow States to deny Medicaid to individuals who dispose of assets for less than fair market value. B. *Why Significant:* This regulation will assure that available income and assets are applied to medical needs before Medicaid is granted. C. *Regulatory Analysis:* Not required D. *Need:* To implement Sec. 5 of Pub. L. 96-611 E. *Legal Basis:* Sec. 1613 of the Social Security Act (42 U.S.C. 1382b) and Sec. 5 of Pub. L. 96-611. F. *Chronology:* The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Elmer Smith, Director, OEP, BPP, Room 440 EHR, 6401 Security Blvd., Baltimore, MD 21207, 301-594-9050.
HCFA—Conditions of Coverage of Suppliers: End Stage Renal Disease (ESRD).	A. *Description:* This regulation revises the conditions which ESRD facilities must meet to be approved as suppliers of end-stage renal disease services. B. *Why Significant:* This regulation will recognize recent developments in medical practices C. *Regulatory Analysis:* Not required D. *Need:* Clarify and expand the types of dialysis service facilities that will be approved to furnish and facilitate program administration, and encourage competition. E. *Legal Basis:* Secs. 226A, 1102, 1871, 1861 of the Social Security Act (42 U.S.C. 426-1, 1302, 1395hh, 1395rr). F. *Chronology:* The proposed rule was published on January 15, 1981 (46 FR 3794). The comment period closed on March 16, 1981. G. *Regulatory Flexibility Analysis Needed:* No	Bob Moore, Program Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-9736.
HCFA—Certification of Long Term Care Facilities with Repeat Deficiencies.	A. *Description:* This regulation eliminates the provision that prohibits the renewal of long term care provider agreements if the same deficiency, regardless of how minor, appears in successive certification surveys. B. *Why Significant:* This regulation will improve program administration as long as there is no jeopardy or adverse affect to the health and safety of patients. C. *Regulatory Analysis:* Not required D. *Need:* To make the rules for skilled nursing facilities and intermediate care facilities consistent with the rules governing other providers and reduce burden. E. *Legal Basis:* Secs. 1102, 1814, 1861, 1865, 1866, and 1910 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh and 1396). F. *Chronology:* The proposed rule was published on March 18, 1980 (45 FR 16505). The comment period closed on May 13, 1980. The final rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Terrence Skelly, Program Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-7942.
HCFA—Medicare Program: Incentive Reimbursement for ESRD Dialysis Services.	A. *Description:* This regulation establishes an incentive-based prospective reimbursement for outpatient maintenance and self-care dialysis training furnished to Medicare beneficiaries. B. *Why Significant:* This regulation implements portions of the ESRD amendments of 1978, and section 2145 of the "Omnibus Reconciliation Act of 1981". C. *Regulatory Analysis:* Yes D. *Need:* This regulation will encourage economies in the delivery of outpatient dialysis and self-care dialysis training services. E. *Legal Basis:* Secs. 1881(b)(l)(B)(ii) of the Social Security Act, Pub. L. 95-292, Pub. L. 97-35. F. *Chronology:* The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Yes	Bernadeete Schumacher, Chief, ARSB, BPP, Rm. 1-C-1, ELR, 6401 Security Blvd., Balto. MD 21207, (301) 597-1048.
HCFA—Medicare/Medicaid Programs: Swing Bed Reimbursement.	A. *Description:* This regulation will provide reimbursement for small rural hospitals which have been granted a certificate of need for provision of long term care services. B. *Why Significant:* This regulation will refine institutional reimbursement policies to assure more efficient delivery of needed health care. C. *Regulatory Analysis:* Not required D. *Need:* To implement Sec. 904(a) and (b) of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Secs. 1158, 1161, 1861(v)(1)(G), 1883, 1902 and 1913 of the Social Security Act. F. *Chronology:* The final rule with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under Consideration	Bill Goeller, ORP, DISR, RPB, Branch Chief, Rm. 1-D-1, ELR, 6401 Security Blvd., Balto., MD 21207, (301) 597-1802.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HCFA—Medicare/Medicaid Programs: Conditions of Participation for Skilled Nursing Facilities.	A. *Description:* This regulation revises and consolidates present regulations governing conditions of participation for SNFs. B. *Why Significant:* This regulation is part of HCFA's regulatory reform effort. C. *Regulatory Analysis:* Yes D. *Need:* This regulation is needed to reduce operating burdens on SNFs, emphasize patient care goals, promote cost containment, maintain adequate quality care, and achieve more effective compliance. E. *Legal Basis:* Secs. 1102, 1814, 1861(j), 1863 and 1871 of the Social Security Act F. *Chronology:* The proposed rule is under review. When the review is completed, it will be forwarded to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Yes	Richard Lenehan, Analyst, HSQB, DLTC, 2-F-3, DWE, 1849 Gywnn Oak Ave., Balto., Md. 21207, (301) 594-7651.
HCFA—Medicare Program: Reimbursement of Health Care Prepayment Plans.	A. *Description:* This regulation establishes reimbursement rules for health care prepayment plans which are reimbursed under a reasonable cost basis. B. *Why Significant:* This regulation is part of HCFA's regulatory reform activity. C. *Regulatory Impact Analysis:* No D. *Need:* This regulation will clarify and simplify reimbursement policy and assure similar treatment of prepayment organizations under Medicare. E. *Legal Basis:* Secs. 1802 and 1833(a)(1)(A) of the Social Security Act F. *Chronology:* The proposed rule was published on 10/31/80. The final rule is under review and will be forwarded to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Bernadette Schumacher, Branch Chief, BPP, ARSB, Rm. 1-C-1, ELR, 6401 Security Blvd., Baltimore, Md. 21207, (301) 597-1048.
HCFA—Medicare/Medicaid Programs: Requirements Applicable to Hysterectomies.	A. *Description:* This regulation waives the requirement that in order to obtain a Federally-funded hysterectomy, a woman must acknowledge receipt of information about the effects of a sterilization even if she is beyond child-bearing age or sterile for other reasons. B. *Why Significant:* This regulation is part of HCFA's regulatory reform activity. C. *Regulatory Analysis:* Not required D. *Need:* This regulation will reduce administratively-burdensome procedures not needed to protect patients. E. *Legal Basis:* Secs. 1102, 1902(a)(13), 1905(a)(4)(C) of the Social Security Act F. *Chronology:* Proposed rule published 1/19/81. This final rule is under review. It will be forwarded to the Department when the review is completed. G. *Regulatory Flexibility Analysis Needed:* No	Raymond Johnson, Branch Chief, BPP, OCP, Rm. 455, EHR, 6401 Security Blvd., Baltimore, Md. 21207, (301) 594-9370.
HCFA—Medicare Program: Comprehensive Outpatient Rehabilitation Facilities.	A. *Description:* This regulation recognizes comprehensive outpatient rehabilitation facilities as Medicare "providers" for purposes of reimbursement, and will provide a source of comprehensive rehabilitation services. B. *Why Significant:* This regulation is part of HCFA's regulatory plan to promote efficiency and reduce costs. C. *Regulatory Impact Analysis:* No D. *Need:* This regulation implements Sec. 933 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* 1832(a)(2)(E), 1835(a)(2)(E), 1861(cc)(dd)(3), 1863(a) of the Social Security Act. F. *Chronology:* The proposed rule is under review. When review is completed, the regulation will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration	Henry Hehir, BPP, DMSCP, Rm. 489, EHR, 6401 Security Blvd., Baltimore, Md. 21207, (301) 594-8561.
HCFA—Medicare Program: Third Party Liability and ESRD Exclusion.	A. *Description:* This regulation establishes that Medicare would be the secondary payor for the first 12 months for health care received by ESRD beneficiaries who are under age 65 and who are also covered by an employer group health plan, and also establishes that Medicare would be the secondary payor for services covered under an automobile, liability, or no-fault insurance policy or plan. B. *Why Significant:* This regulation is part of HCFA's regulatory plan to promote efficiency and reduce costs. C. *Regulatory Impact Analysis:* No D. *Need:* This regulation implements Sec. 2146 of Pub. L. 97-35, "Omnibus Reconciliation Act of 1981" and Sec. 953 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1862(h) of the Social Security Act, Sec. 953 of Pub. L. 96-499 and Sec. 2146 of Pub. L. 97-35. F. *Chronology:* The proposed rule is under review. When review is completed, the regulation will be forwarded to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Herb Pollack, Branch Chief, BPP, OEP, Rm. 474, EHR, 6401 Security Blvd., Baltimore, Md. 21207, (301) 594-4978.
HCFA—Medicaid Program: Prepaid Provider (HMO) Participation in State Plans.	A. *Description:* This regulation encourages enrollment of Medicaid beneficiaries in Health Maintenance Organizations by modifying qualification criteria, extending limits on percentage of Medicare/Medicaid enrollees and other changes. B. *Why Significant:* This regulation is part of HCFA's regulatory plan to promote efficiency and reduce costs. C. *Regulatory Impact Analysis:* No D. *Need:* This regulation implements Sec. 2178 of Pub. L. 97-35, "Omnibus Reconciliation Act of 1981". E. *Legal Basis:* Sec. 1903(m) of the Social Security Act as amended by Pub. L. 97-35 F. *Chronology:* The proposed rule is under review. When review is completed, the regulation will be forwarded to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration	Bernadette Schumacher, Branch Chief, BPP, ARSB, Rm. 1-C-1, ELR, 6401 Security Blvd., Balto., Md. 21207, (301) 597-1048.
HCFA—Medicaid Program: Definition of Persons with Related Conditions—Mental Retardation.	A. *Description:* This regulation deletes the reference in Medicaid regulations that defines persons with conditions related to mental retardation in terms of "developmental disability" and establishes a new definition for Medicaid purposes. B. *Why Significant:* This regulation is part of HCFA's regulatory plan to promote efficiency and reduce costs. C. *Regulatory Analysis:* Not required D. *Need:* This regulation is required as a result of amendments to the Developmental Disabilities Assistance and Bill of Rights Act which could have an undesirable effect on Medicaid. E. *Legal Basis:* Sec. 1102 of the Social Security Act F. *Chronology:* This proposed rule is under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No	Ruth Fosler, Chief, BPP, OCP, Rm. 428, EHR, 6301 Security Blvd., Balto., Md. 21207, (301) 594-9442.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HCFA—Medicare/Medicaid Programs: Continued Use of Demonstration Reimbursement Systems.	A. *Description:* This regulation would set standards for the continuation of reimbursement to hospitals in accordance with a reimbursement system approved as a demonstration project. B. *Why Significant:* This regulation will further program efficiency. C. *Regulatory Analysis:* No. D. *Need:* To implement Sec. 903 of Pub. L. 96-499, "Omnibus Reconciliation Act of 1980". E. *Legal Basis:* Sec. 1814(b) of the Social Security Act, Sec. 903 of Pub. L. 96-499. F. *Chronology:* The proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Liz Flynn, Analyst, ORDS, Rm. 4229 North Bldg., 200 Independence Ave., S.W., Wash., D.C. 20201, (202) 245-6024.
HCFA—Medicare Program: Withholding Payments to Practitioners, Providers and Suppliers of Services.	A. *Description:* This regulation will clarify due process procedures that must be followed when payments to practitioners, providers and suppliers of services under the Medicare program are withheld because of suspected fraud or willful misrepresentation. B. *Why Significant:* The regulation will clarify existing procedures by providing timely notice and administrative review. C. *Regulatory Analysis:* Not required. D. *Need:* Current regulations do not provide clear notification and review procedures. This regulation will establish procedures to safeguard Federal financial interest as well as the interests of the affected party. E. *Legal Basis:* Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395). F. *Chronology:* The proposed rule was published on 12/1/81. The comment period closed on 1/30/81. A final rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	James Patton, Director, DVPS, OPV, BQC, Rm. 2-E-5, ELR, 6401 Security Blvd., Balto., Md. 21207, (301) 594-8213.
HCFA—Medicaid Program: Conditions of Approval and Reapproval for Medicaid Management Information Systems (MMIS).	A. *Description:* This regulation establishes conditions for initial approval of MMIS and for subsequent reapproval. This regulation also establishes procedures for reduction of FFP directed to MMIS in those States failing to meet either initial or reapproval standards. B. *Why Significant:* This regulation is part of HCFA's regulatory reform plan to promote efficiency and reduce costs. C. *Regulatory Impact Analysis:* No. D. *Need:* This regulation will implement, in part, the amendment to Sec. 1903 of the Social Security Act made by the Mental Health Systems Act, and will help ensure that MMIS are being used effectively to manage the medicaid programs and reduce program costs. E. *Legal Basis:* Secs. 1102, 1902(a)(4), 1903(a)(3), and 1903(r). F. *Chronology:* The proposed rule is under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Robert Ouloosian, Branch Chief, BBP, PSB, Rm. 1445, ME, 6300 Security Blvd., Balto., Md. 21207, (301) 594-8040
HCFA—Medicaid Program: Overpayment Reporting Requirements.	A. *Description:* This regulation would require States to establish procedures to identify overpayments made to providers of services and report them to HCFA on a timely basis. B. *Why Significant:* This rule will contribute toward program efficiency. C. *Regulatory Impact Analysis:* Not required. D. *Need:* This regulation is needed to reduce State and Federal Medicaid program costs. E. *Legal Basis:* Sec. 1903(d)(2) of the Social Security Act. F. *Chronology:* This proposed rule is currently under review. When the review is completed, it will be submitted to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* No.	Guy Harriman, Branch Chief, BPO, OSPE, Rm. 1-C-1, ME, 6305 Security Blvd., Balto., Md. 21207, (301) 594-8193
HCFA—Medicare-Medicaid Program: Rural Health Clinics—Prospective Reimbursement.	A. *Description:* This regulation would establish a prospective reimbursement payment method for rural health clinic services. B. *Why Significant:* This regulation will improve the efficiency of the Medicaid and Medicare programs. C. *Regulatory Flexibility Analysis:* Not required. D. *Need:* This will refine institutional reimbursement policies to assure the most efficient delivery of health care. E. *Legal Basis:* Sec. 1833(a)(3) of the Social Security Act. F. *Chronology:* This proposed rule is under review. When that review is completed, it will be forwarded to the Department for approval. G. *Regulatory Flexibility Analysis Needed:* Under consideration.	Bernie Truffer, Section Chief, ORP, BPP, Rm. 1-C-1, ELR, 6401 Security Blvd., Balto., Md. 21207, (301) 597-1369
HCFA—Medicare Program: Medigap Certification of Supplemental Health Insurance Policies.	A. *Description:* This regulation establishes a mechanism for Federal review of Medicare supplemental health insurance policies in States without a regulatory program or one that is not approved by the Supplemental Health Insurance Panel. B. *Why Significant:* This regulation will enable beneficiaries to identify Medigap policies that provide adequate benefits. C. *Regulatory Analysis:* Not required. D. *Need:* To implement, in part, Sec. 507 of Pub. L. 96-265. E. *Legal Basis:* Sec. 1882 of the Social Security Act, Sec. 507 of Pub. L. 96-265. F. *Chronology:* The proposed rule was published on 1/21/81. The final rule is under review and will be forwarded to the Department when that review is completed. G. *Regulatory Flexibility Analysis Needed:* Under consideration.	Thomas Hoyer, Staff Assistant, BPP, OCP, Rm. 401, EHR, 6401 Security Blvd., Balto., Md. 21207, (301) 594-9690
Office of Human Development Services		
HDS-4—Developmental Disabilities Program: General Rules.	A. *Description:* This final rule will implement the 1978 and 1981 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act. These rules will provide maximum flexibility to States in providing protection, advocacy and other services to the developmentally disabled. B. *Why Significant:* This regulation will simplify State administration of the Developmental Disabilities program and reduce the reporting and paperwork requirements. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1978 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act as amended by Pub. L. 97-35. E. *Legal Basis:* 42 U.S.C. 6008. F. *Chronology:* Notice of Proposed Rulemaking published on May 9, 1980 (45 FR 31006). G. *Regulatory Flexibility Analysis Required:* No.	Ms. Madolyn C. Schultz, Administration on Developmental Disabilities, room 3650, HHS North Bldg., 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 472-7213.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
HDS-6—Native American Program: General Rules.	A. *Description:* This regulation would simplify and clarify existing regulations and implement significant changes in policies and operation to reflect experience in operating the program. B. *Why Significant:* The Native American Grants provide valuable resources to Native Americans in their efforts to achieve economic and social self-sufficiency. C. *Regulatory Analysis:* Not required D. *Need:* Regulations are needed to make administrative improvements which include a simplified appeals process; improved management control and paperwork reduction; and the removal of unnecessary provisions. E. *Legal Basis:* 42 U.S.C. 2991 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* Under consideration	Jim Young, Associate Commissioner, Office of Planning and Program Development, Administration for Native Americans, room 5300, HHS North Bldg., 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245-7776.
HDS-7—Child Abuse and Neglect Prevention and Treatment Program: General Rules.	A. *Description:* This regulation will implement statutory amendments to the Child Abuse Prevention and Treatment Act, which provides discretionary grants for demonstration and service projects and research projects to private, nonprofit organizations. In addition, it provides special grants to States who meet the eligibility criteria for child abuse prevention and treatment projects. B. *Why Significant:* This regulation will revise the definition of child abuse and neglect to include sexual abuse and sexual exploitation as required by the statute. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. E. *Legal Basis:* 42 U.S.C. 5101 et seq F. *Chronology:* Notice of Proposed Rulemaking published on May 29, 1980 (45 FR 35794) G. *Regulatory Flexibility Analysis Required:* No	Frank Ferro, Associate Chief, Children's Bureau, Administration for Children, Youth and Families, room 2030, Donohoe Bldg., 400 6th St., SW., Washington, D.C. 20013, (202) 755-7418.
HDS-15—Eligibility Requirements and Limitations for Environment in Head Start.	A. *Description:* This regulation will implement a new legislative requirement of Pub. L. 95-568 which allows a Head Start program to establish more liberal eligibility criteria if the community in which it is operating meets certain statutory requirements. B. *Why Significant:* This amendment will allow more than 15% over income children to enroll in Head Start programs located in communities which meet criteria established in the statute. C. *Regulatory Analysis:* Not required D. *Need:* To implement a 1978 amendment to the Headstart-Follow Through Act E. *Legal Basis:* Pub. L. 97-35, Sec. 635 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* Under consideration	Henlay Foster, Associate Director, Head Start, Administration for Children, Youth and Families, room 5161, Donohoe Bldg., 400 6th St., SW., Washington, D.C. 20013, (202) 755-7782.
HDS-16—Adoption Assistance and Child Welfare Act of 1980.	A. *Description:* This regulation will implement the provisions of the Adoption Assistance and Child Welfare Act of 1980 to establish a program of adoption assistance; strengthen the program of foster care assistance for neglected and dependent children; and to improve the child welfare services program. B. *Why Significant:* The regulation will assist States to improve the public foster care program by reducing the number of children in foster care through increased preventive services; better planning for and services to children in care; establishing an adoption assistance program; and instituting greater efforts to enable children to return home. C. *Regulatory Analysis:* Not required D. *Need:* To implement Section 101-103 of Pub. L. 96-272 E. *Legal Basis:* Pub. L. 96-272; 94 Stat. 500 et seq. F. *Chronology:* Notice of Proposed Rulemaking published on December 31, 1980 (45 FR 86812). G. *Regulatory Flexibility Analysis Required:* No	Ms. Beatrice Moore, Director, Child Welfare Services State Grant Division, Children's Bureau, Administration for Children, Youth and Families, room 2749, Donohoe Bldg., 400 6th St., SW., Washington, D.C. 20013, (202) 755-8888.
HDS-24—Work Incentive Program: Period within which State Claims must be filed.	A. *Description:* This regulation would establish a 2-year time limit for the payment of claims by the State grantees under the Work Incentive Program in accordance with new legislation. B. *Why Significant:* These regulations are intended to improve the financial management programs under the Social Security Act. C. *Regulatory Analysis:* Not required D. *Need:* The regulation is required by new legislation. E. *Legal Basis:* Section 1132 of the Social Security Act as amended by Pub. L. 96-272 F. Chronology: None G. *Regulatory Flexibility Analysis Required:* No	Acting Executive Director, National Coordination Committee Work Incentive Program, room 5102, Patrick Henry Building, 601 D St., NW., Washington, D.C. 20213, (202) 387-6694.
HDS-25—Runaway Youth Program: Removal of Part 1351.	A. *Description:* This rule removes 45 CFR Part 1351 which deals with the Runaway Youth Program. B. *Why Significant:* Furthers the President's deregulation initiative C. *Regulatory Analysis:* Not required D. *Need:* Removes unnecessary Federal requirements E. *Legal Basis:* 42 U.S.C. 5702 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Warren Master, Acting Commissioner, Administration for Children, Youth and Families, room 5030, Donohoe Bldg., 400 6th St., SW., Washington, D.C. 20013, (202) 755-7773.
HDS-26—Head Start Program	A. *Description:* This will be a complete reorganization and rewrite of all Head Start program regulations to update and simplify requirements and to ensure efficient program operation. B. *Why Significant:* These regulations are being reviewed as a group for the first time. Proposed changes will ensure consistency and better program management. C. *Regulatory Analysis:* Not required D. *Need:* To respond to E.O. 12291 E. *Legal Basis:* Omnibus Budget Reconciliation Act of 1980, Pub. L. 97-35, Section 635 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* Yes	Warren Master, Acting Commissioner, Administration for Children, Youth and Families, room 5030, Donohoe Bldg., 400 6th St., SW., Washington, D.C. 20013, (202) 755-7773.
HDS-27—Social Services Programs under Title XX of the Social Security Act: Omnibus Technical Rules.	A. *Description:* This regulation will delete all references to social services under titles I, IV-A, X, XIV, XVI and XX of the Social Security Act. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) combined the social services programs administered in the territories under titles I, IV-A, X, XIV, and XVI (AABD), and in the States under title XX, into a single block grant known as "The Title XX Block Grant to States for Social Services.". B. *Why Significant:* Since existing regulations governing those programs do not apply to the block grant program, this regulation will delete both entire parts and references within a part that apply to the above grant-in-aid programs replaced by the block grant. C. *Regulatory Impact Analysis:* Not required D. *Need:* To delete unnecessary Federal regulations E. *Legal Basis:* Pub. L. 97-35 F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Mrs. Johnnie U. Brooks, Director, Division of Policy Coordination, Office of Policy Development, Rm. 722-E, Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, (202) 472-4415.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Food and Drug Administration

The Department is considering some significant Food and Drug Administration proposed and final regulations in addition to those listed below. Included among them are those regulations which are listed in the April 30, 1981 semi-annual agenda and which have not yet been published. The need for these regulations is being further reviewed in light of the Secretary's reservation for himself of authority to publish certain FDA regulations. That reservation was published in the **Federal Register** on May 11, 1981.

Title	Summary	Contact
New Drug Approval Process; Revision of IND/NDA Regulations.	A. *Description:* Under section 5(a)(3) of E.O. 12291, FDA is reviewing and will propose to revise the existing regulations for investigational new drugs (IND's) and new drug applications (NDA's) to improve the efficiency of FDA's operation and to update and refine its internal policies in reviewing, processing, and communicating with sponsors and applicants on IND's and NDA's. B. *Why Significant:* These revisions are intended to improve the approval process and the accompanying dialogue between FDA and sponsors of IND's and NDA's. The improvements will benefit consumers through earlier availability of new drugs. C. *Regulatory Impact Analysis:* Yes D. *Need:* Experience with these regulations after a number of years and comments by members of Congress, regulated industries, consumer groups, and the general public have identified areas where the IND and NDA procedures and requirements need updating and improving. E. *Legal Basis:* 21 U.S.C. 355, 357, 371(a) F. *Chronology:* The proposed NDA and IND regulations are expected out of agency and to the Department Nov. 1981 and May 1982 respectively. G. *Regulatory Flexibility Analysis Required:* Yes	IND Regulations: Steven Unger, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5200. NDA Regulations: Michael McGrane, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5200.
Patient Package Inserts for Prescription Drug Products (21 CFR Part 203).	*A. Description:* FDA is reviewing this existing regulation that requires manufacturers of designated prescription drug products to prepare and distribute labeling that is intended for the patient. The regulation requires the dispenser of the product to provide the labeling to the patient when the product is dispensed. B. *Why Significant:* As originally promulgated the regulation was intended to help patients use prescription drugs more safey and effectively. C. *Regulatory Analysis:* Yes D. *Need:* Patients may not pay attention to, understand, or remember important prescription drug information presented orally to them by their physicians. E. *Legal Basis:* 21 U.S.C. 352, 353, 355, 357, 371; 42 U.S.C. 2622 F. *Chronology:* In the FEDERAL REGISTER of April 28, 1981 (46 FR 23739 and 23815), FDA stayed the effective dates of its patient package insert program to permit further review of questions that continue to be raised about the actual costs and benefits of the program and to review the rulemaking with respect to Executive Order 12291. On September 30, 1981 and October 1, 1981 FDA held public meetings to receive information and views from interested persons. The period for submitting written comments closed on October 15, 1981. Comments and other information are being evaluated. G. *Regulatory Flexibility Analysis Required:* To be determined	Michael McGrane, General Regulations Branch (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5200.
Health Planning and Resources Development (42 CFR Parts 121, 122, 123, and 124).	A. *Description:* Health planning regulations, intended to control rising hospital costs, have themselves been costly and appear to have restrained competition within the health care industry. Extensive justification is required for expansion of facilities and services, or changes in acquisition of new equipment. These regulations will be reviewed and ways explored to make them more cost-effective, pending legislative action to terminate the program. B. *Why Significant:* Existing health planning regulations are being reviewed and areas identified where substantive changes can be made to relieve the Federal regulatory burden. Highest priority will be given to those revisions with major deregulatory impact which are consistent with both the limited continuation of the health planning program and its eventual phase-out. These revisions will also incorporate changes needed to implement provisions in the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79), the Health Program Extension Act of 1980 (Pub. L. 96-538), and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). C. *Regulatory Analysis:* Not required D. *Need:* To relieve the Federal regulatory burden on health planning agencies and health care providers and to implement the provisions of Pub. L. 96-79, Pub. L. 96-538, and Pub. L. 97-35. E. *Legal Authority:* Public Health Service Act, as amended (41 U.S.C. 300k-1, 42 U.S.C. 216, 41 U.S.C. 3001-4, 3001-5, 42 U.S.C. 300-o-1, 300-r). F. *Chronology:* None G. *Regulatory Flexibility Analysis Required:* No	Libby Merrill, Director, Policy Coordination Staff Bureau of Health Planning, Health Resources Administration, 3700 East-West Hgwy., Hyattsville, MD 20782 (301) 436-6870; FTS 436-6870.
Reasonable Volume of Uncompensated Services to Persons Unable to Pay (42 CFR Part 124, Subpart F).	A. *Description:* Existing regulations at 42 CFR Part 124, Subpart F, establish specific requirements that recipients of Federal assistance under Title VI or Title XVI of the Public Health Service Act must meet to assure that they will make available, in the facility or portion of the facility constructed, modernized or converted with that assistance, a reasonable volume of services to persons unable to pay for services. B. *Why Significant:* These existing regulations are being reviewed to determine which policies could be revised to increase flexibility in monitoring and enforcement, and in determining levels of uncompensated services to persons unable to pay. C. *Regulatory Analysis:* Yes D. *Need:* To provide greater flexibility in determining compliance with assurance of reasonable volume of uncompensated services to persons unable to pay. E. *Legal Authority:* Public Health Service Act, Sections 215 (42 U.S.C. 216), 1528 (42 U.S.C. 300m-4), 1620(3) (42 U.S.C.), and 1627 (42 U.S.C. 300q-6). F. *Chronology:* Existing regulations (42 CFR Part 124, Subpart F) published in the Federal Register of May 18, 1979 (44 FR 29375). G. *Regulatory Flexibility Analysis Required:* Yes	Florence B. Fiori, Director, Bureau of Health Facilities, Health Resources Administration, 3700 East-West Hgwy., Hyattsville, MD 20782, (301) 436-7700.

DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
	Food and Drug Administration	
Health Maintenance Organizations (42 CFR Part 110).	A. *Description:* Existing regulations at 42 CFR Part 110 establish requirements for the organization and operation of Health Maintenance Organizations (HMOs). B. *Why Significant:* Existing regulations will be revised to conform with the HMO Amendments of 1981 in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). In addition, the regulations, and in particular 42 CFR Part 110, Subparts A and H, which establish requirements for HMOs and for employees' health benefits plans, will be reviewed for the purpose of removing burdensome requirements that are not required by statute or are not necessary for sound program implementation. C. *Regulatory Analysis:* Not required. D. *Need:* To amend existing regulations in conformance with Pub. L. 97-35 and to remove burdensome requirements which hinder the growth and financial soundness of HMOs. E. *Legal Authority:* Public Health Service Act, Sections 215 (42 U.S.C. 216), and 1301-1318 (42 U.S.C. 300c-300c-17). F. *Chronology:* Regulations recently published in the FEDERAL REGISTER at 42 CFR Part 110; Subpart A, October 31, 1980 (45 FR 72524); Subpart H, October 31, 1980 (45 FR 72512). Pub. L. 97-35 enacted on August 13, 1981. G. *Regulatory Flexibility Analysis Required:* Yes	Frank H. Seubold, Ph. D., Acting Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, MD 20857, (301) 443-4106.
Various Categorical Grant Regulations (42 CFR Parts 51b, 51c, 51d, 51f, 55a, 56, and 59).	A. *Description:* Regulations at 42 CFR Parts 51b, 51c, 51d, 51f, 55a, 56, and 59 establish requirements that eligible applicants must meet to receive various Pubic Health Service grants. B. *Why Significant:* These existing regulations are being reviewed to identify and remove burdensome and unnecessary requirements in those Public Health Service regulations for categorical grants that were not included in the block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). C. *Regulatory Analysis:* Not required. D. *Need:* To remove burdensome and unnecessary requirements in existing Public Health Service regulations governing various categorical grants. E. *Legal Authority:* Public Health Service Act, as amended. F. *Chronology:* None. G. *Regulatory Flexibility Analysis Required:* Yes.	Robert L. Spencer, PHS Regulations Officer, Office of the Assistant Secretary for Health, Room 17D06, Parklawn Bldg., Rockville, MD 20857, (301) 443-6330.
Reduction of Recordkeeping and Reporting Requirements (42 CFR Part 1 to Part 399).	A. *Description:* Existing regulations at 42 CFR Part 1 to Part 399 establish specific recordkeeping and reporting requirements that must be met to comply with applicable provisions of the Public Health Service Act and related statutes. Those requirements will be reviewed to identify and eliminate unnecessary or burdensome requirements and to request Office of Management and Budget (OMB) approval for recordkeeping and reporting requirements which have not yet been cleared. B. *Why Significant:* Elimination of unnecessary or burdensome recordkeeping and reporting requirements in existing regulations will assure that paperwork burden demands on the public will be kept to the minimum. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) related to improving the economy and efficiency of the government and the private sector by improving Federal information policymaking and reducing the paperwork burden demand on the public. E. *Legal Authority:* Public Health Service Act, as amended; Paperwork Reduction Act of 1980 (Pub. L. 96-511). F. *Chronology:* None. G. *Regulatory Flexibility Analysis Required:* Yes.	Dr., Gooloo S. Wunderlich, Associate Director for Statistical Policy, Office of Health Research, Statistics and Technology, Office of the Assistant Secretary for Health, Room 17A46, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2940.

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Tuesday
November 10, 1981

Part III

Department of Energy

Office of Conservation and Renewable Energy

Methane Transportation Research and Development

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 478

[Docket No. CAS-RM-81-204]

Methane Transportation Research and Development; Proposed Regulations for Review and Certification of Contracts, Grants, Cooperative Agreements, and Projects

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy ("DOE") hereby issues a notice of proposed rulemaking to implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980. This new Act confers authority on the Secretary of Energy to expend Federal funds in order to undertake research and development activities and conduct demonstrations and technologies for methane-powered vehicles and related facilities used in fleet and farm applications. Today's notice proposes administrative regulations, as required by the Act, that establish procedures for ensuring that new contracts, grants, cooperative agreements, DOE projects, or other agency projects to be funded under the Act, supplement rather than supplant, duplicate, displace, or lessen research and development activities in the private sector. This notice solicits comments on the proposed rule and provides for a public hearing. Were it not for the legal requirement to promulgate these regulations, DOE would not do so because the Administration, as part of its policy of budgetary restraint, has proposed to Congress to prohibit DOE from expending any funds to carry out the Act.

DATES: Written comments must be received on or before January 11, 1982.

Public hearing: 9:30 a.m., December 4, 1981. Requests to speak must be received by 4:30 p.m., e.s.t., November 20, 1981. DOE will notify by November 25, 1981, persons selected to speak. Persons selected should bring 15 copies of their hearing statements to the hearing location.

ADDRESSES: Written comments and requests to speak should be addressed to: Department of Energy, Hearing and Dockets, Mail Stop 6B-025, Room 1F-085, 1000 Independence Avenue, SW., Washington, D.C. 20585 (Attn. Docket CAS-RM-81-204), Telephone (202) 252-9319.

Public hearing location: Forrestal Building, Room GJ-015, 1000 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Ralph D. Fleming, Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-8055

Jo Ann Scott, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9516

Hearings and Dockets (Hearing Procedures), Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Room 1F-085, Washington, D.C. 20585, (202) 252-9319

SUPPLEMENTARY INFORMATION:

I. Introduction

A. General

DOE today gives notice of proposed regulations setting forth procedures, standards, and criteria for review and certification of new contracts, grants, cooperative agreements, DOE projects, and other agency projects under its Methane Transportation Research and Development Program. Section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980 ("ACT" or "Methane Act"), Pub. L. 96-512, 94 Stat. 2827, requires promulgation of these regulations. The objective of this review and certification program is to ensure that Federal funds to expended under the Act do not support efforts on research and development ("R&D") of methane-fueled vehicles and related facilities that supplant, duplicate, displace, or lessen the same efforts occurring or that have occurred in the private sector. These regulations, when final, will apply to any R&D contracts, grants, cooperative agreements, DOE projects, and other agency projects to be funded under the Act, including activities conducted by employees of Federal agencies.

The Administration is not seeking funds for implementation of the Methane Act. In proposed budget amendments for FY 1982 (H.D. 97-29), language has been proposed for incorporation into DOE's FY 1982 appropriation that would preclude the expenditure of such funds to implement the Act. Despite this action, the present statutory requirements, that DOE promulgate the administrative regulations under section 4(d), stand until Congress provides otherwise.

B. Statutory Background

The purpose of the Act is to establish a program within DOE involving simultaneous R&D activities and demonstrations of technologies for vehicles operating on methane as well as for related supportive facilities. The Act and the regulations proposed today define "methane" as either natural gas as defined in section 2(1) of the Natural Gas Policy Act of 1978), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources. The program provides for advanced and accelerated research into methane vehicle design, methane distribution systems, and storage faciltiies. It is also intended to demonstrate the economic and technological practicalities of methane-fueled vehicles for fleet use and on-farm operations.

The statutory provisions governing the requirements and applicability of the review and certification program are the six subsections of section 4(d) and the provisions of section 5(a).

Section (d)(1) of section 4 sets forth the substantive policies to be followed by DOE in the exercise of its overall management responsibility for conducting the program. The subsection requires DOE to conduct the program so as to supplement private industry R&D efforts, and avoid supplanting, duplicating, displacing, or lessening those efforts.

Section (d)(2) requires DOE to issue the administrative regulations, which are published in proposed form today. Procedures, standards, criteria, and certification requirements are the specified content of these regulations. The subsection calls for discussion in

the certification of the relationship of any related or comparable industry R&D to the R&D proposed to be conducted under the Act, as well as related issues such as cost sharing and patent rights. Section (d)(3) requires that the certifications be available to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources. In addition, the subsection makes certifications subject to public disclosure under the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development act of 1974, as amended. However, the subsection does not permit judicial review of any certifications and otherwise exempts them from coverage by the Administrative Procedures Act.

Sections (d)(4) and (d)(5) require that a discussion similar to that contained in the certifications be included in annual reports and budget submissions under the Act.

Section (d)(6) limits the scope of section 4(d) to new contracts, grants, cooperative agreements, DOE projects, or other agency projects. It excludes from coverage the contracts, grants, cooperative agreements, DOE projects, or other agency projects formally initiated prior to enactment, as well as any renewal or extension thereof.

Section 5 directs the Secretary to coordinate the functions of this program with related regulatory activities and other responsibilities of DOE and other Federal departments or agencies, and directs other entities within the Federal executive branch to carefully consider any written request for assistance from the Secretary.

II. Development of Proposed Regulations

The proposed regulations would ensure that R&D supported under the Act will not supplant, duplicate, displace, or lessen similar efforts occurring in the private sector. The procedures established in these regulations are intended to make certain that DOE program officials are fully cognizant of related R&D being carried out under private auspices. In particular, the requirement of an annual review of industry programs and the requirement that a DOE program plan be prepared annually and reviewed by the private sector and other Federal agencies provide an explict vehicle for identifying possible areas of duplication prior to the commitment of DOE funds. Other Federal agencies which may comment include, but are not limited to, the Department of Transportation ("DOT"), Department of Agriculture ("USDA"), Environmental Protection Agency ("EPA"), National Aeronautics and Space Administration ("NASA"), Department of Defense ("DOD"), Department of Commerce ("DOC"), and National Science Foundation ("NSF").

The process is intended to be flexible to enable DOE officials to be well informed about current R&D in the area of methane transportation. They then will be able to accurately exercise professional judgment in the course of determining certification as required by the Act. Such certification may be carried out concurrently with technical review of applications for R&D support in order that applicants may receive prompt and complete decisions from DOE on the disposition of their proposals.

The proposed regulations differ from the approach taken by DOE in implementing similar requirements with respect to automotive propulsion under Pub. L. 95–238. While that approach was cited favorably by the report of the Senate Committee on Energy and Natural Resources (S. Rept. 96–1006), the approach proposed today is preferable since it reduces the burden on the public. It does so by providing for critique of overall program plans prior to program execution rather than soliciting comments on a project-by-project basis. Further, the proposed approach places responsibility for knowledge of private sector activities squarely upon the Federal program manager rather than relying upon the private sector to object to individual projects on a case-by-case basis. It is believed that the regulations proposed will more fully permit DOE to carry out the Act than would the approach used to implement Pub. L. 95–238, because it will require the appropriate Federal officials to have public comments in the context of the entire methane transportation R&D program.

III. Discussion of Proposed Regulations

A. General Operation of Proposed Program

R&D projects can be conducted under a variety of arrangements, and although not all of these arrangements may be used, the regulations proposed today are designed to anticipate all the possibilities. Under the Act, the possible arrangements are R&D—

1. By employees of DOE or national laboratories operated by DOE (DOE project);

2. By employees of other Federal agencies or national laboratories operated by other Federal agencies (agency project);

3. Under an unsolicited or solicited contract, grant, or cooperative agreement entered into by DOE with a person, private organization, or non-Federal public agency; and

4. Under an unsolicited or solicited contract, grant, or cooperative agreement entered into by a Federal agency other than DOE (such as NASA) with a person, private organization, or non-Federal public agency pursuant to an interagency agreement with DOE.

The major features of the proposed regulations are:

1. Development and compilation of information for use by DOE and other program managers, identifying industry R&D relevant to the Act;

2. Reviewing requested comment on DOE program plans by industry and other Federal agencies;

3. Standards and criteria to prevent duplication, displacement or lessening of private industry R&D;

4. Review and certification of proposed projects by program managers with the assistance of appropriate technical experts.

In the event that a manager is dealing with an application or proposal for a new contract, grant, or cooperative agreement, the proposed regulations call for completion of the review process prior to actual negotiation of the agreement with the result to be promptly reported to the applicant. The certification document will be prepared by the manager in advance of such a negotiation, but not formally signed until the negotiations are completed. In this way, no applicant for a contract, grant, or cooperative agreement will have to negotiate with uncertainty as to the outcome of the review process under the regulations.

DOE emphasizes that the procedures and requirements proposed today as 10 CFR Part 478 are in addition to, rather than in substitution for, the general contract, grant, and cooperative agreement procedures and requirements of whichever Federal agency funds the research (in the case of DOE, 10 CFR Part 600 for grants and cooperative agreements and the Federal procurement regulations as modified by 41 CFR Chapter 9 for contracts). Certification under 10 CFR Part 478 does not constitute the award of the contract, grant, or cooperative agreement, but certification is necessary before an award can be made.

B. Specific Provisions of Proposed Regulations

1. *Development of Information Describing Industry R&D.* Under § 478.3, today's proposal would ensure that no contract, grant, cooperative agreement, DOE project, or agency project be

certified without the program manager having undertaken systematically to determine its relationship to ongoing industry activities relevant to the Act. This determination will be based on current information concerning industry R&D activities for methane-powered vehicles and related facilities. This information can be developed through analysis of current technical literature, through searching subject data archives such as the National Technical Information Center or the Smithsonian Science Information Exchange, and through contacts with private sector organizations performing related R&D. A formal mandatory survey using a standardized survey instrument is not proposed due to the burden it would place on respondents and the problems of designing categories to avoid problems with proprietary data or information. Assembly of such information annually is intended to provide the funding agency with a background needed to make informed professional judgments. The information, including the sources and contacts, will be complied by the program manager, and excluding any proprietary information, will be available to the public.

2. *Comments on DOE Program Plan.* In accordance with sound R&D management principles, DOE must necessarily complete a written plan for program execution before committing public funds each fiscal year. As part of the process of ensuring that planned program commitments will not supplant, duplicate, displace or lessen private-sector efforts, this plan will be subject to review and comment by experts in public and private organizations. The program manager will request comments from other Federal agencies, such as DOT, EPA, NASA, USDA, DOD, DOC, and NSF, which have an interest in the outcome of the R&D or which have potentially duplicating activities. To carry out the purposes of the Act, the reviewers will be asked to comment on the appropriateness of Federal versus private sector support for the R&D projects as well as on the technical substance of the program plan. A notice of the availability of the program plan for comment will be placed in the *Commerce Business Daily* and the **Federal Register** in order to assure that the opportunity exists for all interested parties to comment. The program manager will keep a record of those notices and of the comments received and of their disposition, and this record will be available to the public; however, final responsibility for the content of the DOE program plan must rest with the judgment of the DOE program manager.

3. *Standards and Criteria.* The standards and criteria in § 478.8 are the basis for determining whether a contract, grant, cooperative agreement, DOE project, or other agency project is certifiable under the Act. As noted above, they are in addition to the normal requirements of DOE or other Federal agencies for the award of contracts, grants, or projects.

The proposed § 478.8 states six related standards and criteria in general terms. If adopted, these standards and criteria would permit certification only upon findings that the R&D to be performed—

1. Supplements private R&D on methane-fueled vehicles and related facilities;

2. Is not duplicative of previously abandoned R&D without good cause;

3. Would not be performed during the term of the award without Federal funding;

4. Results in an accelerated target date for commercialization;

5. Is not duplicative of successful past and current private R&D; and

6. Does not constitute a Federal subsidy of existing efforts but rather accelerates R&D efforts by an applicant for a contract, grant, or cooperative agreement.

These standards and criteria are based on the language of the Act and DOE experience in setting standards and criteria for the automotive propulsion program under the DOE Act of 1978.

4. *Review by Manager.* The proposed regulations define the term "manager" to mean the program official who requests that a contracting officer negotiate a contract, grant, or cooperative agreement; who authorizes the start of a DOE project as defined in § 478.2; or who requests that a contracting officer authorize transfer of DOE funds for an agency project as defined in § 478.2. DOE and agency projects are conducted only by full-time Federal employees or employees of Federal national laboratories. In some instances, the manager will be an employee of DOE, in others, an employee of another agency, such as DOT or NASA. The manager should not be the employee responsible for formal negotiation of a grant, contract, or cooperative agreement.

The timing of the review differs depending upon the arrangement under which the proposed R&D is to take place. For unsolicited proposals for contracts, grants, or cooperative agreements, the manager will be reacting to a proposal from outside the Federal Government. In the case of solicitations for contracts, grants, or cooperative agreements, the manager will be reviewing the solicitation prior to its release, and the manager will also be responsible for reviewing incoming proposals at a later stage of the certification process.

5. *Information Required from Applicant.* Apart from the general information resources, which will bring about informed decisionmaking under the review and certification system proposed today, the proposed regulations call for project-specific information or justification from applicants for contract, grant, or cooperative agreements. This specific material will enable managers to focus on the impact a contract, grant, or cooperative agreement would have upon the R&D program of the applicant in light of the standards and criteria of § 478.8. The requirements for this material are set forth in § 478.5 of the proposed regulations and, in responding to them, the applicant will provide information necessary to apply the standards and criteria.

In some instances, § 478.5 asks questions calling for simple answers:

1. Will the R&D initiate or continue an R&D program?

2. What is the expected delay in an applicant's timetable for the development of a methane-fueled vehicle or related facility that would occur but for the grant, cooperative agreement, or contract?

In other instances, complex responses may be anticipated. For example, the proposed section would have applicants—

1. Discuss allegedly comparable industrial R&D; and

2. Justify further R&D of abandoned systems.

In casting the provisions of § 478.5, DOE has sought to minimize the burden of responding, consistent with its statutory obligations. Under this section, an applicant would have to provide a written certification to DOE that the grants, cooperative agreement, or contract funds would represent a real year-to-year increase in the expenditure of the applicant's resources. DOE has not asked for submission of detailed budget figures because it believes that the possibility of an investigation and the possible consequences of discovery are enough to warrant belief in the veracity of such assurance. DOE also wishes to minimize the burden and cost of applying for a grant, cooperative agreement, or contract.

Applicants or other persons submitting information under the

regulations should bear in mind that DOE is subject to the disclosure requirements of the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development Act of 1974.

6. *Certification.* Based on a consideration of all relevant information, including the DOE program plans and comments thereon, data from appropriate Federal agency and private sector sources compiled annually under § 473.3, as well as information submitted by the applicant, the manager decides whether to certify the proposed R&D project. Examples of private sector sources are: international symposia; foreign and domestic fleet operations using methane fuel; professional and manufacturing organizations such as the Society of Automotive Engineers, the American Society of Mechanical Engineers, the American Gas Association, and the Motor Vehicle Manufacturers Association; and semiannual Contractor Coordination Meetings at which DOE staff and contractors report on the status of advances in automotive technology. If the manager is not an employee of DOE, the proposed regulations require DOE concurrence in the certification decision. DOE concurrence stems from its overall management responsibility stipulated in the Act. Negative decisions are to be communicated in writing to applicants in the case of contracts, grants, or cooperative agreements. Affirmative decisions will lead to preparation of a certification of the contract, grant, cooperative agreement, DOE project, or other agency project, with distribution of copies to the applicant and DOE program manager, as appropriate.

Reflecting the provisions of section 4(d) of the Act, the proposed regulations require the manager to include in the certification a discussion of the contract, grant, cooperative agreement, or agency project R&D to be performed, showing compliance with the applicable standards and criteria and any arguably comparable private R&D. Also reflecting statutory demands, the proposed regulations require that the certification deal with cost sharing and patent rights, where relevant, in the case of grants, cooperative agreements, or contracts. The information on cost sharing and patent rights will also be incorporated in the actual award.

The proposed regulations also contain § 478.5, describing the extent to which certifications are subject to review or disclosure. The provisions of that section are drawn from the statute and are included for the convenience of readers of the Code of Federal Regulations.

C. Review Under the Regulatory Flexibility Act of 1980

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. DOE has concluded that a regulatory flexibility analysis is not necessary because the main function of these regulations is to define the procedures which DOE itself will follow. The chief effects of these regulations on small businesses and other sections of the industry and the public will be the minor delay involved in processing proposals, and potential savings on duplicative R&D. The costs to small businesses and other sections of the public for compliance with these regulations will be comparatively small and limited to the costs of providing information in an application for a grant, cooperative agreement, or contract.

Furthermore, only new contracts, grants, cooperative agreements, and projects will come under the regulations. The Act and regulations specify that the renewals and extensions of existing contracts, grants, cooperative agreements, or projects are not subject to the review and certification program.

For all the above reasons, this hereby certifies that 10 CFR Part 478 will not have a significant economic impact on a substantial number of small entities.

D. Review Under Executive Order 12291 and OMB Circular A–116

These regulations were also reviewed under Executive Order 12291 (46 FR 13193, February 19, 1981), implementing DOE directives thereunder, and Office of Management and Budget ("OMB") Circular A–116. These regulations are not "major" according to the terms of the Executive Order, for the reasons stated in discussion of the Regulatory Flexibility Act. That is, they do not result in an annual effect on the economy of $100 million or more; a major increase in costs for consumers, industries, or government; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of domestic businesses to compete with foreign enterprises. These regulations will not have an impact which is truly major in terms of gross economic and social effects or of promoting achievement of national energy conservation goals. Therefore, they do not require analysis under Executive Order 12291 or an urban community impact analysis under OMB Circular A–116.

E. Review Under the Paperwork Reduction Act of 1980

A copy of these regulations has been submitted to the Director of OMB for review under the Paperwork Reduction Act of 1980 (Pub. L. 95–511). DOE recognizes that OMB approval is necessary under section 3507 of Pub. L. 96–511 in order to request the applicant information required under § 478.5 of this notice. However, DOE is not yet requesting OMB approval because the Administration is not seeking funds to implement the Methane Act. Should funds be appropriated for the methane R&D program, OMB approval will be obtained prior to any information gathering under § 478.5 of this notice.

IV. Environmental Considerations

DOE has concluded that promulgation of these regulations does not require preparation of an environmental assessment or of an environmental impact statement under the National Environmental Policy Act ("NEPA") of 1969 (42 U.S.C. 4321, et. seq. (1970)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (45 FR 20694, March 28, 1980). The regulations are procedural in nature and their issuance will not result in a predictable significant environmental impact. DOE is, however, committed to ensuring that individual contracts, cooperative agreements, grants, or projects executed by DOE will comply with applicable requirements of NEPA.

V. Federal Grant and Cooperative Agreement Act of 1977

The Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501–509 (1970)) requires that the appropriate assistance instrument (grant or cooperative agreement) or procurement contract be used in Federal assistance or acquisition programs. The proposed regulations refer to cooperative agreements because DOE anticipates that there may be instances when section 6 of the Federal Grant and Cooperative Agreement Act will permit their use because of substantial involvement between DOE and the recipient.

VI. Period for Public Comment

A 60-day comment period is being provided for public review and comment on this proposed rulemaking.

VII. Comment and Public Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to today's proposed procedures, standards, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation—Methane Transportation R&D—Proposed Rule (Docket No. CAS-RM-81-204). Ten copies should be submitted. All comments received before 4:30 p.m., e.s.t. on (date TBD) and all other relevant information will be considered by DOE before final action is taken on the proposed regulations. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, appropriately labeled for limited disclosure, and ten copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE will make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Hearing Procedures

The time and place of the public hearing are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before 4:30 p.m. e.s.t. on November 20, 1981, and may be hand delivered to such address, between the hours of 9 a.m. and 5 p.m. e.s.t., Monday through Friday. A request should be labeled both on the document and on the envelope—Methane Transportation R&D—Proposed Rule (Docket No. CAS-RM-81-204).

The person making the request should briefly describe the interest concerned, state why she or he is a proper representative of a group or class of persons that has such an interest, if appropriate, and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day before the hearing.

DOE will notify, before 4:30 p.m. e.s.t., November 25, 1981, each person selected to appear at the hearing. Each person selected to be heard should bring 15 copies of her or his statement to the hearing location.

C. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the registration desk. DOE will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, DOE hereby proposes to amend Chapter X of title 10, Code of Federal Regulations, by establishing Part 478 as set forth below.

Issued in Washington, D.C., October 20, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR is amended by adding a new Part 478, reading as follows:

PART 478—METHANE TRANSPORTATION RESEARCH AND DEVELOPMENT; REVIEW AND CERTIFICATION OF CONTRACTS, GRANTS, COOPERATIVE AGREEMENTS, AND PROJECTS

Sec.

Authority: Methane Transportation Research, Development, and Demonstration Act of 1980, Pub. L. 96-512, 94 Stat. 2827 (15 U.S.C. 3801); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 note).

§ 478.1 Purpose and scope.

These regulations implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980 (15 U.S.C. 3801), and apply to each new contract, grant, cooperative agreement, Department of Energy (DOE) project, or other agency project funded or to be funded under the research and development authority conveyed upon the Secretary of Energy by that Act. These regulations do not apply to subcontractors, contractors under grants or cooperative agreements, or to contracts, grants, cooperative agreements, DOE projects, or other agency projects entered into, made, or formally approved and initiated prior to December 12, 1980, or with respect to any renewal or extension thereof. Insofar as contracts, grants, and cooperative agreements are concerned, these regulations provide procedures and requirements, in addition to those generally applicable under the assistance and procurement regulations of the Federal agency funding the research and development under the Act.

§ 478.2 Definitions.

For purpose of these regulations—

"Act" means the Methane Transportation Research, Development, and Demonstration Act of 1980, Pub. L. 96-512, 94 Stat. 2827 (15 U.S.C. 3801).

"Agency project" means research and development requested by DOE under the Act performed by employees of a Federal agency or of a national laboratory operated for a Federal agency.

"Applicant" means any private laboratory, university, nonprofit organization, industrial organization, private agency, institution, organization, corporation, partnership, individual, or public agency other than a Federal agency.

"DOE" means the United States Department of Energy.

"DOE project" means research and development under the Act by employees of DOE or of a national laboratory operated for DOE.

"Federal agency" means an executive agency as defined by 5 U.S.C. 105.

"Manager" means the Federal program official who requests that a contracting or grants officer negotiate a contract, grant, or cooperative agreement; who requests that a contracting officer authorize transfer of DOE funds for an agency project; or who authorizes a DOE project to begin.

"Methane" means either natural gas (as defined in section 2(1) of the Natural Gas Policy Act of 1978), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources.

"Related facilities" means any facility for the transmission, storage, or dispensing of methane fuel for vehicles.

"Research and development" means activities constituting a project to advance the state of the art of methane-fueled vehicles or related facilities and does not mean activities involving technology transfer to mass production, evaluative testing, preliminary planning for a DOE or an agency project, or program administration and management.

"Solicitation" means a formal, written request for proposals/applications to perform research and development under a contract, grant, or cooperative agreement, typically including evaluation criteria and a statement of the work to be done or areas to be investigated.

"Vehicle" means any truck, van, station wagon, bus, or car used on public roads or highways as well as off-road agricultural equipment, such as tractors, harvesters, and so forth, which currently burn gasoline or diesel fuel.

§ 478.3 Development of information on industry research and development.

Before completing program planning for each fiscal year, the manager shall search appropriate data archives to identify planned, ongoing, or completed research and development on methane-fueled vehicles and related facilities. In addition, when necessary the manager shall contact private sector entities to determine the nature of any research and development of this kind which they may be planning or conducting. This information, which will provide a data base for making certifications under § 478.6, shall be compiled and made available to the public, after removal of any proprietary information as described in 10 CFR § 1004.10(b)(4).

§ 478.4 Review of DOE program plans.

In formulating a program plan for the program authorized by the Act, the DOE manager shall make the draft program plan available for review and shall solicit comments from persons, in both the private sector and other Federal agencies, concerned with research and development of methane-powered vehicles and related facilities. At the same time, the manager shall place in the *Commerce Business Daily* and the **Federal Register** notices that the plan is available for comment. The manager shall take these comments into account in ensuring that planned projects will not supplant, duplicate, displace, or lessen private sector activities as provided in the Act. The manager shall maintain and make available a record of the comments solicited and received, and shall include in the paragraph plan a discussion of the consideration of the comments.

§ 478.5 Required information from applicant.

Any proposal for a contract, grant, or cooperative agreement, under the Act to support research and development activities of methane-fueled vehicles or related facilities must—

(a) State whether the activities will initiate or continue research and development of methane-fueled vehicles or related facilities;

(b) State, insofar as the applicant has information, whether and to what extent the activities to be supported are technically the same as activities conducted previously or to be conducted during the term of the award by any person for research and development of a substantially similar methane-fueled vehicle or related facility;

(c) Justify research and development activities on methane-fueled vehicles or related facilities abandoned by any person because of a lack of mass production potential by presenting information showing a significant intervening technological advance, promising conceptual innovation, or other special consideration;

(d) Provide an assurance that the amount of the applicant's own funds to be expended for research and development of methane-fueled vehicles or related facilities will not be diminished as a result of the award of a contract, grant, or cooperative agreement.

(e) Provide to the extent possible—

(1) An assurance that the time period for completing research and development of the methane-fueled vehicles or related facilities is likely to be shorter as a result of a contract, grant, or cooperative agreement; and

(2) The estimated delay, if any, which is likely to occur if the application for a contract, grant, or cooperative agreement is denied.

Information required from the applicant shall also be set forth in the solicitation notice for a contract, grant, or cooperative agreement.

§ 478.6 Review and certification by manager.

(a) The manager shall reject any proposal that has not been completed in accordance with § 478.5 of these regulations or any other generally applicable requirements for the submission of proposals. A rejected proposal may be corrected, amended or resubmitted as permitted by the applicable procedures under the assistance and procurement regulations of the Federal agency receiving the proposal.

(b) After the preliminary review and prior to recommending that contracting officials negotiate an award, the manager shall review the proposed research and development to be performed under contract, grant, or cooperative agreement, to determine whether the proposed project meets the standards and criteria of § 478.8.

(c) Upon consideration of all relevant information, including the DOE program plan, any applicable comments on the program plan, information on private-sector research and development programs compiled annually under § 478.3, and all material submitted by the applicant, the manager—

(1) Shall determine whether the research and development to be performed complies with the standards and criteria of § 478.8;

(2) Shall obtain the concurrence of DOE on the certification decision, either affirmative or negative, if the manager is not an employee of DOE;

(3) Shall, in the event of a negative determination under this section, advise the applicant of the decision in writing with a brief statement of supporting reasons; and

(4) Shall, in the event of an affirmative determination under this section, prepare a certification—

(i) Explaining the determination;

(ii) Discussing any allegedly related or comparable industrial research and development considered and not deemed to be an adequate basis for not certifying the contract, grant or cooperative agreement;

(iii) Discussing issues regarding cost sharing and patent rights related to the standards and criteria of § 478.8 of these regulations; and

(iv) Discussing any other relevant issue.

(d) After complying with paragraph (c) of this section, the manager shall sign the certification and distribute copies to the applicant, if any, and to DOE, if the manager is not a DOE employee—

(1) Immediately in the case of a DOE or agency project; and

(2) After the agreement has been negotiated in the case of a contract, grant, or cooperative agreement. The applicant's copy shall accompany the award. In this case, the manager shall informally notify the applicant of the outcome of his decision under paragraph (c)(1) of this section as soon as possible after it is made.

§ 478.7 Disclosure and reviewability of certification.

Any certification issued under these rules is—

(a) Subject to disclosure under 5 U.S.C. 552 and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, 42 U.S.C. 5918; and

(b) Available to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate; and

(c) Subject neither to judicial review nor to the provisions of 5 U.S.C. 551–559, except as provided under paragraph (a) of this section.

§ 478.8 Standards and criteria.

Research and development to be performed under a contract, grant, or cooperative agreement, as a DOE project, or as an agency project under the Act may be certified under these regulations only if the research and development to be conducted—

(a) Supplements the research and development efforts of industry or any other researcher on methane-fueled vehicles or related facilities;

(b) Is not duplicative of efforts previously abandoned by private researchers unless the project has been justified by an intervening technological advance, promising conceptual innovation, or other special consideration;

(c) Would not be performed during the term of the award but for the availability of the Federal funding being sought;

(d) Is likely to produce an advanced methane-fueled vehicle or related facility suitable for steps toward technology transfer to mass production in a shorter time period than would otherwise occur;

(e) Is not technologically the same as efforts, by any person, conducted previously or to be conducted during the term of the award regarding a substantially similar advanced methane-fueled vehicle or related facility; and

(f) Is not likely to result in a decrease in the level of private resources expanded for research and development on methane-fueled vehicles and related facilities by substituting Federal funds without justification.

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federal register

Tuesday
November 10, 1981

Part IV

Department of Agriculture

Office of the Secretary

Uniform Federal Assistance Regulations

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Uniform Federal Assistance Regulations

AGENCY: Department of Agriculture (USDA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes Department-wide policies and standards for administration of grants and cooperative agreements. Issuance of these regulations will effect uniformity in policy and standardization of guidance for all USDA Agencies providing assistance through grants and cooperative agreements. The rules primarily implement OMB Circulars A–102 and A–110, which standardize the administration of grants and cooperative agreements, and specify the principles for determining allowable costs under USDA grants and cooperative agreements.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Deputy Director, Finance, Office of Operations and Finance, USDA, Room 131–W, Administration Building, Washington, D.C. 20250 (Telephone (202) 447–7161).

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this rule will directly affect recipients of Federal assistance received from agencies administrated by the Department of Agriculture, this rule does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, it will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). This determination is based on the fact that these final rules publicly implement the policies already published by the Office of Management and Budget (OMB) in Circulars A–102, A–110, A–87, A–21 and A–122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977 (43 FR 36860, August 18, 1978). In addition, USDA Federal assistance will be provided to recipients pursuant to the authorities and restrictions in program statutes and USDA authorizations and appropriations acts.

Introduction

USDA is legally responsible for approximately 100 Federal assistance programs. All of these programs and related activities are the result of specific authorizations and agency regulations or directives. USDA programs cover a broad spectrum of activities, encompassing direct payments, grants, cooperative agreements, subsidies, loans, loan guarantees, insurance, services, information, and property donation. In the past, USDA issued internal regulations on administration of grants and cooperative agreements which directed the agencies to implement USDA, OMB and other guidance agencies' policies and directives through issuance of their own individual agency assistance regulations or directives. This prior policy procedure has lead to confusion, duplication and complexity in the administration and management of Federal assistance provided by USDA.

Additionally, Pub. L. 95–224, the "Federal Grant and Cooperative Agreement Act of 1977," and the implementing guidance and study issued by OMB emphasized the need for uniform policy and standardization of guidance for all assistance programs. In line with the recommendations in the study report of Pub. L. 95–224, OMB is responsible for establishing and directing a program to improve Federal assistance management. Heads of Executive Departments and Selected Agencies are to (1) fully cooperate with the Director of OMB, (2) designate an official or unit to act as a focal point for coordinating internal assistance-related policies and procedures, and work with other agencies and the public, and (3) insure that the management of assistance programs meets the performance standards to be developed by OMB.

Within USDA, the Assistant Secretary for Administration is the focal point for coordinating internal assistance-related policies and procedures and working with other agencies and the public. The Deputy Director, Finance, Office of Operations and Finance, is the internal coordinator for the day-to-day operations dealing with USDA assistance programs.

Additionally, the Inspector General Act of 1978 (Pub. L. 95–452) consolidates all responsibility for audits with the Inspector General. Therefore, the audit requirements set forth in subpart I implement Attachment P of Circular A–102 and are applicable to all Federal assistance provided by USDA agencies to State and local governments and Indian Tribal governments. Attachment P requires that all such entities that are recipients of Federal assistance have an organization-wide financial and compliance audit at least once every two years. The audits are to be performed by independent State or local government auditors or independent public accountants, under arrangements made by the recipients. It is intended that a single audit of each of these entities will meet the needs of all parties concerned and that no additional requirements to perform or obtain audits be placed upon the recipients, except as prescribed by law. The audits are to be performed in accordance with a standard guide published by the General Accounting Office, compliance supplements approved by OMB, and audit standards established by the Comptroller General and the American Institute of Certified Public Accountants. Attachment P also establishes a cognizant audit agency structure. This means that each State department, local government, Indian Tribal government, or subdivision of such entities, that receive Federal assistance, is assigned to a Federal audit agency which will act on behalf of all Federal audit agencies in dealing with the audit requirements of Circular A–102 concerning a specific recipient organization. Attachment P does not limit authority of Federal agencies to make additional audits of recipient organizations as they deem necessary.

On July 20, 1981, the Department of Agriculture published proposed Uniform Federal Assistance Regulations (46 FR 37252, July 20, 1981) to establish Department-wide policies and standards for administration of grants and cooperative agreements. Comments on this proposal were requested by September 3, 1981.

Part 3015 primarily consolidates internal policies and procedures into one document which will be readily available to the public and where all interest parties may find the great majority of the administrative rules applicable to USDA grants, cooperative agreements and subgrants. The majority of the policies and procedures set forth in Part 3015 are derived from OMB Circulars A–102, A–110, A–87, A–122, and A–21.

During the comment period, the Department received 38 letters in response to the proposed rulemaking for Part 3015. Letters were received from 11 universities, 7 State agencies, 1 Indian agency, 2 public interest groups, 16 USDA agencies and regional offices and

the Office of Management and Budget. In light of the comments received, the Department has made various changes, primarily clarifying policies and procedures.

Discussion of Comments

Subpart A—General

Six commenters expressed concern that agency adminstrative manuals, such as the Agriculture Handbook 381 (Hatch Administrative Manual), will be superseded by Part 3015. Section 3015.1(b) as published in the July 20, 1981, **Federal Register**, states that these rules supersede and take precedence over any individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on statutory provision or an exemption from OMB. USDA recognizes that program-specific manuals and directives may be necessary to supplement these regulations in order to meet the requirements of the individual USDA programs. However, such guidance should be consistent with Part 3015 except, in those instances, where the agency guidance is based on a statutory provision or OMB has provided an exception to all or certain provisions of the Circulars.

Accordingly, if any inconsistent provisions are found in existing USDA agency regulations and directives, such as the Hatch Manual and the Extension Administrative Handbook, such regulations and directives are not superseded automatically in their entirety by Part 3015. To the extent that such USDA agency regulations and directives are consistent with Part 3015 and to the extent that any deviations therein are based on statute or an exception from OMB, such regulations and directives continue to be in effect. Part 3015 supersedes and takes precedence only over specific provisions in such regulations and directives, if any, which directly conflict with the provisions of Part 3015 and which are not based on statute or an exception from OMB. USDA agencies are expected to review existing agency regulations and directives to remove any unauthorized inconsistencies as soon as possible.

Two commentors asked whether previous exceptions from the Office of Management and Budget will remain in effect upon implementation of part 3015. Exceptions from provisions of OMB Circulars for the administration of grants and cooperative agreements, which were granted by OMB prior to the publication of this part, will remain in effect for the time granted by OMB, unless later rescinded by OMB. We have included a new § 3015.3(d) to specifically state this.

Two commentors questioned whether formula funds are covered by Part 3015. The term "formula funds" is the same as "mandatory grants" in these regulations. As noted in § 3015.2(a), this part applies to USDA grants and cooperative agreements. This is true regardless of whether the grant is mandatory or formula, or discretionary. Therefore, formula funds are covered by part 3015. Additionally, throughout the regulations, any references to "mandatory grants" have been amended to read "mandatory or formula grants."

Subpart B—Cash Depositories

Six comments were received on this subpart from USDA agencies. Changes recommended were not in compliance with OMB Circulars A–110 and A–102. Therefore, no substantive changes were made.

Subpart C—Bonding and Insurance

Several comments of a general nature were received from USDA agencies on this subpart. However, the comments were inconsistent with OMB Circulars A–102 and A–110. Therefore, no changes were made.

Subpart D—Record Retention and Access Requirements

One commentor recommended that the word "programmatic" records be deleted in § 3015.20(a) because it was too broad and could lead to misinterpretation. We concurred with this recommendation and have deleted "programmatic" records. This section now conforms to language set forth in OMB Circulars A–102 and A–110.

Additionally, one commentor recommended that a paragraph be added requiring a three year record retention period for nonexpendable property being charged to programs. This paragraph has been added and is consistent with OMB Circulars A–102 and A–110.

Subpart E—Waiver of "Single" State Agency Requirements

This section was revised to reference Section 204 of the Intergovernmental Cooperation Act of 1968 as the basis for authorizing Federal agencies to waive "single" State agency requirements on requests of the Governor or other duly constituted State authorities.

Subpart F—Grant Related Income

Four comments were received indicating a desire for further clarification in definitions of income. We have attempted to clarify these sections on income by an expansion of § 3015.40.

Subpart G—Cost Sharing or Matching

Twelve general comments were received on subpart G. One commentor recommended that OMB Circular FMC 73–3 should be cited in this section. However, this Circular was recently rescinded by OMB. Two commentors requested that a reference to subpart T, Cost Principles, be cited in this section. This has been included in § 3015.51. Other minor changes were made for clarity.

Subpart H—Standards for Financial Management Systems

Four commentors observed that § 3015.61(a) conflicted with the requirements of § 3015.82(b). Section 3015.62(b) has been clarified to indicate that the provisions of the grant or subgrant may specify that reports be on either a cash or accural basis. If not specified in the grant award, recipients shall report program outlays and program income on the same accounting basis which they use in their accounting system.

Subpart I—Audits

Thirty-eight comments were received on this subpart. The commentors made general observations and specific comments on the audit requirements. Specific comments are addressed below.

The phrase "on at least a biennial basis" was added to § 3015.70 for clarity. To eliminate the appearence of USDA imposing its regulations on other federal agencies, the phrase "or other federal agencies" has been deleted. Two commentors suggested that the language in § 3015.70(d) inferred that USDA could impose additional audit requirements on recipients. This section has been reworded to eliminate the inference that USDA may impose additional requirements on recipients.

Two commentors suggested that § 3015.72(b) pertaining to the Memorandum of Understanding was not clear and that further explanation was needed. This section has been deleted based on a determination that it is ambiguous and unnecessary.

One commentor suggested that § 3015.73(3) pertaining to coordination of procurement documents with the Cognizant Agency was in conflict with OMB Circular A–102, Attachment O. The section has been revised to

eliminate the conflict with Attachment O requirements.

One commentor suggested that § 3015.74(d) was not clear as to its purpose and intent. We have attempted to clarify the section by incorporating an example of a limitation of audit scope.

Four comments were received indicating a need for further clarification of § 3015.76. One commentor suggested that it would be helpful to mention that the recipient should have a system to follow up on subrecipient audit findings and to make sure that corrective action is taken. We agree and therefore have revised the language to incorporate the suggestion and to clarify the intent of this section.

One commentor suggested that the language in § 3015.79(a) is much broader than OMB Circular A–110 and therefore should be revised to be more consistent with OMB Circular A–110. We agree and, therefore the section has been reworded to incorporate the suggestion.

One commentor recommended that the regulation address audits of for-profit organizations. We have not done this in these final regulations. However, we would like additional comments regarding inclusion of for-profit organizations in any future amendments to the regulations.

Subpart J—Financial Reporting Requirements

Thirteen comments were submitted addresssing various aspects as this section. The Department concurred with two recommendations to include a provision in § 3015.83(d) which would in effect waive specific reporting requirements when advances are less than $10,000 per month, and when other authorized forms are used to monitor advances. One commentor recommended that the due date for the Financial Status Report be changed to either 45 days after the reporting period covered or postmarked 30 days after the reporting period. The Department felt that this recommendation was not in accordance with Circulars A–102 or A–110. Minor language changes were also made for clarity.

Subpart K—Monitoring and Reporting Program Performance

There were five comments addressing recommended language changes in this section. The Department has made the recommended language changes for clarity.

Subpart L—Payment Requirements

There were eight general and specific comments received addressing this particular section. Specifically, two comments suggested that the Letter of Credit include all USDA programs. Although OMB Circular A–102 recommends whenever possible the use of a consolidated Letter of Credit, it is the Department's view that because of the diversities and peculiarities of its programs the Agencies are better able to administer this function.

Subpart M—Programmatic Changes and Budget Revisions

There were eighteen comments addressing this section. Three commentors specifically addressed the misuse of terminology involving mandatory or formula grants. The Department concurred that specific language clarification was needed in addressing these terms. As such, it was decided to include formula grants whenever mandatory grants are used within the regulations. Two commentors were concerned that § 3015.115(a)(1) would prohibit the flexibility granted in A–110, Attachment J. This allows, but does not require awarding agencies to request recipients to seek prior approval before transferring budgeted indirect costs to absorb increases in direct costs or vice versa. The Department did not concur with these comments because, under § 3015.115(2), language has been provided which allows the awarding agency to waive this requirement. The Department however, did concur with two concerns addressing the need to revise § 3015.115(a)(ii) by limiting its applicability to training allowances. As such, the specific language in § 3015.115(a)(ii) has been modified to directly reflect the requirements prescribed in OMB Circular A–110, Attachment J.

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

There were ten comments received recommending language changes for clarity. These changes were made.

Subpart Q—Application for Federal Assistance

Three comments were received recommending that this section be revised to include nonprofit organizations. This has been done.

Subpart S—Procurement

Minor changes have been made in this subpart to conform to language used in OMB Circulars A–102 and A–110. However, many commentors recommended that this subpart be expanded to include all major procurement requirements set forth in OMB Circulars A–102 and A–110. Since this would be a major change from what was set forth in our proposal of July 20, 1981, additional comments are requested regarding expansion of this subpart.

Subpart T—Cost Principles

There were fifteen comments addressing this section. The majority of these comments requested specific language revisions which the Department concurred with for the purpose of clarity. There were however, three general comments concerning the broad applicability of these principles to grants, subgrants, cooperative agreements, cost type contracts and cost type subcontracts under grants. The Department believes that these principles are in accordance with OMB Circulars A–102 and A–110. As such, they are in conformance with generally acceptable guidance and standards governing cost principles. Another related comment addressed § 3015.196(b)(1) as being too broad, unclear and as a time consuming requirement. The Department did not concur with this comment because § 3015.196(c) contains specific language granting awarding agencies with the flexibility to effectively waive this requirement for prior approval of direct costs. Accordingly, it is the Department's intention to leave this decision with the awarding agency in order to better enable the proper and sound administration of the programs. Additionally, as addressed earlier in this preamble, statutes and OMB exceptions take precedence over this part.

Subpart U—Miscellaneous

No substantive changes were made. However, § 3015.203 was clarified to indicate that this section applies only to those USDA programs covered by OMB Circular A–95.

Appendix A

The definition of grant and cooperative agreement was amended to conform with Pub. L. 95–224, the "Federal Grant and Cooperative Agreement Act of 1977."

Commentors Recommending Further Expansion of the Regulations

One commentor recommended that the regulations set forth Departmental policies on the allowability and level of the profit or fee a recipient may receive as well as the type of recipient permitted to earn a profit or fee.

One commentor recommended that general Federally mandated assurance and compliance clauses covering such areas as Animal Welfare, Human subjects. Use of U.S. Flag Carriers, Activities Involving Recombinant DNA

Molecules, etc., be included in the regulations.

Two universities recommended expansion to include uniform requirements for other elements of grants and cooperative agreements such as the Statement of Work, Project Budget, Technical Reporting Requirements and Additional Terms and Conditions.

Acceptance of these recommendations would greatly expand the scope of Part 3015, as proposed on July 20, 1981. Therefore, additional comments are being requested regarding such expansion of Part 3015.

John Schrote,

Assistant Secretary for Administration.

Approved:

John R. Block,

Secretary of Agriculture.

November 4, 1981.

The Department adds Part 3015 of Title 7 of the Code of Federal Regulations as follows:

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

Subpart U—Miscellaneous

Authority: 5 U.S.C. 301.

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by USDA grants and cooperative agreements. This part contains rules that apply to almost all of USDA's grants and cooperative agreements. It primarily implements OMB Circulars A-102 and A-110, which are two of the Office of Management and Budget's (OMB) most important Circulars for standardizing the administration of grants and cooperative agreements and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements as set forth in OMB Circulars A-87, A-21, and A-122. Additionally, this part establishes uniform audit requirements and policy for State and local governments and Indian Tribal governments that receive Federal assistance from USDA.

(b) These rules supersede and take precedence over any individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on a statutory provision or an exception has been obtained from OMB. (See § 3015.3.) Definitions for the terms used in this part are set forth in Appendix A. Definitions for the implementation of standard audit requirements for State and local governments and Indian Tribal governments are contained in Subpart I—Audits.

(c) The purpose of this part is to simplify, standardize, and improve the administration of USDA grants and cooperative agreements.

(d) Responsibility for developing and interpreting the material for this part and in keeping it up-to-date is assigned to the Office of the Deputy Director, Finance, a component of the Office of Operations and Finance (O&F), which reports to the Assistant Secretary for Administration.

§ 3015.2 Applicability.

(a) *Grants and cooperative agreements.* This part applies to USDA grants and cooperative agreements. For each substantive provision in this part, either the words of the provision itself or other words in the same subpart tell whether the provision applies to subgrants. Exemptions to this part may be applicable to certain kinds of recipients. (See paragraph (d) of this section.)

(b) *Terminology applicable to this part.* This part's substantive rules are the same for grants and cooperative agreements. Many of the rules are also the same for subgrants. Therefore, certain simplified terminology is used in the text. Specifically in all portions of this part:

(1) Each provision that applies to "grants" also applies to "cooperative agreements," even though the latter term does not appear in the provisions.

(2) Each provision that applies to "recipients of grants" applies to "recipients of cooperative agreements," even though the latter term does not appear in the provision.

(3) The term "recipient" refers equally to recipients of grants and recipients of cooperative agreements.

(4) The term "awarding agency" refers equally to a USDA agency that awards a grant and to one that awards a cooperative agreement.

(5) The term "subgrant" refers equally to certain awards under grants and to the same kinds of awards under cooperative agreements.

(c) *Public institutions of higher education and hospitals.* Grants, cooperative agreements and subgrants awarded to institutions of higher education and hospitals operated by a government are subject only to the provisions of this part that apply to non-governmental organizations.

(d) *Recipients to which this part does not automatically apply.* This part does not apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, or subgrant make all or specified portions apply:

(1) Foreign governments or organizations,

(2) International organizations, such as the United Nations,

(3) Agencies or instrumentalities of the Federal government, and

(4) Individuals.

(e) *Collaborative arrangements.* (1) Where permitted by the terms of the award, a recipient may enter into collaborative arrangements with other organizations to jointly carry out activities with grant or cooperative agreement funds. In this kind of situation, the arrangement between the recipient and each collaborating organization is subject to the rules in this part that apply to subgrants awarded by the recipients. (See the example shown in § 3015.195.)

(2) This paragraph (e) does not apply to arrangements where the organizations receive an award jointly. In this case, they are not a recipient and subrecipient but, as the award notice states, joint recipients.

§ 3015.3 Conflicting policies and deviations.

(a) *Statutory provisions.* Federal statutes that apply to some USDA grant programs may contain provisions that conflict with this part. Those statutory provisions take precedence over this part.

(b) *Nonstatutory provisions.* USDA awarding agencies occasionally develop grant provisions that are inconsistent with this part. USDA attempts to keep these provisions to a minimum by internal procedures that require these provisions to be justified to appropriate officials of USDA and OMB. If the conflicting provisions are of long-term and general applicability, O&F may require that the awarding agency (1) publish the conflicting provision as a notice in the **Federal Register** and (2) give the public an opportunity to comment before making the regulations final.

(c) *Nonstatutory provisions-subgrants.* If a provision of a subgrant conflicts with this part, the recipient is considered as violating the provisions of the grant, unless the subgrant provision is authorized in writing, by the awarding agency.

(d) *OMB Exceptions.* In some cases, OMB grants exceptions from the requirements of the Circulars, when permissible under existing laws. In those instances where a program receives an exception to a particular provision of a Circular, the exception takes precedence over this part.

§ 3015.4 Special restrictive terms.

(a) Occasionally an awarding agency, or a recipient awarding a subgrant, may find that a particular recipient:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system that does not meet the standards in this part.

In these cases the awarding agency may impose special conditions that are more restrictive than otherwise permitted by this part. If so, the awarding agency must tell the recipient

in writing why it is imposing the special conditions and what corrective action is needed.

(b) At the time an awarding agency imposes a special grant condition under paragraph (a) of this section, the awarding agency, through O&F, shall notify OMB and other interested parties.

(c) At the time a recipient imposes a special restrictive subgrant condition under paragraph (a) of this section, it must notify the awarding agency, giving full particulars. The awarding agency, through O&F, shall then notify OMB and other interested parties.

(d) A special restrictive grant or subgrant condition under paragraph (a) of this section is considered consistent with this part.

Subpart B—Cash Depositories

§ 3015.10 Physical segregation and eligibility.

Except as provided in § 3015.11, awarding agencies shall not impose grant or subgrant conditions which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 3015.11 Separate bank accounts.

A separate bank account shall be required when applicable letter of credit agreements provide that funds will not be drawn until the recipient's checks are presented to the bank for payment.

§ 3015.12 Moneys advanced to recipients.

Any moneys advanced to recipients which are subject to the control or regulation of the United States or any of its officers, agents, or employees (public moneys as defined in Treasury Circular 176, as amended), must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

§ 3015.13 Minority and women-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, recipients, and subrecipients are encouraged to use minority and women-owned banks. Upon request, awarding agencies will furnish a listing of minority and women-owned banks to recipients.

Subpart C—Bonding and Insurance

§ 3015.15 General.

In administering grants, subgrants, and cooperative agreements, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the provisions of the grant, subgrant, or cooperative agreement except as provided in §§ 3015.16 through 3015.18.

§ 3015.16 Construction and facility improvement.

(a) *Scope.* This section covers requirements for bid guarantees, performance bonds, and payment bonds when the recipients will contract or subcontract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Bids and contracts or subcontracts of $100,000 or less.* Unless otherwise required by law, the recipients shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(c) *Bids and contracts or subcontracts exceeding $100,000.* Unless otherwise required by law, the recipient may follow its own regular policy and requirements if the USDA awarding agency has decided that the Federal government's interest will be adequately protected. If this decision has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 3015.17 Fidelity bonds.

(a) If the recipient is not a unit of government, the awarding agency may require the recipient to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as created an unacceptable risk.

(b) If the subrecipient is not a unit of government, the awarding agency or the recipient may require that the subrecipient carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

§ 3015.18 Source of bonds.

Any bonds required under § 3015.16(c) (1) through (3) or § 3015.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Record Retention and Access Requirements

3015.20 Applicability.

(a) This subpart applies to all financial records, supporting documents, statistical records and other records of recipients, which are:

(1) Required to be maintained by the provisions of a USDA grant or cooperative agreement, or

(2) Otherwise reasonably considered as pertinent to a USDA grant or cooperative agreement.

(b) This subpart does not apply to the records of contractors and subcontractors under grants, subgrants and cooperative agreements. For a requirement to place a provision concerning these records in certain kinds of contracts, see Subpart S of this part.

3015.21 Retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be kept for 3 years from the starting date specified in § 3015.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duel recordkeeping, awarding agencies may make special arrangements for recipients to keep any records which are continuously needed for joint use. The awarding agency shall request a recipient to transfer records to its custody when the awarding agency decides that the records possess long-term retention value. When the records are transferred to or maintained by the awarding agency the 3-year retention requirement shall not apply to the recipient.

(d) Records for nonexpendable property acquired in whole or in part, with Federal funds shall be retained for three years after its final disposition.

3015.22 Starting date of retention period.

(a) *General.* The retention period starts from the date of the submission of the final expenditure report or, where USDA grant support is continued or renewed at annual or other intervals, the 3-year retention period for the records of each funding period starts on the day the recipient submits to USDA its annual or final expenditure report for that period. If an expenditure report has been waived, the 3-year retention period

starts on the day the report would have been due. Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The 3-year retention period for the equipment records required by Subpart R starts from the date of the equipment's disposition, replacement, or transfer at the direction of the awarding agency.

(c) *Records for income transactions after grant or subgrant support.* (1) In cases where USDA requires that program income (as defined in Appendix A) be applied to costs incurred after expiration or termination of grant or subgrant support, the 3-year retention period for these cost records starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) Where USDA requires the disposition of copyright royalties or other program income earned after expiration or termination of grant or subgrant support, the 3-year retention period for those income records starts from the end of the recipient's fiscal year in which the income was earned. (See subpart F, § 3015.44.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans; and

(iii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the Federal government requires submission of the proposal; plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the plan, proposal or other computation and the supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the Federal government does not require submission of the proposal, plan, or other computation for negotiation of the rate chargeable for particular costs, then the 3-year retention period for the proposal, plan, or other computation and the supporting records starts from the end of the fiscal year covered by such proposal, plan, or other computation.

§ 3015.23 Microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 3015.24 Access to records.

(a) *Records of recipients.* USDA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the recipient which are pertinent in a specific USDA award in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subrecipients.* USDA and the Comptroller General of the United States, and the recipient, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subrecipient which are pertinent to a specific USDA grant or cooperative agreement, in order to make audit, examination, excerpts, and transcripts.

(c) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

§ 3015.25 Restrictions to public access.

Unless required by law, no awarding agency shall impose grant or subgrant conditions which limit public access to records covered by this subpart, except when the awarding agency determines that such records must be kept confidential and would have been excepted from disclosure pursuant to USDA's "Freedom of Information" regulations if the records had belonged to USDA (7 CFR 1.1–1.16).

Subpart E—Waiver of "Single" State Agency Requirements

§ 3015.30 Waiver of "single" State agency requirements.

Section 204 of the Intergovernmental Cooperation Act of 1968 authorizes Federal agencies to waive "single" State agency requirements on request of the Governor or other duly constituted State authorities.

(a) *Approval authority.* The awarding agency has approval authority for waiver requests, and shall handle them as quickly as feasible. Approval should be given whenever possible.

(b) *Refusal procedures.* When it is necessary to refuse a request for waiver of the "single" State agency requirements under section 204, the awarding agency shall, through O&F, advise OMB that the request cannot be granted. Such advice should indicate the reasons for the denial of the request. Notification, through O&F, to OMB shall occur prior to informing the State of the refusal.

Subpart F—Grant Related Income

§ 3015.40 Scope.

This subpart contains policies and requirements related to program income and interest and other investment income earned on advances of grant funds. Appendix A defines the term "program income." There are five categories of program income covered in this subpart. Each is treated in a separate section. The categories are: (a) General program income; (b) proceeds from sale of real property and from sale of equipment and supplies acquired for use; (c) royalties and other income earned from a copyrighted work; (d) royalties or equivalent income earned from patents or inventions; and (e) income after the period of grant or subgrant support not otherwise treated.

§ 3015.41 General program income.

(a) *Applicability.* This section applies to "general program income" as defined in Appendix A.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the provisions of the grant award. The alternatives in paragraphs (d) or (e) may be used only if expressly permitted by the provisions of the grant award. In specifying alternatives that may be used, the provisions of the grant award may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income.

(2) The provisions of a subgrant award may restrict the use of general program income earned by the subrecipient to only one or some of the alternatives permitted by the provisions of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs supported by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to the net amount determined by deducting the income from total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes the income to be used in a later period.

(2) To illustrate this alternative, assume a project in which the recipient incurs $100,000 of allowable costs and receives no third party in-kind contributions. If the recipient earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal cost-sharing. If that percentage is 90 percent, the most that could be paid to the recipient would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs supported by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal cost-sharing is applied to total allowable costs and third party in-kind contributions. The income shall be used for current costs unless the awarding agency authorizes its use in a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of Federal cost-sharing would be applied to the full $100,000, and $90,000 could therefore be paid to the recipient.

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs supported by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds. Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 3015.42 Proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by subpart R of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies created or purchased under a grant or subgrant and intended primarily for use in the grant or subgrant-supported project or program rather than for sale or rental.

§ 3015.43 Royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to USDA grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions of the grant award do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to, and not inconsistent with, any requirements imposed by the provisions of the grant award.

§ 3015.44 Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by the provisions of the grant or subgrant agreement. If the agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 3015.45 Other program income.

(a) This section applies to program income not treated elsewhere in this part which subsequently results from an activity supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise created or purchased by a grant-supported workshop during the period of support.

(b) The provisions of the grant award govern the disposition of income subject to this section. If the provisions do not treat this kind of income, there are no USDA requirements governing its disposition. A recipient may impose requirements of its own on the disposition of this kind of income which is earned by its subrecipients provided those requirements are in addition to and not inconsistent with any requirements imposed by the provisions of the grant award.

§ 3015.46 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), recipients shall remit to the Federal government any interest or other investment income earned on advances of USDA grant funds. This includes any interest or investment income earned by subrecipients and cost-type contractors on advances to them that result from advances of USDA grant funds to the recipient. Unless the recipient receives other instructions from the responsible USDA awarding agency, the recipient shall remit the amount due by check or money order payable to the awarding agency. This requirement may not be administratively waived.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), States, as defined in the Act, shall not be accountable to the Federal government for interest or investment income earned by the State itself, or by its subrecipents, where this income is attributable to grants-in-aid, as defined in the Act.[1]

(c) Recipients are cautioned that they are subject to the provisions of subpart L for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal government for interest or other investment income earned on the advances.

Subpart G—Cost-Sharing or Matching

§ 3015.50 Scope.

This subpart contains rules reflecting Federal requirements for cost-sharing or matching. These rules apply whether cost-sharing or matching is required by Federal statute, awarding agency regulations, or by other provisions

[1] "State" is defined in the Act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the Act to exclude payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private. (42 U.S.C. 4201)

established by the specific grant agreement.

§ 3015.51 Acceptable contributions and costs.

A cost-sharing or a matching requirement may be satisfied after qualifications and exceptions are met in § 3015.52 and by satisfying either or both of the following:

(a) Allowable costs incurred by the recipient or by any subrecipient under the grant or subgrant. This includes allowable costs supported by non-Federal grants or by cash donations from non-Federal third parties. Allowable costs shall be determined in accordance with the cost principles set forth in subpart T.

(b) The value of third party in-kind contributions applicable to the same period when a cost-sharing or matching requirement applies.

§ 3015.52 Qualifications and exceptions.

(a) *Costs supported by other Federal grants.* (1) A cost-sharing or a matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute. This exception however, does not apply to costs supported by general program income earned from a contract awarded under another Federal grant.

(2) For the purpose of this part, funds provided under General or Countercyclical Revenue Sharing Programs (31 U.S.C. 1221 et seq. and 42 U.S.C. 6721 et seq.) are not considered Federal grants. Therefore, allowable costs supported by these funds may be used to satisfy a cost-sharing or a matching requirement.

(b) *Costs or contributions applied towards other Federal cost-sharing requirements.* Recipient costs or the value of third party in-kind contributions shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant if they are or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income as defined in Appendix A shall not count towards satisfying a cost-sharing or matching requirement of a USDA grant supporting the activity unless the provisions of the grant award expressly permit the income to be used for cost-sharing or matching purposes. (This is the alternative for use of general program income described in § 3015.41).

(d) *Services or property financed by income earned by contractors.* Contractors under a grant or subgrant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.

(e) *Records.* In order to count cost and third party in-kind contributions towards satisfying a cost-sharing or a matching requirement, there must be verification and accurate documentation from the records of recipients or cost-type contractors. These records shall show how the value placed on third party in-kind contributions was decided. Special standards and procedures for calculating these contributions are discussed in paragraph (f) of this section. Volunteer services, to the extent possible, shall be supported by the same pay procedures and rates employed by the organization when paying for similar work performed by its personnel.

(f) *Special standards for third party in-kind contributions.*—(1) *Contributions to recipients or cost-type contractors.* A third party in-kind contribution to a recipient or cost-type contractor may count towards satisfying a cost-sharing or matching requirement only where, if the recipient or cost-type contractor were to pay for it, the payment would be an allowable cost.

(2) *Contributions to fixed-price contractors.* A third party in-kind contribution to a fixed-price contractor may count towards satisfying a cost-sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the recipient or subrecipient), or

(ii) A cost savings to the recipient or subrecipient.

§ 3015.53 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by an individual shall be valued at rates consistent with the rates normally paid for similar work in the recipient organization. If there is no similar work in the recipient organization, the rate of pay for volunteer services should be consistent with those regular rates paid for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer, other than a recipient or cost-type contractor, furnishes the services of an employee without cost to perform the employee's normal line of work, the services shall be valued at the employee's regular rate of pay, exclusive of the employer's fringe benefits and overhead cost. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 3015.54 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contributions shall not exceed the cost of the supplies to the donor or the market value of the supplies, at the time of the donation, whichever is less.

(b) If a third party donates the use of equipment or space in a building but retains the title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 3015.55 Valuation of donated equipment, buildings, and land.

When a third party donates equipment, buildings or land, and the title is given to the recipient, the treatment of this donated property shall depend upon the purpose of the grant or subgrant as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in acquiring property, such as equipment, buildings, and land, then the market value of that property at the time of donation may be counted as cost-sharing or matching.

(b) *Other awards.* If the nature of the grant or subgrant is not for the purpose of acquiring property, the following rules shall apply:

(1) If approval is obtained from the awarding agency, the market value at the time of donation of the equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the provisions of the USDA grant should require that the approval be obtained from the awarding agency as well as the recipient. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount shall be counted for donated land. Instead, only depreciation or use allowances may be counted for donated equipment and buildings and treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart T of this part. They will thus be handled in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of

depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 3015.56 Appraisal of real property.

In some cases, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the awarding agency must require that the market value or fair rental rate be set by an independent appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. This requirement must also be imposed by the recipient on subgrants.

Subpart H—Standards for Financial Management Systems

§ 3015.60 Scope.

This subpart contains standards for financial management systems of recipients. No additional financial management standards or requirements shall be imposed by awarding agencies. Awarding agencies will, however, provide recipients with suggestions and assistance on establishing or improving financial management systems when such assistance is needed or requested.

§ 3015.61 Financial management standards.

The following standards shall be met by recipients and subrecipients in managing their financial management system.

(a) *Financial reporting.* Complete, accurate, and current disclosure of the financial results of each USDA sponsored project or program shall be made in accordance with the financial reporting requirements set forth in the grant or subgrant. When a USDA awarding agency requires reporting on an accural basis, the recipient shall not be required to establish an accrual accounting system, but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(b) *Accounting records.* The source and application of funds shall be readily identified by the continuous maintenance of updated records. Records, as such, shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, and income. When the recipient is a governmental entity, the records shall also contain liabilities.

(c) *Internal control.* Effective control over and accountability for all USDA grant or subgrant funds, real and personal property assets shall be maintained. Recipients shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes. In cases where projects are not 100 percent Federally funded, recipients must have effective internal controls to assure that expenditures financed with Federal funds are properly chargeable to the grant supported project.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate, or required by the awarding agency, financial information shall be related to performance and unit cost data. When unit cost data is required, estimates based on available documentation may be accepted whenever possible.

(e) *Advance payments.* There shall be specific procedures established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their subsequent disbursement by the recipient. When advances are made by a letter of credit method, the recipients shall make drawdowns as close as possible to the time of making the disbursements. This same procedure shall be followed by recipients who advance cash to subrecipients to ensure that timely fiscal transactions and reporting requirements are conducted.

(f) *Allowable costs.* Established procedures shall be used for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles prescribed by subpart T of this part and the provisions of the grant award.

(g) *Source documentation.* Accounting records shall be supported by source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant award documents.

(h) *Audit resolution.* A systematic method shall be employed by each recipient to assure timely and appropriate resolution of audit findings and recommendations.

Subpart I—Audits

§ 3015.70 Audits of State, local and Indian Tribal governments.

(a) Sections 3015.70 through 3015.77 of this subpart implement the audit requirements for government organizations contained in the following documents which are incorporated in this subpart by reference:

(1) OMB Circular A–102, Attachment P, dated October 22, 1979, and any subsequent revisions;

(2) Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States in 1981 (GAO Standards), and any subsequent revisions;

(3) Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants (AICPA);

(4) Guidelines for Financial and Compliance Audits of Federally Assisted Programs issued by the General Accounting Office (GAO) in February 1980, and any subsequent revisions;

(5) Compliance supplements issued by OMB on August 18, 1980, and any subsequent revisions; and

(6) Federal cognizant audit agency assignments issued by OMB on October 6, 1980, and any subsequent revisions.

(b) All of the requirements contained in paragraphs (a) (1) through (5) must be met by the recipients before an audit can be accepted as a Federal audit by the respective cognizant audit agencies referenced in paragraph (a)(6).

(c) Under OMB Circular A–102, Attachment P, OMB has established uniform audit requirements for State, local and Indian Tribal governments, or their subdivisions that receive financial assistance from USDA. Attachment P requires recipients and subrecipients of USDA financial assistance to arrange for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations and to assure that audits are made on an organization-wide basis rather than on a grant-by-grant basis. Such organization-wide audits are to determine whether:

(1) Financial operations are conducted properly;

(2) Financial statements are presented fairly;

(3) Recipients and subrecipients are complying with the laws and regulations that affect the expenditures of Federal funds;

(4) Recipients and subrecipients have established internal procedures to meet the objectives of Federally assisted programs; and

(5) Recipients and subrecipients are providing accurate and reliable financial information to the Federal government.

If the recipients or subrecipients fail to arrange for the required audits on at least a biennial basis or fail to assure that an acceptable audit is performed on at least a biennial basis, the respective cognizant audit agencies may arrange for the performance of the required audits. If the cognizant audit agencies arrange for the required audits because

of these circumstances, the recipients and/or subrecipients shall reimburse the respective cognizant audit agencies for the cost of these organization-wide audits.

(d) Unless specifically required by law or approved by OMB, USDA shall not impose any additional audit requirements on recipients or subrecipients. Audit requirements in USDA regulations for assistance programs administered in cooperation with State, local and Indian Tribal governments shall be limited to requiring compliance with Attachment P and this subpart.

(e) State, local and Indian Tribal governments for whom OMB has assigned USDA as the "cognizant audit agency" shall apply the audit requirements in this subpart.

(f) State, local and Indian Tribal governments that receive financial assistance from USDA and have been assigned a cognizant audit agency other than USDA shall follow the audit requirements established by the respective cognizant audit agency. If the designated cognizant audit agency has not established Attachment P audit requirements or if OMB has not designated a cognizant audit agency, these units of government shall follow the audit requirements contained in OMB Circular A–102, Attachment P, and this subpart.

§ 3015.71 Definitions.

(a) "Cognizant audit agency" means the Office of Inspector General (OIG) or other designated audit organizations of the Federal agencies that OMB has identified in the **Federal Register** as having the audit responsibility for Attachment P, Circular A–102. In those instances where OMB designates USDA as the cognizant audit agency, OIG will act for the Department and recipients shall communicate with the appropriate OIG Regional Inspector General for Auditing about all matters concerning compliance with Circular A–102, Attachment P.

(b) "OIG" means the Office of Inspector General, United States Department of Agriculture.

(c) "Organization-wide audit" means an audit which encompasses all financial operations and all funds (regardless of source) of the audited entity, and which will satisfy the needs of all interested parties for audited financial information.

(d) "Regional Inspector General" means the OIG official in the United States Department of Agriculture who is responsible for audit-related matters in one of the designated regions covered by a Regional Audit Office.

(e) "Recipient" means a State department, local government, an Indian Tribal government or a subdivision of such entities that receive Federal assistance directly from the Federal government. It does not include State or local institutions of higher education, hospitals or other nonprofit organizations, which are covered by Circular A–110 and § 3015.79 of this subpart.

(f) "Subrecipient" means a State department, local government, and Indian Tribal government or a subdivision of such entities that receives Federal assistance indirectly (through a recipient) from the Federal government.

§ 3015.72 Authority.

The Inspector General Act of 1978 (Pub. L. 95–452) established OIG's audit authority. The Act includes, among other powers, the authority to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material related to USDA assistance programs administered by recipient and subrecipient organizations. The provisions of Circular A–102, Attachment P, or this subpart do not limit the OIG's authority to make audits of recipient and subrecipient organizations. However, if the recipients and subrecipients arrange for independent audits that meet the requirements in this subpart, OIG shall rely on those audits and any additional work shall build upon the work already done.

§ 3015.73 Audit arrangements and requirements.

(a) *Arrangements.* (1) State, local and Indian Tribal governments shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in Circular A–102, Attachment P, and this subpart.

Note.—It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work required by this subpart should be done in conjunction with those audits.

(2) Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded for audits required by this subpart (see paragraph 16 of Attachment P, Circular A–102).

(3) In arranging for audits, recipients shall coordinate proposed audit plans and related documents with the appropriate USDA Regional Inspector General prior to initiating the audit. The purpose of coordinating the proposed audit plans and related documents is to enable the Regional Inspectors General to provide timely technical assistance and assure that satisfactory audit coverage is planned.

(4) Provisions shall be included in audit contracts requiring the audit organization to retain audit working papers for a minimum of three years from the date of the audit report unless the auditor is notified in writing by OIG of the need to extend the retention period. The audit contracts shall also contain a provision which requires the audit organizations to provide the workpapers to OIG and GAO upon request.

(b) *Requirements.* (1) All audits shall be performed in accordance with the GAO Standards for Audit of Government Organizations, Programs, Activities, and Functions; generally accepted audit standards established by the AICPA; GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs; OMB approved compliance supplements and other compliance supplements developed in accordance with OMB policies.

(2) At a minimum, the audits shall include examinations of the systems of internal control established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipients and subrecipients.

(3) These examinations shall determine:

(i) If controls over the accounting for revenues, expenditures, assets, and liabilities are proper and effective;

(ii) If the audited entity's financial statements are presented fairly in accordance with generally accepted accounting principles;

(iii) If the Federal financial reports (including Financial Status Reports, Cash Transactions Reports, and claims for advances and reimbursements) contain accurate and reliable financial data and are presented in accordance with the terms of applicable agreements and in accordance with subpart J of this part; and

(iv) If Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

§ 3015.74 Scope of audit tests.

(a) To achieve the above purposes, a representative number of charges to the Federal awards shall be tested. The tests must be representative of (1) the universe of all Federal awards received, and (2) all cost categories that materially affect the awards. The tests are to determine if the charges:

(i) Were necessary and reasonable to properly administer the program or project;

(ii) Conformed to any limitations or exclusions in the award;

(iii) Received consistent accounting treatment and were applied uniformly to both Federally and non-Federally assisted activities;

(iv) Were net of applicable credits;

(v) Excluded costs properly chargeable to other Federally-assisted programs;

(vi) Were properly recorded and supported by source documents;

(vii) Were approved in advance, if subject to prior approval in accordance with OMB Circular A–87 and this part;

(viii) Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of Circular A–102 and subpart S of this part; and

(ix) Were allocated equitably to the benefiting activities, including non-Federal activities.

(b) The use of statistical sampling is a particularly appropriate technique for testing the charges to Federal awards and determining the impact of the results of the tests. OIG recommends the use of this technique unless it is not feasible. Where statistical sampling techniques are not used, the reasons should be documented in the audit working papers.

(c) Because charges that a subrecipient incurs are a part of the universe of the total Federal charges the recipient incurs, subrecipient charges should be tested to the extent necessary for the auditor to be able to make the required determinations. Where subrecipients are audited separately by independent public accounting firms or State or local government audit groups, the recipient's auditor will rely on the subrecipient audits to the extent possible, providing those audits meet the requirements of Attachment P and this subpart.

(d) It is inappropriate to limit the audit scope of a recipient in a way that excludes an audit of material expenditures of the recipient or its subrecipient. For example, denial of access to sources of information, such as books, records, and supporting documents, or denial of opportunity to obtain explanation by officials and employees of the organization, program, or activity under audit, would be inappropriate.

(e) Audits shall be made annually but not less frequently than every two years, and shall cover the period beginning immediately after the end of the period covered by the previous audit.

(f) The auditor shall promptly notify and request guidance from OIG upon becoming aware of irregularities in the operations of the recipient or subrecipient organizations. Matters that auditors shall consider as irregular include conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

§ 3015.75 Reporting requirements.

(a) Audit reports shall include:

(1) Financial statements, including footnotes, of the recipient or subrecipient organization being audited.

(2) Auditors' comments on the financial statements which shall:

(i) Identify the statements examined and the period covered;

(ii) Identify by awarding agency, the various programs under which the recipient or subrecipient received Federal funds and the amounts of the individual awards received;

(iii) State that the audit was done in accordance with the GAO and AICPA Standards; the Guidelines for Financial and Compliance Audits of Federally Assisted Programs; OMB approved compliance supplements and other compliance supplements developed in accordance with OMB policies; and

(iv) Express an opinion as to whether the financial statements were fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) Auditors' comments on compliance and internal control which shall:

(i) Include comments on weaknesses in and any non-compliance with the system of internal control, separately identifying material weaknesses;

(ii) Identify the nature and impact of any noted instances of non-compliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports. The auditor shall explain the impact in terms that are meaningful and relative to the total universe, or defined subuniverse of Federal charges such as estimates of the dollar value or rates of non-compliance with the particular audit universe; and

(iii) Contain an expression of positive assurance with respect to compliance with the requirements for tested items and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims submitted to Federal agencies for advances or reimbursement.

(5) Comments on corrective action that the recipient or subrecipient has taken or planned.

(b) Recipient organizations shall provide the number of copies of final reports needed by the Regional Inspectors General for proper distribution of the reports to the other audit agencies concerned and program officials.

(c) The auditor shall retain audit working papers and reports for a minimum of three years from the date of the audit report unless OIG notifies the auditor in writing of the need to extend the retention period. The auditor, upon request, shall provide or make the working papers available to the OIG and the GAO or their designees.

§ 3015.76 Subrecipient standards.

(a) Recipients must (1) Establish a system for assuring that subrecipients meet the requirements of these regulations; (2) establish a system for evaluating the acceptability of subrecipient audits; and (3) establish a system for following up on results of subrecipient audits.

(b) Subrecipient audit reports shall be transmitted by the subrecipient to the applicable primary recipient. These reports shall not be routinely transmitted to OIG. Instead, the recipient shall retain all subrecipient audit reports on file and make them available to OIG and GAO officials or their designees upon request.

(c) The recipient is responsible for taking appropriate action on subrecipient audits and incorporating the results of these audits into their financial records and related reports. The recipient's auditors shall state in the audit report the amount of funds at the subrecipient level that were audited by the subrecipient's auditors and make any pertinent comments concerning those audits. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

§ 3015.77 OIG cognizant agency responsibilities.

As a cognizant audit agency, OIG shall be responsible for:

(a) Obtaining or making quality assessment reviews of the audit work of non-Federal auditors and providing the review results to other interested audit

agencies. (When a non-Federal auditor is responsible for auditing recipients that have different cognizant audit agencies and it is practicable to do so, OIG shall arrange for a single quality assessment review.);

(b) Assuring that all recipient audit reports affecting Federally assisted programs are received, reviewed, and distributed to the proper audit agencies. These agencies (including USDA OIG) are responsible for distributing audit reports to their respective program officials;

(c) Advising the recipient and the auditor of significant inadequacies found in an audit and the actions needed to correct the inadequacies. If the auditor fails to take corrective action, OIG shall notify the recipient organization and the appropriate audit agencies of the facts and OIG's recommendations. OIG shall refer to appropriate professional bodies major inadequacies or repetitive substandard audit work;

(d) Assuring that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of Circular A–102, Attachment P, and this subpart;

(e) Providing technical advice and acting in a liaison capacity with Federal agencies, independent auditors, and recipient organizations, including providing technical assistance in arranging for audit services;

(f) Maintaining a followup system on audit findings and investigative matters to assure that audit findings are resolved;

(g) Informing other affected audit agencies of disclosed irregularities. These agencies shall in turn inform appropriate officials in their agencies. OIG shall inform State or local government law enforcement and prosecuting authorities of irregularities that fall within their jurisdiction; and

(h) Assuring that necessary audits are performed of indirect cost rate proposals submitted by governmental units for which USDA is cognizant under the provisions of OMB Circular A–87.

§ 3015.78 [Reserved].

§ 3015.79 Audits of institutions of higher education, hospitals and other non-profit organizations.

(a) Non-Federal audits. Institutions of higher education, hospitals and other non-profit organizations that receive Federal assistance shall comply with the requirements for non-Federal audits in OMB Circular A–110, including amendments to those requirements published in the Federal Register by OMB.

(1) Each recipient must arrange for a financial and compliance audit annually but not less frequently than every two years.

(2) The recipient's audits must comply with the GAO "Standards For Audit Of Governmental, Organization, Programs, Activities and Functions," including the standards for auditor independence.

(3) The audit shall be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests shall include an appropriate sampling of Federal agreements. Awarding agencies may not impose grant-by-grant (or subgrant-by-subgrant) audit requirments except as may be prescribed by law.

(4) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of these regulations;

(ii) Evaluating acceptability of subrecipient audits;

(iii) Following up on results of subrecipient audits.

(5) Subrecipients audit reports shall be transmitted by the subrecipient to the applicable primary recipient. These reports shall not be routinely transmitted to OIG. Instead the recipient shall retain all subrecipient audit reports on file and make them available to OIG and GAO officials or their designees upon request.

(6) The recipient is responsible for taking appropriate action on subrecipient audits and incorporating the results of these audits into their financial records and related reports. The recipient's auditors shall state in the audit report the amount of funds at the subrecipient level that were audited by the subrecipients' auditors and make any pertinent comments concerning those audits. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(7) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Federal audit responsibilities.* (1) Audits of Federal contracts and assistance programs at institutions of higher education are performed periodically by the Federal agencies designated as cognizant audit agencies in OMB Circular A–88. In addition, OIG may perform audits of USDA programs at Land Grant Institutions from time to time. Such audits shall be coordinated in advance with the cognizant audit agency and shall, to the extent possible, not duplicate work done by the Federal cognizant audit agency, or by independent auditors in accordance with Circular A–110.

(2) OIG reserves the right to perform audits of USDA assistance programs at other nonprofit organizations as determined by OIG to be necessary. In performing such audits, OIG shall rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

Subpart J—Financial Reporting Requirements

§ 3015.80 Scope and applicability.

(a) This subpart prescribes requirements and forms for recipients to report financial information to USDA and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by recipients in dealing with their subrecipients. Recipients are encouraged not to impose on subrecipients more burdensome requirements than USDA imposes on them.

§ 3015.81 General.

(a) Except as provided in paragraphs (d) and (e) of this section, recipients shall use only the forms specified in § 3015.82 through § 3015.85, and such other forms as may be authorized by OMB for:

(1) Submitting grant financial reports to awarding agencies, or

(2) Requesting grant payments when letters of credit or automatic prescheduled treasury check advances are not used.

(b) Recipients shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in § 3015.82 through § 3015.85. Awarding agencies may not issue substantive supplementary instructions that are inconsistent with this subpart or impose additional requirements on recipients without the approval of O&F and OMB. However, awarding agencies may shade out or instruct the recipient to disregard any line item that the awarding agency finds unnecessary for its decision-making purposes.

(c) Recipients shall not be required to submit more than one original and two copies of the forms required under this subpart.

(d) Awarding agencies may provide computer outputs to recipients to expedite or contribute to the accuracy of reporting. Awarding agencies may accept the required information from recipients in machine readable form or

computer printouts instead of prescribed formats.

(e) When an awarding agency determines that a recipient's accounting system does not meet the standards for financial management systems contained in subpart H of this part, it may require more frequent financial reports or more detail (or both) upon written notice to the recipient (without regard to § 3015.4) until such time as the standards are met.

(f) Awarding agencies may waive any report required by this subpart, if not needed.

(g) Awarding agencies may extend the due date for any financial report upon receiving a justified request from the recipient. The recipient should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need becomes known. Failure by a recipient to submit a report by its due date may result in severe enforcement actions by USDA. These may include withholding of further grant payments, suspension or termination of the grant, etc. Therefore recipients are urged to submit reports on time.

§ 3015.82 Financial status report.

(a) *Form.* Recipients shall use Standard Form 269, Financial Status Report, to report the status of funds for all nonconstruction projects or programs.

(b) *Accounting basis.* Unless specified in the provisions of the grant or subgrant each recipient shall report program outlays and program income on the same accounting basis, i.e., cash or accrual, which it uses in its accounting system.

(c) *Frequency.* The awarding agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 3015.4, 3015.81(e), or by statute. If the awarding agency does not specify the frequency of the report, it shall be submitted annually. Upon expiration or termination of the grant or cooperative agreement, if a period of time remains not covered by a periodic report (i.e., a quarterly, semi-annual or annual report), a final report shall be required.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the grant or agreement period. In addition, final reports as defined in § 3015.82(c) shall be due 90 days after the expiration or termination of grant or agreement support, except in those instances where an extension has been granted.

(e) *Final reports.* (1) Final reports (i.e., the last report submitted) must not show any unpaid obligations. (2) if the recipient will still have unpaid obligations when the final report is due, the recipient shall submit a provisional final report (showing the unpaid obligations) by the due date, and a true final report when all obligations have been paid. When submitting a provisional final report, the recipient shall tell the awarding agency when it expects to submit a true final report. (3) As provided in § 3015.81(f), awarding agencies may waive provisional final reports.

§ 3015.83 Federal cash transactions report.

(a) *Form.* (1) For grants or cooperative agreements paid by letters of credit (or Treasury check advances) through any USDA payment office, the recipient shall submit to USDA a Standard Form 272, Federal Cash Transactions Report, and, when necessary, its continuation sheet, SF–272a. Recipients under the Regional Disbursing Office (RDO) system shall not be required to submit a SF–272. For these recipients, awarding agencies shall use information contained in the Request for Payment to monitor recipient cash balances and to get disbursement information. (2) The SF–272 will be used by USDA to monitor cash advanced to recipients and to obtain disbursement or outlay information from recipients for each grant or cooperative agreement. The format of the report may be adapted, as appropriate, when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the identical information is submitted.

(b) *Forecasts of Federal cash requirements.* Awarding agencies may require that forecasts of Federal cash requirements be provided in the "Remarks" section of the report.

(c) *Cash in hands of subrecipients or contractors.* When considered necessary and feasible by the responsible USDA awarding agency, recipients may be required to:

(1) Show in the "Remarks" section of the report the amount of cash advances exceeding three days needs in the hands of their subrecipients or contractors, and

(2) Provide short narrative explanations or actions taken by the recipient to reduce such excess balances.

(d) *Frequency and due date.* Recipients shall submit the report no later than 15 working days following the end of each quarter. However, the USDA payment office may require recipients receiving advances of one million dollars or more per year to submit a report within 15 working days following the end of each month. Awarding agencies may waive the requirement for submission of the SF–272 when monthly advances do not exceed $10,000 per recipient, provided that such advances are monitored through other forms contained in this subpart, or if, in the awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances.

§ 3015.84 Request for advance or reimbursement.

(a) *Advance payments.* Recipients of nonconstruction grants or cooperative agreements shall request Treasury check advance payments on Standard Form 270, Request for Advance or Reimbursement. This form is not used for letter of credit drawdowns or predetermined automatic advance payments.

(b) *Reimbursements.* Recipients of nonconstruction grants or cooperative agreements shall request reimbursement on Standard Form 270, Request for Advance or Reimbursement (for reimbursement request under construction grants or cooperative agreements, see § 3015.85).

(c) The frequency for submitting payment requests on SF–270 is treated in § 3015.104.

§ 3015.85 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Awarding agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 3015.84 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 3015.104.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant or a cooperative agreement is paid by letter of credit or Treasury check advances, the recipient shall report its outlays to the awarding agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The awarding agency will provide any necessary special instructions. However, frequency and

due date shall be governed by § 3015.82 (c) and (d).

(2) When a construction grant or cooperative agreement is paid by Treasury check advances based on periodic requests from the recipient, the advances shall be requested on the form specified in § 3015.84.

(3) The awarding agency may substitute the Financial Status Report specified in § 3015.82 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 3015.82(b).

Subpart K—Monitoring and Reporting Program Performance

§ 3015.90 Scope.

This subpart establishes procedures for monitoring and reporting program performance of recipients. These procedures place responsibility on recipients to manage the day-to-day operations of their grant and subgrant supported activities.

§ 3015.91 Monitoring by Recipients.

Recipients shall monitor the performance of grant and subgrant-supported activities to assure that performance goals are being achieved. Recipient monitoring shall cover each program, function, or activity.

§ 3015.92 Performance reports.

(a) *Nonconstruction.* The awarding agency shall, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the recipient to submit a performance report only upon expiration or termination of grant support. Unless waived by the awarding agency this report will be due on the same date as the final Financial Status Report (as provided in § 3015.82 (d) and (e)).

(1) Recipients shall submit annual peformance reports unless the awarding agency requires quarterly or semi-annual reports or unless covered under paragraph (a) of this section. Annual reports shall be due 90 days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report shall be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a recipient, the awarding agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the awarding agency.

(2) Performance reports shall contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established goals were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Recipients shall not be required to submit more than the original and two copies of performance reports.

(4) Recipients shall adhere to the standards in paragraph (a) of this section in prescribing performance reporting requirements for subrecipients.

(b) *Construction.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by awarding agencies to monitor progress under construction grants and subgrants. The awarding agency shall require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

§ 3015.93 Significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the recipient shall inform the awarding agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure shall include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally planned.

§ 3015.94 Site visits.

The awarding agency shall make site visits as frequently as practicable to:

(a) Review program accomplishments and manage control systems.

(b) Provide such technical assistance as may be required.

§ 3015.95 Waivers, extensions and enforcement actions.

(a) *Reports from recipients.* USDA may waive any performance report required by this subpart if not needed.

(b) *Reports from subrecipients.* The recipient may waive any performance report from a subrecipient when not needed. The recipient may extend the due date for any performance report from a subrecipient if the recipient will still be able to meet its performance reporting obligations to the USDA awarding agency.

Subpart L—Payment Requirements

§ 3015.100 Scope.

This subpart prescribes the basic standards and methods under which a USDA awarding agency will make grant payments to recipients, and recipients will make subgrant payments to their subrecipients.

§ 3015.101 General.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 3015.102 Payment methods.

(a) *Non-construction.* (1) Letters of credit will be used to pay USDA recipients when all the following conditions exist:

(i) There is or will be a continuing relationship between the recipient and the USDA awarding agency for at least a 12 month period and the total amount of advances to be received within that period from the awarding agency is $120,000 or more per year.

(ii) The recipient has established or demonstrated to the USDA awarding agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient.

(iii) The recipient's financial management system meets the standards for fund control and accountability prescribed in subpart H of this part.

(2) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the recipient does not meet the requirements in paragraph (a)(1)(i) of this section but does meet the requirements in paragraph (a)(1) (ii) and (iii) of this section.

(3) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in either paragraph (a)(1) (ii) or paragraph (a)(1)(iii) of this section. This

method may also be used when USDA financial assistance makes up only a minor portion of the program and where the major portion of the program is accomplished through private financing or Federal loans.

(b) *Construction.* (1) Reimbursement by Treasury check shall be the preferred method when the recipient does not meet the requirements specified in § 3015.102(a)(1)(ii) or (iii), and may be used for any USDA construction grant unless USDA has entered into an agreement with the recipient to use a letter of credit for all USDA grants, including construction grants.

(2) When the reimbursement by Treasury check method is not used, § 3015.102(a) (1) and (2) shall apply to the construction grants. Implementing procedures under § 3015.102(a) (1) and (2) will be the same for construction grants as for nonconstruction grants awarded to the same recipient, insofar as possible.

(3) USDA awarding agencies will not use the percentage-of-completion method to pay its construction grants. The recipient may use that method to pay its construction contractor, but if it does, USDA payments to the recipient will nevertheless be based on the recipient's actual rate of disbursements.

§ 3015.103 Withholding payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by recipients will not be withheld at any time during the grant period unless (1) the recipient has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (2) the recipient is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States, or (3) the grant is suspended pursuant to subpart N of this part.

(b) Payments withheld for failure of a recipient to comply with reporting requirements, but without suspension of the grant, will be released to the recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with subpart N of this part. When a debt is to be collected, USDA awarding agencies may withhold payments or require appropriate accounting adjustments to recorded cash balances for which the recipient is accountable to the Federal government, in order to liquidate the indebtedness.

§ 3015.104 Requesting advances of reimbursements.

(a) *Advances.* If advance payments are by Treasury check and are not prescheduled, the recipient shall submit its payment requests at least monthly. Less frequent requests are not permitted for they result in advances covering excessive periods of time. Recipient requests for advances shall not be made in excess of the Federal share of reasonable estimates of outlays for the month covered. These estimates shall be made on a cash basis, even if the recipient uses an accrual accounting system.

(b) *Reimbursements.* If payments are made through reimbursement or by Treasury check:

(1) Requests for reimbursements may be submitted monthly or more frequently if authorized to do so by the awarding agency. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(2) The recipient shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

(c) *Forms.* The forms for requesting advances or reimbursements are identified in subpart J of this part.

§ 3015.105 Payments to subrecipients.

Recipients shall observe the requirements of this subpart in making (or withholding) payments to subrecipients, with the following exceptions:

(a) Advance payment by Treasury check may be used instead of letter of credit;

(b) The forms specified in subpart J of this part for requesting advances and reimbursements are not required to be used by subrecipients; and

(c) The reimbursement by check method may be used to pay any construction subgrant.

Subpart M—Programmatic Changes and Budget Revisions

§ 3015.110 Scope and applicability.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory or formula grants.* Section 3015.113 through § 3015.115 do not apply to programmatic changes or budget revisions made by recipients under State plans or other grants which the awarding agency is required by law to award if the applicant meets all applicable requirements for entitlement.

(c) *Exemption of certain subgrants.* Sections 3015.113 through 3015.115 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 3015.111 Cost principles.

(a) The cost principles prescribed by subpart T of this part require prior approval of certain types of costs. Except when waived, those prior approval requirements apply to all grants and subgrants, whether or not § 3015.113 through § 3015.115 apply.

(b) Procedures for prior approvals required by the cost principles are in § 3015.196. Procedures for prior approvals required by this subpart are in § 3015.112.

§ 3015.112 Approval procedures.

(a) *For grants or cooperative agreements.* When requesting a prior approval required by this subpart, recipients shall address their requests to the responsible official of the awarding agency. Approvals shall not be valid unless they are in writing and signed by either the responsible officer, the head of the awarding agency, or the head of the awarding agency's regional office.

(b) *For subgrants.* Recipients shall be responsible for reviewing requests from their subrecipients for the approvals required by this subpart and for giving or denying the approval. A recipient shall not approve any action which is inconsistent with the purpose or terms of the Federal grant or cooperative agreement. If an action by a subrecipient will result in a change in the overall grant project or budget requiring approval from the awarding agency, the recipient shall obtain that approval before giving its approval to the subrecipient. Approvals shall not be valid unless they are in writing and signed by an authorized official of the recipient organization.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 3015.113 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of

departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding agencies may require prior approval for other kinds of programmatic changes to an approved cooperative agreement, grant, or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope).

(c) *Changes in key people.* This section applies to grants, subgrants, and cooperative agreements for research. This section does not apply to other types of grants, subgrants, or cooperative agreements unless other terms of the award make it apply. The recipient shall obtain prior approval:

(1) To continue the project during any continuous period of more than three months without the active direction of an approved project director or principal investigator.

(2) For its selection of a replacement for the project director of principal investigator,

(3) For its selection of a replacement for any other persons named and expressly designated as key project people in the grant, subgrant, or cooperative agreement award document, or

(4) To permit the project director or principal investigator (or anyone covered by paragraph (c)(3) of this section) to devote substantially less effort to the project than was anticipated when the award was made.

(d) *Transferring work and providing financial assistance to others.* Recipients shall obtain prior approval for transferring to another party the actual performance of the substantive programmatic work, and for providing any form of financial assistance to another party.

(e) *Audiovisual activities.* (1) Except to the extent explicitly included in the project plan approved at the time of award, using grant support for any of the following requires prior approval:

(i) Producing an audiovisual.

(ii) Buying ownership of any of the rights in the work embodied in the audiovisual. (This does not apply to merely buying a license in any of the rights. For the remainder of this section, buying ownership of the rights is referred to simply as buying or purchasing an audiovisual).

(iii) Presenting or distributing to the general public an audiovisual that was produced or bought with grant support.

(2) Prior approval is not required for:

(i) Any audiovisual activity under a subgrant.

(ii) Any audiovisual whose direct production or purchase cost to the recipient is $5,000 or less.

(iii) The production or purchase of an audiovisual as a research instrument or for documenting experimentation or findings, if the audiovisual is not intended for presentation or distribution to the general public.

(3) Following are examples of presentation or distribution of an audiovisual to the general public.

(i) Broadcast on commercial, cable, or educational television, or radio.

(ii) Showing in commercial motion picture theaters.

(iii) Showing in public places such as airports, waiting rooms, bus or railroad depots, and vacation resorts.

(iv) Showing to civic associations, schools (except when used as a teaching tool in a classroom setting), clubs, fraternal organizations, or similar lay groups.

§ 3015.114 Budgets—general.

(a) *Research and non-research project budgets.* For research and non-research projects which involve cost-sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding agency's share and the recipient's share). However, the awarding agency may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(b) *Subdivision by programmatic segments.* Some grants, subgrants, and cooperative agreements contain two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding agency may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 3015.115 Budget revisions.

(a) *Nonconstruction projects.* (1) Except as provided in paragraph (a)(2) of this section, the recipient of a grant, subgrant, or cooperative agreement having an approved budget shall obtain prior approval for any budget revision which will:

(i) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(ii) Involve transfer of amounts previously budgeted for training allowances (direct payments to trainees), or

(iii) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(2) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding agency.

(3) Except as provided in § 3015.116 other budget changes under nonconstruction grants do not require approval.

(b) *Construction projects.* Unless provided otherwise by the terms of the grant, subgrant, or cooperative agreement, revisions to construction project budgets do not require approval.

§ 3015.116 Construction and nonconstruction work under the same grant, subgrant, or cooperative agreement.

When a grant, subgrant, or cooperative agreement provides support for both construction and nonconstruction work, the awarding agency may require prior approval for any fund or budget transfers between the two types of work.

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

§ 3015.120 Closeout.

(a) Each grant or subgrant shall be closed out as soon as possible after expiration or notice of termination.

(b) The following shall apply when closing out USDA grants:

(1) Upon request from the recipient, any allowable reimbursable cost not covered by previous payments shall be promptly paid by USDA.

(2) Any unobligated balance of cash advanced to the recipient shall be immediately refunded to the awarding agency or managed in accordance with USDA instructions.

(3) Within a maximum period of 90 days following the date of expiration or termination of a grant, all financial performance and related reports required by the terms of the agreement shall be submitted to the awarding agency by the recipient. USDA reserves the option of extending the due date for any report and may waive any report that it considers to be unnecessary.

(4) The provisions formally expressed and agreed to within the grant arrangement shall dictate the settlement of any upward or downward adjustments of the Federal share of costs.

(c)(1) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records. (See subpart D of this part).

(2) The closeout of a grant does not affect the recipient's responsibilities regarding property under subpart R of this part or with respect to any program income the recipient is still accountable for under subpart F of this part.

(3) Final audits (See Attachment L, Circular A–102 and Attachment K of Circular A–110) are not a required part of the grant or subgrant closeout procedures. Normally, a final audit should not be needed unless there are problems with a grant or subgrant that require audit attention. If a USDA agency considers a final audit to be necessary, it shall contact the OIG Region within which the recipient or subrecipient is located and inform OIG of the situation. OIG shall be responsible for assuring that necessary final audits are performed and for any necessary coodination with other Federal cognizant audit agencies, recipients or State and local auditors. Audits performed in accordance with subpart I may serve as final audits providing such audits meet the needs of the requesting agency.

(4) If a grant is closed out without audit, the awarding agency reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 3015.121 Amounts payable to the Federal government.

The following outstanding sums for each grant shall be considered as a debt or debts owed by the recipient to the Federal government. They shall, if not paid upon demand, be subject to recovery by the awarding agency from the recipient or its successor or assignees by set off or other action provided by law:

(a) Any grant funds paid to the recipient by the Federal government which exceed the amount the recipient is finally determined to be entitled to under the provisions of the grant award;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal government;

(c) Any royalties or other special classes of program income which, under the provisions of the grant award, are required to be returned to the Federal government;

(d) Any amount the Federal government is entitled to under subpart R of this part; and

(e) Under the provisions of the grant award, any other amounts finally determined to be due to the Federal government.

§ 3015.122 Violation of terms.

(a) Whenever it is determined that the recipient has materially failed to comply with the provisons of the grant award, the awarding agency may suspend or terminate, in accordance with §§ 3015.123 and 3015.124, any grant in whole, or in part, at any time before the date of completion, or take such other remedies as may be legally available and appropriate.

(b) A grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period. This action is applicable when a project or program is supported over two or more funding periods.

§ 3015.123 Suspension.

(a) When a recipient has materially failed to comply with the provisions prescribed in the grant agreement, the awarding agency may, after reasonable notice to the recipient, suspend the grant in whole or in part. A suspension notice shall be issued by the awarding agency stating the reasons for the suspension, any corrective action required of the recipient, and the effective date. Suspension may go into effect immediately if the awarding agency deems it necessary to protect its interest and if a delayed effective date would be unreasonable considering the awarding agency's responsibilities to protect the Federal government's interest. Suspension shall remain in effect until the recipient has taken corrective action satisfactory to the awarding agency, or given evidence that such corrective action will be taken, or until the awarding agency terminates the grant.

(b) Unless specifically authorized by the awarding agency in the notice of suspension or subsequently expressed in an amendment to it, new obligations incurred by the recipient during the suspension period shall not be allowed. necessary and otherwise allowable costs which the recipient could not reasonably avoid during the suspension period will be allowed, if they result from obligations properly incurred by the recipient before the effective date of the suspension and not in anticipation of suspension or termination. If the awarding agency approves, third party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost-sharing or matching requirements.

(c) During the suspension period, appropriate adjustments to payments under the suspended grant will be made by not giving credit to the recipient for disbursements made in payment of unauthorized obligations incurred during the suspension period or by withholding subsequent payments.

§ 3015.124 Termination.

(a) *Termination for cause.* The awarding agency may terminate any grant or other agreement in whole, or in part, at any time before the date of expiration, whenever it is determined that the recipient has materially failed to comply with the conditions of the agreement. The awarding agency shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date.

(b) *Termination by mutual agreement.* Except as provided in paragraph (a) of this section, grants may be terminated in whole, or in part, only as follows:

(1) When the awarding agency and recipient agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(2) By written notification by the recipient to the awarding agency setting forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. In the case of a partial termination, if the awarding agency decides that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the awarding agency may terminate the award in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* Upon termination of a grant, the recipient shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The awarding agency, however, shall allow full credit to the recipient for the Federal share of the non-cancellable obligations properly incurred by the recipient prior to termination.

§ 3015.125 Applicability to subgrants.

Recipient subgrants shall be subjected to the same standards regarding closeout, suspension, and termination of subgrants as prescribed in this subpart for awarding agencies.

Subpart O [Reserved]

Subpart P [Reserved]

Subpart Q—Application for Federal Assistance

§ 3015.150 Scope and applicability.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals, non-profit organizations, and institutions of

higher education operated by a government) in applying to USDA for discretionary grants. This subpart is not applicable, however, to mandatory or formula grants or programs which do not require applicants to apply to USDA for funds on a project basis.

(b) This subpart permits awarding agencies to prescribe the form of applications by nongovernmental organizations (including hospitals, nonprofit organizations and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants or cooperative agreements and is not required to be applied by recipients in dealing with applicants for subgrants. However, recipients are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

§ 3015.151 Authorized forms.

(a) Sections 3015.152 through 3015.156 specify the forms that governmental organizations shall use to apply to USDA for a discretionary grant.

(b) Governments need not submit more than the original and two copies of application forms. When less will suffice, the awarding agency shall notify potential applicants.

(c) When a government agency amends a previously submitted application or applies for additional funding (such as a continuation or supplemental award) only the facesheet and any other affected pages are required to be submitted. Previously submitted pages whose information is still current may be resubmitted, but are not required to be resubmitted.

§ 3015.152 Preapplication for Federal assistance.

(a) When a government submits a preapplication, it shall use the Preapplication for Federal Assistance form prescribed by Circular A–102. The purposes of these preapplications shall be to:

(1) Establish communication between the potential applicant and the awarding agency;

(2) Determine the potential applicant's eligibility;

(3) Identify projects which have little or no chance for Federal funding before applicants incur significant costs for preparing an application.

(b) Preapplication is always required if the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. If these conditions are not present, potential applicants need not submit preapplications unless required to do so by the awarding agency. Any government may submit a preapplication even when not required.

§ 3015.153 Notice of preapplication review action.

Awarding agencies shall inform governmental applicants of the results of their review of preapplications by using the Notice of Preapplication Review Action form prescribed by Circular A–102. If the review cannot be completed within 45 days, the awarding agency shall inform the applicant, in writing, when it will complete the review.

§ 3015.154 Application for Federal assistance (nonconstruction programs).

Governments shall use the Application for Federal Assistance (Nonconstruction Programs) form prescribed by OMB Circular A–102 in applying for discretionary grants unless a form specified in § 3015.155 or § 3015.156 is to be used.

§ 3015.155 Application for Federal assistance (construction programs).

Governments shall use the Application for Federal Assistance (for Construction Programs) form prescribed by Circular A–102 in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

§ 3015.156 Application for Federal assistance (short form).

Governments shall use the Application for Federal Assistance (Short Form) form prescribed by Circular A–102 in applying for any single-purpose, one-time grant of less than $10,000 not requiring Circular A–95 clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Awarding agencies may, at their discretion, authorize or require this form for applications for larger amounts.

§ 3015.157 Authorized form for nongovernmental organizations.

Nongovernmental organizations shall use application forms prescribed by the awarding agency. The facesheet of these applications shall be Standard Form 424.

Subpart R—Property

§ 3015.160 Scope and applicability.

(a) Except as explained in paragraphs (c), (d), and (e) of this section, this subpart applies to real property, equipment (including ADP) and supplies whose acquisition is supported by a grant.

(b) Also contained in this subpart are standards covering inventions, patents, and copyrights arising out of activities supported by a grant.

(c) This subpart does not apply to:

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental, rather than for use.

(d) This subpart applies to equipment or supplies acquired by a contractor under a grant or subgrant only if, by terms of the contract, title vests in the recipient or subrecipient.

(e) For research grants that are subject to an institutional cost-sharing agreement, real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is supported as a direct cost by Federal grant funds.

§ 3015.161 Additional requirements.

Provided they observe the requirements of this subpart, recipients may follow their own property management policies and procedures. Unless specifically required by Federal statutes or Executive Orders, awarding agencies may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart.

§ 3015.162 Title to real property, equipment and supplies.

Subject to the obligations and conditions specified in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the recipient or subrecipient, respectively. In certain cases, money due the Federal government upon disposition of real property may be authorized to be used for allowable costs rather than paid to USDA. (See § 3015.173.)

§ 3015.163 Real property.

Except as stated otherwise by Federal statutes, real property applicable to this subpart shall be subject to the following requirements, in addition to any other requirements imposed by the provisions of the grant award:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, the awarding agency may approve the use of the property for other purposes. These uses shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* In accordance with paragraph (a) of this section, approval may be requested from the awarding agency to transfer title to an eligible third party for continued use for authorized purposes. If approval is permissible under Federal statutes, and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the awarding agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal government shall have a right to an amount computed by multiplying the Federal share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be followed which provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal government shall have a right to an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal government or an eligible non-Federal party named by the awarding agency. The recipient shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. In cases where the property belonged to a subrecipient, see § 3015.172 for the subrecipient's share.

§ 3015.164 Statutory exemptions for equipment and supplies.

(a) In certain circumstances some Federal statutes permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal government or on such terms and conditions set forth in the grant award, as deemed appropriate. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, is an example of such a statute. It provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at non-profit institutions of higher education or at non-profit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, when an equipment item has a unit acquisition cost of $1,000 or more, it shall be subject to § 3015.165 concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 3015.167.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 3015.165 Rights to require transfer of equipment.

(a) *USDA right.* The awarding agency shall have the right to require the transfer of equipment (including title) for items of equipment having a unit cost of $1,000 or more to the Federal government or to an eligible non-Federal party named by the awarding agency. Normally, USDA agencies will only exercise this right if the project or program for which the equipment was acquired is transferred from one recipient to another. The following conditions shall govern this right:

(1) The property shall be appropriately identified in the grant award.

(2) In order for the awarding agency to exercise the right, disposition instructions must be issued no later than 120 days after the end of USDA grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 3015.164 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the disposition instructions must have been received by the recipient while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, disposition instructions must have been received by the recipient before other permissible disposition of the equipment took place in accordance with § 3015.168.

(3) If the right is exercised, the recipient shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment.

(b) *Right of parties awarding subgrants.* A recipient may reserve for itself, when awarding a subgrant, rights similar to those found in paragraph (a) of this section which covers items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the awarding agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subrecipient and only for the purpose of transferring the equipment to the new subrecipient for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding agency is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it with a list of all items of equipment that are subject to the right. As such, the awarding agency will decide which items, if any, should be transferred.

§ 3015.166 Use of equipment.

(a) *Basic rule.* Whenever the equipment is not transferred under the provisions set forth in § 3015.165, it shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When the equipment is no longer needed for the original project or program the recipient shall use the equipment, if needed, in other projects or programs currently or previously funded by the Federal government, in the following order of priority:

(1) Projects or programs currently or previously funded by the same USDA awarding agency.

(2) Projects or programs currently or previously funded by any USDA awarding agency.

(3) Projects or programs currently or previously funded by other Federal agencies.

(b) *Shared use.* When equipment is used less than full time in the original project or program, the recipient shall make it available for use in other projects or programs currently or previously funded by the Federal government. Provided, such other use will not interfere with the work on the original project or program. First preference for such use, however, shall

be given to other projects or programs funded by the same USDA awarding agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously funded by the Federal government which the recipient is supporting through subgrants or through non-Federal grants. A subrecipient may also voluntarily make the equipment available for use in projects or programs currently or previously funded by the Federal government which are being conducted or supported by the recipient.

(d) *Other Uses.* Unless the awarding agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part-time for other purposes. The use as described in the previous paragraphs, however, shall be given priority over other uses.

§ 3015.167 Replacement of equipment.

(a) If needed, equipment may be exchanged for replacement equipment. Replacement of equipment may be done either through trade-in or through sale and application of the proceeds to the acquisition cost of replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from USDA, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. None of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 3015.168 Disposal of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal government, disposal of the equipment shall be made as follows:

(a) Equipment with a unit acquisition cost of less than $1,000 may be sold, retained or otherwise disposed of with no further obligation to the Federal government.

(b) All other equipment may be retained or sold. The Federal government shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the Federal share of the equipment (see § 3015.172). If part of the Federal share of the equipment came from an award under which the exemptions in section 3015.164 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses. If the recipient's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the awarding agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be returned to the awarding agency by check or money order.

§ 3015.169 Equipment management requirements.

Recipient procedures for managing equipment shall, as a minimum, meet the following requirements (including replacement equipment) until such actions as transfer, replacement or disposal takes place:

(a) Property records shall be maintained accurately. (Subpart D of this part contains retention and access requirements for these records.) The records shall include for each item of equipment the following:

(1) A description of the equipment including manufacturer's serial numbers.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment (see § 3015.172).

(5) Acquisition date and unit acquisition cost.

(6) Location, use and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposal of the equipment.

(b) Every two years, at a minimum, a physical inventory shall be conducted and the results reconciled with the property records to verify the existence, current utilization, and continued need for the equipment. Any discrepancies between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) In order to insure adequate safeguards to prevent loss, damage or theft of equipment, a control system shall be used. Any loss, damage or theft of equipment shall be investigated and fully documented. The awarding agency may require a report of the circumstances involving the loss, damage, or theft of equipment.

(d) In order to keep the equipment in good condition, adequate maintenance procedures shall be implemented.

(e) Where equipment is to be sold and the Federal government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 3015.170 Damage, loss, or theft of equipment.

(a) *Applicability.* This section applies to equipment with a unit acquisition cost of $1,000 or more that, before disposal (see section 3015.168), is damaged beyond repair, lost, or stolen.

(b) *Recipient at fault.*— (1) *Applicability.* This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does not have a control system in effect as required by § 3015.169, and

(ii) The damage, loss, or theft is not due to an act of God.

(2) *Equipment replaced.* If the equipment is replaced, the replacement is governed by § 3015.167. When that happens, the market value of the original equipment at the time it was damaged, lost, or stolen is used instead of the amount received for trade-in or sale.

(3) *Equipment not replaced.* If the equipment is not replaced, the Federal government has a right to an amount calculated by multiplying the Federal share in the equipment by its market value at the time of damage, loss, or theft. The amount is reduced pro rata if part of the Federal share of the equipment comes from an award under which the exemption in § 3015.164 applied.

(4) *Other remedies.* The provisions in this paragraph (b) are in addition to other remedies available to the awarding agency if a recipient acquires equipment with grant support but fails to establish the control system required by § 3015.169.

(c) *Recipient not at fault.*—(1) *Applicability.* This paragraph applies if:

(i) At the time of the damage, loss, or theft, the recipient does have a control system in effect as required by § 3015.169(c) or

(ii) The damage, loss, or theft is due to an act of God.

(2) *Recipient not compensated.* If the recipient is not compensated for the damage, loss, or theft, through insurance or some other means, there is no obligation to USDA for the equipment.

(3) *Recipient compensated.* If the recipient is compensated for the damage, loss, or theft and replaces the equipment, section 3015.167 applies to the replacement equipment. If the recipient is compensated but does not replace the equipment, § 3015.168 applies as though the recipient had sold the equipment. (All of § 3015.168 applies including the rule permitting the amount due the Federal government to be reduced by 10 percent of the proceeds or $100, whichever is greater.) The amount received for trade-in or sale is considered the lesser of (i) the amount of compensation or (ii) the market value of the equipment at the time it was damaged, lost, or stolen.

(d) *Waivers.* The awarding agency may waive in whole or in part any provision of this section.

§ 3015.171 Unused supplies.

(a) If unused supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously funded by the Federal government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 3015.164.

§ 3015.172 Federal share of real property, equipment, and supplies.

This subpart contains principles necessary to determine the Federal (or non-Federal) share of real property, equipment or supplies.

(a) *General.* (1) Except as explained in the following paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total cost under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either supported by the grant or counted toward satisfying a cost-sharing or matching requirement of the grant.

(2) If the property is acquired by a subrecipient, the Federal share of the subrecipient's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the recipient's costs by the latter's share of the subrecipient's costs. (For example, if the Federal share of the recipient's costs is 50 percent and the subgrant bears only 50 percent of a subrecipient's costs, then the Federal share of that subrecipient's costs (and of the property acquired by that subrecipient) is 25 percent.)

(3) The provisions of some grant awards set different maximum percentages of Federal financial participation for different categories of costs. In these cases, for the purposes of this section, the costs in each category are considered as costs under a separate grant. If two categories have the same maximum percentage of Federal participation and costs in one category are permitted to count toward satisfying a cost-sharing or matching requirement of the other, they are a single category for the purposes of this rule. Also, all categories with a 100 percent rate are considered a single category for the purposes of this rule.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. Occasionally, the amount paid for the property is only a part of its value. The remainder is donated as an in-kind contribution by the party that provided the property.

(2) To determine the Federal share of such property, first calculate the Federal share of the acquiring party's total costs under the grant as explained in paragraph (a) of this section. Next multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was supported as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* To calculate the Federal share of replacement equipment the following procedures shall be followed:

(1) Step 1: Determine the Federal share (percentage) of the equipment replaced.

(2) Step 2: Determine the percentage of the replacement equipment's costs that was covered by the amount received for trade-in or the sale proceeds from the equipment replaced.

(3) Step 3: Multiply the step 1 percentage by the step 2 percentage.

(4) Step 4: If an additional outlay for the replacement equipment was charged as a direct cost either to USDA grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

§ 3015.173 Using or returning the Federal share.

(a) This section applies when, under §§ 3015.163, 3015.168 or 3015.170, the Federal government has a right to an amount of money upon disposal or loss, theft, or damage of property.

(b) If the recipient's project or program for which the property was acquired is still receiving grant support from the same Federal program, the awarding agency may authorize use of the net money due for allowable costs of that project or program.

(c) Otherwise, the net amount must be returned to the awarding agency by check or money order.

§ 3015.174 Subrecipient's share.

Where this subpart requires a sharing of the market value or sale proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the recipient and the subrecipient. The subrecipient shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal government. The remainder of the non-Federal share shall belong to the recipient.

§ 3015.175 Intangible personal property.

(a) *Inventions and patents.* (1) If the recipient is a small business or non-profit organization (including universities and other institutions of higher education), the allocation of rights in inventions produced under a grant or cooperative agreement shall be determined in accordance with the provisions of sections 202 through 204 of Pub. L. 96-517 (35 U.S.C. 202-204) and all implementing regulations.

(2) For all other recipients, the allocation of rights in inventions shall be determined in accordance with the "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23,

1971, and statement of Government Patent Policy as printed in 36 FR 16889).

(b) *Copyrights.*—(1) *Applicability.* This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the exclusive rights comprising a copyright is purchased with grant support, this section applies to the purchased copyright or rights.

(2) *Basic rules.* (i) USDA reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. The recipient shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of USDA.

(ii) One way that USDA may exercise its nonexclusive license is to authorize exercise of the rights in another project or activity that receives or has received grant support from the Federal government.

(iii) A recipient awarding a subgrant is allowed to impose subgrant terms reserving a nonexclusive license for itself, similar to the one reserved by this section for USDA, with respect to any copyright or rights subject to this section that arise under the subgrant.

(c) *Exceptions.* It is permissible for the other provisions of a grant award to restrict the owner from exercising, preserving, or transferring the rights. For a subgrant, the restrictions may be in the provisions of the grant or subgrant or both.

Subpart S—Procurement

§ 3015.180 Scope and applicability.

(a) This subpart contains information for complying with Attachment 0, "Procurement Standards", of OMB Circulars A–102 and A–110. Circular A–102 covers grant and cooperative agreement programs with State and local governments and Indian Tribal governments. Circular A–110 covers grant and cooperative agreement programs with institutions of higher education, hospitals, and other nonprofit organizations. Copies of both Circulars may be obtained from O&F.

(b) This subpart applies to recipient procurements (by purchase, rental, or barter) of supplies, equipment, and services (including construction).

(c) This subpart applies only to procurements that are supported in whole or in part by a grant or cooperative agreement.

(d) This subpart does not apply to procurements of land, existing land improvements or structures, or any other existing real property.

(e) The Attachment 0 of Circulars A–102 and A–110 apply to procurements under subgrants as well as grants.

§ 3015.181 Standards of conduct.

(a) Recipients shall maintain a written code or standards of conduct governing the performance of their officers, employees or agents engaged in awarding and administering contracts supported by Federal funds:

(1) No employee, officer or agent shall participate in the selection, award, or administration of contracts using Federal funds where to his knowledge, such employee, officer or agent or his immediate family, partners or organizations has a financial interest in, is negotiating with, or has any arrangements concerning prospective employment with the proposed contractor.

(2) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or proposed contractors.

(3) Provisions shall be made for disciplinary actions against the recipient's officers, employees, or agents or by contractors or their agents violating the standards of conduct.

(b) Awarding agencies may review the written standards of conduct to determine if they meet the minimum standards of Attachment 0 of OMB Circulars A–110 and A–102. Recipients will be notified of deficiencies and make corrective action.

§ 3015.182 Open and free competition

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value shall be conducted in a manner that provides maximum open and free competition.

3015.183 Access to contractor records.

The Attachment 0 requires recipients to include in specified kinds of contracts a provision for access to the contractor's records by the recipient and the Federal government. The following applies to the provision:

(a) The provision must require the contractor to place the same provision in any subcontract which would have to have the provision were it awarded by the recipient.

(b) The provision must require retention of records for three years after final payment is made under the contract or subcontract and all pending matters are closed. The provision must also require that, if any audit, litigation, or other action involving the records is started before the end of the three year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

(c) In contracts and subcontracts under a subgrant, the provision must require that access to the records be provided to the recipient as well as the subrecipient and the Federal government.

§ 3015.184 Equal employment opportunity.

(a) The Attachment 0 requires recipients to include in contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, concerning equal employment opportunity as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

(b) If construction is to be assisted by a grant or subgrant, the Executive Order and the Department of Labor supplementing regulations apply, unless an exemption is granted by or under those regulations. Recipients shall observe all applicable requirements of the Order and regulations and include in their nonexempt construction contracts the specific clauses prescribed by 41 CFR 60–1.4(b) and, if applicable, 41 CFR 60–4.3.

Subpart T—Cost Principles

§ 3015.190 Scope.

This subpart makes the allowable costs incurred by the recipient the maximum amount of money a recipient is entitled to receive from USDA. In addition, this subpart identifies the principles to be used in determining allowable costs. These cost principles shall apply to transactions and activities conducted under grants, subgrants, cooperative agreements, cost-type contracts and cost-type subcontracts under grants.

(a) *Allowable costs.* Grant funds may be used only for allowable costs of the activities for which the grant was awarded. This means that the total amount of money that the recipient is entitled to receive from USDA may not exceed the allowable costs incurred by the recipient for those activities.

(b) The following rules apply in computing maximum allowable costs:

(1) *Third party in-kind contributions.* Because they are not allowable costs of the party that receives them, the value of third party in-kind contributions received may not be included in determining maximum allowable costs.

However, as provided in subpart G of this part, third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of the Federal grant.

(2) *Costs supported by another grant.* Allowable costs incurred by the recipient and supported by another Federal grant (or by a non-Federal grant) awarded to the recipient may not be included in determining maximum allowable costs. The basic intent of this rule is to prevent double compensation. It does not, however, prevent proration of costs that are allowable under two or more awards.

(3) *Costs used to match another Federal grant.* A cost that the recipient uses to meet a cost-sharing or matching requirement of one Federal grant may not count towards determining maximum allowable costs under another Federal grant, unless specifically authorized by a Federal statute.

(4) *Costs supported by general program income.* A grant may not pay for a cost which is supported by general program income earned by the recipient or by a subrecipient under the grant. Therefore, these costs may not be included in determining maximum allowable costs.

(5) *Use of money due Federal government.* In accordance with § 3015.173, an awarding agency, under certain circumstances, may authorize a recipient to use certain money due the Federal government for allowable costs of the project or programs, instead of returning the money to the Federal Government. Costs supported by the money may not be included as part of the maximum allowable costs charged to USDA.

(6) *Subgrant and contract costs.* The recipient's allowable costs include allowable outlays, if any, to its subrecipients and contractors. If the recipient pays a subrecipient more than the allowable costs incurred by the subrecipient, the excess is not an allowable cost of the recipient and may not be included as part of the maximum allowable costs charged to USDA. However, for cost-type contracts a reasonable fee or profit paid by the recipient to the contractor, in addition to the contractor's allowable costs, may be included in this maximum unless prohibited by the provisions of the grant award.

§ 3015.191 Governments.

(a) OMB Circular No. A–87, and any subsequent amendments to this Circular published in the **Federal Register** by OMB, shall be used in determining the allowable costs of activities conducted by governments.

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the start of a government's first fiscal year following the amendment's publication in the **Federal Register.**

§ 3015.192 Institutions of higher education.

(a) OMB Circular No. A–21, including any amendments to the Circular published in the **Federal Register** by OMB, shall be used in determining the allowable costs of activities conducted by institutions of higher education (other than for-profit institutions).

(b) Additional amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the start of an institution's first fiscal year following the amendment's publication in the **Federal Register.**

§ 3015.193 Other non-profit organizations.

(a) OMB Circular No. A–122, including any subsequent amendments to the Circulars published in the **Federal Register** by OMB, shall be used in determining the allowable costs of activities conducted by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. It does not apply to colleges or universities which are covered by Circular A–21; State, local and Federally recognized Indian Tribal governments which are covered by Circular A–87, or hospitals.

(b) Future amendments to the Circular, unless otherwise prescribed by OMB, shall go into effect at the time the initial award is made to the recipient.

§ 3015.194 For-profit organizations.

The principles to be used in determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Procurement Regulations at 41 CFR 1–15.2. Exception: Independent research and development costs including the indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Procurement Regulations at 41 CFR 1–15.205–35.

§ 3015.195 Subgrants and cost-type contracts.

USDA cost principles applicable to a cost-type contractor or a subrecipient will not necessarily be the same as those applicable to the recipient. For example, where a State government awards a subrecipient or cost-type contract to an institution of higher education, OMB Circular A–21 would apply to the costs incurred by the institution of higher education even though OMB Circular A–87 would apply to the costs incurred by the State.

§ 3015.196 Costs allowable with approval.

Each set of cost principles specifically identifies certain costs that, in order to be allowable, must be approved by the awarding agency. Other costs do not require approval. The following procedures govern approval of these costs:

(a) When costs are allocated in accordance with a government-wide cost allocation plan or when treated as indirect costs, acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b) (1) All direct costs must be approved in advance by the awarding agency.

(2) When costs are specified in the budget, approval of the budget shall constitute approval of the cost.

(3) Specific prior approval in writing from the awarding agency is required if the costs are not specified in the budget, or if there is no approved budget. For this purpose the prior approval procedures of subpart M shall be followed, except that, for formula or mandatory grants, the awarding agency's written approval may be signed by any authorized official of the awarding agency.

(c) The awarding agency may waive or conditionally waive the requirement for its approval of the costs. A waiver, as such, shall be applicable only to the requirement for approval. If it is determined, by audit or otherwise, that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the provisions of the Federal grant.

Subpart U—Miscellaneous

§ 3015.200 Acknowledgement of support on publications and audiovisuals.

(a) *Definitions.* Appendix A defines "audiovisual," "production of an audiovisual," and "publication."

(b) *Publications.* Recipients shall have an acknowledgement of awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals.* Recipients shall have an acknowledgement of awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over $5,000. Unless the other provisions of the grant award make it apply, this requirement does not apply to:

(1) Audiovisuals produced under mandatory or formula grants or under subgrants.

(2) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

(d) *Waivers.* Awarding agencies may waive any requirement of this section.

§ 3015.201 Use of consultants.

(a) *Definition.* Appendix A defines "consultant."

(b) *Applicability.* This section applies only to the use of consultants whose fees are supported by a grant, subgrant, or cost-type contract.

(c) *Basic policy.*—(1) *Prior approval.* Awarding agencies shall not require prior approval for the use of consultants.

(2) *Exceptions.* (i) In unusual cases, using a consultant may constitute a transfer of substantive programmatic work, which requires prior approval under discretionary grants. (ii) Consulting fees paid by an organization to its own employees require prior approval.

(d) *Use of an organization's own employees.*—(1) *Faculty members of education institutions.* Charges representing extra compensation (above base salary) paid by an educational institution to a salaried member of its faculty for consulting work are allowable only in unusual cases, and only if both of the following conditions exist:

(i) The consultation is across departmental lines or involves a separate or remote operation; and

(ii) The work performed by the consultant is in addition to his or her regular departmental load.

(2) *All other cases.* In all other cases, consulting fees paid in addition to salary by recipients or cost-type contractors to people who are also their employees may be supported by a grant, subgrant, or cost-type contract only in unusual cases, and only if all of the following three conditions exist:

(i) The policies of the recipient or contractor permit such consulting fee payments to its own employees regardless of whether Federal grant funds are involved;

(ii) The work involved is clearly outside the scope of the person's salaried employment; and

(iii) It would be inappropriate or not feasible to compensate for the additional work by paying additional salary to the employee.

(3) *Requirement for approval.* Consulting fees paid under this section must have a specific prior approval in writing from the Head of the recipient or contractor or from his or her designated representative. If the recipient or contractor is a government, the approval may be given by the Head (or a designated representative of the Head) of the government agency which is primarily responsible for administering or carrying out the project or program. If the designated representative is personally involved in the project or program under consideration, the approval may be given only by the Head. If the Head is personally involved in the project or program under consideration, prior approval from the awarding agency is required. Such prior approval must include a determination that the applicable requirements in paragraph (d)(1) or (2) of this section are present.

(e) *Documentation standards.* (1) Charges for consulting payments must be supported in the records of the recipient or cost-type contractor by an invoice from the consultant and a copy of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

(2) If any of the following information is not shown on the invoice and/or report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient or contractor for its files, or noted in handwriting on the consultant's invoice by the recipient or contractor. The memorandum, other document, or handwritten notation must be signed by an official of the recipient or contractor and show:

(i) The name of the consultant;

(ii) The nature of the services provided (such as statistical analysis of data, participation on project advisory committee, or specified medical services to eligible beneficiaries);

(iii) The relevance of the services to the project or program, if not apparent from the nature of the services; and

(iv) Whichever of the following is applicable:

(A) (If the fee was based on a rate per day or hours worked) the rate and the dates and/or hours worked;

(B) (If the fee was based on a rate per unit of service provided, such as the number of patients examined by a physician) the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or

(C) (If the fee was determined on some other basis) the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

§ 3015.202 Limits on total payments to the recipient.

(a) This section summarizes the four most widely applicable limits on the total amount of money the recipient is entitled to receive from USDA as a result of a grant. It is permissible for the terms of a grant to provide one or more additional limits.

(b) For each grant, the lowest of the applicable limits is the one that governs the final settlement upon expiration or termination of the grant.

(c) The following two limits apply to every grant:

(1) The amount of Federal funds authorized.

(2) The Federal share of the allowable costs incurred by the recipient.

(d) Grants that require a specified percentage of cost-sharing or matching are subject to the limit described in subpart G.

(e) For each budget period of an incrementally funded discretionary grant, the Federal share of that period's approved budget is a limit.

§ 3015.203 OMB Circular A-95.

(a) *Part I—Project notification and review system (PNRS).* (1) Except as noted in paragraph (a)(4) of this section, applicants desiring Federal assistance, under covered programs, must notify the appropriate state and areawide clearinghouses of their intention to apply for USDA funds. Clearinghouses have 30 days to review and comment on this notification of intent (NOI) which summarizes the proposed project. Clearinghouses may have another 30 days to review and comment on a completed application from the applicant. In cases where a completed application is initially submitted in lieu of a NOI, the clearinghouses will have a 60 day review and comment period. Clearinghouse comments must be submitted with applications to USDA.

(2) USDA agencies may not award grants for projects that are covered by Circular A-95 until the applicant has complied with those requirements.

(3) The kinds of projects covered by the project notification and review system are described in the A-95 Circular.

(4) Applicants desiring USDA housing assistance for projects involving new construction or substantial rehabilitation may submit an application to USDA rather than to a clearinghouse. In this case, USDA will transmit a copy of the application to the appropriate State and areawide clearinghouse for a 30 day review and comment period.

(b) *Part II—Direct Federal development.* USDA agencies engaged in direct development of Federal projects must consult with State and local governments and environmental agencies that might be affected by those projects. State and areawide clearinghouses must be used to the greatest extent practicable in securing State and local views and comments.

(c) *Part III—Review of State plans.* Before a State submits a State plan or any amendment to USDA for approval, the State shall give its Governor or his designated agency 45 days to comment. The Governor's comments shall be submitted with the plan or amendment. If the Governor does not comment, the State official submitting the plan or amendment shall certify to the awarding agency that the Governor was given 45 days to comment, but did not comment.

(d) *Part IV—Coordination of planning in multijurisdictional areas.* USDA agencies responsible for areawide planning programs must assure coordination of planning in multijurisdictional areas as prescribed by Part IV of Circular A–95.

§ 3015.204 Federal Register publications.

(a) *Program regulations.* Most grant programs have program-specific regulations, which are published in the **Federal Register** and codified in the *Code of Federal Regulations.* In some cases the program-specific regulations are promulgated in the form of agency directives or manuals which may be obtained from the awarding agency.

(b) *Program announcements.* For each program, the awarding agency may publish in the **Federal Register** one or more program announcements. Program announcements invite applications for one or more stated program objectives. They include at least the following information:

(1) An estimate of how much money will be available for competing awards, and the expected size of the awards, broken down by subprogram or priority area when appropriate;

(2) Who is eligible;

(3) How to obtain application kits;

(4) Where to submit applications; and

(5) The deadline for submitting applications.

(c) *Cooperative agreements.* If any or all of the awards are likely to be cooperative agreements rather than grants, the program announcement so states. In that case, if feasible, the program announcement also describes the anticipated substantial Federal involvement in performance. (This paragraph does not prevent the award of cooperative agreements under a program announcement that mentioned only grants. Nor does it prevent the award of grants under a program announcement that mentioned only cooperative agreements.)

(d) *Evaluation criteria.* The awarding agency publishes its criteria for evaluating grant applications either in the program regulations or the program announcement. If the criteria are not all equal in importance, their relative weights are also published. The criteria cover at least the following factors (except where the nature of the eligible projects makes one or more of these factors irrelevant):

(1) How well qualified the project's personnel will be;

(2) The adequacy of the applicant's facilities and resources;

(3) The adequacy of the project plan or methodology;

(4) The cost-effectiveness of the project; and

(5) How closely the project objectives fit the objectives for which applications were invited.

(e) *Funding priorities.* If the awarding agency will give priority to one or more particular kinds of projects, the priority (and how it will be applied in deciding which applications to fund) is described in the program announcement.

(f) *Competing continuations vs. "new" projects.* If the awarding agency will give a preference to competing continuation applications over applications for projects not already receiving support under the program, or vice versa, the preference is described in the program announcement.

(g) *Programs with few potential applicants.* In some programs the number of potential applicants is relatively small. (For example, in some programs only the States are eligible.) In these situations the awarding agency may send a copy of the program announcement directly to every potential applicant instead of publishing it in the **Federal Register.**

(h) *Register—Other information which is available.* In addition to the items specified above, each awarding Agency makes available to the public the following information and materials for each program:

(1) A copy of, or reference to, the authorizing statutes for the program;

(2) All guidelines of general applicability for administration of the program;

(3) A description of the procedures the awarding agency will use for evaluating applications; and

(4) Any other information that the awarding agency believes will be helpful.

(i) *Consulting with applicants.* Each awarding agency publishes as much information as practicable to reduce the need for consultation by applicants. If the awarding agency does provide consultation, its staff members try to give consistent interpretations and fair treatment to all requestors.

Appendix A—Definitions

Section I *"Grant" and "Cooperative Agreement"*

(a) "Grant" unless qualified by "non-Federal" means an award by the Federal government of money, property instead of money, services, or anything of value, to the State or other recipient, with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government; and

(2) At the time the award is made, no substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(b) "Cooperative agreement" has the same meaning as "grant," except that, at the time a cooperative agreement is awarded, substantial involvement is anticipated between the executive agency, acting for the Federal government, and the State or local government or other recipient during performance of the contemplated activity.

(c) "Grants" and "cooperative agreements" do not include technical assistance, which provides services instead of money; revenue sharing; loans; loan guarantees; capital contributions to loan funds; interest subsidies; insurance; or direct appropriations. (See the definition of "Non-Federal grant" in Section II of this appendix.)

Section II *Other Definitions.*

"Acquisition" of property includes purchase, construction, or fabrication of property. It does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment. It includes the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment useable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the

regular accounting practices of the organization purchasing the equipment.

If an item of equipment is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay. (See the definition of "amount received for trade-in.")

For purposes of the rules on equipment and supplies, "acquisition cost" of a copy of a work of authorship (such as a book, print of a motion picture, or tape of a television program) refers to the cost of fabricating or purchasing the individual copy, considered as a material object. It does not include the cost of developing, or acquiring rights to, the work embodied in the copy.

"Advance by Treasury check" is a payment made by a Treasury check to a recipient of a grant or cooperative agreement, before payments are made by the recipient of the grant or cooperative agreement. Advances by Treasury check are based on either a periodic request from the recipient or a predetermined payment schedule.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in, minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value, shown on an invoice. For example, suppose that a recipient can buy a new machine for $5,000 in cash. The recipient actually buys this machine by trading in a used machine and paying $3,000 in cash. In this case, the amount received for trade-in would be $2,000 ($5,000 minus $3,000) regardless of the trade-in allowance shown on the invoice.

"Approved budget" means a budget (including any revised budget) which has been approved in writing by the awarding agency. (See the definition of "budget.")

"Audiovisual" means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

"Awarding agency" means (1) for grants and cooperative agreements, the USDA agency making the award, and (2) for subgrants, the recipient.

"Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument, accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

"Budget" means the recipient's financial expenditure plan approved by the awarding agency to carry out the purposes of the Federally-supported project. The budget is comprised of both the Federal share and any non-Federal share of such plan and any subsequent authorized rebudgeting of funds.

For those programs that do not involve Federal approval of the non-Federal share of costs, such as research grants, the term "budget" means the financial expenditure plan approved by the awarding agency including any subsequent authorized rebudgeting of funds, for the use of Federal funds only. Any expenditures charged to an approved budget consisting of Federal and non-Federal shares are deemed to be supported by the grant in the same proportion as the percentage of Federal/non-Federal participation in the overall budget.

"Budget period" means the period specified in the grant or cooperative agreement during which Federal funds awarded are authorized to be expended, obligated, or firmly committed by the recipient for the purposes specified in the agreement.

"Closeout" of a grant or cooperative agreement means the process by which an awarding agency determines that all applicable administrative actions and all required work of the grant or cooperative agreement have been completed by the recipient and the awarding agency.

"Consultant" means a person who gives advice or services for a fee, but not as an employee. The term includes guest speakers when not acting as employees of the party that engages them. Note that in unusual cases it is possible for a person to be both an employee and a consultant at the same time. (See § 3015.201.)

"Contract" means a procurement contract awarded under a grant, cooperative agreement, or subgrant; and "subcontract" means a procurement subcontract under such a contract. Procurement contracts and subcontracts are ones which place the parties in a buyer-seller relationship, regardless of the label used by the parties to describe the relationship (e.g., purchase-of-service agreement). The terms "contract" and "subcontract" do not include any agreements between organizational components of the same legal entity, even if one of the components provides property or services to or for the other. (See definitions of "subgrant," "cost-type contract," and "fixed price contract.")

"Cost-sharing" and "matching" each mean the value of third party in-kind contributions plus that portion of the allowable costs of recipients not supported by the Federal Government. (The terms "cost-sharing" and "matching," in this part, are synonymous.)

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs. The term includes cost-plus-fixed-fee contracts and subcontracts. (However, the term does not include any subcontracts under a "fixed-price contract.")

"Discretionary" grants and cooperative agreements are ones which a Federal statute authorizes but does not require USDA to award.

"Equipment" means an article of tangible personal property that has a useful life of more than two years and acquisition cost of $500 or more. Any recipient may use its own definition of equipment if its definition would at least include all items of equipment as defined here.

"Expenditure report" means (1) for nonconstruction awards, the "Financial Status Report" (or other equivalent report); (2) for construction awards, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report).

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount is a limit on the total amount of money that the recipient is entitled to receive from the Federal Government as a result of the award. In addition to this limit, there are other limits. Refer to § 3015.202 for a summary of these.

"Federally recognized Indian Tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.

"Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

"Fixed-price contract" means any contract except a cost-type contract. The term includes firm-fixed price contracts. It also includes contracts under which the contractor is paid at a fixed rate per unit of service or unit of labor time. (See the definitions of "contract" and "cost-type contract.")

"General program income" means all program income except the special categories treated in §§ 3015.43 through 3015.46. The term "general program income" is limited to amounts that accrue to a recipient of grant or cooperative agreement during the period of Federally assisted support, or to a subrecipient during the period of sub-award support.

"Local government" means a local unit of government including specifically, a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1974), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Mandatory" or "formula" grants and cooperative agreements are ones which a Federal statute requires USDA to award if the applicant meets specified conditions.

"Non-Federal grant" means an award of financial assistance in the form of money which includes no Federal funds, and for which the recipient must account to the donor on an actual cost basis. The term does not include any award that would be excluded from the definitions of "grant" and "cooperative agreement" if it were made by the Federal government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or future period.

"O&F" means the Office of Operations and Finance, which is an organizational

component in USDA reporting to the Assistant Secretary for Administration.

"OMB" means the Office of Management and Budget in the Executive Office of the President.

"Outlays" means charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Payment bond" means a bond executed in connection with a contract, to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided in the contract.

"Percentage-of-completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, instead of the recipient's rate of disbursements.

"Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Production of an audiovisual" means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording, or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

"Program income" means gross income earned by a recipient from activities supported by a grant or cooperative agreement. (See definition of "supported by a grant or cooperative agreement.") It includes but is not limited to income in the form of fees for services performed during the life of the grant, cooperative agreement, or subgrant, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the income's classification as program income be affected by the fact that the recipient earns it from a procurement contract awarded to the recipient (1) by the Federal government or (2) by another recipient acting under another Federal grant, cooperative agreement, or subgrant.

The following are not considered program income:

(1) "Revenues" raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of these revenues shall be recorded as a part of the transactions of the Federally-assisted project or program when the revenues are specifically earmarked for the project in accordance with the terms of the grant, cooperative agreement, or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant, cooperative agreement, or subgrant.

(3) Income earned by contractors or subcontractors.

(4) Internal reimbursements or transfers of funds between organizational components of the same legal entity (e.g., between agencies of the same government).

(5) Third party in-kind contributions.

(6) Gifts or financial assistance from another source, such as (i) a non-Federal grant, (ii) another Federal grant, and (iii) charitable contributions (whether or not for a restricted purpose), and

(7) Interest or other investment income earned from investing advances of Federal cash. (This kind of income is treated in § 3015.46.)

"Project period" means the total time for which the recipient's project or program is approved for support including any extensions. Project periods may consist of one or more budget periods.

"Publication" means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

"Real property" means land, land improvements, structures, and things attached to them so as to become a part of them. Movable machinery and other kinds of equipment are not real property. If a question comes up about whether certain property should be classified as real property, the law of the State or foreign country in which the property is located governs.

"Recipient" means a State or local government, Federally recognized Indian Tribe, university, non-profit, for profit, or other organization that is a recipient of grants or cooperative agreements from a USDA agency.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, possession, or trust territory of the United States, or any agency or instrumentality of a State. The term does not include local governments.

"Subgrant" means an award of money, or property instead of money, which:

(1) Is made under a grant or cooperative agreement by the recipient of the grant or cooperative agreement; and

(2) Is made principally to accomplish a purpose of support of stimulation rather than to establish a buyer-seller relationship between the two parties.

Any award which meets that definition is a subgrant even if the parties to the award use some other label such as "grant," "agreement," "cooperative agreement," "contract," "allotment," or "delegation agreement." Also, if the award meets that definition, it is a subgrant whether or not the awarding agency is expected to be substantially involved in its performance. However, the term "subgrant" does not include any type of assistance which is excluded from the definitions of "grant" and "cooperative agreement" by Section I(c) of this Appendix.

"Supplies" means all tangible personal property other than equipment.

"Supported by a grant or cooperative agreement," as applied to a cost or an activity, means that the cost or the cost of the activity is entirely or partly (1) treated as a direct cost under a grant, cooperative agreement, subgrant, or cost-type contract, and (2) either supported by Federal funds or counted towards a Federal cost-sharing or matching requirement.

"Suspension" of an award means temporary withdrawal of the recipient's authority to obligate the funds awarded pending corrective action by the recipient or a decision to terminate the award.

"Termination" of an award means permanent withdrawal of the recipient's authority to obligate previously awarded funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the recipient.

"Termination" does not include:

(a) Withdrawal of the unobligated balance upon expiration of award;

(b) Refusal by the awarding agency to extend an award or to award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Annulment, i.e., voiding of an award upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception;

(d) Withdrawal of surplus Federal funds from a discretionary grant or any analogous withdrawal of funds by a recipient from a subrecipient; or

(e) Withdrawal from a mandatory or formula grant of surplus Federal funds authorized which the recipient will not obligate during the fiscal year, or any analogous withdrawal of funds by a recipient from a subrecipient.

"Terms" of a grant, cooperative agreement, subgrant, or contract means all rights and duties created by the award, whether stated in statute, this part or other regulations, the award document itself, or any other document.

"Third party" means, with respect to a grant or cooperative agreement, any entity except (1) the Federal government, (2) the

recipient of the cooperative agreement, and (3) subrecipients under that grant or cooperative agreement. Note that contractors of recipients are third parties under this definition, although subrecipients are not.

"Third party in-kind contributions" means property or services benefiting the Federally assisted project or program which are contributed by third parties without charge. Note that the term does not include any costs incurred by the recipient or subrecipient.

"Unliquidated obligations," means, for financial reports prepared on a cash basis, the amount of obligations incurred by the recipient that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the recipient for which an outlay has not been recorded.

"Unobligated balance" is the portion of Federal funds authorized which has not been obligated by the recipient. It is calculated by subtracting the Federal share of the recipient's cumulative obligations from the cumulative Federal funds authorized.

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Part V

Department of Commerce

Patent and Trademark Office

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent cases (1) to eliminate public access to reissue applications, (2) to eliminate consideration of the so-called "no defect" reissue applications, (3) to limit the participation by protestors during the application examination, (4) to reject and permit appeal to the Board of Appeals for failure to comply with the duty of disclosure rather than striking applications without appeal rights, and (5) to clarify the interface between patent application examination and patent reexamination in certain areas. These proposed changes are considered desirable in view of the large backlog of pending patent applications and the implementation of reexamination procedures under Public Law 96–517. These changes are intended to (1) reduce the prosecution costs of patent applicants, and (2) permit some of the Patent and Trademark Office resources now devoted to consideration of the so-called "no defect" reissue applications, and to extensive participation by protestors during application examination, to be directed toward reduction of the backlog of pending patent applications. The proposed changes are also intended to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. The proposed changes are further intended to clarify the interface between the duty of disclosure during patent application examination and the duty of disclosure during patent reexamination, as well as the treatment of concurrent reissue and reexamination proceedings on the same patent.

DATES: Comments must be submitted on or before February 4, 1982; public hearing, February 4, 1982, 9:30 a.m.; requests to present oral testimony should be received on or before January 29, 1982.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The hearing will be held in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. R. Franklin Burnett by telephone at (703) 557–3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change is designed to reduce the prosecution costs of patent applicants by limiting the amount of participation by protestors during the patent application examination process. The proposed change also seeks to reduce the amount of time required by the Patent and Trademark Office to examine such protested applications by the same limitations placed on protestor participation. Interpartes proceedings to resolve factual disputes would be left to the courts to handle. At the same time, the technical expertise of the Patent and Trademark Office would continue to be available to make determinations of patentability on the bais of prior art and related facts as they can best be determined on an ex parte basis. These purposes are intended to be accomplished by (1) eliminating public access to reissue applications, and (2) limiting protestor participation to the filing of papers in opposition to the grant of a patent with no Office communications to the protestor resulting therefrom. The proposed change also intends to accomplish these purposes by eliminating the consideration of reissue applications not initially containing the defects required by 35 U.S.C. 251. The views of many who commented in writing and at the hearing on April 16, 1981, on proposed rules for implementing reexamination favored modifications of the rules along the lines proposed herein. The reexamination legislation, contained in Pub. L. 96–517, provides for the reexamination of an already issued patent on the basis of prior patents and printed publications, prior art which can be readily and adequately considered by the examiner.

This proposed rule change is also designed to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. This purpose is intended to be accomplished by amending § 1.56(d) to provide that the claims in an application would be examined pursuant to 35 U.S.C. 131 and 132 and rejected on the ground that applicant is not "entitled to a patent under the law." The rejection would be make under the same conditions and circumstances previously used to strike an application, i.e., "clear and convincing evidence" of fraud or any violation of the duty of disclosure through bad faith or gross negligence. The statute, 35 U.S.C. 131, provides for examination of an application "and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent * * *." Section 132 of Title 35 makes provision for the rejection of a claim for a patent as a result of the examination directed by 35 U.S.C. 131. While questions of fraud and violations of the duty of disclosure have historically been dealt with by the Commissioner through the mechanism of striking the affected appliction, there is no statutory requirement that the Commissioner act in that manner. Clearly the Commissioner can choose how, and by whom, the examination directed by 35 U.S.C. 131 can be made. Section 132 authorizes a rejection in those circumstances where applicant is not "entitled to a patent under the law." The proposed changes would simply modify the mechanism and procedures which the Commissioner would use where the applicant is not "entitled to a patent under the law" because of failures to comply with § 1.56(d).

No proposal is being made to change the discretionary authority of the Commissioner to strike applications from the file pursuant to § 1.56(c). Since the striking of applications under paragraph (c) of § 1.56 is discretionary, it is appropriate that the authority be retained by the Commissioner or the Commissioner's delegate.

The proposed rule change is also designed to clarify the interface between patent application examination and patent reexamination in certain areas. The two areas involved are duty of disclosure and concurrent proceedings involving a patent under reexamination and for which a reissue application has been filed.

Present §§ 1.11, 1.56, 1.106, 1.175, 1.176, 1.193, 1.291, 1.555, 1.565, and 1.570 would be amended to accomplish the purposes indicated above.

Section 1.11, if amended as proposed, would eliminate access by the public to reissue applications except "in such special circumstances as may be determined by the Commissioner" as provided in 35 U.S.C. 122. This section, if amended as proposed, would mean that access by the public to reissue applications would be obtained only by

the granting of a petition under essentially the same guidelines as those which existed prior to the change in § 1.11 which became effective on March 1, 1977. Section 1.11, if amended as proposed, would no longer provide for announcement of the filing of reissue applications in the Official Gazette. However, no change is being proposed in § 1.179 which requires placing in the file of the original patent a notice stating that an application for reissue has been filed. The notice provided for in § 1.179 will continue to enable interested persons to determine whether or not an application seeking reissue of a particular patent has been filed.

Section 1.56, if amended as proposed, would revise the title and paragraph (d), and add new paragraphs (e) through (i). The proposed revision to the title and to paragraph (d) would provide for the rejection of claims on the ground that applicant is not entitled to a patent under the law if upon examination pursuant to 35 U.S.C. 131 and 132 it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the appplication relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies. Uner the proposed revision to paragraph (d), any rejection would be made would include all the claims in the application. The standards to be used in rejecting the claims under paragraph (d), as proposed to be amended, would be the same as those not utilized by the Commissioner in striking applications pursuant to present paragraph (d), i.e., clear and convincing evidence of fraud or any violation of the duty of disclosure through bad faith or gross negligence. Consistent with present practice, the proposed revision of paragraph (d) would look to fraud or a violation of the duty of disclosure through bad faith or gross negligence with relation to the application under consideration or any previous application upon which the application relies. The phrase "in connection with the application" is to be construed in the same manner as in the present paragraph (d) and would include within its scope the mere refiling of the subject matter of an application into another application without relying in the second application upon the first application. Thus, upon examination pursuant to 35 U.S.C. 131 and 132, an appropriate rejection based on conduct or actions proscribed by § 1.56(d) could not be avoided merely by refiling the subject matter of the application in a second or subsequent application which did not rely upon the earlier application.

Paragraph (e) of § 1.56, if added as proposed, would normally delay the examination of an application for compliance with paragraph (d) of § 1.56 until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. Paragraph (e), if added as proposed, would thus permit the resolution of issues arising under § 1.56(d) to be delayed until consideration of such issues is necessary and appropriate. The practice under proposed paragraph (e) would be generally consistent with practice under present paragraph (d) which normally delays the substantive resolution of fraud and duty of disclosure issues until other issues have been resolved in favor of applicant. Under proposed paragraph (e) an appeal would be suspended for examination pursuant to paragraph (d) of § 1.56 once appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals. Of course, if no questions of possible violation of § 1.56 are raised or evident on the record before the examiner, no examination for compliance with paragraph (d) of § 1.56 would be undertaken. Proposed paragraph (e) provides for the reopening of prosecution of the application to the extent necessary to conduct the examination pursuant to proposed paragraph (d) of § 1.56 including any appeal pursuant to § 1.191. Proposed paragraph (e) also indicates that where an appeal has already been filed based on a rejection on other grounds, any further rejection under paragraph (d), if amended as proposed, shall be treated in accordance with proposed § 1.193(c).

Proposed new paragraph (f) would continue the present long-standing practice whereby any member of the public can file a petition to strike an application from the files pursuant to present paragraph (c) of § 1.56. Such petitions are currently being filed without specific mention in § 1.56. Under present practice such petitions can seek to have an application stricken from the files for violations of either or both of paragraphs (c) and (d) of § 1.56. Under the proposed revision of § 1.56 petitions to strike an application for a violation of § 1.56 would be limited to violations of paragraph (c) with any violations of paragraph (d) being subject matter for rejection under the proposed revisions to paragraph (d). Proposed new paragraph (f) would require that any such petition alleging a violation of paragraph (c) which is entered in the application file would have to (1) be timely filed, (2) specifically identify the application to which the petition is directed, and (3) be served on the applicant or be filed with the Office in duplicate in the event service is not possible. Proposed new paragraph (f) does not specifically limit a "timely petition" to any particular point in the examination of the application. Such petitions will generally be considered "timely" if they are filed before final rejection or allowance of the application by the examiner.

Whether or not a petition filed after final rejection or allowance of the application by the examiner is considered "timely" would depend upon the circumstances and the point in the prosecution at which the petition is submitted. Proposed new paragraph (f) would also require that the petition specifically identify the application to which the petition is directed. While an identification by application serial number is not essential, the identification must include enough specificity that the Office can determine with certainty the application to which the petition is directed. Paragraph (f), if added as proposed, would also require service on the applicant of the petition, or a duplicate copy in the event service is not possible, before the petition would be entered. While the Office might, in some circumstances, reproduce and serve a petition on the applicant, a member of the public would have no assurance that such would be done and, under proposed paragraph (f), could not rely upon the Office doing so. Paragraph (f), if added as proposed, would require that any petition filed by an attorney or agent comply with § 1.346.

Paragraph (g) of § 1.56, if added as proposed, would assure a member of the public that a petition to strike an application for violation of paragraph (c) of § 1.56 would be considered by the Office if (1) it is timely filed; (2) it specifically identifies the application to which the petition is directed; and (3) it is properly served upon the applicant in accordance with § 1.248 or is filed with the Office in duplicate in the event service is not possible. However, under proposed paragraph (g) the Office would not communicate with the member of the public filing such a petition, except for the return of a self-addressed

postcard acknowledging receipt of the petition. Paragraph (g), if added as proposed, would not permit the member of the public filing the petition to contact the Office as to the disposition, or status, of the petition, or to participate in any Office proceedings relating to the petition. The disposition of the petition, once such has been filed, would, under the proposed paragraph (g), be an ex parte matter between the Office and the applicant. Paragraph (g), if added as proposed, would provide for the Office to communicate with the applicant regarding a petition to strike the application which has been entered in the application file. Under paragraph (g), if added as proposed, the applicant could be required by the Office to respond to the petition. Any such response would be ex parte and would not be served on the member of the public filing the petition.

Paragraph (h) of § 1.56, if added as proposed, would provide that any member of the public may seek to have the claims in an application rejected pursuant to the proposed revisions to paragraph (d) of § 1.56 by filing a timely protest in accordance with § 1.291. Proposed paragraph (h) also requires that any such protest filed by an attorney or agent seeking a rejection of claims pursuant to the proposed revisions to paragraph (d) of § 1.56 must be in compliance with § 1.346.

Paragraph (i), if added as proposed, would provide for the Office requiring the applicant to supply information pursuant to paragraph (a) of § 1.56 in order for the Office to decide any issues relating to paragraphs (c) and (d) of § 1.56, whether or not such issues arise as a result of a petition or a protest, or arise from other sources, e.g., an examiner discovering the issue while studying the application file. Any requirements for information under proposed paragraph (i) would be ex parte in nature between the Office and the applicant. The ex parte nature of the requirements for information under proposed paragraph (i) differs from current practice under which information may be required, or requested, from applicant and one or more petitioners or protestors.

Section 1.106, if amended as proposed, would have added thereto a paragraph (c) emphasizing the importance placed on admissions by the applicant or patent owner in a reexamination proceeding insofar as matters affecting patentability are concerned. Such admissions would have increased importance in view of the limitations proposed herein on protestor participation during the application examination. Paragraph (c), if added as proposed, would also include a reference to the use of rejections based upon facts within the knowledge of the examiner as provided in present § 1.107. Paragraph (c), if added as proposed, would not constitute a change in practice, but would result in § 1.106 more closely reflecting current practice.

Section 1.175, if amended as proposed, would eliminate paragraph (a)(4), which provides the specific authorization for the filing of "no defect" reissue applications. If § 1.175 is amended as proposed, an applicant for reissue of a patent would be required to file with the reissue application a statement under oath or declaration specifically averring to a defect in the patent, e.g., "a defective specification or drawing," or to an excess or insufficiency in the claims. Section 1.175, if amended as proposed, would also require, in paragraphs (a)(5) and (a)(6), that applicant specify errors as opposed to "what might be deemed to be errors." Section 1.175, if amended as proposed, would effectively eliminate Office consideration of the merits of "no defect" reissue applications since any such "no defect" reissue applications filed after the effective date of the changes to § 1.175 would not be examined as to questions of patentability. In addition, § 1.175(a)(6) would be added to parallel the provisions presently in § 1.65 requiring in reissue applications oaths or declarations, the same acknowledgment of the duty of disclosure as in the case of a non-reissue application.

Section 1.176, if amended as proposed, would eliminate the two month waiting period before examination of the reissue application begins. No waiting period would be necessary or desirable if the proposed amendments to § 1.11(b) eliminating public access to reissue applications and the *Official Gazette* announcement of the filing of the reissue applications are adopted.

Section 1.193, if amended as proposed, by adding paragraph (c), would provide that any decision pursuant to § 1.56(d) rejecting claims in an application already under appeal of a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e). Prior to entering any such supplemental examiner's answer under proposed paragraph (c), the Office may require information from applicant pursuant to proposed paragraph (i) of § 1.56. Under proposed paragraph (c) of § 1.193, the appellant may file a reply to the supplemental examiner's answer within two months from the date of the supplemental examiner's answer. Proposed paragraph (c) provides that the appellant's reply to the supplemental examiner's answer will be considered and responded to as necessary with appellant being provided with an additional month, or such other time as may be set, within which to reply to any such response from the Office. Following the introduction of a supplemental examiner's answer pursuant to proposed paragraph (c) and any replies and response thereto, the application will be forwarded to the Board of Appeals for consideration.

Section 1.291, if amended as proposed, would continue to permit protests by the public against pending original and reissue applications. The protest could include any grounds which the member of the public filing the protest believed to be applicable. Paragraph (a), if amended as proposed, would eliminate the present requirement that the Office acknowledge the filing of a protest. Instead, proposed paragraph (c) would provide for the member of the public submitting the protest to include with the protest a self-addressed postcard in order to receive an acknowledgment that the protest has been received. Under paragraph (c), as proposed to be amended, a self-addressed postcard containing an identification of the protest would be stamped by the Office and returned.

Paragraph (a) of § 1.291, if amended as proposed, would provide that a protest specifically identifying the application to which the protest is directed would be entered in the application file if the protest is timely submitted and is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. The comments made above in the discussion of proposed new paragraph (f) of § 1.56, regarding the timeliness of the filing or submission, specific identification of the application, and service on the applicant, are also applicable to the proposed amendments of paragraph (a) of § 1.291.

Paragraph (b) of § 1.291, if added as proposed, would assure a member of the public that a protest would be considered by the Office if (1) it specifically identifies the application to which it is directed; (2) it is timely submitted; (3) it is properly served upon the applicant in accordance with § 1.248 or is filed with the Office in duplicate in the event service is not possible; (4) it includes a listing of the patents, publications or other information relied

upon and a concise explanation of the relevance of each listed item; (5) it includes a copy of each listed patent or publication or other item of information in written form, or at least the pertinent portions thereof; and (6) it includes an English language translation of all the necessary and pertinent parts of any non-English language document relied upon. It is considered desirable that § 1.291 advise a member of the public as to the contents which should be included in any protest since there would be no office communications directed to the member of the public submitting the protest, if paragraph (c) is amended as proposed. Thus, under paragraph (c), as proposed to be amended, a member of the public would not be provided with an opportunity to complete any protest which is incomplete.

Paragraph (c) of § 1.291, if amended as proposed, would provide that the member of the public filing the protest would not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard acknowledging receipt of the protest. Paragraph (c) of § 1.291, if amended as proposed, would not permit the member of the public filing the protest to contact the Office as to the disposition, or status, of the protest or to participate in any Office proceedings relating to the protest. The disposition of the protest, once such has been filed, would, under paragraph (c) as proposed to be amended, be an ex parte matter between the Office and the applicant. Paragraph (c), if amended as proposed, would provide for the Office to communicate with the applicant regarding any protest entered in the application file. Under paragraph (c), if amended as proposed, the applicant could be required by the Office to respond to the protest. Any such response would be ex parte and would not be served on the member of the public filing the protest. Paragraph (c), if amended as proposed, would provide for the office requiring the applicant to supply information pursuant to present paragraph (a) of § 1.56 in order for the Office to decide any issues raised by the protest. Any requirements for information under paragraph (c), if amended as proposed, would be ex parte in nature between the Office and the applicant, the ex parte nature of the requirements for information under paragraph (c), if amended as proposed, differs from current practice under which information may be required, or requested, from applicant and one or more protestors.

Section 1.555, if amended as proposed, would make the duty of disclosure in reexamination proceedings more consistent with the duty of disclosure in patent applications. Proposed paragraph (a) of § 1.555 specifies that a duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner or involved employees of the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. This proposed change is consistent with the duty set forth in § 1.56(a) insofar as patent applications are concerned, except that in proposed paragraph (a) of § 1.555 the patent owner is specified rather than the inventor as set forth in paragraph (a) of § 1.56. This does not however, impose the responsibility for compliance with the duty of disclosure on a corporate entity or organization but leaves the responsibility with involved individuals in the corporation or other organization. Proposed paragraph (a) of § 1.555 places a requirement on the individuals identified to bring to the attention of the Office patents or printed publications material to the reexamination which have not been previously made of record in the patent file and specifies how that should be accomplished.

Paragraph (b) of § 1.555, if added as proposed, would essentially parallel existing paragraph (b) of § 1.56 and make similar provisions applicable to disclosures in reexamination proceedings.

Paragraph (c) of § 1.555, if added as proposed, would provide that the duties of candor, good faith, and disclosure required in proposed paragraph (a) of § 1.555 have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding. The language of proposed paragraph (c) refers to fraud or violation of the duty of disclosure in the reexamination proceeding since such conduct during the pendency of applications is covered by § 1.56.

Paragraph (d) of § 1.555, if added as proposed, would affirm that the responsibility for compliance with § 1.555 rests upon the individuals identified in proposed paragraph (a). Proposed paragraph (d) would also provide that no evaluation will be made in the reexamination proceeding by the Office as to compliance with § 1.555. Proposed paragraph (d) of § 1.555 also provides that questions of compliance with § 1.555 which are discovered during a reexamination proceeding will be noted as unresolved questions in accordance with present § 1.552(c). Proposed paragraph (d) would not preclude the patent owner from filing a reissue application to have questions of candor, good faith, and duty of disclosure considered and resolved, including such questions which arise during a reexamination proceeding so long as the requirements of 35 U.S.C. § 251 have been met. Proposed paragraph (d) would also not preclude suspension or disbarment proceedings under present § 1.348 based upon conduct during a reexamination proceeding.

Section 1.565, if amended as proposed, would eliminate from present paragraph (b) the last two sentences relating to the treatment of concurrent reexamination and reissue proceedings and add a new paragraph (d) relating to this subject. Under proposed paragraph (d), which is consistent with the practice presently in effect under present paragraph (b), if a reissue application and a reexamination proceeding on which an order pursuant to present § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings. Proposed paragraph (d) provides that where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with present §§ 1.171–1.179. The examiner, in examining the merged proceeding, will apply the reissue statute and case law, in addition to present §§ 1.171–1.179, to the merged proceeding. This is appropriate in view of the fact that the statutory provisions for reissue applications and reissue application examination include, *inter alia*, provisions equivalent to 35 U.S.C. 305 relating to the conduct of reexamination proceedings. proposed paragraph (d) of § 1.565 would also make clear that the patent owner must place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. Under proposed paragraph (d) of § 1.565 the examiner's actions and any responses by the patent owner in a merged proceeding would apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Proposed paragraph (d) provides that any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

Section 1.570, if amended as proposed, would revise paragraph (e) to refer to proposed paragraph (d) of § 1.565 rather than present paragraph (b) in order to reflect the changes being proposed in § 1.565.

Environmental, energy, and other considerations: The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354).

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291.

The proposed rule change does not impose a recordkeeping or reporting requirement on the public and consequently is not subject to the Paperwork Reduction Act of 1980.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

It is proposed to amend 37 CFR, Part 1, as follows with deletions indicated by brackets and additions by arrows:

1. Section 1.11 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(b) All [reissue applications and all] applications in which the Office has accepted a request filed under § 1.139, and related papers in the application file, are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. [The filing of reissue applications will be announced in the Official Gazette. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.]

2. Section 1.56 is proposed to be amended by revising the title and paragraph (d) and by adding new paragraphs (e) through (i) to read as follows:

§ 1.56 Duty of disclosure;► fraud;◄ striking► or rejection◄ of applications.

* * * * *

(d) ►No patent will be granted on an application in connection with which fraud on the Office was practice or attempted or the duty of disclosure was violated through bad faith or gross negligence. The claims in an◄ [An] application shall be ►rejected◄ [stricken from the files] if►upon examination pursuant to 35 U.S.C. 131 and 132,◄ it is established by clear and convincing evidence ►(1)◄ that any fraud was practiced or attempted on the Office in connection with ►the application, or in connection with any previous application upon which the application relies,◄ [it] or►(2)◄ that there was any violation of the duty of disclosure through bad faith or gross negligence ►in connection with the application, or in connection with any previous application upon which the application relies◄.

►(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.193(c).◄

►(f) Any member of the public may seek to have an application stricken from the files pursuant to paragraph (c) of this section by filing a timely petition to strike the application from the files. Any such timely petition and any accompanying papers will be entered in the application file if the petition and accompanying papers (1) specifically identify the application to which the petition is directed, and (2) are either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Any such petition filed by an attorney or agent must be in compliance with § 1.346.◄

►(g) A petition to strike an application from the files submitted in accordance with the second sentence of paragraph (f) of this section will be considered by the Office, but a member of the public filing such a petition will not receive any communications from the Office relating to the petition, other than the return of a self-addressed postcard which the member of the public may include with the petition in order to receive an acknowledgment by the Office that the petition has been received. The Office will communicate with the applicant regarding any such petition entered in the application file and may require the applicant to respond to the Office on matters raised by the petition.◄

►(h) Any member of the public may seek to have the claims in an application rejected pursuant to paragraph (d) of this section by filing a timely protest in accordance with § 1.291. Any such protest filed by an attorney or agent must be in compliance with § 1.346.◄

►(i) The Office may require applicant to supply information pursuant to paragraph (a) of this section in order for the Office to decide any issues relating to paragraphs (c) and (d) of this section which are raised by a petition or a protest, or are otherwise discovered by the Office.◄

3. Section 1.106 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1.106 Rejection of claims.

* * * * *

►(c) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to § 1.107.◄

4. Section 1.175 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had a right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

[(4) When the applicant is aware of prior art or other information relevant to patentability, not previously considered by the Office, which might cause the examiner to deem the original patent wholly or partly inoperative or invalid, particularly specifying such prior art or other information and requesting that if the examiner so deems, the applicant be permitted to amend the patent and be granted a reissue patent.]

►(4)◄[(5)] Particularly specifying the errors [or what might be deemed to be errors] relied upon, and how they arose or occurred.

►(5)◄[(6)] Stating that said errors [, if any,] arose "without any deceptive intention" on the part of the applicant.

►(6) Acknowledging a duty to disclose information applicant is aware of which is material to the examination of the application.◄

* * * * *

5. Section 1.176 is proposed to be revised to read as follows:

§ 1.176 Examination of reissue.

An original claim, if re-presented in the reissue application, is subject to reexamination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications [, but not sooner than two months after announcement of the filing of the reissue application has appeared in the Official Gazette].

6. Section 1.193 is proposed to be amended by adding a paragraph (c) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

►(c) Any decision pursuant to § 1.56(d) rejecting claims in an application already under appeal of a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e), in which case appellant may file a reply thereto within two months from the date of the supplemental examiner's answer. Such reply will be considered and responded to as necessary. Appellant may file a reply brief directed to any such response within one month of the date of the response or within such other time as may be set in the response.◄

7. Section 1.291 is proposed to be amended by revising the title, amending paragraphs (a) and (c), and adding paragraph (b) to read as follows:

§ 1.291 Protests by ►the◄ public► against pending applications◄.

(a) Protests►by a member of the public◄against pending applications will be [acknowledged and] referred to the examiner having charge of the subject matter involved. A protests specifically identifying the application to which the protest is directed will be entered in the application file [and,] if ►(1) the protest is◄timely submitted [and accompanied by a copy of each prior art document relied upon, will be considered by the examiner]►; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible◄.

►(b) A protest submitted in accordance with the second sentence of paragraph (a) of this section will be considered by the Office if it includes (1) a listing of the patents, publications or other information relied upon; (2) a concise explanation of the relevance of each listed item; (3) a copy of each listed patent or publication or other item of information in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information in written form relied upon.◄

(c) ►A member of the public filing a protest under paragraph (a) of this section will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office will communicate with the applicant regarding any protest entered in the application file and may require the applicant to supply information pursuant to paragraph (a) of § 1.56, including responses to specific questions raised by the protest, in oprder for the Office to decide any issues raised by the protest◄ [Protests by the public and any accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant in accordance with § 1.248, or (2) be filed with the Office in duplicate in the event service is not possible].

8. Section 1.555 is proposed to be revised to read as follows:

§ 1.555 Duty of disclosure in reexamination proceedings.

►(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. All such individuals who are aware, or become aware◄ [The owner of a patent involved in a reexamination proceeding who is aware, or becomes aware], of patents or printed publications material to the reexamination which have not been previously made of record in the patent file must bring such patents or printed publications to the attention of the Office. A prior art statement, preferably in accordance with § 1.98, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such patents or printed publications to the attention of the Office.

►(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility on behalf of the patent owner for the reexamination proceeding or through a patent owner acting in his or her own behalf. Disclosure to such an attorney, agent or patent owner shall satisfy the duty of any other individual. Such an attorney, agent or patent owner has no duty to transmit information which is not material to the reexamination.◄

►(c) The duties of candor, good faith, and disclosure required in paragraph (a) of this section have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding.◄

►(d) The responsibility for compliance with this section rests upon the individuals identified in paragraph (a) of this section and no evaluation will be made in the reexamination proceeding by the Office as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).◄

9. Section 1.565 is proposed to be amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 1.565 Concurrent office proceedings.

* * * * *

(b) If a patent in the process of reexamination is or becomes involved in interference proceedings or a reissue application is filed for the patent, or litigation is instituted, the Commissioner shall determine whether or not to stay the reexamination, reissue or interference proceeding. [If

reexamination is stayed for the conduct of a reissue proceeding, the reissue proceeding shall take into account prior art provided by the requester for reexamination and the reexamination requester will be granted at least the same degree of participation in the reissue proceeding which the requester would have had in the reexamination proceeding. Any reexamination proceeding stayed for the conduct of a reissue proceeding shall be terminated by the grant of the reissued patent.]

* * * * *

►(d) If a reissue application and a reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings. Where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171–1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.◄

10. Section 1.570 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.570 Issuance of reexamination certificate after reexamination proceedings.

* * * * *

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § [1.565(b)] ►1.565(d)◄, the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

* * * * *

Dated: October 27, 1981.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

Robert B. Ellert,

Acting Assistant Secretary For Productivity, Technology and Innovation.

[FR Doc. 81-32497 Filed 11-9-81; 8:45 am]

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November 10, 1981

Part VI

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act (CETA); Conditional Prime Sponsor Designation for Fiscal Year 1983; Invitation to Submit Preapplications

DEPARTMENT OF LABOR

Employment And Training Administration

Comprehensive Employment and Training Act (CETA); Conditional Prime Sponsor Designation for Fiscal Year 1983; Invitation to Submit Preapplications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the eligibility criteria and procedures for applying for prime sponsor designation under the Comprehensive Employment and Training Act (CETA) and sets December 18, 1981 as the date for submission of preapplications for conditional designation for fiscal year (FY) 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Jess C. Ramaker, Acting Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213, (202) 376-6254.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to section 101(c) of CETA and 20 CFR 676.3 of the implementing regulations, each year applicants for prime sponsor designation, including those which were designated as prime sponsors in previous years, must submit Preapplications for Federal Assistance for the following fiscal year, by a date specified by the Secretary of Labor. The Secretary then designates qualified applicants as prime sponsors to receive financial assistance for the conduct of employment and training programs during the next fiscal year.

This notice sets a December 18, 1981, date for the submission of preapplications by potentially eligible entities. Prime sponsor designation will be conditional, subject to the enactment of new or amended employment and training legislation which provides for the designation of prime sponsors for FY 1983 on a basis consistent with that specified in the current Act, or the extension of CETA pursuant to section 701(g) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, August 13, 1981).

Eligibility Criteria; Lists of Jurisdictions by Population

Section 101(a) of the Act provides that a prime sponsor shall be:

(1) A State;

(2) A unit of general local government which has a population of 100,000 or more;

(3) Any consortium of units of general local government which includes a unit of general local government qualifying under paragraph (2);

(4) Any unit of general local government or any consortium of such units, without regard to population, which is determined by the Secretary,

(A)(i) To serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

(B) To have demonstrated that (i) it has the capability for adequately carrying out programs under the Act, (ii) there is a special need for services within the area to be served, and (iii) it will carry out programs and services in the area as effectively as any larger unit of general local government in the jurisdiction of which it is located or as the State.

(5) The four existing Concentrated Employment Program (CEP) prime sponsors;

(6) Any unit of general local government previously designated as a prime sponsor, with a population below 100,000 persons, which the Secretary certifies has demonstrated its effectiveness in, and continues to have the capability for, adequately carrying out programs under the Act. Under section 101(a)(2), units of general local government with populations of 100,000 or more persons qualify as CETA prime sponsors. Accordingly, List "A" of this notice shows jurisdictions with populations of 100,000 or more, based on the most satisfactory current data available to the Secretary. Under section 101(a)(6), any unit of general local government previously designated as a prime sponsor whose population has declined below 100,000 persons may qualify, provided it is certified by the Secretary pursuant to the standards in section 101(a)(6). Such jurisdictions whose populations have fallen below 100,000 persons are shown on List "B" of this notice. The publication of these lists is not intended in any manner to preclude other applicants from submitting applications.

Application Procedures

General Procedures for Applying

In accordance with section 101(c) of the Act, and in order to be considered eligible for prime sponsorship, the Secretary of Labor hereby informs all potential applicants that they must submit preapplications for Federal assistance no later than December 18, 1981. The Department of Labor will not accept any changes in these applications subsequent to December 18, 1981. One such preapplication will suffice for all titles of CETA; however, the preapplication for Special Grants to Governors must be separate.

All preapplications must be submitted to the appropriate Regional Administrator, Employment and Training Administration (ETA), the Governor, and appropriate State and areawide clearinghouses pursuant to OMB Circular A-95, not later than 30 days prior to the date the completed Comprehensive Employment and Training Plan (CETP) is submitted to the clearinghouse for formal review.

The preapplication will consist of Standard Form (SF) 424, as described in 41 CFR Part 29-70, with an attachment giving the following information:

(a) Population of area(s) to be served;

(b) Certification that the prime sponsor applicant, except for States, CEP and consortia prime sponsor applicants, has the general government authority required by the definition of "unit of general local government" at section 3(29) of CETA;

(c) Name of any eligible unit of general local government, located within the prime sponsor applicant's jurisdiction, that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's plan;

(d) Certification that the development of the applicant's plan will be in accordance with the requirements of the Act and regulations;

(e) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

Special Application Procedures

(a) *Units of general local government of less than 100,000 population.* Any unit of general local government which does not have a population of 100,000 but wishes to be named a prime sponsor because of exceptional circumstances under the provisions of section 101(a)(4) of the Act should submit a preapplication according to procedures set forth above. In addition, the preapplication should include information as to:

(1) The labor market area(s) in which the unit of general local government is located;

(2) The proportion of the labor market area population which resides within the jurisdiction of the unit of general local government;

(3) The unit of general local government's administrative and organizational capability for adequately carrying out programs under the Act;

(4) The unit of general local government's ability to carry out the program as effectively as the State, *e.g.*, past experience in operating employment and training programs, effective linkages with community-based organizations and programs, and administrative efficiency in terms of costs;

(5) The special need for services within the area to be served, *e.g.*, a high proportion of groups within the population such as disadvantaged youth, offenders, high school dropouts, a high unemployment rate, substantial outmigration, or unique commuting problems. The problems faced by prime sponsors applying under the exceptional circumstance provision must be different from the problems faced by other prime sponsors in similar geographic areas. The problems must be unique and thus require an exceptional response.

(b) *Consortia.* Combination of units of general local government may form a consortium to plan and operate a comprehensive employment and training program. The nature of consortium agreements is set forth in detail in 20 CFR 676.4 of the CETA regulations.

In order to encourage the formation of consortia that comprise at least 75 percent of labor market areas, unless there is an extenuating circumstance, the Secretary may use funds available for Title II, Parts A, B and C, of the Act to provide additional funding for such consortia provided sufficient funds are available.

Consortia which do not serve such areas shall not be eligible for these additional funds. Prior to making decisions concerning these funds, the Regional Administrator, ETA, will consult with Governors of the appropriate States and afford them an opportunity to make recommendations.

A consortium must submit a preapplication according to the procedures set forth above. In addition, each consortium shall submit a consortium agreement to the appropriate Regional Administrator, ETA, by December 18, 1981. An established consortium which submitted a formal written agreement may attest in writing that the agreement is the same or may specify amendments to the agreement. The formal agreement or attestation must be signed by the chief elected official or chief executive officer of each consortium member. Only one such agreement is necessary for designation under all titles.

List of ETA Regional Offices. All preapplication information and consortium agreements (described above) must be submitted to the appropriate Regional Administrator, ETA. The names, addresses and geographic areas of the Regional Administrators are shown on "list C."

Implementation Schedule. The following schedule is tentative and is subject to the same conditions regarding the continuation of CETA programs as stated above with respect to prime sponsor designation for FY 1983 for grants to be executed by October 1, 1982. Planning estimates will be released by May 15, 1982. Prime sponsors will be expected to submit their grant applications to the appropriate Regional Administrator by September 1, 1982.

List A—Eligible Under Section 101(a) (1) and (2)

Listing of Jurisdictions 100,000 or More Population (based on the most satisfactory current data available to the secretary).

Alabama

Birmingham City	Jefferson County
Huntsville City	Etowah County
Mobile City	Mobile County
Calhoun County	Tuscaloosa County
Montgomery City	Balance Alabama

Alaska

Municipality of Anchorage	Balance Alaska

Arizona

Phoenix City	Maricopa County
Tucson City	Pima County
Mesa City	Balance of Arizona
Tempe City	

Arkansas

Little Rock City	Balance Arkansas
Pulaski County	

California

Anaheim City	Long Beach City
Bakersfield City	Los Angeles City
Berkeley City	Modesto City
Concord City	Oakland City
Fremont City	Oxnard City
Fresno City	Pasadena City
San Francisco City/ County	Riverside City
	Sacramento City
San Jose City	San Bernardino City
Santa Ana City	San Diego City
Stockton City	Monterey County
Sunnyvale City	Orange County
Torrance City	Placer County
Fullerton City	Riverside County
Garden Grove City	Sacramento County
Glendale City	San Bernardino County
Huntington Beach City	San Diego County
San Joaquin County	Santa Barbara County
San Luis Obispo County	Santa Clara County
San Mateo County	Santa Cruz County
Alameda County	Shasta County
Butte County	Solano County
Contra Costa County	Sonoma County
Fresno County	Stanislaus County
Humboldt County	Tulare County
Kern County	Ventura County
Los Angeles County	Yolo County
Marin County	Balance California
Merced County	

Colorado

Aurora City	Boulder County
Colorado Springs City	El Paso County
Denver City/County	Jefferson County
Lakewood City	Larimer County
Pueblo City	Weld County
Adams County	Balance Colorado
Arapahoe County	

Connecticut

Bridgeport City	Stamford City
Hartford City	Waterbury City
New Haven City	Balance Connecticut

Delaware

New Castle County	Balance Delaware

District of Columbia

Florida

Ft. Lauderdale City	Marion County
Hialeah City	Lake County
Hollywood City	Lee County
Jacksonville City/Duval County	Leon County
	Manatee County
Miami City	Okaloosa County
Orlando City	Orange County
St. Petersburg City	Palm Beach County
Tampa City	Pasco County
Alachua County	Pinellas County
Brevard County	Polk County
Broward County	Sarasota County
Dade County	Seminole County
Escambia County	Volusia County
Hillsborough County	Balance Florida

Georgia

Atlanta City	DeKalb County
Columbus City/ Muscogee County	Dougherty County
	Fulton County
Macon City	Gwinnett County
Savannah City	Richmond County
Clayton County	Balance Georgia
Cobb County	

Hawaii

Honolulu City/Honolulu County	Balance Hawaii

Idaho

Boise City	Balance Idaho

Illinois

Chicago City	Tazewell County
Peoria City	LaSalle County
Rockford City	Lake County
Champaign County	Macon County
Cook County	Madison County
DuPage County	McHenry County
Kane County	McLean County
Kankakee County	Rock Island County
Sangamon County	Will County
St. Clair County	Balance Illinois

Indiana

Evansville City	Allen County
Ft. Wayne City	Delaware County
Gary City	Elkhart County
Hammond City	LaPorte County

Lake County
Indianapolis City/
Marion County
Porter County
South Bend City
St. Joseph County
Madison County
Tippecanoe County
Vigo County
Balance Indiana

Iowa

Cedar Rapids City
Des Moines City
Black Hawk County
Polk County
Davenport City
Woodbury County
Balance Iowa

Kansas

Kansas City
Topeka City
Wichita City
Johnson County
Balance Kansas

Kentucky

Lexington City/
Fayette County
Louisville City
Jefferson County
Kenton County
Balance Kentucky

Louisiana

Baton Rouge/
Baton Rouge Parish
New Orleans City/Parish
Shreveport City
Calcasieu Parish
Jefferson Parish
Lafayette Parish
Ouachita Parish
Rapides Parish
St. Tammany Parish
Balance Louisiana

Maine

Cumberland County
Kennebec County
Penobscot County
York County
Balance Maine

Maryland

Baltimore City
Anne Arundel County
Baltimore County
Frederick County
Hartford County
Howard County
Montgomery County
Prince George's County
Washington County
Balance Maryland

Massachusetts

Boston City
Worcester City
Springfield City
Balance Massachusetts

Michigan

Ann Arbor City
Detroit City
Flint City
Grand Rapids City
Lansing City
Livonia City
Sterling Heights City
Warren City
Bay County
Berrien County
Calhoun County
Genesee County
Ingham County
Jackson County
Kalamazoo County
Kent County
Livingston County
Macomb County
Monroe County
Muskegon County
Oakland County
Ottawa County
Saginaw County
St. Clair County
Washtenaw County
Wayne County
Balance Michigan

Minnesota

Minneapolis City
St. Paul City
Anoka County
Dakota County
Hennepin County
Ramsey County
St. Louis County
Sterns County
Washington County
Balance Minnesota

Mississippi

Jackson City
Harrison County
Jackson County
Balance Mississippi

Missouri

Independence City
Kansas City
Springfield City
St. Louis City
Boone County
Jackson County
Jefferson County
St. Charles County
St. Louis County
Balance Missouri

Montana

Yellowstone County
Balance Montana

Nebraska

Lincoln City
Omaha City
Balance Nebraska

Nevada

Las Vegas City
Reno City
Clark County
Washoe County
Balance Nevada

New Hampshire

Hillsborough County
Rockingham County
Balance New Hampshire

New Jersey

Elizabeth City
Jersey City
Newark City
Paterson City
Atlantic County
Bergen County
Burlington County
Camden County
Cumberland County
Essex County
Gloucester County
Hudson County
Mercer County
Middlesex County
Monmouth County
Morris County
Ocean County
Passaic County
Somerset County
Sussex County
Union County
Balance New Jersey

New Mexico

Albuquerque City
Balance New Mexico

New York

Albany City
Buffalo City
New York City
Rochester City
Syracuse City
Town of Amherst
Town of Cheektowaga
Yonkers City
Town of Babylon
Town of Brookhaven
Town of Huntington
Town of Islip
Town of Smithtown
Town of Hempstead
North Hempstead
Township
Oyster Bay Township
Albany County
Broome County
Chautauqua County
Chemung County
Dutchess County
Erie County
Monroe County
Niagara County
Oneida County
Onondaga County
Orange County
Oswego County
Rensselaer County
rockland County
Saratoga County
Schenectady County
St. Lawrence County
Steuben County
Ulster County
Westchester County
Balance New York

North Carolina

Charlotte City
Greensboro City
Davidson County
Durham City
Raleigh City
Winston-Salem City
Buncombe County
Catawba County
Cumberland County
Gaston County
Guilford County
New Hanover County
Onslow County
Robeson County
Wake County
Balance North Carolina

North Dakota

Ohio

Akron City
Cincinnati City
Cleveland City
Columbus City
Dayton City
Parma City
Green County
Hamilton County
Lake County
Licking County
Lorain County
Lucas County
Toledo City
Youngstown City
Allen County
Ashtabula County
Butler County
Clark County
Clermont County
Columbiana County
Cuyohoga County
Franklin County
Medina County
Mahoning County
Montgomery County
Portage County
Richland County
Stark County
Summitt County
Trumball County
Wood County
Balance Ohio

Oklahoma

Oklahoma City
Tulsa City
Comanche County
Oklahoma County
Balance Oklahoma

Oregon

Eugene City
Portland City
Clackamas County
Jackson County
Lane County
Marion County
Multnomah County
Washington County
Balance Oregon

Pennsylvania

Allentown City
Erie City
Philadelphia City/
County
Pittsburgh City
Allegheny County
Beaver County
Berks County
Blair County
Bucks County
Butler County
Cambria County
Centre County
Chester County
Fayette County
Franklin County
Lackawanna County
Lancaster County
Lawrence County
Lebanon County
Lehigh County
Luzerne County
Lycoming County
Mercer County
Montgomery County
Northampton County
Schuylkill County

Cumberland County
Dauphin County
Delaware County
Erie County
Washington County
Westmoreland County
York County
Balance Pennsylvania

Puerto Rico

Bayamon Municipio
Caguas Municipio
Carolina Municipio
Mayaguez Municipio
Ponce Municipio
San Juan Municipio
Balance Puerto Rico

Rhode Island

Providence City
Balance Rhode Island

South Carolina

Columbia City
Aiken County
Anderson County
Charleston County
Florence County
Greenville County
Horry County
Lexington County
Richland County
Spartanburg County
York County
Balance South Carolina

South Dakota

Minnehaha County
Balance South Dakota

Tennessee

Chattanooga City
Knoxville City
Memphis City
Nashville City/Davidson
County
Hamilton County
Knox County
Sullivan County
Balance Tennessee

Texas

Amarillo City
Arlington City
Austin City
Beaumont City
Collin County
Corpus Christi City
Dallas City
El Paso City
Fort Worth City
Garland City
Houston City
Irving City
Lubbock City
Pasadena City
San Antonio City
Bell County
Bexar County
Brazoria County
Cameron County
Dallas County
Denton County
Ector County
Galveston County
Harris County
Hidalgo County
Jefferson County
Montgomery County
Smith County
Tarrant County
Taylor County
Waco City
Wichita County
Balance Texas

Utah

Salt Lake City
Davis County
Salt Lake County
Utah County
Weber County
Balance Utah

Vermont

Chittenden County	Balance Vermont

Virginia

Alexandria City	Virginia Beach City
Chesapeake City	Arlington County
Hampton City	Chesterfield County
Newport News City	Fairfax County
Norfolk City	Henrico County
Portsmouth City	Prince William County
Richmond City	Balance Virginia

Washington

Seattle City	Pierce County
Spokane City	Snohomish County
Tacoma City	Spokane County
Benton County	Thurston County
Clark County	Whatcom County
King County	Yakima County
Kitsap County	Balance Washington

West Virginia

Cabell County	Balance West Virginia
Kanawha County	

Wisconsin

Madison City	Outagamie County
Milwaukee City	Racine County
Brown County	Rock County
Dane County	Sheboygan County
Kenosha County	Waukesha County
Marathon County	Winnebago County
Milwaukee County	Balance Wisconsin

Wyoming

Virgin Islands

American Samoa

Guam

Northern Marianas

Trust Territory of the Pacific Islands

Note.—Any jurisdiction whose name does not appear on this list which has Bureau of Census certified documentation to support the fact that its population has increased to 100,000 should submit such documentation, along with a preapplication, according to the procedures contained herein.

List B—Jurisdictions Which Previously Exceeded 100,000 or More in Population

(Based on the most satisfactory current data available to the Secretary)

Region I—Cambridge City, Massachusetts, Fall River City, Massachusetts, New Bedford City, Massachusetts

Region II—City of Camden, New Jersey, City of Trenton, New Jersey, Town of Tonawanda, New York

Region III—City of Scranton, Pennsylvania, Northumberland County, Pennsylvania, Roanoke City, Virginia

Region V—Dearborn City, Michigan, Duluth City, Minnesota, Canton City, Ohio

Region VI—Cleveland County, Oklahoma

Regional Administrators—Employment and Training Administration

Location and States in Region

Region I, Boston

Timothy Barnicle
Regional Administrator
ETA/U.S. Department of Labor
J. F. Kennedy Building, Room 1703
Boston, Massachusetts 02203
Connecticut, Maine, Massachusetts, Vermont, Rhode Island, New Hampshire

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ETA/U.S. Department of Labor
1515 Broadway, Room 3713
New York, New York 10036
New York, Puerto Rico, New Jersey, Virgin Islands, Canal Zone

Region III, Philadelphia

William J. Haltigan
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Post Office Box 8796
Philadelphia, Pennsylvania 19101
Delaware, Virginia, Maryland, Pennsylvania, West Virginia, District of Columbia

Region IV, Atlanta

Lawrence E. Weatherford
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1371 Peachtree Street, N.E., Room 405
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Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee

Region V, Chicago

Thomas C. Komarek
Acting Regional Administrator
ETA/U.S. Department of Labor
230 South Dearborn Street, 6th Floor
Chicago, Illinois 60604
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI, Dallas

Louis R. Garibay
Acting Regional Administrator
ETA/U.S. Department of Labor
555 Griffin Square Building, Room 316
Dallas, Texas 75202
Arkansas, Oklahoma, Texas, Louisiana, New Mexico

Region VII, Kansas City

Richard G. Miskimins
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Iowa, Missouri, Nebraska, Kansas

Region VIII, Denver

Floyd E. Edwards
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ETA/U.S. Department of Labor
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Colorado, Utah, South Dakota, North Dakota, Montana, Wyoming

Region IX, San Francisco

Carolyn M. Golding
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450 Golden Gate Avenue
San Francisco, California 94102
Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territory of the Pacific Islands

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Regional Administrator
ETA/U.S. Department of Labor
Federal Office Building
909 First Avenue, Room 1145
Seattle, Washington 98174
Alaska, Idaho, Oregon, Washington

Signed at Washington, D.C., this 5th day of November 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-32509 Filed 11-9-81; 8:45 am]

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Federal Register

Vol. 46, No. 217

Tuesday, November 10, 1981

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Deadlines for Comments on Proposed Rules for the Week of November 15 through November 21, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

54366 11–2–81 / Milk marketing order; Upper Midwest; comments by 11–17–81

Animal and Plant Health Inspection Service—

52117 10–26–81 / Scleroderris canker; comments by 11–16–81

46563 9–21–81 / Specifically approved States to receive stallions imported from CEM-affected countries; comments by 11–20–81

Commodity Credit Corporation—

50378 10–13–81 / Grain warehouses; standards of approval; comments by 11–16–81

Federal Grain Inspection Service—

50802 10–15–81 / Revision to the standards for whole dry peas and standards for lentils; comments by 11–16–81

Rural Electrification Administration—

45783 9–15–81 / Defective and nonstandard materials and equipment, Bulletin 345–5; comments by 11–16–81

45783 9–15–81 / Proposed revision of Bulletins 44–7 (Electric) and 345–3 (Telephone); comments by 11–16–81

45784 9–15–81 / Specification for self-supporting cable, PE–38, Bulletin 345–29; comments by 11–16–81

ALASKA NATURAL GAS TRANSPORTATION SYSTEM, OFFICE OF THE FEDERAL INSPECTOR

51726 10–22–81 / Rate base audit and approval; standards and procedures; policy statement; comments by 11–20–81

CIVIL AERONAUTICS BOARD

46592 9–21–81 / Air taxis; operations in Alaska, classification and exemption and terminations, suspensions, and reductions in service; comments by 11–20–81

51390 10–20–81 / Dual authority after domestic route deregulation; comments by 11–19–81

46338 9–18–81 / Foreign air carrier permits and foreign citizen exemptions; continuance by law of expired authorizations pending renewal applications determination; comments by 11–17–81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

51393 10–20–81 / Improving coastal management in the U.S.; comments by 11–20–81

50977 10–16–81 / Recission of proposed interpretation of Federal consistency term, "directly affecting the coastal zone"; comments by 11–16–81

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

50804 10–15–81 / Short-term time deposit instruments; comments by 11–16–81

EDUCATION DEPARTMENT

48092 9–30–81 / Fund for the Improvement of Postsecondary Education; assistance awards; comments by 11–16–81

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

52126, 52127 10–26–81 / High-cost gas produced from tight formations; Colorado; comments by 11–18–81

52389 10–27–81 / High-cost gas produced from tight formations; Louisiana; comments by 11–20–81

51618 10–21–81 / High-cost gas produced from tight formations; New York; comments by 11–16–81

51617 10–21–81 / High-cost gas produced from tight formations; Texas; comments by 11–16–81

45624 9-14-81 / Inclusion of construction work in progress for public utilities; reply comments by 11-19-81

ENVIRONMENTAL PROTECTION AGENCY

50810 10-15-81 / Availability of Illinois State Solid Waste Management Plan; comments by 11-16-81

51622 10-21-81 / Carbaryl; tolerance; comments by 11-20-81

46351 9-18-81 / Iowa; approval and promulgation of implementation plans; comments by 11-17-81

27617 5-20-81 / Manufacture of PCBs in concentrations below fifty parts per millions; possible exclusion from manufacturing prohibition; comments by 11-16-81

46597 9-21-81 / National Pollutant Discharge Elimination System; compliance extensions for innovative technologies; comments by 11-20-81

27619 5-20-81 / PCBs in concentrations below fifty parts per million; manufacturing, processing commercial distribution and use prohibitions; comments by 11-16-81

49814 10-7-81 / Stack height regulations; rebuttal and supplementary; comments by 11-18-81

48243, 48254 10-1-81 / Underground injection control program criteria and standards; comments by 11-16-81

FEDERAL COMMUNICATIONS COMMISSION

51784 10-22-81 / Aeronautical radionavigational service; assignment of frequencies in 415-435 kHz band; comments by 11-16-81

40902 8-13-81 / Bell operating company procurement of telecommunications equipment; reply comments by 11-15-81

44012 9-2-81 / FM broadcast stations in Agana, Guam; table of assignments; reply comments by 11-16-81

46357 9-18-81 / FM broadcast station in Billings, Mont.; changes in table of assignments; comments by 11-16-81

49624 10-7-81 / FM broadcast stations; Brookville and Versailles, Ind.; extending time for filing comments; reply comments by 11-16-81

46354 9-18-81 / FM broadcast stations in Augusta and Gardiner, Maine; changes in table of assignments; comments by 11-16-81

46352 9-18-81 / FM broadcast station in Camden, Ala.; changes in table of assignments; comments by 11-16-81

46353 9-18-81 / FM broadcast stations in Downs, Kans.; changes in table of assignments; comments by 11-16-81

46355 9-18-81 / FM broadcast station in Mountain View, Mo.; changes in table of assignments; comments by 11-16-81

44010 9-2-81 / FM broadcast station in Spearfish, S. Dak.; table of assignments; reply comments by 11-16-81

48623 10-2-81 / General Council; Equal Access to Justice Act; implementation; comments by 11-15-81

40899 8-13-81 / Radio frequency interference to electronic equipment; reply comments by 11-16-81

53463 10-29-81 / Request of General Electric Co. to exempt medical diagnostic equipment from a certain part of the Commission's rules; reply comments extended to 11-17-81

[*See also* 46 FR 44790, 9-8-81]

55125 11-6-81 / Revision of programming policies and reporting requirements related to public broadcasting licensees; order extending time for filing comments and reply comments; comments by 11-16-81 (original document published at 46 FR 43190; 8-27-81)

47601 9-30-81 / Revision to permit inland assignment of frequencies in a certain MHz band for non-government radiolocation; order extending reply comments to 11-21-81

[*See also* 46 FR 39185, 7-31-81]

HEALTH AND HUMAN SERVICES DEPARTMENT

Human Development Services Office—

46776 9-21-81 / Work Incentive Program for AFDC recipients under Title IV of the Social Security Act; comments by 11-20-81

Social Security Administration—

46750 9-21-81 / Aid to families with dependent children; eligibility criteria and procedures for program administration; comments by 11-20-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner, Office of Assistant Secretary for Housing—

46317 9-18-81 / HUD/FHA mortgage insurance of condominium units in projects that have been approved for loan guaranty by the Administrator of Veterans Affairs; (interim rule); comments by 11-17-81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

46358 9-18-81 / Petition to extend access privileges across the Back Bay National Wildlife Refuge to qualified part-time residents of the Outer Banks; comments by 11-17-81

33534 6-30-81 / Reviews of species in Appendices to the Convention or International Trade in Endangered Species of wild fauna and flora; comments by 11-15-81

Surface Mining Reclamation and Enforcement Office—

54385 11-2-81 / Permanent program submission; surface coal mining and reclamation enforcement; Virgina; comment period extended to 11-17-81

[Originally published at 46 FR 41525, 8-17-81. *See also* 46 FR 43698, 8-31-81]

50984 10-16-81 / Provisions to satisfy conditions of Montana's permanent regulatory program under Surface Mining Control and Reclamation Act of 1977; comments by 11-17-81

INTERSTATE COMMERCE COMMISSION

51413 10-20-81 / Motor carrier consolidation procedures; general policy statement; comments by 11-19-81

51253 10-19-81 / Qualifications and requirements of ICC non-attorney practitioners; comments by 11-18-81

50998 10-16-81 / Standards for determing rail service continuation subsidies in the Northeast-Midwest region of the United States; comments by 11-16-81

JUSTICE DEPARTMENT

Justice Assistance, Research, and Statistics Office—

46144 9-17-81 / Hearing and appeal procedures available to grantees and applicants for financial assistance; comments by 11-16-81

LABOR DEPARTMENT

Employment and Training Administration—

46776 9-21-81 / Work Incentive Program for AFDC recipients under Title IV of the Social Security Act; comments by 11-20-81

[Republished 46 FR 46803; 9-22-81]

Occupational Safety and Health Administration—

47241 9-25-81 / Access to employee exposure and medical records; modification; comments by 11-20-81

NUCLEAR REGULATORY COMMISSION

49134 10-6-81 / Integrated operational experience reporting system; comments by 11-17-81

46582 9-21-81 / Nondiscrimination on basis of age in federally assisted Commission programs; comments by 11-20-81

47799 9-30-81 / Procedural rules for adjudications involving conduct of military or foreign affairs functions; amendment to provide exceptions; comments by 11-16-81

Deadlines for Comments on Proposed Rules for the Week of November 22 through November 28, 1981

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Next Week's Public Hearings

List of Public Laws

Last Listing November 5, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 4608 / Pub. L. 97–76 To continue in effect any authority provided under the Department of Justice Appropriation Authorization Act, Fiscal Year 1980, for a certain period, and for other purposes. (Nov. 5, 1981; 95 Stat. 1068) Price: $1.50.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published ion the **Federal Register** during the previous week.