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Thursday
March 13, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

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Reporting and Recordkeeping Requirements
Farm Credit Administration
General Services Administration

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: March 20; 9 am and 1 pm. (identical sessions)

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC

RESERVATIONS: Ruth Reedy, 202-523-5239, for reservations.

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout Denver Federal Information Center. 303-236-7181, for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471, for reservations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pool status under the Great Basin Federal milk order. The suspension was requested by cooperative associations representing most of the producers supplying the market to assure that the milk of all producers historically associated with the market will continue to be pooled. The provision is suspended for the months of February through July 1986.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 11, 1986; published February 13, 1986 (51 FR 5367).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Great Basin marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 13, 1986 (51 FR 5367) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of February through July 1986, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13."

Statement of Consideration

This action removes, for the months of February through July 1986, the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pooling under the Great Basin milk order. The order now provides that a certain percentage of a distributing plant's receipts in each month be disposed of as route disposition if the plant is to be qualified for pooling. In addition to fluid milk products physically received at the plant, diversions of producer milk to nonpool plants are included as part of the receipts of which a particular percentage must be disposed of on routes.

The suspension was requested by Western General Dairies, Inc., and Lake Mead Cooperative Association, cooperative associations that supply most of the market's fluid milk needs and handle most of the market's reserve milk supplies. The cooperatives stated that due to an increased amount of milk production surplus to the fluid needs of the market, approximately 15,000,000 pounds of their members' milk failed to qualify for pooling during each of the months of November and December 1985. According to the cooperatives, suspension of the requested provisions will assure that all of their members' milk would qualify for inclusion in the marketwide pool.

The suspension is necessary because of the increased amount of milk surplus to the fluid needs of the market which must be handled by the cooperatives. For the foreseeable future, the cooperatives' reserve milk supplies are expected to exceed the quantity of producer milk that may be pooled on the basis of producer milk deliveries to pool distributing plants.

A public hearing on the cooperatives' proposal to merge the Great Basin and Lake Mead orders has been scheduled to begin March 18, 1986. The cooperatives expect that the pool plant qualification standards contained in the proposed merged order will offer a long-term solution to the problems of qualifying all of the cooperatives' member milk for pooling. Continuation of the suspension beyond July, if necessary, would be based on the record of the public hearing.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action. In addition, a hearing to consider this issue has been requested and is scheduled to begin March 18, 1986, at Salt Lake City, Utah.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1136.7(a) of the Great Basin order are hereby suspended

for the months of January through July 1986, as follows:

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR PART 1136 continues to read as follows:

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

§ 1136.7 [Amended]

2. In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13." is suspended for the months January through July 1986.

Signed at Washington, DC, on: March 6, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–5447 Filed 3–12–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1139

Milk in the Lake Mead Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain diversion provisions of the Lake Mead Federal milk order. The suspended provisions relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended is the "touch-base" requirement that at least one day's production of each producer's milk be received each month at a pool plant. The suspension is for the months of February through July 1986. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 11, 1986; published February 13, 1986 (51 FR 5368).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Lake Mead marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 13, 1986 (51 FR 5368) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of February through July 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1139.13(d)(2), all of the language following the parenthetical phrase.

Statement of Consideration

This action removes for the months of February through July 1986, the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and removes the requirement that at least one day's production of each producer's milk be received at a pool plant each month. The suspension was requested by Lake Mead Cooperative Association, which supplies some of the market's fluid milk needs and handles most of the market's reserve supplies.

The order now provides that a cooperative may divert a quantity of milk not in excess of 50 percent in the months of March through July, and 40 percent in other months, of the producer milk delivered to or diverted from pool plants during the month. Suspension of the requested language will allow unlimited amounts of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Lake Mead Cooperative Association stated that suspension of the order's diversion limits is necessary to assure that all of the member milk of the cooperative is eligible to participate in marketwide pooling and pricing under the Lake Mead Federal order. The cooperative claimed that all of the production of a large nonmember producer is shipped to a distributing plant for fluid use, displacing the milk of cooperative members and causing it to be hauled long distances to manufacturing facilities. Recently, increased production by this nonmember source of milk has caused greater displacement of the cooperative's member milk supply, which has also been increasing. As a result, the cooperative is unable to pool all of its members' milk within the diversion limits of the order.

A public hearing on the cooperative's proposal to merge the Great Basin and Lake Mead orders has been scheduled to begin March 18, 1986. The cooperative expects that the diversion provisions contained in the proposed merged order will offer a long-term solution to the problems of operating within the order's present diversion limits.

In view of these circumstances, it is concluded that the aforesaid provisions should be suspended to assure that all of the member milk of the cooperative association will continue to be eligible for pricing and pooling under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action. In addition, a hearing at which this issue will be considered has been requested and is scheduled to begin March 18, 1986, at Salt Lake City, Utah.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.13(d)(2) of the Lake Mead milk order are hereby suspended for the months of February through July 1986, as follows:

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. The authority citation for 7 CFR Part 1139 continues to read as follows:

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

§ 1139.13 [Amended]

2. In § 1139.13(d)(2), all of the language following the parenthetical phrase is suspended for the months of February through July 1986.

Signed at Washington, DC, on: March 6, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–5448 Filed 3–12–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Clipper Navigation, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Clipper Navigation, Inc.

EFFECTIVE DATE: February 26, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Clipper Navigation, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 is revised to read as follows and the authority citations following each section in Part 238 are removed:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Clipper Navigation, Inc. under "Victoria".

Dated: March 3, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86–5479 Filed 3–12–86; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Board of Directors Designating the Presiding Officers of Hearings

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending § 308.81 of its regulations (12 CFR 308.81) to delete the requirement that the Board of Directors designate the presiding officers of hearings under § 308.79 of its regulations (12 CFR 308.79).

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret M. Olsen, Deputy Executive Secretary, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–3812.

SUPPLEMENTARY INFORMATION: Section 308.79 of FDIC's regulations provides that a person subject to a notice of assessment of civil money penalties for willful violation of the Change in Bank Control Act (12 U.S.C. 1817(j)) may request a hearing. Under § 308.81 of FDIC's regulations, the Board of Directors designates the presiding officer for any such hearing. For reasons of administrative ease and efficiency, the Board is deleting the requirement that it designate the presiding officer. The effect of this deletion is to have the presiding officer be an administrative law judge appointed by the United States Office of Personnel Management. These hearings are governed by the Administrative Procedure Act and, consequently, appointment of an administrative law judge as presiding officer is logical.

This amendment relates solely to internal agency practices and procedures and, therefore, the notice, public comment and delayed effective date requirements of 5 U.S.C. 553 are not applicable. The amendment also would not have a significant economic impact on a substantial number of small entities and would not impose any recordkeeping or reporting requirements on any person. Thus, under FDIC's policy statement on drafting regulations entitled, "Development and Review of FDIC Rules and Regulations," a cost-benefit analysis is not required.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure; Claims; Courts; Equal access to justice; Lawyers; Penalties.

Accordingly, the Board of Directors amends Part 308 as set forth below.

PART 308—[AMENDED]

1. The authority citation for Part 308 continues to read as follows:

Authority: Sec. 2(9), Pub. L. 797, 64 Stat. 881 (12 U.S.C. 1819); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

2. Section 308.81 is revised to read as follows:

§ 308.81 Hearing.

The Executive Secretary shall order a hearing to commence within 30 days after receipt of a request for hearing pursuant to § 308.79(b), in Washington, DC, or another place designated by the Executive Secretary. The provisions of the Administrative Procedure Act (5 U.S.C. 554–57) and Subpart B shall apply to the hearing.

By order of the Board of Directors this 7th day of March 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-5452 Filed 3-12-86; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 602, 620, 621

Disclosure of Information on Reports to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Acting Chairman of the Farm Credit Administration Board (Board), adopts new regulations under Part 620 that require (1) banks and associations of the Farm Credit System (System) chartered under the Farm Credit Act of 1971, as amended (Act), to issue annual reports to shareholders; (2) Federal land bank associations (FLBAs) and production credit associations (PCAs) to issue an annual information statement to their shareholders prior to meetings at which directors are elected; and (3) all institutions chartered under the Act to file reports of condition and performance in accordance with specified accounting requirements. The FCA also adopts an amendment to 12 CFR 602.250, relating to disclosure under the Freedom of Information Act, that (1) designates as public information, available for a reasonable fee upon request, reports to shareholders filed under the new regulations and items in reports of condition and performance that are of essentially the same character as items disclosed in reports to shareholders; and (2) makes conforming technical changes made necessary by Pub. L. 99-205. The FCA also intends to propose for comment an amendment to the new regulations that would: (1) Require disclosure of the aggregate compensation of senior officers; (2) require System banks and production credit associations to issue quarterly statements to shareholders at the end of each quarter except the one that coincides with the end of the fiscal year; and (3) require financial statements of each Federal intermediate credit bank (FICB) to accompany the annual reports to shareholders of the PCAs who are shareholders of the FICB.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Holland, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4452

or

Dorothy J. Acosta, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On August 27, 1985, the Federal Farm Credit Board (Federal Board) published for comment proposed new regulations that would require (1) banks and associations of the System to issue to shareholders annual reports after the end of each fiscal year; (2) associations to issue annual meeting information statements prior to meetings at which directors are elected; and (3) all institutions chartered under the Act to file reports of condition and performance in accordance with prescribed accounting rules and instructions. At the same time the Federal Board proposed for comment an amendment to its Freedom of Information Act regulations (12 CFR 602.250) that would designate the reports to shareholders required by the new regulation and corresponding items in the reports of condition and performance as public information. The comment period closed on October 23, 1985.

On December 23, 1985, Congress enacted and the President signed into law Pub. L. 99-205, which amended the Farm Credit Act of 1971 (hereinafter 1985 Amendments). This legislation replaced the 13-member part-time Federal Farm Credit Board with a three-member, full-time Farm Credit Administration Board (Board) and replaced the Governor of the Farm Credit Administration with a Chairman of the Board as executive head of the FCA. Congress designated the former Governor of the Farm Credit Administration as Acting Chairman of the Board until a Chairman is appointed by the President and confirmed by the Senate and authorized him to exercise the powers of the Board.

Comments were received from almost every System bank, the Farm Credit System Accounting Standards Committee (ASC), the Farm Credit Corporation of America, and an accounting firm used by some System institutions. The American Institute of Certified Public Accountants (AICPA) requested a 30-day extension of the comment period. The FCA declined to extend the period but agreed to consider any comments submitted by the AICP during that period. No comments were submitted. The comments of the ASC, which is comprised of representatives of System banks, were incorporated by reference, in whole or in part, by almost every bank that commented. The FCA considered every comment that was submitted. A summary of the comments and FCA responses by part and paragraph follows.

A. Part 620—Subpart A—Annual Reports to Shareholders

1. General

Most of the commentators supported the concept of adequate disclosure to shareholders but differed widely with the FCA and each other on what constitutes adequate disclosure and the degree of regulation required to attain it. One commentator suggested that disclosure to shareholders should be a matter of self-regulation by the System. The FCA disagrees vigorously with this position and, in any case, the 1985 Amendments require the FCA to regulate in this area. Also, one commentator noted that the disclosure required should be limited to the requirements of generally accepted accounting principles (GAAP). The FCA rejected this suggestion because GAAP is limited primarily to accounting disclosures and does not address all disclosures that are material to shareholders' decisions. In addition, the FCA believes that System institution shareholders should have access to at least the level of disclosure made to shareholders of other financial institutions in order to enhance the borrower ownership and control mandated by the Act.

Several commentators commented that the annual report to shareholders required by the proposed regulation contained information that public companies are required to file with the Securities and Exchange Commission (SEC) on Form 10-K, which, while publicly available, is not routinely sent to shareholders. Some of the commentators, including the ASC, recommended that the FCA require a report similar to the 10-K to be filed with the FCA that would be publicly available and required to be sent to shareholders upon request, and a separate, more abbreviated annual report to shareholders focusing on the financial condition of the institution's operations during the preceding fiscal year.

The FCA published the proposed rule with full awareness of its differences from the SEC regulatory format, in the belief that the single annual report filed

with the FCA simultaneously with its dissemination to shareholders would impose the least administrative and cost burden upon reporting institutions. The FCA seriously considered the commentators' suggestion, but since the FCA believes that shareholders are entitled to receive all of the information required by the proposed regulation, it concluded that the single multipurpose annual report would be the simplest, least burdensome method of assuring adequate disclosures to shareholders. Institutions would have to print enough copies of annual reports to FCA to make them available upon request to shareholders anyway, and any savings on printing and mailing would appear to be more than offset by the cost of preparing and printing an additional report. In addition, the FCA is considering proposing for comment a regulation that would require certain disclosures to be made to prospective borrowers. One of the options under consideration is a requirement that the most recent shareholder reports be given to prospective borrowers prior to the issuance of stock. Consequently, the FCA declined to accept the suggestion that the regulation require an annual report to be filed with the FCA and a separate, more focused annual report be sent to shareholders.

Several commentators were of the opinion that the disclosure requirements are excessively burdensome and costly. The FCA recognizes that preparation of reports to shareholders is costly but believes that shareholders who assume the risk of ownership of an institution are entitled to receive materially relevant information about the institution's financial condition and results of operations, the directors and officers who manage it, and nominees for directors in order to have a basis for evaluating the stewardship of the directors they have elected and the ability and integrity of the persons from whom they select directors. A few commentators commented that the proposed regulations goes beyond SEC regulations. The disclosure requirements are generally less extensive than those of the SEC and other financial regulators for financial institutions that are public companies. These commentators appeared to overlook the fact that some of the information that is required to be disclosed in the annual report in the FCA proposal but not in the 10–K is required under SEC rules to be sent to shareholders in proxy statements and information statements prior to shareholder meetings. When considered in their entirety, without regard to which shareholder communication the requirement relates to, the FCA requirements are generally less extensive than those of the SEC. Also, while the FCA has drawn upon the experience of other regulators, it is guided in its rulemaking primarily by what it considers appropriate and necessary for System institutions in light of its regulatory experience.

While not all System institutions would meet the test for public companies, many of them have in excess of 500 shareholders and, as the trend toward merger and consolidation continues, the number of associations with less than 500 shareholders continues to decline. In districts in which districtwide mergers or consolidations have occurred, shareholders number in the thousands and the association serves several States. More importantly, the regulations will promote democratic borrower ownership and control, for which Congress has demonstrated such strong concern in the 1985 Amendments, by giving shareholders complete and reliable information on which to base their decisionmaking.

2. Section 620.1 Definitions

Several commentators noted that the definition of "affiliated organization" would cause the disclosure of participations between System institutions. One commentator noted that the definition of "related organization" would, in the case of the Central Bank for Cooperatives, require a description of the business of all of the institutions with which it participates.

The definition of "affiliated organization" has been amended in the final rule to exclude other System institutions, as the FCA did not intend to require disclosure of routine transactions between System institutions in the context of disclosure of transactions of officers, directors, and nominees with the institution they serve. However, the FCA believes that disclosure of the institution's relationships with other System institutions is a material disclosure and does not believe that the requirement to describe the business of related organizations is excessively burdensome. In the case of the Central Bank, the business of the banks for cooperatives with which it participates may be briefly and generically described.

Several commentators requested a definition of the term "executive officer." The final rule substitutes the term "senior officer" for "executive officer" to avoid any confusion the term "executive" may cause, and defines "senior officer" as a person designated by the board of directors as responsible for a major management function.

Several commentators requested a definition of "materiality." The final rule adds a definition of material that makes it clear that material information is information to which there is a substantial likelihood that a reasonable person would attach importance in making a shareholder decision or determining the financial condition of the institution.

Several commentators requested a definition of the term "normal risk of collectibility" as it relates to the requirement to disclose loans to senior officers and directors. A definition of "normal risk of collectibility" has been added to the rule that makes it clear that the reference is to the performance status of the loan as determined in accordance with Part 621. Any loan that falls within any category of "nonperforming loans," as defined in Part 621, is deemed to involve more than a "normal risk of collectibility."

The FCA has reconsidered the proposed definition of "immediate family" and concluded it to be too all encompassing, requiring disclosure of transactions too remote to constitute a substantial risk of a conflict of interest. The final rule has been changed and now restricts "immediate family" to parents, children, and siblings.

The final rule adds a definition of "loan" that is the same as the definition in Part 621 and includes extensions of credit of all types and leases. The final rule also adds a definition of "shareholder" that includes all holders of an equity interest, whether or not they are entitled to vote.

3. Section 620.2 Preparing, Distributing, and Filing the Report

Several commentators stated that 90 days is an unreasonably short period within which to prepare and disseminate an annual report to shareholders. One suggested that the 90-day requirement is appropriate for a 10–K type filing but not an annual report to shareholders. The FCA does not agree that the 90-day requirement is unreasonable and notes that it is consistent with the requirements of the SEC and other Federal financial institution regulators.

One commentator suggested that the signing requirement is appropriate for a 10–K type filing but not an annual report to shareholders. Several noted that the SEC requires only a majority of the board rather than the entire board to sign. Also, one commentater expressed concern that the signing requirement may present logistical problems

requiring the scheduling of a special board meeting for that purpose. The FCA recognizes that its signing requirements are more stringent than those of the SEC, but believes it necessary to ensure director accountability to require each director to sign or require the institution to disclose the reason for not signing. Also, the FCA believes that directors should be willing to make the same certification to shareholders that they make to FCA. However, to partially alleviate any logistical problems that may result from the requirement, the final rule requires that only the reports to be sent to the FCA be signed by each member of the board of directors and permits the annual reports to be sent to shareholders to be signed by its chief executive officer and the chairman of the board, on behalf of the institution and its board. This change would obviate the need to coordinate the board meeting and the schedule for printing the reports to be mailed to shareholders. However, if any member of the board has not signed the copy of the annual report filed with FCA, the name of the persons who have not signed and the reasons therefor must be disclosed in the annual report to shareholders as well as in the copy sent to the FCA. Also, the final rule has been revised to require the officer who certifies the reports of condition and performance required under Part 621 to also certify the annual report to be sent to FCA.

In the final rule the certification statement that the chief executive officer, the board, and the designated certifying officer are required to sign has been expanded to include a representation that the report has been prepared in accordance with applicable statutory and regulatory requirements.

A new paragraph (h) has been added to this section to clarify that disclosure items required by Part 620 that are of essentially the same character as items required in reports of condition and performance under Part 621 must be prepared in accordance with the rules in Part 621. The purpose of the addition is to assure that financial reporting to shareholders is consistent with disclosure to the FCA in reports of condition and performance. This does not mean that the same format must be used but does mean that the rules and definitions in Part 621 must be consulted in the preparation of the annual report.

Several commentators do not believe it is necessary for the Federal land bank's (FLB) financial statements to accompany the FLBA's annual report. One commentator suggested that such a requirement may make it difficult for the association to fulfill the timing requirements of the regulation. The FCA included this requirement in the proposed rule because all of the loans generated and serviced by the association are carried as assets on the FLB's books and do not appear on the books of the association, since the FLB and not the association is the creditor. When the borrower purchases equity in the FLBA, the FLBA is required to purchase a like amount of equity in the FLB, which equity is specifically identified to the particular borrower's loan. For these reasons, and because of the manner in which capital preservation agreements between the FLB and the FLBA operate, it is the health of the FLB that determines the safety of the borrower's investment. Also, it is the FLB that sets the interest rate on the borrower's loans. For these reasons the requirement is retained in the final rule. The FCA does not believe there is a significant timing problem because preparation of the statements can proceed simultaneously.

Several commentators expressed concern that the disclosures required by § 620.3 (j) and (k) would violate FCA regulation 12 CFR 618.8320, which prohibits the release of borrower data except in certain circumstances. While the FCA intends to make conforming amendments to its regulations concerning release of borrower data in the context of a more comprehensive overhaul of those regulations, the final rule responds to these concerns by adding a new paragraph to § 620.2 to make it clear that disclosure required by this regulation does not violate any other FCA regulation.

A new paragraph has also been added to the final rule requiring the reporting institution to make the annual report to shareholders publicly available at the institution.

4. Section 620.3. Contents of the Annual Report to Shareholders

(a) Description of Business

Several commentators commented that the requirement to discuss the significant developments for the last 5 years is excessive. One believes that merger is not an important event and one suggested that the seasonal nature of the business is already known by the shareholders. The FCA believes that merger activity is a significant event of the type that should be reported since it is usually designed to effect economies of scale and often results in significant changes in management and operations. The FCA continues to believe that the seasonal nature of the business should be disclosed because it is relevant to an evaluation of earnings performance during the year and it enhances the potential for using shareholder reports as a prospectus for prospective borrowers.

One commentator suggested that Farm Credit service corporations provide banks and associations descriptive information about their businesses for inclusion in their reports. The FCA has no objection to this suggestion but does not believe it appropriate to require it in the regulation.

One commentator suggested that "significant developments" be more specifically defined. The FCA believes it is not in a position to define all events that may be significant to a particular institution's operation and that the types of examples included are sufficient guidance to allow institutions to make a judgment.

It was suggested that the FCA use a percentage of interest revenues test to determine concentrations rather than a percentage of assets test. The FCA declined to accept this suggestion. The suggested disclosures, which are required by GAAP to be disclosed in the footnotes to the financial statements, serve a different purpose. The purpose of requiring disclosure of concentrations in the narrative portion is to enable the reader to evaluate existing risk from concentrations outstanding in the portfolio. For this purpose it is better to use a percentage of assets of the last day of the fiscal year as the test rather than a percentage of revenues earned over the last fiscal year.

Several commentators stated that the information required by paragraph (8) on the dependence on a single customer would violate the FCA release of information regulations, which prohibit the release of borrower data except in limited circumstances. The FCA does not believe that the disclosure required by this paragraph would violate FCA regulations since the regulation does not require any disclosure about a borrower other than the fact of the institution's dependence on the borrower. However, the FCA intends to make this abundantly clear in the comprehensive overhaul of 12 CFR 618.8320 that is planned. Also, the final regulation adds a new paragraph that clarifies that disclosure required by this regulation does not violate any other FCA regulation.

Several commentators believe that the word "few" in the requirement to disclose dependence on a single customer or a few customers is unworkably vague and suggest that it be defined or that the requirement be

restricted to a single customer. The FCA rejected this recommendation, believing that "few" cannot be more specifically defined in absolute terms and still elicit meaningful information about asset concentrations. The intent of this item is to require disclosure of dependence on a few large customers, the loss of whose business would have a material impact on the institution's financial condition. The requirement is consistent with the requirements of the SEC and other bank regulators.

(b) Description of Property

One commentator noted that this requirement is excessive and another commentator noted that it should be a part of the report to FCA and not the annual report to shareholders. Another commentator requested that the regulation be clarified to indicate that it does not apply to acquired property. The FCA disagrees that the requirement is excessive, since for most institutions the disclosure will require only a brief description of the institution's offices. The FCA recognizes that this disclosure does not ordinarily appear in annual reports to shareholders, but the multipurpose statement approach elected by the FCA requires inclusion of this item. The FCA has clarified the inapplicability of the requirement to acquired property in the final rule.

(c) Legal Proceedings

One commentator suggested that the required description of legal proceedings required should be "brief" rather than "full," especially since the items to be disclosed are enumerated, noting that a full description would require an unnecessary amount of detailed information to be included. In the final rule the word "briefly" is substituted for the word "fully," since the FCA concurs that disclosure of the enumerated items is sufficient.

Several commentators noted that the requirement that management render an opinion on the impact of the proceedings on the institution's financial condition would involve management in making a legal judgment that should only be made by the institution's legal counsel. The final rule deletes this requirement because it is unnecessary, since the judgment as to its materiality has already been made before the matter is disclosed. Presumably, however, judgment as to materiality must necessarily be based upon consultations with legal counsel.

The proposed regulation also required disclosure of proceedings to which the institution's officers and directors are parties. Several commentators suggested limiting the proceedings required to be disclosed to those to which officers and directors are parties in their official capacity in order to avoid disclosures of irrelevant personal actions. Another commentator suggested that this disclosure be eliminated except in the context of the footnote disclosure for the financial statements.

The final rule deletes any reference to proceedings to which officers and directors are parties and substitutes a requirement to disclose any proceeding involving claims that the institution may be required, by contract or operation of law, to satisfy. This substitution would reach suits to which officers and directors are parties whose claims the institution would be required to satisfy by virtue of the indemnification provision in the institution's bylaws or under the doctrine of respondeat superior. Certain enumerated proceedings reflecting on the ability or integrity of an officer or director are required to be disclosed under paragraph (k).

The FCA declined to accept the suggestion that the disclosure of material legal proceedings be deleted altogether. Footnote disclosure of legal proceedings as contingent liabilities governed by GAAP is designed to assure that financial statements are not misleading. The standard for disclosure in the narrative portion goes beyond that required by GAAP and requires disclosure of items of importance to shareholder decisions as well as a determination of financial condition. The requirement to disclose such matters in the narrative portion of the statement is consistent with the requirements of other regulators.

During the period in which the FCA was considering the comments, legislation was enacted that gives the FCA new enforcement powers similar to those of other Federal financial institution regulators. The FCA considered whether to add to the regulation a requirement to make similar disclosure with respect to administrative proceedings. This issue is also currently under consideration by other Federal financial institution regulators. The FCA decided not to add such a requirement at this time, but will continue to consider it and will watch closely the experience of other regulators.

(d) Description of Capital Structure and

(e) Description of Securities

In the proposed regulation these paragraphs were both subsumed under a paragraph entitled "Description of securities." A commentator suggested changing the title of this section to avoid the implication that System stock is a security for the purpose of the Federal securities laws. The same commentator suggested that the only meaningful description is a description of voting stock. Several commentators stated that the number of shares of stock is not a meaningful disclosure in a cooperative institution since each shareholder gets only one vote regardless of the number of shares outstanding.

The FCA believes that, while stock in System institutions is an "at-risk" ownership interest, it lacks some of the attributes needed to make it a security for the purposes of the Federal securities law. Therefore, in the final rule the title of paragraph (d) has been changed to "Description of capital structure" and paragraphs (d) (2) and (3) have been set forth separately as paragraph (e), entitled "Description of liabilities." All subsequent paragraphs have been renumbered accordingly.

The FCA does not agree that the only meaningful description of an institution's capital structure is a description of voting stock and that the number of shares is not a meaningful disclosure. The FCA concurs that such a disclosure is not particularly helpful in the context of an election of directors, but notes that it is materially relevant when preferred shares are proposed to be issued, since a majority of the shares of each class of stock, whether voting or nonvoting, must approve the issuance. Also, a description of the institution's capital structure would be incomplete without a full description of each class of stock and participation certificates, including the number of shares outstanding. Such a description is useful to present to prospective shareholders in evaluating the capital strength of the institution and the relative priority of the shareholders' interest among the institution's equity holders.

(f) Selected Financial Data

One commentator noted that the items selected were random and not oriented toward balances and yields and suggested that "income from continuing operations" be defined. The same commentator believes that the analysis of loan losses properly belongs in the footnotes to the financial statements. The ASC recommended that the format be tailored to the particular operating environment of each type of System institution and suggested such a format. Another commentator noted that the time periods for selected financial data are inconsistent with the time periods for the "Management's discussion and analysis of financial condition and results of operations" (MD&A) and the financial statements.

The FCA adopted the format suggested by ASC because it appeared to be more descriptive and meaningful for System institutions than that of the proposed regulation. This change should respond to the concern of the first commentator about the meaningfulness of the required disclosures. The FCA disagrees with the statement that the analysis of loan losses belongs only in the footnotes to the financial statements and notes that the SEC and other financial regulators require such an analysis in the narrative portion. However, the analysis of loan losses has been relocated to the MD&A.

The difference in the time period between that called for in "Selected financial data" and the MD&A is intentional. The two sections serve different purposes. The MD&A is a narrative explanation of the changes in the institution's financial condition and results of operations for the last 2 fiscal years and will facilitate the comparison of the last fiscal year with the prior year. The purpose of the 5-year period for the selected data is to permit the shareholder to spot trends that might not be evident from the discussion presented in the MD&A.

(g) Management Discussion and Analysis of Financial Condition and Results of Operation

One commentator stated that the requirements of the paragraph are excessive. The ASC, however, suggested an outline for this section that is more detailed than the proposed regulation and more tailored to the operating environment of System institutions. This outline gives more specific and meaningful guidance regarding the type of information that should be presented. The FCA has incorporated substantially all of the suggestions of the ASC for the content of this item. Since the incorporated ASC format calls for, among other things, a discussion of the loan portfolio, the analysis of loan losses has been relocated to this paragraph.

Another commentator noted the lack of a specific requirement for disclosure of nonperforming loan information in the annual report to shareholders and recommended its addition. This requirement has been added under the discussion of the loan portfolio. Also added to the discussion of the loan portfolio is a requirement to discuss recent PCA loss experience in the aggregate. This information is materially relevant to the other PCAs and other financial institutions (OFIs) who are the FICB shareholders because of the impact these losses may have on the financial condition of the FICB.

(h) Directors and Senior Officers

One commentator commented that there is no need to disclose 5 years of business experience or the names of business entities of which the person is a director. Several commentators noted that the requirement to disclose events reflecting on the ability or integrity of directors provides potential for management influence of elections and that the standard for disclosure is too vague and broad.

The FCA disagrees that the 5-year period for describing a director or senior officer's business experience is an inappropriate disclosure. A shareholder or prospective shareholder is entitled to know the qualifications of the individuals who direct and manage the institution's operations. The FCA believes that the disclosure of other business entities in which the officers and directors are directors is useful to shareholders in evaluating actual or potential conflicts of interest. The final rule has been revised to clarify that directors need only disclose business entities on whose boards they also serve as directors.

Several commentators noted that detailed disclosure about officers and directors is inappropriate in the annual report to shareholders but is appropriate for a 10–K form.

Since the final rule retains the multipurpose statement approach, the information required by this section is essentially unchanged, except that the requirement to disclose events that reflect on the ability or integrity of directors and senior officers has been relocated to paragraph (k). The types of events that are required to be disclosed have been specified in response to the concern that management is given too much discretion in determining what should be disclosed and hence given an opportunity to influence elections.

(i) Director Compensation

Several commentators suggested that information about director compensation is inappropriate in an annual report to shareholders but would be appropriate in a report to the FCA that would be available to shareholders upon request. One commentator suggested shareholders do not need this information. Two commentators suggested that the number of days served is of doubtful use. Another commentator believes that the disclosure compensation formula is not appropriate and could be misused, and one believes that it is inappropriate in the annual report to shareholders.

The FCA disagrees with all of these comments. The FCA believes that shareholders are entitled to know the manner in which directors whom they elect are compensated and the amount of that compensation. Disclosure of the compensation formula and number of days used in the compensation formula permits the shareholder to evaluate the amount of time a director is devoting to his or her duties and to ascertain the total compensation paid to each director. Accordingly, these requirements have not been changed. However, a requirement to disclose total compensation paid to each director during the year has been added. This requirement makes it unnecessary for the reader to perform the calculation to determine how much a particular director was paid during the last fiscal year. Such a requirement parallels the requirements of the SEC and other regulators. Also, the regulation has been revised to allow noncash compensation that does not exceed the lesser of 10 percent of cash compensation or $25,000 to be excluded from the disclosure.

In the course of considering these comments, the FCA concluded that shareholders are also entitled to disclosure of management compensation as well as director compensation and that its failure to include such a requirement in the proposed regulation was a significant omission. Therefore, the FCA intends to propose an amendment to this regulation that would require disclosure of compensation to senior officers in the aggregate.

(j) Transactions With Senior Officers and Directors

Several commentators noted that the captions in this paragraph in the proposed regulation were not properly descriptive. Accordingly, the caption of this paragraph has been changed from "Certain relationships and related transactions" to "Transactions with senior officers and directors." Paragraph (j)(2) continues to be captioned "Transactions other than loans," but paragraph (j)(3) in the final rule is captioned "Loans to senior officers and directors" rather than "Loans to management" as it was captioned in the proposed rule. In the course of reviewing the proposed regulations, FCA discovered an inadvertent omission in paragraph (j)(3) that made its requirements inconsistent with the requirements of paragraph (j)(2). Consequently, paragraph (j)(3) in the final rule has been expanded to require disclosure of loans to members of the officer's or director's immediate family and any organization with which such person is or has been affiliated within the last fiscal year if the loans meet the

criteria of paragraph (j)(3). However, the definition of "immediate family" has been restricted to parents, children, and siblings in the final regulation. These additions make paragraph (j)(3) consistent with paragraph (j)(2) and with the requirements of other financial regulators. Also in the final rule, "unfavorable features" has been deleted as a criterion for disclosure from paragraph (j)(3)(I) in response to numerous comments that the term was too broad and unworkably vague. A definition of "normal risk of collectibility" has been added to § 620.2(a).

Several commentators noted that the disclosures of the type required by this part are not usually made in annual reports to shareholders but are usually made in annual meeting information statements.

The FCA agrees that the information required by this paragraph is more appropriate in an annual meeting information statement. However, since district directors are not elected at annual meetings but according to a statutorily prescribed scheme, some mechanism for disseminating such disclosure on district directors to shareholders was needed. The most workable solution appeared to be require such disclosure on officers and incumbent directors in the annual report to shareholders and disclosure with respect to nominees in the context of the FCA-conducted district director elections. The FCA intends to propose for comment in the near future an amendment to its district director election regulations that would impose similar disclosure requirements on nominees for district director. Therefore, in the final rule the requirement to disclose certain transactions between the institution and senior officers and directors is retained in the annual report to shareholders, with an updating requirement and a similar requirement for association director nominees in the association's annual meeting statement required by Subpart C.

(k) Involvement in Certain Legal Proceedings

The final rule adds a new paragraph entitled "Involvement in certain legal proceedings" that contains the requirement to disclose events reflecting on the ability and integrity of senior officers and directors that was contained in the paragraph entitled "Directors and executive officers" in the proposed regulation. Events that must be disclosed have been enumerated, in response to the concern of several commentators that the proposed regulation lodged too much discretion in management to determine what events must be disclosed, giving management an opportunity to manipulate elections. These events are bankruptcy or insolvency proceedings, criminal proceedings, and proceedings resulting in a prohibition to engage in a particular type of business activity. Criminal proceedings are deemed to begin at indictment by a grand jury or the filing of a bill of information or similar action by a public prosecutor that formally charges the defendant with a crime. Criminal investigations are not deemed to be "criminal proceedings" as that term is used in these regulations.

(l) Relationship With Independent Public Accountants

In the proposed regulation, Part 621 contained a requirement that changes in accountants and disputes with accountants be disclosed in the annual report to shareholders. This requirement has been restated in the final rule as paragraph: (1) In response to a comment that the requirement to disclose disputes with and changes in accountants should be stated in the annual report to shareholders rather than the annual information statement. However, updated disclosure is also required in the annual information statement under Subpart C.

(m) Financial Statements

The proposed regulation required financial statements for the last 3 fiscal years. One commentator suggested that 2 years of comparative statements with 5 years of financial highlights are enough. Another noted that 2 years of comparative statements is standard industry practice.

The regulation is designed to provide the financial statements necessary to do a comparative study of the institution's performance during the last 2 fiscal years, which is standard industry practice and required by the SEC. In Form 10–K the SEC requires income statements for the last 3 fiscal years and balance sheets for 2 years. The FCA regulation requires an additional balance sheet, but the FCA does not believe that such a requirement is excessively burdensome and believes it may contain useful comparative information. The final regulation continues to require that the MD&A discuss the results of operations for 2 years on a comparative basis. The FCA believes this is necessary in order to obtain a proper perspective on the fiscal year just ended.

Recent statutory amendments require the independent audit of all System institutions effective for yearend 1986 reports. This change required the deletion of the exception for FLBAs from the audit requirement and the deletion of provisions phasing the audit requirement in over the next 2 years and made comments relative to these provisions moot.

The final regulation adds a requirement that the financial statements be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that in their opinion the financial statements fairly present the financial condition of the institution.

B. Part 620—Subpart C—Association Annual Meeting Information Statement

1. General

Several commentators suggested that the applicability of Subpart B in the proposed regulation, entitled "Annual Meeting Information Statement," be clarified since the subpart directed each System "institution" to disseminate an annual information statement to shareholders prior to any meeting at which directors are elected. "Institution" was defined to include banks as well as associations, but bank directors (who are also district directors) are not elected at meetings but according to a statutory scheme that provides that district directors serve as ex officio directors of the Federal land bank, the Federal intermediate credit bank, and the bank for cooperatives in the district.

The final regulation clarifies that the annual meeting information statement is applicable only to associations by inserting "Association" in the subpart caption and substituting the word "association" for the word "institution" throughout the regulation. In the final regulation Subpart B—Association Annual Information Statement has been relettered as Subpart C. Subpart B has been reserved and the FCA intends to publish a new Subpart B for comment in the near future that would require quarterly reporting and prescribe a framework for such interim reporting.

2. Section 620.20 Preparing, Distributing, and Filing the Information Statement

A number of comments were received regarding a timing problem created by the interplay of the requirement to include the latest quarterly statements if the annual meeting is held more than 120 days after the end of the fiscal year and the requirement to distribute to shareholders 15 days before the meeting and file with the FCA 30 days prior to dissemination to shareholders.

The final regulation includes a number of changes that are designed to alleviate

this problem. First, the final regulation requires the quarterly statement only if the annual meeting is held more than 134 days after the end of the fiscal year. Second, the requirement to distribute to shareholders 15 days prior to the meeting has been changed to 10 days prior to the meeting. Third, the requirement to file with the FCA 30 days prior to dissemination to shareholders has been changed to a requirement that the statement be filed with the FCA (received at FCA offices) on or before the date of its dissemination to shareholders.

A few commentators supported routine quarterly reporting but questioned the wisdom of requiring interim reporting without setting up a framework for such reporting designed to assure that it is not more misleading than helpful. The FCA concluded that the comment had merit and has drafted a regulation that it will propose for comment in the near future that will require a quarterly report to be sent to shareholders for each quarter of the year except the one that coincides with the end of the fiscal year and prescribes rules for presenting the information similar to those of the SEC. Subpart B has been reserved for this regulation. If this regulation were to be adopted, it would eliminate the need to send financial statements with the annual information statement and Subpart C would be amended accordingly.

The signing requirements in the proposed regulation for the annual information statement were subject to the same criticism as those of the annual report and the final regulation reflects the same changes as those made in Subpart A. The final regulation continues to require every member of the board to sign the statement filed with the FCA and the association to disclose in the statement the reason for any director's failure to sign, but permits the chief executive officer and the chairman of the board to sign, on behalf of the board, the statement sent to shareholders.

In addition, the final regulation requires one copy of the statement to be filed with the FCA to be manually signed, to achieve consistency with the signing requirements of Subpart A.

3. Section 620.21 Contents of Association Annual Meeting Information Statement

(a) Section 620.21(b) Voting Shareholders

One commentator suggested that the requirement to disclose the number of voting shareholders be deleted. The FCA rejected this suggestion because it gives the shareholder the only information available about the potential vote required, even though the actual vote required cannot be determined until the meeting, since the Act requires only a majority of stockholders present and voting for all shareholder decisions except the authorization of preferred stock. It imposes little burden on the association to disclose the number of voting shareholders since a voting list must be compiled for the election. In addition, to provide information about the vote required for the authorization of preferred stock, which requires approval of a majority of the outstanding shares of each class of stock, whether voting or nonvoting, the FCA final regulation adds a requirement that the number of voting shares of each class of stock be disclosed when a vote to authorize preferred stock is to be taken.

(b) Section 620.21(c) Directors

The proposed regulation required the reporting institution to disclose policy disagreements when requested by a director who has resigned because of such a dispute. One commentator opined that providing a forum for the airing of policy disagreements between directors is not a good idea. The same commentator noted that information on attendance and compensation policy might be misinterpreted.

The FCA believes that the shareholders who own a business are entitled to know when a director they have elected resigns because of a major policy dispute and the requirement is retained in the final rule. This provision does not require policy disputes to be routinely aired. It only requires disclosure when a director who has resigned because of a policy disagreement requests it. It is unlikely that a director will resign because of a trivial policy dispute and even more unlikely that he or she will attempt to bring it to shareholders unless it is of some importance to the institution. This requirement is consistent with SEC requirements and those of other regulators.

The information required by the proposed regulation on director compensation and other directorships has been deleted, as the same disclosure is required in the annual report to shareholders, which is incorporated by reference.

It was suggested that the information required by this item be given to the nominating committee. The regulation does not address what information, if any, should be given to the nominating committee. Its purpose is to require adequate information be provided to shareholders.

(c) Section 620.21(d) Nominees

Two commentators noted that the disclosure requirements for floor nominees are impractical and difficult to implement. One of them believes that 5 years of business experience is excessive and made the same comment on the disclosure of events reflecting on the ability or integrity of nominees as those made on directors.

FCA recognizes that the floor nominee disclosures present an administrative problem but believes that it would be unfair not to require the same disclosures of floor nominees as are required of ballot nominees. The final rule requires that the notice of meeting state that floor nominees must provide such disclosure in writing at the meeting(s) at which the nomination is to be considered. It is incumbent upon the floor nominee to contact the association to ascertain whether his loan requires disclosure, and the notice should so state. In the final rule the paragraph requiring nominee disclosures states that no person may be a nominee for director who has not made the disclosures required by this regulation.

One commentator stated that the requirement to disclose transactions between the institution and the nominees is redundant, since it also appears in the annual report to shareholders. However, the commentator overlooked the fact that the requirement in the annual report to shareholders related only to incumbent directors and senior officers. The final regulation retains the requirement for nominees, but rather than repeating the substance of the requirement, imposes the requirement by cross referency the requirement in Subpart A. In addition, a paragraph has been added that would require updating of information on incumbent directors and senior officers disclosed in the annual report to shareholders.

The final regulation adds a paragraph requiring nominees to disclose the names of business entities on whose boards of directors they serve, to achieve consistency with disclosure required on incumbent directors and to permit shareholders to evaluate actual or potential conflicts of interest. To respond to the concern that the regulation would cause the association to violate FCA regulations on release of borrower data, a statement has been added to § 620.20 of the final rule to clarify that none of the disclosure required by this subpart shall be

deemed to violate any regulations of the FCA.

(d) Section 620.21(f) Legal Proceedings.

The same comments were made on the legal proceedings paragraph in this subpart as were made about the legal proceedings paragraph in the annual report to shareholders. In addition, one commentator noted that the requirement is redundant, since the annual report is incorporated by reference. The final regulation deletes this paragraph.

4. Section 620.22 Prohibition Against Incomplete, Inaccurate, or Misleading Disclosure.

A new paragraph has been added to the regulation to clarify that any disclosure made in connection with an election, whether pursuant to the subpart or not, which is incomplete, inaccurate, or misleading, is a violation of the regulation and that when such a violtion occurs the FCA may require corrective disclosure.

FCA will use its ongoing examination and regulatory mechanisms to enforce compliance with Part 620 and, where appropriate, require corrective action, including restatement of any misleading or erroneous data.

C. Part 621—Accounting and Reporting Requirements

1. General

A large number of comments were received on this part, the most significant and substantive of which related to the definitions of the categories of nonperforming assets. These comments are discussed below according to the topics and definitions to which they relate. One commentator stated that reporting requirements and media specifications should be limited to those that are reasonable and necessary. Another requested that the regulation include a requirement that the FCA give System institutions 90 days' notice before implementing changes in accounting instructions or reporting formats.

The FCA agrees that reporting requirements and media specifications should be reasonable and limited to those that are necessary to fulfill the Agency's responsibility as an examiner and regulator. It is the current practice of the FCA to give 90 days' advance notice of a change in accounting instructions or reporting format when practicable. The FCA intends to continue that practice. However, the FCA declines to add such a requirement to the regulation because of the occasional instance when the information is needed and the 90 days' notice period is not practicable or necessary.

2. Section 621.1 Purpose and Applicability

The final rule has been revised to clarify that the Farm Credit System Capital Corporation established by the 1985 Amendments is subject to the accounting and reporting requirements of this part. A Farm Credit System Capital Corporation was in existence prior to the 1985 Amendments, which had been chartered as a service organization under section 4.25 of the Act. The 1985 Amendments required that this organization be dissolved and a new Farm Credit System Capital Corporation be chartered under section 4.28(A) of the Act. The clarification in the regulation is needed to assure that "service organization" is not read narrowly to include only those organizations chartered under section 4.25 of the Act.

The proposed regulation contains two statements that articulated the FCA's motivation for adopting the regulations that have been deleted. These considerations continue to be the key considerations in adopting the regulation but are more appropriately stated in the preamble. The FCA believes these regulations are necesary because accurate and reliable financial information, prepared in accordance with appropriate accounting requirements, is essential to ensuring the accountability of management and directors to stockholders. The accounting requirements are needed to provide a uniform foundation for generating, presenting, and disclosing accurate and reliable information of a material nature to all persons having or contemplating business transactions with System institutions, including investors in consolidated Systemwide bonds.

3. Section 621.2 Definitions

This section has been expanded to include all of the definitions applicable to this part, which in the proposed regulation were scattered throughout the part in the sections to which they relate. In addition, certain definitions have been added that respond to comments received or that were made necessary by the FCA response to comments.

The term "nonperforming loans" received by far the most comments and raised the most concern. Eight commentators believed the term as used was misleading because, in their view, not all descriptive categories included in the term "nonperforming" are really nonperforming, and hence the information that would be reported about System institutions is misleading and inaccurate. A majority of the commentators suggested that the FCA requirements parallel those prescribed in SEC Industry Guide 3, "Statistical Disclosure by Bank Holding Companies," so as to provide comparability between System institutions and commercial banks.[1] One commentator stated that "the financial community" uses "nonperforming" assets to refer to nonaccrual loans, restructured loans, and other real estate owned, and suggested disclosing "other high risk" loans separately from the nonperforming category. One commentator suggested that the term "nonperforming" include only nonaccural loans, and that "performing" should be defined as accruing.

The FCA used the term "nonperforming loans" in the proposed rule to serve two purposes. The first purpose was to establish and communicate to readers of the annual report to shareholders that there is risk associated with loans that do not perform in accordance with contractual terms and conditions set forth in loan agreements, and that this risk may reduce the current or prospective value of these loans. The various categories of nonperforming loans differentiate the degree of severity of their "nonperformance," ranging from "nonaccrual loans" at one end of the continuum (in which the threat of reduced value is realized), to "other high risk loans" at the other end (representing the least severe risk), with restructured loans in the middle range. The second purpose to be served by the term "nonperforming loans" was to establish objective standards and ensure consistent application by System

[1] The SEC formerly used the term "nonperforming" to mean nonaccrual loans; loans that are contractually past due 90 days or more as to interest or principal, but not in nonaccrual status; renegotiated loans that provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower; and loans that are current but there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. Recently, the SEC abandoned the "nonperforming" terminology and adopted a requirement that "risk elements" be disclosed. The reason for the change was to expand the scope of the required disclosure of risk elements to include all assets displaying unusual risks or uncertainties, whether or not they met the formal definition of "nonperforming loans." In addition, the revision further required disclosure of risk elements in cross border outstandings whether or not, at the time, they were in a nonperforming status. As defined in Guide 3, "risk elements" include substantially all assets that previously would have been referred to as "nonperforming" assets plus other types of identified risk, such as concentrations of risk.

institutions, to enable the FCA to monitor the financial condition and performance of System banks and associations and to ensure that accurate and meaningful aggregate data about the System as a whole can be compiled. Also, the concepts and terminology were intended to provide information to be used by shareholders in holding management and directors accountable for the institution's performance and by the FCA in carrying out its examination and regulatory responsibilities. Eliminating the general concept of "nonperforming loans" would eliminat one of the most valuable tools that the proposed regulation established for use in holding management and directors accountable for the institution's condition and performance.

The FCA does not agree that the term "nonperforming" is not routinely used by the financial community or that the FCA use is inconsistent with established usage. The FCA investigated the use of the term "nonperforming loans" by Federal financial institution regulators and, to the extent practicable, the financial press. The FCA concluded that, while not always defined in the regulations, the major Federal bank regulators use the term "nonperforming loans" to refer collectively to loans that have not performed in accordance with contractual terms and conditions specified in loan agreements. Federal bank regulators use the term in their individual monitoring programs and collectively through the Federal Financial Institutions Examination Council. Federal bank regulators use the term "nonperforming loans" for internal examination and regulatory purposes and in standard external communications, such as the Uniform Bank Performance Report.

The FCA definition of the term "nonperforming loans" is substantially the same as the definition used by major Federal bank regulators. The Federal Financial Institutions Examination Council uses the term "nonperforming loans" to refer to the aggregate of: (1) Nonaccrual loans; (2) Loans past due 90 days or more and still accruing; and (3) Renegotiated troubled debt. The three components of "nonperforming loans" used by the Federal Financial Institutions Examination Council correspond to the items failing within the scope of FCA's definition of the term, with two minor exceptions. First, FCA divides "renegotiated troubled debt" into two categories, formally restructured, and other restructured and reduced rate loans. Second, FCA includes loans past due 90 days or more and still accruing in the "other high risk" category rather than as a separate category, and also includes in "other high risk loans" those loans that are current but otherwise in severe default, and loans in bankruptcy or foreclosure.

The FCA believes its extension of the term "nonperforming loans" to include loans that are current but otherwise in severe default and loans in bankruptcy and foreclosure is appropriate because of the risk implied by those conditions. FCA does not believe, however, that by expanding its definitions to specify those items as nonperforming makes FCA's definition of the term "nonperforming loans" materially inconsistent with the definition used by other Federal bank regulators because loans in severe default and loans in bankruptcy and foreclosure that are not already included in another nonperforming category are relatively few in number. However, since these loans exhibit characteristics that could place doubt on their collection in full, the FCA believes they should be classfied as nonperforming loans.

In addition, FCA review concluded that the term "nonperforming" is standard terminology used not only by many commercial financial institutions in disclosures contained in their annual reports to shareholders, but also by financial analysts when analyzing a commercial bank's loan portfolio. Generally the terms "nonperforming loans" or "nonperforming assets" are used. There is, however some confusion and no consistency in the components that make up the "nonperforming loans" and "nonperforming assets." The financial industry generally uses the term "nonperforming loans" to mean nonaccural and restructured or renegotiated loans, and, in some cases, past due but accruing loans (loans delinquent 90 days or more but adequately secured and in the process of collection). The financial industry generally uses "nonperforming assets" to refer to nonperforming loans and acquired property.

After careful consideration of the comments and possible alternatives to the use of the term "nonperforming," the FCA concluded that no other term is as descriptive of the condition common to all individual categories falling within the scope of the term to identify loans that have not performed in accordance with contractual terms and conditions. The FCA acknowledges that the term "nonperforming" is used inconsistently and imprecisely in the financial press. However, the FCA believes it should concern itself primarily with its own regulatory objectives and seek, to the extent possible, consistency with other Federal financial institutions regulators. Therefore the term "nonperforming loans" is retained in the final rule and is defined to include nonaccrual loans, formally restructured loans, other restructured or reduced rate loans, and other high risk loans.

The final rule, however, reflects some changes made for clarity and greater compatibility with other Federal financial institution regulators. The definition of "nonaccrual loan" in the proposed regulation permitted a loan past due 90 days or more (severely past due) to continue to accrue interest if adequately secured. In the final rule, loans that are 90 days or more past due must be adequately secured *and* in the process of collection in order to remain in an accrual status. A definition of "in the process of collection" is added which states that "a debt is in process of collection if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action that are reasonably expected to result in repayment of the debt or in its restoration to a current status." In addition, the final rule requires any loan that is delinquent for 180 days or more to be classified a nonaccrual loan without regard to whether it is adequately secured and in process of collection.

The final rule also adds a definition of "nonperforming assets" that includes "acquired property" and "nonperforming loans." Acquired property is defined in the final rule as any personal or real property, other than an interest-earning asset, that has been acquired as a result of liquidation of a loan, either full or partial.

While the final rule does not adopt the reporting requirements as exactly provided in SEC Industry Guide 3, as suggested, the types of information required to be disclosed are similar, except that the final rule retains the "nonperforming" nomenclature.

One commentator noted that under the proposed definition of "adequately secured," no loan could ever be adequately secured. Moreover, the commentator noted loan obligations should be paid out of cash flow from the borrower's operations or source of income rather than liquidation of collateral. While the commentator did not adequately explain the basis for the first criticism, FCA concluded that the comment was in response to the requirement that the net realizable value of the collateral or the guarantee of a responsible party, if any, be sufficient to

cover the "principal, interest, and collection expenses as may be outstanding, accrued or incurred to the time the debt is discharged in full. . ." and was related to the fact that actual collection expenses may not be known at the time the performance status is determined. In the final rule the requirement has been revised to state that the net realizable value of the collateral must be sufficient to discharge the debt in full, that is, on the principal and interest that will accrue under the contract. Estimated collection expenses would be deducted from the value of the collateral in making the determination of net realizable value.

In response to the second comment, it should be noted that the term "adequately secured" is used in the proposed regulation in the context of deciding whether interest should be accrued on a loan that is not performing in accordance with the contractual terms and conditions. The FCA agrees wholeheartedly that loans should be repaid from the cash flow from the borrower's operations rather than the liquidation of collateral. However, when cash flow from operations does not materialize in amounts sufficient to meet debt obligations, or when borrowers are otherwise unable or unwilling to repay debts, lenders must look to liquidation of collateral or to the guaranteeing party to collect the indebtedness.

Another commentator objected that the definition includes considerations of the guarantor and borrower creditworthiness in the definition of "adequate security" and noted that "adequate security" is commonly understood to refer to loan security itself and not the creditworthiness of the borrower or his or her surety.

In the context of this regulation, the adequacy of security on a nonperforming loan is critical to the determination of whether the loan belongs in nonaccrual status by virtue of its uncollectibility. One of the key tests for determining collectibility is whether the lender can, through legal devices related to the loan, obtain sufficient cash to discharge the debt in full. In this sense, the term "security" must include all potential sources of repayment. If "adequately secured" and "in process of collection," as the terms are used in this regulation, a loan is properly retained in accrual status. If, however, a combination of collateral and guarantors cannot be reasonably expected to yield enough cash to repay a loan in full, then the loan must be identified and reported as nonaccrual.

The proposed regulation defined "bankruptcy" for purposes of identifying and reporting nonperforming loans. Several commentators noted that the portion of the definition governing how long the loan must be reported in that category was confusing and redundant. One commentator opined that once a debt adjustment plan is approved by the court, the loan should no longer be considered "in bankruptcy."

The FCA has substantially revised this section in response to the comments to provide that a loan must continue to be reported as "in bankruptcy" until the court's jurisdiction is terminated unless relief from the automatic stay has been granted that allows the institution to proceed fully with collection or unless the loan has been restructured under a debt adjustment plan. When the court's jurisdiction is terminated or relief from the stay granted, the reporting institution must redetermine the performance status after an analysis of all pertinent factors and documents its determination in the loan file. If the institution proceeds with foreclosure, the loan would remain in "other high risk loans" unless it meets the criteria for nonaccrual. However, if a debt adjustment plan that requires concessions from the lender has been confirmed by the court, the loan must be reported as "formally restructured." Of course, whenever the loan meets the criteria for nonaccrual, it must be placed in nonaccrual without regard to whether any of the events described above have occurred.

One commentator thought that the definition of "contractually past due" in the proposed regulation was too broad in that loans that are only technically past due or past due in small amounts must be reported as nonperforming. Section 621.3(b) of the proposed regulation established acceptable tolerances that should be recognized in the application of definitions. These tolerances were included in the proposed rule to avoid requiring past due loans be reported as nonperforming when their past due status results from insignificant technicalities or involves insignificant amounts. The final rule retains this tolerance but relocates it to § 621.2(b)(1).

The proposed regulation required loans in foreclosure to be reported as "other high risk" loans. Foreclosure was defined to include foreclosure actions initiated by third parties against property in which the reporting institutions have a security interest. One commentator noted that such actions may not affect System institutions and should not be a criterion for identifying loans as "other high risk", especially when foreclosure is brought by a lienholder junior to a lien held by a System lender.

The FCA believes that the risk inherent in one lender's loan increases substantially when the borrower fails to perform on a loan from another lender. Third party foreclosures suggest strongly that either the borrower's ability to pay obligations to all lenders without liquidating collateral is questionable or that the borrower is otherwise unwilling to fullfill contractual obligations. The adequacy of the loan security enhances ultimate collectibility but does not ensure performance. The FCA recognizes, however, that circumstances may arise in which third party foreclosures may not signal abnormal risk on a loan. Therefore, the final rule has been revised to require prompt review of loans in which the security is subject to third party foreclosures to detemine the level of risk inherent in the loan and the proper performance status. Such reviews must consider all information pertinent to the borrower's willingness and ability to perform on the loan and conclusions must be well documented in the loan file. If such a review indicates the presence of abnormal risk on a loan, it must be identified and reported in the proper nonperforming category so long as the abnormal risk is present.

The proposed regulation defined "formally restructured loans" to mean those loans on which the contractual terms have been amended or otherwise revised to incorporate concessions made to the borrower that would not otherwise be made by the lender for economic or legal reasons. One commentator suggested that the regulation be revised to include compromise settlements as a legal reason. Another commentator recommended a revision to the definition of concession to clarify whether routine extensions of an installment should be considered a restructured loan. Another commentator does not believe the definition of "formally restructured loans" in § 621.3(a)(5) of the proposed regulation should include renewals or reamortizations provided the financial condition of the borrower supported the renewal and the terms are similar to those made to other borrowers.

The FCA responded to these concerns by defining "formally restructured loans" as those loans described in the statement of Financial Accounting Standards Bulletin (FASB) No. 15 rather than stating the substance of the bulletin. The proposed rule specified, in § 621.3(b)(2), that renewals or amortizations are not considered restructurings as long as the financial condition and performance of the

borrower supported the renewal and the renewal or amortization is made under the same terms and conditions as are used to make similar loans to other borrowers whose financial condition and performance are sound. The final rule retains this provision but relocates it to the definition of "formally restructured loans" in § 621.2(a)(8).

One commentator believes that a loan should be divisible for the purpose of classification when determining its performance status. That is, a portion of a loan could be classified nonaccrual and a portion could continue to accrue interest. There is no basis for such a split classification nor is it practical to split a loan for the purpose of determining its accrual or nonaccrual status. Once a loan is estimated to be uncollectible, including principal and interest, acceptable accounting principles would require the entire loan is required to be placed in a nonaccrual status. From a financial reporting perspective, there is no reason to have part of a loan reported as accruing and earning interest and another part reported as nonaccruing.

Performance classifications should be distinguished from loan classifications that are governed by 12 CFR 614.4050. Loan classifications are subjective ratings given to loans during examinations. The final rule does not require disclosure of loan classifications, as they are a part of the confidential FCA examination report. However, it does require the inclusion of loans classified as vulnerable and loss in certain nonperforming categories.

One commentator objected to the inclusion of all loss loans in the definition of a "nonaccrual loan." The commentator believes it may be appropriate to continue accruing interest on a loan classified as loss, since loans are classified as loss as a result of the estimated ultimate uncollectability and loans that may not ultimately be collectible may still be performing at the time of classification and may continue to perform for some time. The commentator further believes that such loans should be adequately reserved for but not automatically placed in a nonaccrual status.

The FCA disagrees with this comment. If an analysis of a loan identifies it as a loss loan, there is no justifiable reason to continue the accrual of interest on such a loan only to have it charged off at a later date. The proposed regulation is consistent with GAAP, which requires loans to be placed in a nonaccrual status if there is doubt as to collectability of principal or interest.

The need to identify past due but well-secured loans as "high risk" and thus "nonperforming loans" was questioned by some commentators.

Performance classifications are designed to measure borrower performance. The FCA believes that the adequacy of the security on a loan does not assure the borrower's performance in fulfilling obligations set forth in the loan agreement. The adequacy of the security is relevant to the collectibility of the loan, which may determine the particular category of nonperforming loans to which it is assigned, but it does not make a nonperforming loan performing. The final regulation retains the requirement that certain past due loans be identified and reported as "other high risk" even though adequately secured.

One commentator questioned whether, when a borrower is 90 days or more past due on one of three notes, the amount outstanding on the other two notes should also be reported as nonperforming. Another commentator believed there was a need to define "loan" and suggested that "loan" should apply to each individual loan of a borrower and not the aggregate credit.

The FCA believes that loan performance is determined primarily by the borrower's willingness and ability to fulfill debt obligations. The structure of indebtedness, whether a single note covering all amounts owed or a series of notes covering the same debt, does not alter the risk underlying the indebtedness. All indebtedness of a borrower should be identified and reported in the appropriate category of nonperforming loans when any portion of the indebtedness meets any of the criteria established for the identification and reporting of nonperforming loans when the underlying risk is the same. Accordingly, the final regulation adds a rule of aggregation that clarifies this point in § 621.2(b)(2). This rule of aggregation is designed to require the institution to consider all loans on which a particular borrower is primarily obligated, including joint loans with other borrowers and partnership or corporate loans, as one loan unless the institution can establish that a particular loan constitutes an independent risk. Minor editorial revisions have been made to the definition of "loan," but the term continues to include all extensions of credit and leases.

One commentator noted that § 621.3(a)(9)(iv) of the proposed rule permitted an implication that all loans classified problem under 12 CFR 614.4050 are to be classified as "other high risk." The FCA agrees that this was a permissible interference, which was unintended. Therefore, the final regulation has been modified to eliminate any such inference by substituting a requirement that institutions report as "other high risk," any loan where information is known to management that causes serious doubts about the ability of the borrower(s) to comply with the loan repayment terms. This modification clarifies that not all problem loans are to be included in high risk but will capture those loans that could result in serious credit problems and loan losses.

One commentator questioned the logic of § 621.3(a) of the proposed rule relating to the definition of "other restructured and reduced rate loans." The commentator could not conceive of concessions that might be offered that would not be incorporated into some formal contractual agreement.

While the FCA believes that it is possible for some loans to be placed in a reduced rate status or restructured internally by the institution without a formal agreement between the borrower and the institution, it agrees with the commentator that, in most cases, a formal agreement would be entered into. However, the fact that the institution has internally modified the accrual and the application of payments to accelerate the repayment of principal does not, unless the loan is formally restructured, relieve the borrower from making full payment in accordance with the original contract terms. This classification is used for financial reporting purposes to preclude the recording of interest in full if collection of the entire principal or interest is doubtful.

One commentator noted that the cash application sequence specified in § 621.3(b)(1)(iii) of the proposed regulation is not consistent with that used by some System banks and associations.

Because of the need to maintain some uniformity by System institution when they prepare financial statements, all System institutions will be expected to apply cash in accordance with the final regulation from its effective date forward.

4. Section 621.3 Generally Accepted Accounting Principles

Five commentators stated that the regulation should simply state the institutions should follow GAAP and not duplicate the specific provisions of GAAP in the regulations, noting that restating the specific provisions of GAAP in a regulation would require the regulation to be changed if the specific provisions of GAAP changed. Another suggested that FCA's interpretations of GAAP should not be in the regulations

but in guidelines, as has been the practice in the past. Another suggested that the regulations should only define those System accounting practices that are different from GAAP.

The FCA does not intend to restate the requirements of GAAP but to require the System institutions to conform to the applicable provisions of GAAP, unless otherwise modified by statutory or regulatory requirements. FCA is fully supportive of having the System institutions comply with GAAP, but recognizes that there are differences. Currently, there are two such statutory or regulatory requirements that differ from GAAP. These are the requirements for both the FLBs and PCAs to maintain an allowance in accordance with GAAP, subject to minimum specified requirements. GAAP does not specify minimums. Because of the difficulty involved in estimating an adequate allowance for loan losses, the FCA believes it appropriate to maintain these minimum requirements to provide some assurance that the allowance is adequate to cover the potential risk that may be present in the loan portfolio.

In addition, in many situations GAAP provides an option for recording a transaction and the application of any one of the options would result in the transaction's being recorded in accordance with GAAP. Since the FCA prepares combined financial statements for the various bank and association groups and the System prepares a combined Report to Investors, there is a need for consistent application. In those cases, the regulations specify which option to be used, to ensure consistent application by all System institutions.

Notwithstanding the fact that FCA endorses the concepts of GAAP, it may find it necessary from time to time to issue releases on accounting principles and practices with respect to specific accounting areas.

The final regulation has been modified to eliminate any requirement that may be an unnecessary duplication of GAAP and not needed to ensure consistent application among System institutions. For instance, under § 621.3(a)(5) of the proposed regulations the definition of formally restructured loans has been replaced with a reference to the GAAP provisions of FASB No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings."

Minor editorial and clarifying changes have been made to § 621.2 of the proposed regulations (§ 621.3 of the final regulations) to state the requirements more clearly. Section 621.2(c) in the proposed regulation, "Accrual basis of accounting," has been set out as a separate section in the new regulation (§ 621.4) and succeeding sections renumbered.

5. Section 621.5 Nonperforming Assets

One commentator stated that § 621.3(c)(1) of the proposed regulations implies that GAAP covers nonperforming loans and the implication should be removed because GAAP does not specifically address nonperforming loans. The FCA agrees that GAAP does not specifically prescribe requirements for nonperforming loans and similar assets. The regulation has been adjusted accordingly.

This section has been further amended to state its requirements more clearly and succinctly by combining paragraphs (a) and (b); stating more directly the requirement to determine the performance status of loans on a quarterly basis, and adding a paragraph to clarify that measures taken to enhance the collectibility of a loan, such as guarantees, do not relieve the institution of the obligation to determine the loan's perfornance status.

6. Section 621.6 Uncollectible Interest on Loans and Similar Assets

One commentator stated that the use of term "chargeoffs" in § 621.4(a) of the proposed regulation (§ 621.6(a) of the final regulation) is not technically correct when referring to earned but uncollected interest. The commentator stated that proper accounting requires interest to be backed out or reversed and suggested the paragraph be changed to read "appropriately account for earned but uncollected interest."

The final regulation has been adjusted to clarify its requirements. The substance of the change requires: (1) Earned but uncollected interest income that was accured in the current fiscal year and determined to be uncollectible to be reversed from interest income in the current period; and (2) Earned but uncollected interest income that was accrued in prior fiscal years and determined to be uncollectible to be charged off against the allowance for loan losses. In addition, because the requirements mandated by this section are not the only acceptable options under GAAP for the charging off or reversing of accured but uncollectible interest, the specific reference to GAAP in this section of the proposed regulation has been deleted.

7. Section 621.7 Chargeoffs on Losses on Loans

Several comments were received relating to § 621.5(c) of the proposed regulation (§ 621.7 of the final regulations) requiring the maintenance of an allowance for losses that, when considered in combination with the ability to make additional provisions for loss, is adequate to absorb loss in the loan portfolio. The commentators noted that this section permits an inference that earnings are needed before additions can be made, which is inconsistent with GAAP. Another commentator suggested that this paragraph be deleted in its entirety.

The FCA agrees that GAAP requires the maintenance of an adequate allowance without regard to the effect on earnings and the final regulation has been adjusted accordingly. The final regulation has also been modified to incorporate the requirement to maintain an allowance for loan losses that is in accordance with minimum statutory and regulatory standards.

One commentator noted that paragraph (d) of this section is open ended, with room for abuse by the FCA, and suggested it be eliminated. Because there is a critical need for each institution to adopt policies and to apply such policies, the FCA believes that paragraph (d) is necessary and it is retained in the final rule. In addition, since the FCA issues releases on accounting principles from time to time, the phrase "such other requirements as may be specified by the Farm Credit Administration" is needed.

8. Section 621.8 Adjustments to Book Value of Assests

Section 621.6 of the proposed regulations gave institutions differing with the FCA over the amount that should be charged off the option of charging off the amount specified by the FCA or disclosing the dispute with the FCA over the amount to be charged off in the annual report to shareholders. Section 621.8 of the final regulations requires that the institution charge off the amount directed by the FCA to be charged off. This change requires more directly what the FCA believed would be the usual result of an institution's exercise of the option presented in the proposed regulation.

9. Section 621.9 Audit by Qualified Public Accountant

The comments received regarding this section (§ 621.7 of the proposed regulations) were generally supportive of the need for audited financial statements. The commentators recommended the requirement to report FCA changes of accountants and disagreements with accountants be accelerated. One suggested that the institution be required to report to FCA within 15 days of the monthend in which the change takes place and that the

certified public accountant (CPA) be required to provide a letter stating whether the CPA concurs with management's response. If the CPA does not concur, the regulation should require the reasons to be stated. Another commentator recommended that § 621.7(c), "Disagreements with accountants," be deleted if the suggested modifications are made to § 621.7(d).

The FCA agrees that any disagreements with the accountant's opinion or changes in accountants should be reported to FCA immediately, in addition to being included in reports to shareholders, and such a requirement has been added to § 621.9 (c) and (d) of the final rule. The requirement that the CPAs be required to provide a letter stating whether they concur with management's response was thought to be implicit in the requirements of § 621.7(c)(3) of the proposed regulations. However, this paragraph (§ 621.9(c)(3) in the final regulation) has been clarified to make the requirement more explicit. The final regulation also requires that all correspondence required by § 621.9(c) be submitted to the FCA simultaneously with its submission by management to the accountant or submission by the accountant to management.

The requirement of § 621.7(c) has not been deleted even though the suggested changes have been made to § 621.7(d) because the FCA believes two separate sections are needed. Section 621.7(d) has, however, been modified to require notification to FCA within 15 days of the monthend when an institution changes its accountant and the reasons therefor.

The comments suggested that each institution be required to establish an audit committee made up of board members, and that the audit committee's activities be a required disclosure in the Annual Meeting Information Statement. One commentator suggested that all System institutions, including service corporations chartered by the FCA in which no equity is owned by any entity not chartered by the FCA, be required to have their financial statements audited by a qualified public accountant.

The FCA supports the use of audit committees but does not believe it appropriate to require them by regulation. The decision to have an audit committee is an internal management decision. The FCA does not think it appropriate to regulate the types of committees each institution should have. The FCA concurs that all institutions chartered by the FCA should have their financial statements audited by a qualified public accountant and the 1985 Amendments require it. The requirement has been restated in the final regulations.

FCA has also eliminated the requirement of § 621.7(b)(3) of the proposed regulation (§ 621.9 of the final regulations) that a copy of the public accountant's opinion of each institution's financial statements be sent to the FCA chief accountant upon receipt, since the annual report to shareholders filed with the FCA will contain the opinion.

D. Part 602.—Disclosure Under the Freedom of Information Act

The proposed amendment to 12 CFR 602.250(a)(8) stated that reports to shareholders required by FCA regulations and certain portions of the reports of condition and performance filed under Part 621 would be publicly available for a reasonable fee upon request. The preamble to the proposal explained that items in the reports of condition that correspond to items in the shareholders reports would be publicly available. One commentator suggested that the regulation specify those portions of the reports of condition and performance that would be made publicly available.

The final amendment states that those items in the reports of condition and performance that are of essentially the same character as items required to be disclosed to shareholders will be publicly available. In addition, technical adjustments made necessary by the 1985 Amendments were made in 12 CFR 602.250(a)(5).

List of Subjects in 12 CFR Parts 602, 620, and 621

Archives and records, Freedom of information, Information, Records, Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statement, Accounting and reporting requirements, Report of condition and performance.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended by amending Part 602 and by adding Parts 620 and 621 as follows:

PART 602—RELEASING INFORMATION

1. The authority citation for Part 602 is revised to read as follows:

Authority: Secs. 5.9 and 5.17, Pub. L. 99-205, 99 Stat. 1678.

2. Section 602.250 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(5) and (8) to read as follows:

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.250 Official records of the Farm Credit Administration.

(a) The Farm Credit Administration shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

* * * * *

(5) Inter-Agency or intra-Agency memorandums or letters which would not be available by law to a private party in litigation in which the United States, as real party interest on behalf of the Farm Credit Administration, is a party, or from any Farm Credit System institution, including banks, associations, service organizations, or the Capital Corporation, to a private party in litigation with such institution if such memorandums or letters are records of such institution;

* * * * *

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit institutions that are regulated and examined by the Farm Credit Administration that are prepared by, on behalf of, or for its use; except that reports to shareholders filed with the Farm Credit Administration pursuant to Part 620 of this chapter and those items in reports of condition and performance filed with the Farm Credit Administration pursuant to Part 621 of this chapter that are of essentially the same character as items disclosed in reports to shareholders filed with the Farm Credit Administration pursuant to Part 620 of this chapter, shall be available to the public on request for a reasonable fee.

* * * * *

3. A new Part 620 is added to read as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

Subpart A—Annual Reports to Shareholders

Sec.

Authority: Sec. 5.17(9) and (10), Pub. L. 99-205.

Subpart A—Annual Reports to Shareholders

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer, or nominee for director of the reporting institution is a director officer, or majority shareholder.

(b) "Senior officer" means any person designated by the board of directors as responsible for a major management function.

(c) "Immediate family" shall mean parents, childern, and siblings.

(d) "Institution" means any bank or association chartered by the Act.

(e) "Loan" shall have the same meaning as in Part 621 of this chapter.

(f) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(g) "Normal risk of collectibility" means the ordinary risk inherent in the lending operation. Any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter shall be deemed to have more than a normal risk of collectibility.

(h) "Related organization" means any Farm Credit institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(i) "Risk funds" means the allowance for loan losses and all capital accounts exclusive of capital stock, participation certificates, and allocated equities.

(j) "Shareholder" means a holder of any equity interest in an institution.

§ 620.2 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System shall prepare and distribute to its shareholders an annual report within 90 days of the end of its fiscal year.

(b) For the purposes of § 620.3(m), a Federal land bank association shall include the financial statements of the Federal land bank in the district in addition to its own. Federal land bank associations shall comply with all other sections of this part except as expressly stated otherwise herein.

(c) The report shall contain, at a minimum, the information required by § 620.3 and, in addition, such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Three complete copies of the report, including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report, shall be filed with the Chief Examiner, Farm Credit Administration, simultaneously with its disssemination to shareholders and shall be available for public inspection at the Farm Credit Administration.

(e) At least one of the reports filed with the Farm Credit Administration shall be dated and manually signed on behalf of the institution by:

(1) the person designated by the board of directors to certify the reports of condition and performance in accordance with § 621.12 of this chapter;

(2) The chief executive officer; and

(3) Each member of the board.

The name and position title of each person signing the report shall be typed or printed beneath his or her signature. The statement to which the signers of the report shall attest shall read as follows:

> The undersigned certify that this report has been prepared in accordance with all applicable statutory or regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge.

If any officer or any member of the board is unable to or refuses to sign the report, the institution shall disclose the individual's name and position title and the reasons such individual is unable or refuses to sign the report.

(f) The report sent to shareholders shall be signed and dated by and on behalf of the institution and its board of directors by its chief executive officer and the chairman of the board of directors. If any peson required to sign the report submitted to the Farm Credit Administration pursuant to paragraph (e) of this section has not signed the report, the name and position title of the individual and the reasons such individual is unable or refuses to sign shall be disclosed in the report sent to shareholders.

(g) Information in any part of this report may be incorporated by reference in answer or partial answer to any other item of the report.

(h) All items of essentially the same character as items required to be reported in the reports of condition and performance pursuant to Part 621 of this chapter shall be prepared in accordance with the rules set forth in Part 621.

(i) No disclosure required by this subpart shall be deemed to violate any regulation of the Farm Credit Administration.

(j) A copy of the most recent annual report to shareholders shall be publicly available at the institution.

§ 620.3 Contents of the annual report to shareholders.

The report shall contain the following items in substantially the same order:

(a) Description of Business

The description shall include a brief discussion of the following items:

(1) The territory served;

(2) The persons eligible to borrow;

(3) The types of lending activities engaged in and financial services offered. (Banks shall also briefly describe the lending and financial services offered by the associations that are its shareholders as well as financial services offered to district borrowers by any service organization in which it has an ownership interest.);

(4) Any significant developments within the last 5 years that had or could have a material impact on earnings or interest rates to borrowers, including, but not limited to, mergers or consolidations and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or from any other source;

(5) Any acquisition or disposition of material assets during the last fiscal year, other than in the ordinary course of business;

(6) Any material change during the last fiscal year in the manner of conducting the business;

(7) Any seasonal characteristics of the institution's business;

(8) Any concentrations of more than 10 percent of its assets in particular commodities or particular types of agricultural activity or business, and the institution's dependence, if any, upon a single customer, or a few customers, including other financial institutions (OFIs), as defined in § 614.4540(e) of this chapter, the loss of any one of which would have a material effect on the institution; and

(9) A brief description of the business of any related Farm Credit organization and the nature of the institution's relationship to such organization.

(b) Description of Property

State the location of and briefly describe the principal offices and other materially important physical properties (other than property acquired in the course of collecting a loan) of the institution. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly the terms and conditions of the agreement under which the property is used or occupied.

(c) Legal Proceedings

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involves claims that the institution may be required, by contract or operation of law, to satisfy. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(d) Description of Capital Structure

Describe each class of stock and participation certificates the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(1) The number of shares of each class outstanding;

(2) The par or face value;

(3) The voting and dividend rights;

(4) The order of priority upon impairment or liquidation;

(5) The institution's retirement policies and restrictions on transfer;

(6) The statutory requirement that a borrower purchase stock as a condition to obtaining a loan;

(7) The manner in which the stock is purchased (i.e., promissory note to the issuer or cash not advanced by issuing institution); and

(8) The statutory authority of the institution to require additional capital contributions, if any.

(e) Description of Liabilities

(1) Describe the institution's debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal year just ended. Describe applicable statutory and regulatory restrictions on the institution's ability to incur debt.

(2) Describe fully the institution's rights and obligations under any agreement, formal or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other financial assistance agreement.

(3) Describe any statutory authorities or obligations to contribute to or on behalf of another institution of the Farm Credit System.

(f) Selected Financial Data.

Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) For banks and production credit associations:

(i) Balance sheet

Total assets
- Investments
- Loans
- Allowance for losses
- Net loans
- Acquired property

Total liabilities
- Obligations with maturities longer than 1 year
- Obligations with maturities less than 1 year

Total capital
- Stock and participation certificates
- Surplus
- Allocated equities

(ii) Statement of income

- Net interest income
- Provision for loan losses
- Net income

(iii) Key financial ratios

- Return on average assets
- Return on average capital
- Net interest margin as a percentage of average earning assets
- Capital-to-asset
- Debt-to-capital
- Net chargeoffs-to-average loans
- Allowance for loan losses-to-average loans

(iv) Net income distributed

Cash
- Dividends
- Patronage refunds

Stock

Allocated equities

(2) For Federal land bank associations:

(i) Balance sheet

Total assets

Accrued obligation under loss-sharing agreement, if any

Total capital

(ii) Statement of income

Compensation from the Federal land bank

Total operating expense

Provision for obligation under capital preservation or loss-sharing agreements, if any

Net income

(iii) Other

Loans serviced for the Federal land bank

Dividends paid

Patronage refunds paid
- Cash
- Allocated equities

Payments to the Federal land bank under loss-sharing agreement

(g) Management's Discussion and Analysis of Financial Condition and Results of Operations

Fully discuss the institution's financial condition, changes in financial condition, and results of operations during the last 2 fiscal years, identifying favorable and unfavorable trends and significant events or uncertainties. In addition to the items enumerated below, the discussion shall provide such other information as the institution believes is necessary to an understanding of its financial condition, changes in financial condition, and results of operations.

(1) Loan portfolio.

(i) Describe the types of loans in the portfolio by major category (e.g., agricultural real estate mortgage loans; rural home loans; agriculture production loans by major subcategory; processing and marketing; farm business; and international), indicating the approximate percentage of the total dollar portfolio represented by each major category. For each category, discuss any special features of the loans that may be material to the evaluation of risk and any economic or business conditions that have had or are likely to have a material impact on their collectibility. For Federal intermediate credit banks, disclose separately the aggregate amount of loans outstanding to production credit associations and OFIs.

(ii) Describe the geographic distribution of the loan portfolio by State or other significant geographic division, if any.

(iii) Recent loss experience. For the periods covered by the financial statements provide:

(A) An analysis of nonperforming assets in accordance with the categories delineated in § 621.2 of this chapter;

(B) An analysis of the allowance for loan losses that includes the ratios of the allowance to average loans and net chargeoffs to average loans, and a discussion of the adequacy of the allowance for losses to absorb the risk inherent in the institution's loan portfolio;

(C) Financial assistance given or received under districtwide or Systemwide loss-sharing or capital preservation agreements or otherwise;

(D) For Federal intermediate credit banks, a description in the aggregate of the recent loss experience of the PCAs that are its shareholders, including the items enumerated in paragraphs (g)(1)(iii)(A), (B), and (C) of this section.

(2) Results of operations.

(i) Describe, on a comparative basis, changes in the major components of net income during the last 2 fiscal years, describing significant factors that contributed to the changes and quantifying the amount of the changes due to an increase in volume or the introduction of new services and the amount due to changes in interest rates earned and paid, based on averages for each period.

(ii) Describe any unusual or infrequent events or transactions or any significant economic changes, including, but not limited to, financial assistance from or paid to other Farm Credit institutions, that materially affected reported income. In each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying the changes, if any, in the return on average assets and the return on average capital.

(iv) Describe, on a comparative basis, the major components of operating expense, indicating the reasons for significant increases or decreases.

(v) Describe any other significant components of income or expense, including, but not limited to, income from investments, that in the institution's judgment should be described in order to understand the institution's results of operations.

(vi) Describe any known trends or uncertainties that have had, or that the institution reasonably expects will have, a material impact on net interest income or net income. Disclose any events known to management that will cause a material change in the relationship between costs and revenues.

(3) Liquidity and funding sources.

(i) Funding sources.

(A) Describe the average and yearend amounts, maturities, and interest rates on outstanding consolidated Systemwide debt obligations or other bond obligations used to fund the institution's lending operations.

(B) Describe existing lines of credit and their terms.

(C) Describe the institution's capital accounts and other sources of lendable funds.

(ii) Liquidity.

(A) Discuss the institution's liquidity policy and the components of asset liquidity, including, but not limited to, cash, investment securities, and maturing loan repayments. Assess the ability of the institution to generate adequate amounts of cash to fund its operations and meet its obligations.

(B) Discuss any known trends that are likely to result in a liquidity deficiency and the course of action management intends to take to resolve it. Discuss any material increase or decrease in liquidity that is likely to occur.

(iii) Funds management.

(A) Discuss the institution's interest rate programs and the institution's ability to control interest rate margins.

(B) Discuss changes in net interest margin (net interest income as a percentage of average earning assets), explaining the reasons therefor.

(4) Capital resources.

(i) Describe any material commitments to purchase capital assets and the anticipated sources of funding.

(ii) Discuss any material trends or changes in the mix and cost of debt and capital resources.

(iii) Describe any favorable or unfavorable trends in the institution's capital resources.

(iv) Discuss and explain any material changes in capital ratios, noting any material adverse variances from regulatory guidelines.

(v) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the adequacy of available risk funds.

(h) Directors and Senior Officers

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director, list any other business entity on whose board the director serves and state the principal business in which it is engaged.

(i) Compensation of Directors

Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation or $25,000 whichever is less) and state the total cash compensation paid to directors as a group during the last fiscal year. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities; and

(3) The total compensation paid to each director during the last fiscal year.

(j) Transactions With Senior Officers and Directors

(1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year for which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of his or her immediate family, or any organization with which the person or director is affiliated. State the name of the person, his or her relationship to the institution, the nature of his or her interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) Loans to senior officers and directors.

(i) If true, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors that:

(A) Were made in the ordinary course of business;

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) Did not involve more than the normal risk of collectibility.

(ii) If the conditions stated in paragraph (j)(3)(i) of this section do not apply to the loan(s) of any person who served as a senior officer or director on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended, or any member of such person's immediate family or any organization with which such person is or has been affiliated within the last fiscal year, state:

(A) The person's name;

(B) The largest aggregate amount of indebtedness outstanding at any time during the last fiscal year;

(C) The nature of the loan(s);

(D) The amount outstanding as of the end of the last fiscal year;

(E) The rate of interest payable on the loan;

(F) The repayment terms for the loan;

(G) The amount past due, if any;

(H) The performance status of the loan as determined by the institution in accordance with Part 621 of this chapter; and

(I) If applicable, the reason the loan is deemed to involve more than the normal risk of collectibility.

(k) Involvement in Certain Legal Proceedings.

Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

(l) Relationship With Independent Public Accountant

If a change or changes in accountants have taken place since the last annual report to shareholders or if a disagreement with an accountant has occurred that the institution would be required to report to the Farm Credit Administration under Part 621 of this chapter, the information required by § 621.9 (c) and (d) of this chapter shall be disclosed.

(m) Financial Statements

(1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and instructions and other requirements of the Farm Credit Administration and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.2(a)(21) of this chapter, and an opinion expressed thereon. The statements shall include the following statements and related footnotes for the last 3 fiscal years: balance sheet, statement of income, statement of changes in capital, and statement of changes in financial position.

(2) The audit requirements of paragraph (m)(1) of this section shall be effective for financial statements issued for the 1986 fiscal yearend.

(3) The financial statements shall be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that the financial statements, in the opinion of management, fairly present the financial condition of the institution, except as otherwise noted.

Subpart B—[Reserved]

Subpart C—Association Annual Meeting Information Statement

§ 620.20 Preparing, distributing, and filing the information statement.

(a) Each association of the Farm Credit System shall prepare and distribute to its shareholders at least 10 days prior to any meeting at which directors are to be elected an information statement ("statement").

(b) The statement shall contain, at a minimum, the information specified in § 621.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds a shareholder meeting at which directors are elected more than 134 days after the end of its fiscal year, the statement shall be accompanied by the most recent quarterly statements and statements for the comparable period in the prior fiscal year.

(d) Three complete copies of the statement, including financial statements and all other paper and documents that are part of the statement, shall be filed with the Chief Examiner, Farm Credit Administration (received at Farm Credit Administration offices), on or before the date of its dissemination to shareholders.

(e) At least one of the statements filed with the Chief Examiner, Farm Credit Administration, including any interim financial statements that may be required under paragraph (c) of this section, shall be dated and manually signed on behalf of the institution by:

(1) The person designated by the board to certify reports of condition and performance in accordance with § 621.12 of this chapter;

(2) The chief executive officer; and

(3) Each member of its board of directors.

The name and position title of each person signing the statement shall be typed or printed beneath the signature. The certification to which the signers of the statement shall attest shall read as follows:

> The undersigned certify that this statement has been prepared in accordance with all applicable statutory and regulatory requirements and that the information contained herein is true, correct, accurate, and complete to the best of his or her knowledge.

(f) The statement sent to shareholders shall be signed on behalf of the institution and its board of directors by its chief executive officer and the chairman of the board of directors. If any person required to sign the statement submitted to the Farm Credit Administration pursuant to paragraph (e) of this section has not signed it, the name and position title of the individual and the reason such individual is unable or refuses to sign shall be disclosed in the statement sent to shareholders.

(g) Information in any part of the statement may be incorporated by reference in answer, or partial answer, to any other item of the statement.

(h) No disclosure required by this subpart shall be deemed to violate any regulation of the Farm Credit Administration.

§ 620.21 Contents of the association annual meeting information statement.

The statement shall address the following items:

(a) Date, Time, and Place of the Meeting(s)

(b) Voting Shareholders

For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote, and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon.

(c) Directors

(1) State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which such persons have served. No information need be given with respect to any director whose

term of office as a director will not continue after the meeting to which the statement relates.

(2) State the name of any incumbent director who attended fewer than 75 percent of the total of board meetings and any board committee meeting of committees on which he or she served during the last fiscal year.

(3) If any director resigned or declined to stand for reelection during the last year fiscal year to date because of a policy disagreement with the board, and if the director has furnished a letter requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement contained in the letter. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(4) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.3(j), or any of the events required to be disclosed in the annual report to shareholders under § 620.3(k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.3(j) and (k) shall be made with respect to such transactions or events in the annual information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.3(j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the annual information statement.

(d) Nominees

(1) If directors are nominated by region, describe the regions and state the number of voting shareholders entitled to vote in each region. If nominations from the floor are restricted by the bylaws to persons from a particular region, so state.

(2) If fewer than two nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(3) If the annual meeting is held in consecutive sectional meetings, the statement shall contain a notice that nominations from the floor must be made at the first sectional meeting.

(4) For each nominee, state the nominee's name, age, and business experience during the last 5 years, including each person's principal occupation and employment during the past 5 years. List any business entities on whose board of directors the director serves and state the principal business in which the entity is engaged.

(5) For each nominee who is not an incumbent director, except nominees from the floor, the disclosures required of senior officers or directors by § 620.3 (j) and (k) shall be made in the annual information statement. Floor nominees must provide the disclosures required by § 620.3 (j) and (k) in writing at the meeting(s) at which the nomination is considered. No person may be a nominee for director who does not make the disclosures required by this subpart.

(6) The statement shall contain a notice that each person nominated from the floor must provide in writing all of the disclosures required by this subpart at the meeting(s) at which the nomination is considered.

(e) Other Shareholder Action

(1) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition.

(2) The statement shall describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

(f) Relationship With Independent Public Accountant

If an institution of the Farm Credit System has had a change or changes in accountants since the last annual report to shareholders, or if a disagreement with an accountant has occurred, the institution shall disclose the information required by § 621.9 (c) and (d) of this chapter.

§ 620.22 Prohibition against incomplete, inaccurate, or misleading disclosure.

No employee or director or nominee for director of the institution shall make any disclosure to shareholders with respect to an election that is incomplete, inaccurate, or misleading. When any such person makes disclosure, that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made pursuant to this subpart, such institution or person shall, at the direction of the Farm Credit Administration, make such additional or corrective disclosure as is necessary to provide shareholders with full and fair disclosure.

4. A new Part 621 is added to read as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Accounting Requirements

Subpart B—Report of Condition and Performance

Authority: Sec. 5.17 (9) and (10), Pub. L. 99–205.

Subpart A—Accounting Requirements

§ 621.1 Purpose and applicability.

This part sets forth accounting requirements to be followed by all banks, associations, and service organizations chartered under the Act, including the Farm Credit System Capital Corporation and its successors. The requirements set forth in this part include both requirements of general application and specific requirements focusing on particular areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information on lending operations.

§ 621.2 Definitions.

(a) For the purposes of this part, the following definitions shall apply, subject to the rules of application in paragraph (b) of this section:

(1) "Accrual basis of accounting" means that accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

(2) "Acquired property" means any real or personal property, other than an interest-earning asset, that has been acquired as a result of liquidation of a loan, either full or partial.

(3) "Adequately secured." A nonperforming loan shall be considered adequately secured only if:

(i) Collateralized by liens having a net realizable value sufficient to discharge the debt in full.

(ii) Guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

(4) "Bankruptcy." A loan shall be considered in bankruptcy if the reporting institution has received notice that a petition has been filed with a court of competent jurisdiction by or against the borrower under any chapter of the Federal Bankruptcy Act or similar State statute. A loan shall remain "in bankruptcy" for the purposes of this part until the court's jurisdiction is terminated or relief from the automatic stay is granted that permits collection to proceed fully, and a detailed analysis of the loan supports a reclassification other than a nonperforming status. Such analysis shall consider all pertinent factors and shall be well documented. If a debt adjustment plan has been confirmed by the court, the loan shall be classified as "formally restructured" unless no concessions are granted by the creditor under the plan.

(5) "Borrowing entity" means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, which is primarily obligated on the loan agreement.

(6) "Contractually past due." A loan shall be considered contractually past due if any principal repayment or interest payment required by the lending agreement is not received on or before the agreed date. A loan shall remain contractually past due until it is formally restructured, or until the entire amount past due, including principal, accrued interest, and penalty interest incurred by virtue of past due status, is collected or otherwise discharged in full.

(7) "Foreclosure." A loan shall be considered in foreclosure if the lender has authorized initiation of proceedings under State law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest. If the lender has received notice that a third party has initiated proceedings under State law or deed of trust to terminate the borrower's right in any property in which the lender has a security interest, the lender shall promptly review the potential impact of the third party actions and classify the loan accordingly. The review shall consider all pertinent factors and the classification shall be well documented in the loan file.

(8) "Formally restructured loans" means loans that are "troubled debt restructurings," as defined in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the Financial Accounting Standards Board. After a loan is classified as "formally restructured," it shall continue to be reported as formally restructured until it is fully paid off or otherwise discharged. A renewal or reamortization of the loan at maturity shall not be considered a restructuring, provided:

(i) The financial condition and loan performance of the borrower support renewal; and

(ii) The renewed or reamortized loan is made under the same terms and conditions as are used to make similar loans to other borrowers whose financial condition and performance are sound and not deteriorating.

(9) "Generally accepted accounting principles" shall mean that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(10) "Generally accepted auditing standards" shall mean the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants to govern the overall quality of audit performance.

(11) "In process of collection." A debt is in process of collection if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action that are reasonably expected to result in repayment of the debt or in its restoration to current status.

(12) "Institution" means any bank, association, or service organization chartered under the Farm Credit Act of 1971, as amended, including the Farm Credit System Capital Corporation and its successors.

(13) "Loan" means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of a reporting institution. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interests in loans purchased from another lender.

(14) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(15) "Nonaccrual loans." A loan shall be considered nonaccrual if and so long as:

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or

(ii) It has been classified "loss" as a result of a periodic credit evaluation; or

(iii) It is severely past due and not adequately secured, in process of collection, and fully collectible with respect to all principal and interest; or

(iv) It is past due for 180 days or more, without regard to whether it is adequately secured or in process of collection.

(16) "Nonperforming assets" means nonperforming loans and acquired property as defined in this part.

(17) "Nonperforming loans" means nonaccrual, formally restructured, other restructured and reduced rate and other high risk loans, as defined in this part.

(18) "Other high risk loans" means all loans that:

(i) Have been classified "vulnerable" as a result of a periodic credit evaluation; or

(ii) Are past due 90 days or more but less than 180 days, but adequately secured and in process of collection; or

(iii) Are in process of collection, bankruptcy, or foreclosure; or

(iv) Are in severe default; or

(v) Do not meet the other criteria of this paragraph for classification as other high risk loans, but management has information that causes serious doubt as to the borrower's willingness or ability to perform in accordance with the terms and conditions of the loan agreement.

(19) "Other restructured and reduced rate loans" shall have the same meaning as formally restructured loans except that the concessions granted to the borrower have not been incorporated into the contractual terms and conditions of the loan by amendment or other revision. A loan shall continue to be classified as other restructured or reduced rate until the reporting institution, after a well-documented analysis of all pertinent factors, determines that it should be reclassified.

(20) "Performing loans" means all loans not identified as nonperforming under the definitions and standards established in this part.

(21) "Qualified public accountant" shall mean a person who:

(i) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant; and

(ii) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States; and

(iii) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited; and

(iv) Is not suspended or otherwise barred from practice as an accountant or public accountant before the U.S. Securities and Exchange Commission or any other appropriate Federal or State regulatory authority; and

(v) Is independent of the institution that is to be audited. For the purposes of this definition the term "independent" shall have the same meaning as under the rules and interpretations of the American Institute of Certified Public Accountants.

(22) "Severe default." A loan shall be considered in severe default if:

(i) The borrower does not perform in accordance with any term(s) or condition(s) or other obligation(s) set forth or incorporated by reference into the loan agreement; and

(ii) The borrower's failure to perform in accordance with the loan agreement increases the lender's risk exposure on the loan to a level that reduces or threatens to reduce the current or prospective value of the loan as a financial asset.

(23) "Severely past due loans." A loan shall be considered severely past due if any portion thereof is contractually due and uncollected for a period of 90 days or more with respect to principal, interest, or both.

(24) "Vulnerable" shall have the same meaning as under § 614.4051(a)(4(iii) of this chapter.

(b) Rules for applying definitions.

(1) Acceptable tolerances in determining amounts contractually past due. For purposes of this part, earned and contractually due but uncollected amounts may be considered paid in full if:

(i) At least 90 percent of all contractually due principal and interest has been collected; and

(ii) No more than a combined total of $100 of contractually due principal and interest remains uncollected.

However, amounts collected in successive partial payments or other credits shall be applied to the oldest contractually past due amount until it is paid in full, then to the next oldest past due amount until it is paid in full, and so on until the total amount of the partial collection(s) is exhausted.

(2) Rule of aggregation. For the purposes of determining performance status under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

§ 621.3 Generally accepted accounting principles.

Each institution of the Farm Credit System shall:

(a) Prepare and maintain accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements or otherwise required by the Farm Credit Administration; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

§ 621.4 Accural basis of accounting.

Each institution of the Farm Credit System shall use the accrual basis of accounting in the preparation and maintenance of its accounting records, and in the preparation of its financial statements, including interim statements that are:

(a) Used for internal management purposes;

(b) Used by the board of directors;

(c) Prepared to meet Farm Credit Administration reporting requirements; and

(d) Prepared for shareholders and investors.

§ 621.5 Nonperforming assets.

(a) Each institution of the Farm Credit System shall:

(1) Account for, report, and disclose to shareholders, investors, board of directors, and the Farm Credit Administration all material items with respect to nonperforming assets, in accordance with the rules and definitions set forth in this part and such other requirements as may be prescribed by the Farm Credit Administration;

(2) Develop, adopt, and apply policies governing nonperforming assets, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(3) Review at least quarterly all loans to:

(i) Determine their performance status in accordance with the definitions in this part; and

(ii) Determine the collectibility of accrued but uncollected income, if any.

(4) Recognize interest income from informally restructured loans and similar assets on its books and records and on its financial statements when received in cash or cash equivalents, or at a rate of accrual lower than the contractual rate and consistent with amounts that the institution may reasonably expect to collect given the material facts of the borrower's situtation.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

§ 621.6 Uncollectible interest on loans and similar assets—general rules.

(a) Each institution of the Farm Credit System shall employ the following practices with respect to charging off earned but uncollected interest income on loans, leases, contracts, and similar assets:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income.

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

(b) Notwithstanding the above, the following types of income shall, at a minimum, be classified as uncollectible:

(1) Earned but uncollected interest on any loan, if any portion thereof is severely past due and the loan is not adequately secured;

(2) Earned but uncollected interest on any loan, lease, or similar investment

that is not adequately secured and on which the institution has commenced legal action to acquire title to, secure possession of, or force liquidation of the underlying collateral security, or to otherwise enforce performance on the loan by the borrower;

(3) Earned but uncollected interest on any loan that is not adequately secured on which the institution has received notice that the borrower's bankruptcy petition, or similar pleading, has been filed with a court of competent jurisdiction; and

(4) Earned but uncollected interest on loans that are being or have been restructured, but such interest is not explicitly included in the principal amount of the restructured loan.

§ 621.7 Chargeoff of losses on loans.

Each institution of the Farm Credit System shall:

(a) Charge off loans, wholly or partially as appropriate, at the time they are determined to be uncollectible; and

(b) Apply generally accepted accounting principles, or regulatory requirements where appropriate, consistently in all material aspects of recognizing, estimating, and recording chargeoffs; and

(c) Maintain at all times an allowance for loan losses that is in accordance with statutory and regulatory requirements and, at a minimum, is adequate to absorb all loses that may be reasonably expected to exist in the loan portfolio; and

(d) Develop, adopt, and apply policies governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules and definitions, and standards set forth in this part and such other requirements as may be prescribed by the Farm Credit Administration.

§ 621.8 Ajustments to book value of assets.

When an institution, or the district bank in which it is a shareholder, if any, or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can be reasonably expected to be collectible, or that the documentation supporting the recorded asset value is inadequate:

(a) The institution shall immediately charge off the asset in the amount determined to be uncollectible.

(b) If the amount determined to be uncollectible by the institution or its district bank in which it is a shareholder, if any, is different from the amount determined to be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

§ 621.9 Audit by qualified public accountant.

(a) Each institution of the Farm Credit System shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report to shareholders.

(c) Disagreements with accountant's opinion. If an institution of the Farm Credit System disagrees with the opinion of a qualified public accountant provided under the requirements of paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted acounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report to shareholders directly following the accountant's opinion of the institution's financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration the written documentation required by paragraphs (c)(1) through (4) of this section.

(d) Changes in qualified public accountants. If an institution of the Farm Credit System selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution's annual meeting information statement and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

Subpart B—Reports of Condition and Performance

§ 621.10 Applicability and purpose.

(a) Each institution of the Farm Credit System shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Administration, Management Information Division, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

§ 621.11 Content and standards—general rules.

Each institution of the Farm Credit System shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

§ 621.12 Certification of correctness.

Each report of financial condition and performance filed with the Farm Credit Adminstration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

Marvin Duncan,

Acting Chairman.

[FR Doc. 86-5342 Filed 3-12-86; 8:45 am]

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12 CFR Part 611

Farm Credit System Capital Corporation; Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Farm Credit Administration ("FCA") has promulgated final regulations §§ 611.1140–611.1142 applicable to the Farm Credit System Capital Corporation ("Capital Corporation" or "Corporation") established under the Farm Credit Amendments Act of 1985 ("1985 Amendments") chartered by the FCA on February 24, 1986, pursuant to § 4.28A of the Farm Credit Act of 1971, as amended ("1971 Act"). The Corporation supersedes and succeeds to the assets and liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation") chartered by the FCA on June 6, 1985 and dissolved by the FCA following the chartering of the Corporation.

DATES: Effective March 10, 1986. Written comments must be received on or before April 9, 1986.

ADDRESSES: Submit comments in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4024.

SUPPLEMENTARY INFORMATION: Under the 1985 Amendments enacted on December 23, 1985, Congress authorized and directed the FCA to charter the Capital Corporation within 60 days for the purpose of carrying out a program of financial and technical assistance to Farm Credit System ("System") banks and associations (hereinafter referred to as "institutions") and their borrowers. the Corporation is designed to acquire, hold, restructure, collect and otherwise administer nonperforming assets (including loans and acquired property) from System institutions, and to provide financial and technical assistance and services to System institutions. Congress intended that the Corporation serve as a vehicle through which the System will assist itself by transferring its substantial surplus to those districts in greatest need of capital.

Congress directed that the FCA promulgate regulations to address a number of areas relating to the Capital Corporation, including the nomination and election of System representatives on the board of directors, financial assistance, corporate powers, and the capitalization of the Corporation. Section 611.1140 concerns the chartering and organization of the Corporation. It establishes a Nominating Committee ("Committee"), comprised of the Chairman or Vice Chairman of each System bank board of directors, to nominate candidates to be elected by Systems banks to the three director seats on the board of directors of the Corporation. The Committee is to hold its initial meeting as soon as possible to nominate at least two candidates for each of those board positions. The FCA election officer will conduct the initial director election within 15 days after receiving the slate of candidates from the Committee. This election procedure is designed to expedite selection of System representatives on the board in an equitable manner, enabling the Corporation to become operational as soon as possible. Subsequent elections of System board members will take place as provided in the Corporation's bylaws.

The regulation prohibits interlocking affiliations between the Capital Corporation and the Farm Credit Corporation of America ("FCCA"). The FCA endorses the purposes and mission of the FCCA, including the establishment of Systemwide policies and standards, and encourages the FCCA to press forward with its important work. However, functions and operations of the Capital Corporation must be separated from the FCCA. The legislative history of the 1985 Amendments indicates that Congress did not intend that the Corporation become a bank or bank holding company, or a vehicle for consolidating System structure or authority. Accordingly, the Capital Corporation regulations prohibit any person who serves, or has served within 3 years prior to the election, as a director, officer or an employee of the FCCA from serving on the board of the Corporation.

The regulations set director compensation for all members of the Capital Corporation board of directors. Neither System institution officers or employees who serve as directors nor any full time employee of the United States who may be appointed to the board by the Secretary of Agriculture will receive compensation in addition to their current salaries. Compensation for other directors is set at $25,000 per annum, less any compensation received from any other System institution or System service organization board activities.

This amount was determined as the minimum necessary to attract qualified persons to serve on the Corporation board to perform the very serious and complex work associated with marshaling System resources to provide financial assistance where necessary.

Section 611.1141 sets forth the rules regarding the capitalization of the Capital Corporation. The initial capitalization of the Corporation will be established by the FCA in consultation with System institutions as soon as possible. The regulation establishes the classes of stock the Corporation may issue and specifies the voting and other rights, qualifications, preferences, and restrictions that the stock may carry.

The regulations are designed to provide ample flexibility in capitalizing the Corporation in a way that will optimize its effectiveness. Special classes of stock have been established to facilitate an exchange of stock for stock of the Predecessor Corporation, and for purchase by the Secretary of the Treasury or the FCA in the event Government funds are made available to the System.

Section 611.1142 addresses the powers of the Corporation. In order to assure policy and operational autonomy from System banks and associations that will be contributors or recipients of resources to the Corporation, joint employees between the Corporation and System institutions or System service organizations have been prohibited. Similarly, contracts for services with System institutions and service organizations have been limited to administrative, financial, and operational services not to include policy or management functions, assessment or financial assistance determinations, legal services, or funds management. The regulation severs any connections between the Predecessor Corporation and System institutions. The regulation also affirms that although the Capital Corporation is a Federal instrumentality, it is not a Federal agency and is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. Commercial borrowings of the Corporation are permitted without further FCA approval where the Corporation is able to obtain terms better than those available from System institutions or through the issuance of Systemwide obligations, and the Corporation may join with the System in the issuance of Systemwide obligations so long as the collateral requirements of 12 CFR 615.5050 are satisfied by the Corporation or another System bank. All borrowings by the Corporation must be pursuant to a debt management policy.

Paragraph (h) of § 611.1142 is reserved for rules regarding the assessment by the Capital Corporation of System institutions. The FCA expects that those regulations will be published within several weeks, together with capital adequacy regulations otherwise required by the Act.

Paragraph (i) sets forth standards under which System institutions may be eligible for financial assistance and establishes a related application process. Financial assistance can be provided by the Corporation in the form of direct financial assistance to the requesting institution through stock purchases, loans, cash contribution, or other financing, as well as the purchase of nonaccrual loans and acquired property held by the institution. The regulations provide that any System institution may request that the Corporation purchase nonaccrual loans or acquired property, and that any institution whose stock is or will, within 90 days, be impaired shall be eligible to apply for direct financial assistance from the Corporation.

The regulation specifies the information that must be included in an application for assistance. The Capital Corporation must analyze each application taking into consideration the financial and economic condition of the institution, the System, and the available resources to the Corporation. In recognition that the Capital Corporation has limited resources, the regulation directs that the Corporation make optimum use of its resources and gives the Corporation flexibility to determine the type and amount of financial assistance. Consistent with the requirement of the Act that financial assistance by the Corporation be administered in accordance with sound business practices, the regulation provides that the Corporation shall require, as a condition precedent to providing any direct financial assistance, that a recipient institution make such changes in its operations as may be necessary to enable the institution to make a sound financial recovery. The FCA may intervene in any Corporation decision regarding direct financial assistance.

The regulation affirms that any purchase by the Corporation of nonaccrual loans or acquired property must be at fair market value. Fair market value is defined in accordance with usage of the term under generally accepted accounting principles recognizing that the Corporation will negotiate the purchase price based on the costs associated with restructuring, reamortizing, guaranteeing, administering, and liquidating a particular asset on a case by case basis. Finally, the regulation subjects the Capital Corporation to the same accounting and financial reporting requirements applicable to other System institutions.

In adopting the regulations as final regulations, the FCA noted that the Act requires that regulations be in effect before the Capital Corporation can organize and exercise all of the powers which Congress conferred under the Act. The agency has determined that in light of the congressional directive in the Amendments that the Corporation be chartered within 60 days of enactment of the 1985 Amendments and be operational as soon as possible thereafter, public notice and publication for comment are impracticable, unnecessary and contrary to the public interest. For the same reasons, the FCA has waived the 30-day period otherwise applicable under subparagraph (b)(1) of § 5.17 of the Act. In accordance with 12 U.S.C. 2252(b)(2), the regulation is effective immediately. Although the regulations will be effective immediately, the public has been afforded a period of 30 days from the date of publication to submit written comments to the FCA.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

These regulations are hereby adopted by the Farm Credit Administration the 10th day of March 1986.

Donald E. Wilkinson,

Acting Chairman.

PART 611—ORGANIZATION

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is being amended as follows:

§ 611.1145 [Redesignated as § 611.1130]

1. In Subpart H, § 611.1145 is redesignated as § 611.1130.

§§ 611.1150 and 611.1151 [Redesignated as §§ 611.1135 and 611.1136]

2. Subpart I is amended by redesignating §§ 611.1150 and 611.1151 as §§ 611.1135 and 611.1136 respectively.

3. Subpart J is amended by redesignating it as Subpart L and adding a new Subpart J, consisting of §§ 611.1140–611.1142 to read as follows:

Subpart J—Farm Credit System Capital Corporation

Sec.

Authority: Secs. 4.28A–4.28L, 5.17, Pub. L. 99–205, 99 Stat. 1678.

Subpart J—Farm Credit System Capital Corporation

§ 611.1140 Charter and organization of the Farm Credit System Capital Corporation.

(a) *Corporation charter.* The regulations set forth in this Subpart shall be applicable to the Farm Credit System Capital Corporation (hereinafter referred to as the "Corporation")

chartered by the FCA pursuant to section 4.28A of the Act. The charter of the Corporation may be amended from time to time as directed by the FCA.

(b) *Board of directors.* The Board of Directors of the Capital Corporation shall consist of five members, with three members to be elected by the System banks owning the voting stock in the Corporation and two members to be appointed by the Chairman of the Farm Credit Administration Board ("FCA Board"). The Board shall be expanded by operation of law to include two additional members in the event public funds are made available to the System, with the sixth board member to be appointed by the Secretary of Agriculture and the seventh member to be selected by the other six directors.

(1) *FCA appointments to the Corporation Board.* Members of the board of directors of the Corporation appointed by the Chairman of the FCA Board, shall serve at the pleasure of the Chairman.

(i) *Qualifications.* Each appointed director must be a citizen of the United States and experienced in financial services and credit. No person who is a borrower from, a shareholder in, or a director, officer, employee, or agent of any System institution may serve as an appointed director. No person shall be eligible for appointment if within 5 years preceding the commencement of the term he or she has been a director, salaried officer or employee, or agent of the FCA or a salaried officer or employee of any System institution. No appointed director shall, within 2 years after the date he or she ceases to be a member of the board of the Corporation, be elected, appointed, or designated to serve as an officer, employee or agent of any other System institution or System service organization, or of the FCA.

(ii) *Terms.* Each appointed director shall serve a 2 calendar year term, except that the director first appointed by the Chairman shall serve a term ending December 31, 1986. Appointed directors shall serve until their successors have been duly seated and may serve successive terms. Vacancies to terms shall be filled by appointment.

(2) *Farm Credit System Bank nominations and elections to the board.*

(i) *Nominating committee.* Nominations for election to the board of directors of the Corporation by Farm Credit System banks shall be made by a Nominating Committee ("Committee") of the Corporation comprised of the Chairman or the Vice Chairman of each System bank board of directors. The Committee shall meet prior to each election at an annual or special meeting of the stockholders of the Corporation held to fill a vacancy or expiring term on the board. A meeting of the Committee may be facilitated by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. A majority of the Committee shall constitute a quorum for transacting business of the Committee. The Committee shall keep written minutes of its proceedings which shall be maintained with the corporate records of the Corporation.

(ii) *Nominee qualifications and eligibility.* The Committee shall select candidates for election as directors to respective terms in the following three categories:

(A) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net contributor to the Corporation during the year of the election;

(B) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net recipient from the Corporation during the year of the election; and

(C) One member without regard to the restrictions for each position in paragraph (b)(2)(ii) (A) and (B) of this section.

In selecting nominees, the Committee shall endeavor to select candidates in a manner that assures equitable and adequate representation on the board of directors of the net contributors and net recipients as defined in 12 CFR 611.1142(1), all types of System institutions, System borrowers, and the public interest. No person may be elected to serve on the board of directors of the Corporation who serves, or has served within 3 years prior to the election, on the board of directors or as an officer or employee of the Farm Credit Corporation of America or any subsidiary thereof.

(iii) *FCA determination of net contributors and recipients.* Prior to each meeting of the stockholders of the Corporation held to fill a vacancy on the board of directors, the FCA Board shall provide the Committee with a list of System institutions and Farm Credit districts that are projected to be net contributors of capital to, or net recipients of capital from, the Corporation for the calendar year as defined in 12 CFR 611.1142(1). If a System institution's status as a net contributor or net recipient changes before the FCA Board makes its next annual projection, then its status as changed shall determine the eligibility of persons from that institution for nominations for any elected director vacancies occurring after the change.

(iv) *Elections generally.* The initial election of directors shall be conducted in accordance with the procedures set forth in paragraph (b)(3) of this section. Subsequent elections shall be conducted in the manner as provided in the bylaws of the Corporation.

(v) *Terms.* Each elected director shall serve for a term of 2 calendar years except that the initial term of the director elected to the position in paragraph (b)(2)(ii)(C) of this section shall end on December 31, 1986. Elected directors, shall serve until their successors are duly seated, may be removed for cause as provided in the Articles of Incorporation of the Corporation, and may serve for successive terms. Vacancies shall be filled by election in accordance with this section.

(vi) *Elected director vacancies.* The office of any elected director shall become vacant in the event such director:

(A) Files a petition for relief in voluntary bankruptcy, or otherwise voluntarily institutes suit under the applicable Federal bankruptcy, or Federal or State insolvency, receivership, or conservatorship laws; or

(B) Is adjudged a debtor in an involuntary Federal bankruptcy proceeding or placed in receivership or conservatorship in a Federal or State proceeding; or

(C) Seeks reorganization under the Federal bankruptcy laws for personal business interests or that of a corporation in which the director owns the plurality interest; or

(D) Is a party to a foreclosure proceeding (judicial, deed in lieu of foreclosure, or otherwise) brought by any System institution, service organization or other financial institution and involving property in which the director has an interest; or

(E) Is convicted of any felony while holding office; or

(F) Has a loan in his or her name, or in the name of a corporation in which the director owns a plurality interest, or in the name of a partnership in which he or she is a general or limited partner, from a System institution or other financial institution, which loan is placed by the institution in nonaccrual status; or

(G) Is declared legally incompetent or becomes physically or mentally incapacitated as is determined by the remaining directors of the board; or

(H) Resigns or is removed for cause by the remaining directors of the board.

All vacancies shall be filled under the general nomination and election procedures set forth in this paragraph.

(3) *Initial nomination and election.* The initial nomination and election of the board of directors of the Corporation shall be in accordance with the procedures set forth in paragraph (b)(2) of this section, except as provided herein.

(i) *Initial meeting of the Nominating Committee.* The Committee shall hold its initial meeting on call of the FCA election officer at a mutually convenient time and place not later then 15 days after the issuance of the charter of the Corporation. At the initial meeting, the Committee shall select at least two candidates from each of the categories specified in paragraph (b)(2)(ii) of this section, and shall ascertain that all candidates are willing to stand for election and serve as directors of the Corporation.

(ii) *Initial election.* At the conclusion of its initial meeting, the Committee shall present a slate of candidates to the FCA election officer, who shall confirm that each candidate meets the qualifications for the vacancy for which he or she is nominated. The FCA election officer shall thereafter send ballots and election instructions to the Chairman of each System bank board. Each System bank shall be entitled to cast one vote for each vacancy to be filled through the election. The Chairman of the respective boards shall forward certified voting results to the FCA election officer, who, upon determining the validity of the results, shall certify the election results, inform the directors of their election and arrange a meeting of the initial board as soon as practicable.

(4) *Expanded board membership.* In the event that the Secretary of the Treasury purchases any obligation of the Corporation, including stock, the board of directors of the Corporation shall be expanded to include two members as follows:

(i) One member shall be appointed by the Secretary of Agriculture; and

(ii) One member shall be selected by the Corporation board of directors, including the appointee of the Secretary of Agriculture, which member shall not be a stockholder in, or a borrower from, or an employee or agent of any System institution, nor a Government employee; and

(iii) These directors shall serve as long as any obligations of the Corporation purchased by the Secretary of the Treasury remain outstanding. The director appointed under paragraph (b)(4)(i) of this section shall serve at the pleasure of the Secretary of Agriculture, and the director selected under paragraph (b)(4)(ii) of this section shall be removable for cause by the unanimous vote of the remaining directors.

(5) *Compensation of directors.* Elected directors of the Corporation who also serve as officers or employees of any System institution or System service organization shall receive no additional compensation for service on the board of the Corporation, but shall be entitled to receive reimbursement from the Corporation for reasonable travel and other expenses incurred in connection therewith. A full-time employee or officer of the United States appointed as a director of the Corporation by the Secretary of Agriculture shall receive no additional compensation for service on the board of the Corporation and shall obtain reimbursement for travel and related expenses from his or her employer. All other directors of the Corporation shall be compensated for service on the board at the rate of $25,000 per annum (less any compensation received by the person for serving on the board of directors of any System institution or System service organization), and shall be entitled to reimbursement by the Corporation for reasonable travel and related expenses incurred in connection therewith.

(c) *Chief Executive Officer.* The chief executive officer or any acting chief executive officer of the Corporation shall be selected by the board, and approved by the FCA under procedures as it shall establish. The chief executive officer shall have such duties and responsibilities as set forth in the bylaws of the Corporation.

§ 611.1141 Corporation capitalization; classes of stock; dividends; transfers, exchanges, and retirements.

(a) *Capitalization.* The FCA shall determine the amount of the initial capitalization of the Corporation pursuant to section 4.28K of the Act and prescribe assessments therefor in accordance with 12 CFR 611.1142. Thereafter, the Corporation shall maintain minimum capital levels established under section 4.3 of the Act and 12 CFR Part 615. If the Corporation fails to meet the capital level, the FCA may require System institutions to contribute additional capital to the Corporation in accordance with section 4.28G of the Act.

(b) *Classes of Stock.* The Corporation may issue the following classes of stock in such amounts, at such times, and in such manner as will enable the Corporation to carry but its purposes as provided in section 4.28B of the Act. The Corporation shall not be required to issue any class of stock other than Class A voting stock to all System banks, Class D nonvoting preferred stock to holders of stock in the predecessor Farm Credit System Capital Corporation ("Predecessor Corporation") to which the Corporation succeeded pursuant to section 4.28H of the Act, and Class E stock to the Secretary of the Treasury or the FCA as provided herein.

(1) *Class A Voting Common Stock:* One share of Class A stock shall be issued to each System bank upon the chartering of the Corporation regardless of whether the bank is a net contributor to, or net recipient from, the Corporation. No other shares of Class A stock shall be issued. No dividend shall be declared or paid on Class A stock.

(2) *Class B Nonvoting Common Stock:* Class B nonvoting common stock may only be issued to, and held by, System banks and associations contributing to the capital of the Corporation pursuant to sections 4.1 and 4.28G of the Act in such amounts as necessary to provide adequate capital to the Corporation. Stock may be held by the supervising bank in the name of, or on behalf of, any association purchasing stock. Class B stock may bear dividends as provided in the Corporation bylaws.

(3) *Class C Nonvoting Preferred Stock:* Class C nonvoting preferred stock may only be issued to, and held by, System institutions contributing to the capital of the Corporation in such amounts as necessary for the Corporation to purchase loans and other assets from any System institution as authorized under 4.28G of the Act. Class C stock may bear dividends as provided in the Corporation bylaws.

(4) *Class D Nonvoting Preferred Stock:* Class D nonvoting preferred stock shall only be issued to, and held by, stockholders of the Predecessor Corporation in exchange, in equal value for all of the stock held by the holders in the Predecessor Corporation in accordance with section 4.28H of the Act, this Subpart J, and the charter of the Corporation. Class D stock may bear dividends as provided in the Corporation bylaws.

(5) *Class E Nonvoting Preferred Stock:* Class E nonvoting preferred stock may only be issued to, and held by, the Secretary of the Treasury or the FCA under such terms and conditions, including retirement thereof, as may be determined by the Secretary or the FCA.

(6) Any additional class of stock for other special purposes, may be issued having such preferences, rights, and qualifications as established by the Corporation board, set forth in the bylaws, and approved by the FCA.

(7) Classes of stock may be issued in one or more series within class, having such par value, voting or nonvoting

powers, designations, preferences, rights, qualifications, limitations, or restrictions as shall be expressly stated in these regulations, the Articles of Incorporation, or the bylaws. All stock shall be issued in book-entry form unless otherwise provided by the board of directors of the Corporation. The holders of nonvoting common and preferred stock may receive dividends at such rates, on such conditions, and at such times as stated in the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act and 12 CFR Part 615.

(c) *Transfer, exchanges and retirements.*

(1) Class A stock may not be transferred, exchanged, pledged, or hypothecated.

(2) All other classes of stock of the Corporation shall be transferred, exchanged, pledged, or hypothecated as provided in the bylaws, except that stock may only be transferred to eligible holders of such stock.

(3) Stock of the Corporation may be retired consistent with applicable provisions of the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act, and FCA regulations and directives. Class E stock shall be retired as determined by the Secretary of the Treasury or the FCA, as the case may be.

(i) Class A stock may be retired only upon the liquidation of the Corporation, at book value and after all other classes of Corporation stock have been retired.

(ii) Class B stock may be retired at book value.

(iii) Class C stock may be retired at book value as assets that were purchased from the proceeds of the stock issuance are sold. Class C stock shall be retired pro rata of all holders at book value, not to exceed par, except upon the liquidation of the Corporation.

(iv) Class D stock may be retired at book value from the income and proceeds of the sale of the assets of the Predecessor Corporation.

§ 611.1142 General corporate powers.

The Corporation shall have the corporate powers set forth in the Act and the Articles of Incorporation.

(a) *Bylaws.* The Corporation shall operate under the direction of the board of directors pursuant to bylaws adopted by the board and approved by the Farm Credit Administration.

(b) *Litigation.* As is provided in 28 U.S.C. 2680(n) with respect to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, the United States is not liable for any activities of the Corporation, and the Corporation is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. The Corporation shall complain and defend itself in courts of competent jurisdiction in the same manner as any other System institution. The Corporation shall obtain necessary insurance as permitted in § 4.28C(a)(10) of the Act to protect against such claims.

(c) *Operations.* The Corporation shall be operated on a sound business basis, and its directors, officers, employees, and agents shall be subject to the standards of conduct provisions set forth in 12 CFR Part 612, Subpart B. The board of directors shall have its meetings and conduct business at the principal offices of the Corporation unless telephonic or other communications equipment is employed. In addition, in order to ensure that transactions between the Corporation and System institutions are conducted impartially and on a sound business basis, no director, officer, employee, or agent of any System institution or System service organization may be affiliated with or employed by the Corporation in a joint capacity, except as an elected director of the Corporation where otherwise eligible. Any joint officer or employee of any System institution and the Predecessor Corporation must resign from the System institution to remain an employee of the Corporation.

(d) *Contracts.* The Corporation may contract with System institutions and System service organizations for financial, administrative, or operational services, provided that no System institution or System service organization, or their agents shall be engaged to provide services to the Corporation related to assessment or financial assistance determinations, legal services, funds management, or any policy or management functions, and no System institution or service organization shall be engaged to provide loan or acquired property valuation services. The Corporation may contract with any party to service performing or nonaccrual loans or manage acquired property purchased from any System institution in accordance with policies and procedures established by the Corporation. If the Corporation cannot engage any association or other party to service such loans on terms acceptable to the Corporation, the Corporation may service the loans directly.

(e) *Commercial borrowing.* The Corporation may borrow from any commercial bank on its own responsibility on such terms and conditions as it may determine without any additional FCA approval where it can obtain such funds at terms, conditions, and rates not otherwise available through loans from other System institutions or through the issuance with System banks of Systemwide obligations under § 4.2(d) of the Act.

(f) *Systemwide obligations.* The Corporation shall not join with the other System banks as a primary obligor, within the meaning of § 4.4(a) of the Act, on an issue of Systemwide obligations unless the Corporation meets the collateral requirements established for System banks under § 4.3(c) of the Act and 12 CFR 615.5050, or one or more System banks provide the Corporation with collateral in excess of its own collateral obligations to support the Corporation's primary liability on the Systemwide issuance. On an issuance of Systemwide obligations in which the Corporation joins but is not primarily liable, the Corporation shall be jointly and severally liable on such obligations to the same extent as each System bank under § 4.4(a) of the Act.

(g) *Debt policy.* The Corporation may issue consolidated or Systemwide obligations or borrow funds from other System institutions or commercial banks only in accordance with a debt management policy adopted by the Corporation's board of directors and approved by the FCA.

(h) [Reserved].

(i) *Financial assistance.* As soon as practicable after the appointment of a chief executive officer, the Corporation shall establish procedures consistent with this section by which System institutions may apply to the Corporation for financial assistance, and shall make those procedures available to all System institutions. The Corporation may purchase nonaccrual loans and acquired property from System institutions in accordance with paragraph (j) of this section. The Corporation may also provide direct financial assistance to System institutions through stock or other equity purchases, loans, participations, cash contributions, the assumption of some portion of receiving institution's outstanding debt obligations, or any combination of the foregoing. Any request for direct financial assistance shall be subject to the review and direction of the FCA. The Corporation shall administer direct financial assistance to System institutions according to the standards and criteria set forth below:

(1) *Eligibility and application.* A System institution whose stock is impaired or will be impaired within 90 days based on information acceptable to

the Corporation may apply to the Corporation for financial assistance by submitting an application containing the following:

(i) A statement of the efforts taken by the institution and its Farm Credit district to improve its financial position; and

(ii) A statement of the efforts taken by the institution to limit financial deterioration through merger, consolidation, or other form of corporate reorganization; and

(iii) A statement of the current activity and ability of other System institutions to service the borrowers in the requesting institution's territory; and

(iv) A business plan for correcting the institution's operational problems, including changes in management and the board of directors, credit administration, loan approval practices, and loan collection activities, and any requirements or conditions directed by the FCA pursuant to § 4.3 of the Act; and

(v) The institution's most recent quarterly financial statements along with comparative statements for the previous year; and

(vi) The institution's most recent FCA report of examination, or bank credit review adopted by the FCA; and

(vii) The institution's most recent report of financial condition certified by independent public accountants or in such form approved by the Corporation; and

(viii) The financial and interest rate projections of the institution as specified by the Corporation; and

(ix) A proposed budget of the institution for the current and next fiscal year; and

(x) Such other financial or other information as the Corporation may request.

(2) The Corporation shall analyze each application for financial assistance taking into consideration the financial needs of the institution, the financial and economic condition of the Farm Credit district in which the institution operates, the financial condition of the System generally, and whether the institution meets the following criteria:

(i) The financial condition of the institution has deteriorated to insolvency as provided in section 4.12(b)(1) of the Act; and

(ii) The institution can no longer provide a continuing source of agricultural credit in its territory and no other System institution operating under the same title of the Act is able to provide adequate services in the territory served by the institution; and

(iii) The FCA has not charged that the institution is engaging in any unsafe and unsound practice that management has not agreed to correct by means acceptable to the FCA; and

(iv) The institution has agreed with the Corporation to a business plan, including any requirement by the FCA pursuant to section 4.3 of the Act, designated to correct stock impairment of the institution.

(3) A determination of the type and amount of direct financial assistance for any System institution meeting the eligibility requirements of paragraph (i)(1) of this section shall be in the discretion of the Corporation taking into consideration the financial condition of the requesting institution, the credit needs of creditworthy borrowers served by the institution, the minimum capital requirements of the institution established under section 4.3 of the Act and 12 CFR Part 615, and the financial and economic condition of the individual Farm Credit district involved and the entire System generally. The Corporation shall structure the financial assistance package in the most cost effective manner giving the recipient institution the greatest benefit from the assistance and ensuring that the recipient institution will use the resources optimally. In no event shall the amount of direct financial assistance to any System institution exceed that necessary to correct any impairment of voting stock or participation certificates of the institution held by its borrowers, unless approved by the FCA. No institution shall receive both direct financial assistance from the Corporation and loss sharing assistance to which it may be entitled under either district or Systemwide loss sharing or capital preservation agreements. The Corporation shall reject any request for financial assistance if it concludes that the Farm Credit district involved has adequate resources to correct any stock impairment of the requesting institution.

(4) The Corporation shall require in each instance, as a condition precedent to its extension of direct financial assistance, that the eligible institution make such modifications in its operations as are or may be necessary to enable the institution to make a sound financial recovery. Such modifications shall include, but not limited to, changes in the institution's directors, officers, employees and agents; credit approval and administration policies, procedures, and practices; and such other actions as a reasonable and prudent creditor would require in similar circumstances. The Corporation may also require the receiving institution to sell to the Corporation loans and related assets described in paragraph (j) of this section. All conditions for assistance shall be set forth in the financial assistance agreement between the Corporation and the receiving institution, and must be consistent with any business plan approved by the FCA under section 4.3 of the Act and any consent agreement or order between the System institution and the FCA. The Corporation shall keep an accounting of all direct financial assistance received by any System institution for repayment purposes. The Corporation shall monitor compliance with such condition precedents and may subsequently impose any additional operational requirements of the institution as it may deem necessary to effectively apply the financial assistance. The Corporation may terminate or withdraw any financial assistance where the receiving institution fails to comply with conditions or requirements so imposed.

(5) Prior to providing direct financial assistance to any institution, the Corporation may redeem any nonvoting stock, participation certificates, or other equities of the Corporation held by the institution receiving financial assistance.

(j) *Purchase of assets.* At the request of any System institution, the Corporation may purchase loans or interests in loans that the institution has placed in nonaccrual status, or any acquired property held by the institution. The Corporation may also purchase from any production credit association in liquidation any performing loan that has not been purchased in a final sale by another party. In both cases, assets shall be purchased at fair market value as the term is defined under paragraph (l) of this section.

(k) *Reporting requirements.* The Corporation shall meet the financial disclosure, accounting, and financial reporting requirements of 12 CFR Parts 620 and 621 for System institutions.

(l) *Definitions.* For purposes of this Subpart—

(1) A "net contributing institution" or "net contributing district" means any System institution or district projected by the FCA Board, or as provided in

section 402 of the Farm Credit Amendments Act of 1985, for the calendar year to be required to provide the Corporation with more stock, loans, cash contributions, or other form of financing through assessments by the Corporation than it receives in direct financial assistance from the Corporation. A net recipient institution or district means any System institution or district projected by the FCA Board for the calendar year to receive more direct financial assistance from the Corporation than it contributes to the Corporation through assessments of stock, loans, cash contributions or other form of financing.

(2) "Performing loan" means a loan so defined in 12 CFR 621.2(a)(20).

(3) "Nonaccural loan" means a loan defined as a nonperforming loan in 12 CFR 621.2(a)(17).

(4) "Fair market value" shall have the same meaning as the term is defined under generally accepted accounting principles, where value is determined on the basis of facts that would be relevant to a willing purchaser and a willing seller, both of whom are knowledgeable that the assets conveyed will be converted to cash over some period of time, during which the holder will incur the usual expenses associated with administration, maintenance, disposition, and sale on liquidation.

(5) "System institution" means any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, or bank for cooperatives, including the Central Bank for Cooperatives, but excludes System service organizations.

(6) "System bank" means any Federal land bank, Federal intermediate credit bank, or bank for cooperatives, including the Central Bank for Cooperatives.

(7) "System association" means any Federal land bank association of production credit association.

(8) "System service organization" means any Farm Credit System unincorporated organization or incorporated organization under Title IV, Part D, sections 4.25 to 4.27 of the Act.

Subpart K [Redesignated as Subpart M and Reserved]

4. Subpart K is amended by redesignating it as Subpart M and Subpart K is reserved.

[FR Doc. 86-5533 Filed 3-11-86; 10:09 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8068]

Income Taxes; Stock Acquisitions; Temporary Regulations Under Section 338(h)(10) of the Internal Revenue Code of 1954 and Extension of Time To Make Certain Elections

Correction

In FR Doc. 86-60 beginning on page 741 in the issue of Wednesday, January 8, 1986, make the following corrections:

1. On page 741, in the second column, in the eighth line from the bottom, insert "1.338(h)(10)-1T and 1.1502-75T and by amending §" after "§§".

2. In § 1.338(h)(10)-1T:

a. On page 743, in the third column, in the third line of paragraph (d)(3), "§ 1.388-" should read "1.338-".

b. On page 745, in the first column, in the fourth line of paragraph (e)(5), insert "(b)" before "(6)".

c. On page 747, in the middle column, in the third line of paragraph (iv)(B) of example 5 of paragraph (g), "§ 9,600" should read "§ 19,600".

5. On the same page, in the third column, in the second line of pargraph (j)(2)(iii), "in" should read "to".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 807

Issuing Air Force Publications and Forms Outside the Air Force

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 807, Issuing Air Force Publications and Forms Outside the Air Force. The source document, Air Force Regulation (AFR) 7-1, has been revised. It is intended for internal guidance and has no applicability to the general public. This action is a result of departmental review in an effort to insure that only regulations which affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, AF/DASJR(S), Pentagon, Washington, D.C. 20330-5025, telephone: (202) 697-1361.

Authority: Sec. 8012, 70A Stat. 488, 10 U.S.C. 8012.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 807

Government contracts, Government procurement.

PART 807—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 807.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-5449 Filed 3-12-86; 8:45 am]

BILLING CODE 3910-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

Preservation and Protection of and Access to Historical Materials of the Nixon Administration; Repromulgation of Public Access Regulations

Correction

In FR Doc. 86-4358, beginning on page 7228 in the issue of Friday, February 28, 1986, make the following corrections:

1. On page 7233, in the first column, in the third line of § 1275.44(b), "§ 127.42(b)" should read "§ 1275.42(b)";

2. On the same page, the last line of § 1275.44(b) appearing in the first column should read "public access to the pertinent materials. If that decision is adverse to the petitioner, the"; and

3. On page 7235, in the first column, the heading for § 1275.54 should read "Periodic review of restrictions".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Services and Breaking Appointments

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration is amending its medical regulations, (38 CFR Part 17) to more clearly reflect the specific action that the Department of Medicine and Surgery will take when a patient breaks a medical appointment, and to more accurately define the eligibility requirements for claims filed for VA payment of unauthorized medical services. The costs allowed for unauthorized repairs to certain prosthetic items are increased also. The

amendments will more clearly define the prerequisite for the benefits.

EFFECTIVE DATE: This regulation is effective April 28, 1986.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, 810 Vermont Avenue, NW., Washington, DC 20420, 202–389–2143.

SUPPLEMENTARY INFORMATION: On pages 29990, 29991 and 29992 of the **Federal Register** of July 23, 1985, the proposed regulation was published for 38 CFR Part 17. Interested persons were given *30* days to submit comments, suggestions or recommendations. One comment was received. It expressed concern that veterans who miss one scheduled appointment and who break a second appointment will be classified as a permanent refusal and denied further treatment, of any kind, by the VA. That is not the intent of the regulation. No veteran will be denied treatment for breaking an appointment if circumstances were such that notice could not be given and the veteran notifies the VA facility within 24 hours, of the circumstances that prevented them from keeping the appointment. It is the intent of this regulation to provide guidelines for VA medical facilities to manage outpatient workloads. Service-connected as well as nonservice-connected veterans who consistently fail to show up for scheduled appointments, with no excuse or followup explanation, deprive other veterans of needed medical care by reserving available clinic time. In such cases, the treating physician will review the individual veteran treatment file and sign a statement to this effect in the record. The veteran will be advised of the decision and informed "no further treatment will be furnished, except for emergency conditions, until the veteran has agreed to cooperate by keeping appointments."

In addition, this amendment to VA regulations more accurately defines the eligibility requirements for claims filed for VA payment of unauthorized medical services, and eliminates any confusion relating to the costs allowed for unauthorized repairs to certain prosthetic items.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291 on Federal Regulation. It will not have an annual effect of $100 million or more on the economy, will not cause a major increase in costs or prices, and will not have any significant adverse economic effects.

The Administrator certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603–604. The reason for this certification is that this change will regulate only the eligibility of individuals to these benefits.

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.011, and 64.013.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 25, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. Section 17.61 and the title of the section are revised to read as follows:

Breaking Appointments

§ 17.61 Refusal of treatment by unnecessarily breaking appointments.

A patient under medical treatment who breaks an appointment without a reasonable excuse will be informed that breaking an additional appointment will be deemed to be a refusal to accept VA treatment. If such a patient fails to keep a second appointment, without at least 24 hours notice, such action will be deemed as a refusal to accept VA treatment. Thereafter, no further treatment will be furnished until a new application is filed, and the veteran has agreed to cooperate by keeping appointments. Treatment will not be discontinued until the treating physician has reviewed the treatment files, concurred in the action and signed a statement to this effect in the record. Consideration will be given to the veteran's ability to make a rational decision concerning the need for medical care and/or examination. The veteran will be advised of the final decision. Nothing in this section will be construed to prevent treatment for an emergent condition that may arise during or subsequent to this action. Where an appointment is broken without notice and satisfactory reasons are advanced for breaking the appointment and circumstances were such that notice could not be given, the patient will not be deemed to have refused treatment. (38 U.S.C. 4115)

2. In § 17.80, paragraphs (a) and (c) are revised to read as follows:

§ 17.80 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

* * * * *

(a) *For veterans with service connected disabilities.* Care or services not previously authorized were rendered to a veteran in need of such care or services: (1) For an adjudicated service-connected disability; (2) for nonservice-connected disabilities associated with and held to be aggravating an adjudicated service-connected disability; (3) for *any disability* of a veteran who has a total disability permanent in nature resulting from a service-connected disability (does not apply outside of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico); (4) for any illness, injury or dental condition in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. Ch. 31 and who is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in § 17.48(g). (38 U.S.C. 624, 628); and

* * * * *

(c) *When Federal facilities are unavailable.* VA or other Federal facilities were not feasibly available, and an attempt to use them beforehand or obtain prior VA authorization for the services required would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused. (38 U.S.C. 624, 628, 4115)

3. In § 17.81, the introductory paragraph and paragraph (b) are revised to read as follows:

§ 17.81 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of an adjudicated service-connected disability (or, in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. Ch. 31 and who is determined to be in need of the repairs for any of the reasons enumerated in § 17.48(g)) may be paid or

reimbursed on the basis of a timely filed claim, if (38 U.S.C. 628)

* * * * *

(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed $125. (38 U.S.C. 628, 4115)

4. In § 17.48, paragraphs (a) and (d) are revised to read as follows:

§ 17.84 Where to file claims.

* * * * *

(a) *For services rendered in the U.S.* Claims for the expenses of care or services rendered in the United States, including the Territories or possessions of the United States, should be filed with the Chief, Outpatient Service or Clinic Director of the VA facility designated as a clinic or jurisdiction which serves the region in which the care or services were rendered, and [38 U.S.C. 4115)

* * * * *

(d) *For services rendered in other foreign countries.* Claims for the expenses of care or services rendered in other foreign countries may be filed with the American Embassy or consulate in the country where services were provided. Claims will be developed and forwarded to the VA Medical Center, Washington, D.C., for final action. Claims may be submitted directly to the VA Medical Center, Washington, D.C., if the veteran has returned to the United States before having had a chance to contact the appropriate Embassy or Consulate. (38 U.S.C. 4115)

* * * * *

5. In § 17.85, paragraph (c) is removed and paragraph (b) is revised to read as follows:

§ 17.85 Timely filing.

* * * * *

(b) In the case of case or services rendered prior to a VA adjudication allowing service-connection:

(1) The claim must be filed within 2 years of the date the veteran was notified by the VA of the allowance of the award of service-connection.

(2) VA payment may be made for care related to the service-connected disability received only within a 2-year period prior to the date the veteran filed the original or reopened claim which resulted in the award of service-connection but never prior to the effective date of the award of service-connection within that 2-year period.

(3) VA payment will never be made for any care received beyond this 2-year period whether service connected or not.

(38 U.S.C. 4115)

[FR Doc. 86-5440 Filed 3-12-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-7-FRL-2982-3]

Standards for Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Source (NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61. The action which involved EPA and the State of Iowa added five (5) NSPS and two (2) NESHAPS categories to the delegations of authority. Except for grain elevators, the NSPS delegation now includes all categories for which federal standards have been promulgated by the agency through May 1, 1985.

EFFECTIVE DATE: March 13, 1986.

ADDRESSES: All requests, reports, applications, submittals and such other communications which are required to be submitted under 40 CFR Part 60 or Part 61 (including the notifications required to be submitted under Subpart A of the regulations) for affected facilities or activities in Iowa should be sent to the Iowa Department of Water, Air and Waste Management (IDWAWM), Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all Subpart A related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address (913/236-2896 or FTS: 757-2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act, respectively, allow the Administrator of the Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and 40 CFR Part 61. When a delegation is issued, the agency retains concurrent authority to implement and enforce the delegated standards. The delegation basically shifts the primary responsibility for implementation and enforcement of the standards from the agency to the state government.

On August 20, 1984, the agency and the State of Iowa entered into a delegation of authority agreement whereby Iowa will automatically receive authority to implement and enforce federal NSPS and NESHAPS standards upon the adoption of the standards by the state government [see 50 FR 933].

Prior to August 20, 1984, Iowa was delegated authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. These previous delegation and extension of authority actions were not affected by the action described below.

Iowa has revised its rules to reflect an adoption, by reference, of the standards for five (5) additional NSPS and two (2) additional NESHAPS regulations promulgated by the agency. The effective date of the adoption action was delayed until January 22, 1986. The IDWAWM informed the agency of the adoption action in a letter dated December 20, 1985.

The agency subsequently acknowledged the adoption and the corresponding delegation of authority actions in a letter to IDWAWM on January 29, 1986. The delegation occurred under the terms of the above mentioned August 20, 1984, automatic delegation of authority agreement.

Interested individuals are informed that, as of January 22, 1986, the State of Iowa has EPA's authorization to implement and enforce the federally-established standards for the following additional categories:

NSPS:

- Subpart AAa—Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983;
- Subpart FFF—Flexibile Vinyl and Urethane Coating and Printing;
- Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries;
- Subpart JJJ—Petroleum Dry Cleaners; and,
- Subpart PPP—Wool Fiberglass Insulation Manufacturing Plants.

NESHAPS:

Subpart J—Equipment Leaks (Fugitive Emission Sources) of Benzene; and,

Subpart V—Equipment Leaks (Fugitive Emission Sources).

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAPS regulation for facilities or activities in Iowa affected by the amended delegations of authority should be sent to the Iowa Department of Water, Air and Waste Management at the above address rather than to the EPA Region VII office, *except* as noted below.

A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or Part 61, must *also* be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

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

Dated: February 28, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 86-5490 Filed 3-12-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-4 FRL 2980-3]

Air Programs; South Carolina; Plan for Total Reduced Sulfur Emissions Control; Change in Construction Permit for Stone Container Corp.

AGENCY: Environmental Protection Agency.

ACTION: Change in construction permit.

SUMMARY: On August 16, 1985 (50 FR 33036), EPA approved a source-specific revision to South Carolina's 111(d) plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. The plan revision included an extended compliance schedule for the evaporator system at Stone Container Corporation's Florence mill. Final compliance of the evaporators is required 49 weeks after publication of EPA's approval in the **Federal Register** (on or before July 25, 1986). Since EPA's approval of the plan revision, the company has changed its construction plans and will now be incinerating TRS emissions from the evaporators in the No. 1 lime kiln instead of the No. 3 power boiler.

The 49-week schedule will not be affected, however, and final compliance will still be achieved by July 25, 1986. No EPA action is necessary; this notice is for informational purposes only.

DATES: The modified construction permit for Stone Container Corporation was issued by the State of South Carolina on January 14, 1986.

ADDRESSES: Copies of the initial 111(d) plan revision and modified construction permit are available for public inspection upon request at the following locations:

EPA, Region IV, Air Programs Branch, Air, Pesticides, and Toxics Management Division, 345 Courtland Street NE, Atlanta, Georgia 30365

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch, at the Atlanta address above and telephone (404) 347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On August 16, 1985, EPA approved a source-specific revision to the Total Reduced Sulfur 111(d) plan for the State of South Carolina. That revision included an extended compliance schedule for the evaporator hot-well vents at Stone Container Corporation's kraft pulp mill in Florence, South Carolina. The company was allowed 49 weeks to construct a system to route total reduced sulfur (TRS) emissions from the evaporators to an existing power boiler (No. 3) for incineration. The completion of this system would allow the evaporators to comply with South Carolina regulation No. 62.5, Standard No. 4, Section VIII and the applicable TRS emission limit of 5 ppm. Construction is to be completed 49 weeks after final EPA approval of South Carolina's 111(d) plan revision. Thus, final compliance is required on or before July 25, 1986, (49 weeks from August 16, 1985). The compliance schedule and TRS emission limit for the evaporators at Stone Container Corporation were contained in a construction permit (No. 1040-0003-CA) which was issued by South Carolina on July 19, 1985. The permit gave Stone Container permission to construct a system to collect the TRS gases from the evaporators and burn them in the No. 3 power boiler.

In November 1985, Stone Container Corporation requested a modification of their construction permit due to an unforeseeable change in construction plans. The company requested that South Carolina allow them to destruct TRS gases from the evaporators in the No. 1 lime kiln instead of the No. 3 power boiler. Because Stone Container plans to construct a new large power boiler, the older No. 3 power boiler will be shut down most of the time. Since it would be impossible to consistently incinerate TRS gases in the No. 3 power boiler, the company determined that it would be more economical to route the gases to the lime kiln.

Stone Container has certified to EPA, as well as to the State, that the 49-week compliance schedule will not be delayed, even with the change in system design. Construction changes have already begun and final compliance of the evaporators will be achieved by July 25, 1986. The company has also certified that the lime kiln will continue to meet the applicable TRS emission limit of 20 ppm, even with the addition of TRS gases from the evaporators.

On January 14, 1986, the State of South Carolina issued a modified construction permit (No. 1040-0003-CA) to Stone Container Corporation. This permit allowed TRS emissions from the evaporators to be destructed in the No. 1 lime kiln instead of the No. 3 power boiler.

This change in construction plans does not require additional EPA action. The plan revision which was published on August 16, 1985, (50 FR 33037) merely approved an extended compliance schedule for the evaporators. Since the 49-week schedule will not change, no additional action is necessary. This notice is for informational purposes only.

(Sec. 111(d) of the Clean Air Act (42 U.S.C. 7401-7642))

Dated: February 24, 1986.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 86-5010 Filed 3-12-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-43

[FPMR Amendment H-158]

Property Management; Revision of Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation illustrates the latest edition of Standard Form 121, Annual Report of Utilization and Disposal of Excess and Surplus Personal Property, used by Federal agencies to report to GSA those excess and surplus

utilization and disposal transactions for which GSA has no accurate means of gathering necessary statistics.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Utilization Division (703–557–0807).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–43

Government property management, Reporting requirements, Surplus government property.

Accordingly, 41 CFR 101–43 is amended as follows:

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

1. The authority citation for Part 101–43 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–43.1—General Provisions

2. Section 101–43.102 is revised to read as follows:

§ 101–43.102 Reassignment of property within executive agencies.

Each executive agency shall, to the maximum extent feasible, reassign property within activities of the agency, including its cost reimbursement contractors, as described in Subpart 16.3 of title 48, chapter 1, when such property is determined to be no longer required for the purpose of the appropriation from which it was purchased or the use to which it has been applied, and shall immediately discontinue procurement of items for which such property can be substituted or adapted.

Subpart 101–43.49—Illustration of Forms

3. Section 101–43.4901–121 and 101–43.4901–121–1 are revised to read as follows:

§ 101–43.4901–121 Annual Report of Utilization and Disposal of Excess and Surplus Personal Property.

Note.—The form illustrated in this § 101–43.4901–121 is filed as part of the original document and does not appear in the Federal Register.

§ 101–43.4901–121–1 Instructions for preparing Standard Form 121.

Note.—The instructions in this § 101–43.4901–121–1 are filed with the original document and do not appear in the Federal Register.

Dated: January 27, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–5461 Filed 3–12–86; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–136; RM–4918; RM–5019]

FM Broadcast Station in Warren and Niles, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates FM Channel 291A to Niles, Ohio, as that community's first fulltime local service, at the request of Gary R. Zocolo, and denies the request of CKP, Inc. to allocate Channel 291A to Warren, Ohio, as that community's first local FM service.

EFFECTIVE DATE: April 7, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Warren and Niles,[1] Ohio); MM Docket No. 85–136, RM–4918, RM–5019.

Adopted: January 31, 1986.

Released: February 28, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 21631, published May 28, 1985, proposing the allocation of Channel 291A to Warren, Ohio, as that community's first local FM service, at the request of CKP, Inc. ("CKP"). Also before us is the conflicting proposal filed by Gary R. Zocolo ("Zocolo") requesting the allocation of Channel 291A to Niles, Ohio, as that community's first local FM service.[2] CKP and Zocolo each filed comments and reply comments. Additional, Johnny Appleseed Broadcasting Co. ("Appleseed"), licensee of Station WVNO–FM, Mansfield, Ohio, filed reply comments.

2. Warren (population 56,629),[3] seat of Trumbull County (population 241,863), is located approximately 15 miles northwest of Youngstown, Ohio. It currently receives local service from fulltime AM Station WRRO and daytime-only AM Station WOKG, licensed to Geri Taczak, Inc., the principal of CKP. Niles (population 23,088), also in Trumbull County, is located approximately 10 miles northwest of Youngstown, Ohio, and receives local service only from daytime-only AM Station WNIO. Co-channel Class A frequencies must be separated by 105 kilometers (65 miles). Here, however, the two communities are only five miles apart. Our engineering study failed to show that any other channels were available for allocation to either community.

3. CKP urges the allocation of Channel 291A to Warren in order to provide the city with its first local FM service. It claims that Warren is an important city due to its status as both the county seat and as an industrial center. CKP provides demographic data showing the area's economic base, its social and cultural organizations, etc. It states that there are compelling public interest reasons for allocating the channel to Warren in that it "would bring the first minority ownership and first fulltime

[1] This community has been added to the caption.

[2] Public Notice of the Niles petition was given on June 10, 1985, Report No. 1518.

[3] Population figures are taken from the 1980 U.S. Census.

local commercial FM station" to the community. It claims that Warren is one of the largest communities in the country without local FM service and that this fact alone clearly demonstrates the need for an FM allocation.

4. CKP opposes the Zocolo counterproposal seeking the allocation at Niles. It states that the counterproposal must be denied based on both procedural and legal grounds. Procedurally, CKP claims that although Zocolo's petition was filed as a counterproposal herein, it was not served on the petitioner or her counsel, as required. As to its legal deficiencies, CKP states that Zocolo failed to provide a showing of need for the allocation, that is, the petition does not show "by description or demographics that Niles needs this FM channel." CKP also claims that the counterproposal violates section 307(b) of the Communications Act of 1934, as amended, since it failed to provide any population data for Niles or any comparative population figures for the two communities. In comparing the needs of the two communities, CKP states that Niles is almost contiguous to Warren, that it is a part of the Warren metropolitan area and that it is served by all the Warren stations. Furthermore, Warren has a population more than twice that of Niles, according to CKP. Therefore, it concludes that section 307(b) mandates the allocation of Channel 291A to Warren.

5. Zocolo contends that Channel 291A could provide Niles as well as associated unincorporated areas with a first fulltime local radio service in addition to a first local FM service. He further asserts that the allotment at Niles would provide in excess of 25,000 persons with a fulltime local service while the use of the channel at Warren would not provide such service to anyone. He rebuts CKP's arguments that his counterproposal is procedurally defective, stating that the petition was filed without any knowledge of the Warren proposal in an effort to improve the radio service to Niles residents. Rather, it was the Commission which reduced his petition to that of a counterproposal. Zocolo argues that Niles has a greater need for the FM channel than does Warren. He states that Niles is a separate community, with its own schools, government and public services. Further, he contends that Niles is also a center of commerce, industry, retailing and housing. He also refutes CKP's statement that Niles is already well served by the Warren stations, contending that the residents of Niles "have endured many years of second citizen treatment by radio services licensed to other communities." As an example, he states that in May of 1985, a severe tornado struck Trumbull County and Niles in particular. Due to the extensive physical and property damage caused by the tornado, and the resultant disruption of communications, electricity and other vital services, a state of emergency was declared. According to Zocolo, Niles daytime-only AM Station WNIO, operating as a local Emergency Broadcast Station, broadcast emergency information to the residents by operating throughout the nighttime hours pursuant to § 73.1250 of the Commission's Rules. However, he says that during this same period Warren Station WOKG was not on the air due to its lack of emergency back-up power and fulltime Warren Station WRRO continued to broadcast its regular entertainment and news programming.

6. Zocolo also contends that it is likely that Warren's daytime-only AM Station WOKG will be able to expand its service in the near future to include nighttime operations. The United States and Mexico are currently negotiating a new treaty which could permit U.S. stations such as WOKG, which operates on a Mexican clear channel, to operate at night. However, according to Zocolo, WNIO will not have the same opportunity to expand its service since the station's coverage area falls within the protected contour of U.S. Clear Channel Station KXEL, Waterloo, Iowa. Thus, should Channel 291A be allocated to Warren, that community could receive three fulltime local signals while Niles would be precluded from ever receiving its first.

7. In its reply comments, CKP reiterates the arguments concerning Warren's larger population and its status as the county seat. In futherance of its argument that Warren should recieve the allocation, CKP states that this is a "classic case of the [Commission's] 'wide area' doctrine. It cites *Huntington Broadcasting Co.* v. *FCC*, 192 F. 2d 33 (D.C. Cir. 1951), where the court held that no Section 307(b) choice need be made or preference given in cases where the applications are for the same urbanized area and propose "wide area" coverage. It contends that this decision and subsequent case law are appropriate here where both parties propose wide area coverage of Warren and Trumbull County. It also cites numerous other cases in support of its contention that the channel should be allocated to the larger, central city, where each propose to serve the same urbanized area, even though the channel could be licensed to one of the adjacent communities as a first local FM service.

8. Zocolo disagrees with CKP's assertion that the Commission's policy concerning the allocation of "wide area" radio frequencies in metropolitan areas is applicable in this instance. He maintains that Channel 291A is not a "regional" channel, as argued by CKP, but, rather, is "an 80–90 local channel", designed to provide local service to smaller communities. Thus, he maintains that the *Huntington Beach* decision, *supra*, as well as the other cases cited by CKP are inapplicable here. He contends that the criteria set forth in *Revision of FM Assignment Policies and Procedures*[4] govern the decision herein and that these criteria mandate that the allocation be made to Niles as its first fulltime local service.

9. Appleseed does not oppose either allocation. It notes that the Commission stated that a site restriction would be imposed if the channel were allocated to Warren and that CKP failed to state its intention to comply with the site restriction should the channel be allocated there. Therefore, it requests that the Commission ensure that any application filed for Channel 291A at Warren specify a site which protects its Mansfield, Ohio, Station WVNO–FM operation.

Discussion

10. Before a decision can be made as to which community should receive the allocation, the acceptability of Zocolo's counterproposal needs to be resolved. We agree with CKP that any petition filed as a counterproposal to an outstanding Notice of Proposed Rule Making must be served on the petitioner, as stipulated in § 1.420(d) of the Rules. These counterproposals are filed in response to the Notice and responses thereto can only be filed as reply comments since the counterproposal is filed during the initial comment period. Here, however, Zocolo filed his petition prior to the *Notice's* publication in the Federal Register, thus before the public was informed of CKP's Warren request. The Commission, on its own motion, accepted his petition as a counterproposal herein. Further, the Commission, in announcing the inclusion of Zocolo's petition in this proceedings, sent a copy of the June 10, 1985, Public Notice to CKP's counsel, thus insuring that he was aware of the counterproposal well before both comments and replay comments were due on July 5 and July 22, 1985, respectively. We believe that no party

[4] *Second Report and Order*, 90 F.C.C. 2d 88 (1982).

has been prejudiced by our consideration of Zocolo's request in this proceeding, especially in light of the fact that CKP filed both comments and reply comments addressing the Niles allocation indicating that it had actual knowledge of the Niles proposal. Therefore, we find that Zocolo's petition is acceptable.

11. There also appears to be some confusion as to the Commission's allocation policies and priorities. CKP argues that the channel must be allocated to Warren based on the Commission's "wide area coverage" policy embodied in *Huntington Broadcasting Co., supra.* Warren and Niles are part of the Youngstown-Warren Urbanized Area. However, this policy has never been applied in the FM context because channels are allocated on a community basis and are available for application only at the listed community. See § 73.203 of the Commission's Rules. Further, Class A channels, with their lower power, are designed to provide local rather than such regional, wide-area, service. With an effective service area of approximately 15 miles, compared to service radii for Class B and C channels of 40 and 57 miles, respectively, Class A Channel 291 could only provide service to either Warrent or Niles but could not provide service to the entire Youngstown-Warren Urbanized Area nor any regional, county-wide service, as proposed by CKP.

12. *In the Revision of FM Assignment Policies and Procedures, supra,* the Commission adopted the following priorities for allocating new FM channels:

(1) First aural service.
(2) Second fulltime aural service.
(3) First local service.
(4) Other public interest matters.

[Co-equal weight given to priorities (2) and (3).] Zocolo is incorrect in his belief that the Docket 84–231 priorities supplanted those listed above.[5] Therefore, the determination as to which community will receive the channel allotment will be made using these priorities.

13. In examining the conflicting proposals for Warren and Niles, we find that no first or second fulltime aural service would be provided and that each community has some local radio service. Therefore, the determination must rest on a comparison of factors such as the amount of reception services, local services, community population and location. In comparing the two communities, we find that the most important factor of availability of local service provides us with a clear choice. See *Washington and Wilmington, North Carolina,* 47 FR 30992, published July 16, 1982. Warren is served by two radio stations which provide the community with local fulltime service as well as a diversity of viewpoints. Niles, on the other hand, has no nighttime local service nor does it have a competitive outlet which could provide the community with a diversity of views. CKP argues that its larger population and status as a county seat mandate the allocation of Channel 291A to Warren. While we agree that Warren is a substantial and important community in Trumbull County, we do not believe that its larger population or status outweights the benefits accruing from the provision of a first local fulltime service. In this regard, we note that Warren's 1980 population reflects a 12% decrease from 1970 while Niles shows a continuing increase in population for the last two decades, including a 7% gain since 1970. Likewise, the status of Warren as a county seat, while important, does not negate the fact that Niles is a separate and independent community with its own schools, government, public services and industry and therefore its own community needs. We cannot find a comparatively greater need for a third service at Warren over a second service at Niles. We believe this determination is consistent with the mandate of section 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio services among the various communities. We also find that the decision is consistent with the allocation priorities enunciated above the CKP has not provided us with any past Commission determinations which dispute this finding.

14. Channel 291A can be allocated to Niles in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 5.8 kilometers (3.6 miles) north to avoid short-spacings to Station WAMO, Pittsburgh, Pennsylvania, and to Station WWKS, Beaver Falls, Pennsylvania.

15. Canadian concurrence in this allocation has been received as the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

16. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 7, 1986, the FM Table of Allotments, § 73.202(b) of the Rules is amended with respect to the community listed below, to read as follows:

City	Channel No.
Niles, Ohio	291A

17. The window period for filing applications for this channel will open on April 8, 1986, and close on May 8, 1986.

18. It is further ordered, That this proceeding is terminated.

19. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–5487 Filed 3–12–86; 8:45 am]

BILLING CODE 6712-01-M

[5] Because of the large number of allocations being contemplated in the omnius proceeding, it was found to be necessary to reword the priorities in order to enable the Commission to utilize a computer program to assist in making the selections. The priorities were thus listed in Docket 84–231 as (1) first aural service; (2) second aural service; (3) first local service; (4) first fulltime local service; and (5) minority or public radio service.

GENERAL SERVICES ADMINISTRATION

48 CFR Part 508

[GSAR AC–86–3]

Acquisition Regulations; Obtaining Consideration for Accepting Delinquent Deliveries From Workshops for the Blind or Other Severely Handicapped

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends section 508.705–73 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5 to eliminate the prohibition against requesting a price reduction when negotiating adjustments to delivery schedules for delinquent orders under contracts with workshops for the blind or other severely handicapped. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

DATES:

Effective March 1, 1986.

Expiration date: August 13, 1986, unless canceled earlier.

Comment date: Comments must be submitted on or before May 12, 1986.

ADDRESS: Comments must be submitted to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405, (202) 535-7791.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to revise the regulation to implement the Committee's revised position on the need for approval of price reductions for delinquent deliveries is an urgent and compelling circumstance that makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations for Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule provides for nonprofit workshops for the blind and other severely handicapped to be dealt with in a manner consistent with all other GSA contractors when negotiating adjustments in delivery schedules. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 508

Government procurement.

1. The authority citation for 48 CFR Part 508 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 508 is amended by the following Acquisition Circular:

February 28, 1986.

General Services Administration Acquisition Regulation; Acquisition Circular AC-86-3

To: All GSA contracting activities.
Subject: Obtaining consideration for accepting delinquent deliveries from workshops for the blind or other severely handicapped.

1. *Purpose.* This Acquisition Circular (AC) temporarily amends section 508.705-73 of the General Services Administration Acquisition Regulations (GSAR), Chapter 5 (APD 2800.12) to eliminate the prohibition against requesting a price reduction when negotiating adjustments to delivery schedules for delinquent orders under contracts with workshops for the blind or other severely handicapped.

2. *Background.* Subpart 508.7 of the GSAR, which deals with acquisitions from the blind and other severely handicapped, currently provides with respect to delinquent delivery orders that contracting officers' efforts to negotiate adjustments to delivery schedules shall not include a request for a price adjustment. This instruction was based upon the fact that only the Committee for Purchase from the Blind and other Severely Handicapped (Committee) had the statutory authority to determine the fair market price of an item or service. In the past, the Committee considered a reduction in contract price to reflect delinquent deliveries to be a price change which would be within its exclusive jurisdiction. The Committee recently reviewed its position on this matter and decided that a reduction in price based upon late delivery did not require Committee approval. Since the fair market price initially established by the Committee under its pricing policies addresses all factors including compliance with delivery and specification requirements, contract price adjustments that result from amending delivery schedules or for approving material waivers or deviations are outside this fair market price determination, and therefore, the Committee is not required to approve these types of contract price changes.

3. *Effective date.* March 1, 1986.

4. *Reference to regulation.* Section 508.705-73 of the General Services Administration Aquisition Regulation (GSAR).

5. *Explanation of change.* Section 508.705-73 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

508.705-73 Delinquent delivery orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. Contracting officers shall follow the procedures outlined in FAR 8.705 and the regulations of the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51-5.2 and 51-5.7).

(1) In cases of excusable delays, contract delivery schedules should be extended without obtaining consideration. However, when the delay is inexcusable, normal procedures should be followed in reviewing and adjusting contract prices if appropriate.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-5454 Filed 3-12-86; 8:45 am]

BILLING CODE 6820-61-M

48 CFR Parts 546, 552, and 553

[APD 2800.12 CHGE 24]

General Services Administration Acquisition Regulation; Contractor Inspection Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 is amended to add section 546.301 to prescribe a Contractor Inspection Requirements clause for use by contracting officers within the Federal Supply Service of GSA, to add section 552.246-77 to provide the text of the Contractor Inspection Requirements clause which replaced the Quality Approved Manufacturer Agreement (QAMA) clause, to revise section 552.246-75 to amend the Guarantees clause to clarify when the guarantee period begins, and to add section 553.173(c) to provide for the use of the GSA Form 3539, Quality Deficiency Notice. In addition, miscellaneous editorial changes are made in Parts 546 and 552. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides for the Government to rely on the contractor quality control system to assure the quality of supplies provided under the contract rather than relying on Government inspection of the supplies at the source. This rule does not

contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 546, 552, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 546, 552, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The Table of Contents for Part 546 is amended to add a new entry for section 546.301 as set forth below:

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.

546.301 Contractor inspection requirements.

* * * * *

3. Section 546.301 is added to read as follows:

546.301 Contractor inspection requirements.

Contracting officers in the Federal Supply Service shall insert the clause at GSAR 552.246–77, Contractor Inspection Requirements, in solicitations and contracts that provide for source inspection, except multiple award schedule contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division, General Products Commodity Center, unless warranted by particular conditions of a contract.

4. Section 546.302 is amended to revise the first sentence of the section to read as follows:

546.302 Fixed-price supply contracts.

In addition to the clause at FAR 52.246–2, the clauses prescribed in GSAR 546.302 relating to inspection must be included in solicitations and contracts under the circumstances indicated in the respective subsections.

* * * * *

5. Sections 546.302–70, 546.302–71, and 546.302–72 are revised to read as follows:

546.302–70 Inspection facilities.

(a) The contracting officer shall insert the clause at GSAR 552.246–70, Inspection Facilities, in solicitations and contracts for supplies to reserve the right of the Government to evaluate the acceptability and effectiveness of the contractor's inspection system. Under paragraph (b) of the clause, space must be provided in the solicitation for offerors to provide the required information.

(b) Paragraph (c) of the clause in GSAR 552.246–70 concerns the inspection of supplies of foreign origin. The requirements of this paragraph (c) of the clause may be waived: (1) When inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area, (2) when an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (3) when procurements to be made for AID specify the area or source, or (4) when other considerations will ensure more economical and effective inspection consistent with the best interests of the Government. When this portion of the clause is to be waived, a statement to that effect must be made in the schedule. Any such decisions should be fully coordinated with the appropriate quality assurance specialist.

546.302–71 Source inspection.

The contracting officer shall insert the clause at GSAR 552.246–73, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source.

546.302–72 Charges for inspection and testing.

The contracting officer shall insert the clause at GSAR 552.246–74, Charges for Inspection and Testing, in solicitations and contracts that include the clause at GSAR 552.246–73.

6. The Table of Contents for Part 552 is amended to add a new entry for Section 552.246–77 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 552.2—Text of Provisions and Clauses

* * * * *

552.246–77 Contractor Inspection Requirements.

* * * * *

7. Section 552.246–70 is amended to revise the introductory paragraph to read as follows:

552.246–70 Inspection Facilities.

As prescribed in 546.302–70, insert the following clause:

* * * * *

8. Section 552.246–71 is amended to revise the introductory paragraph to read as follows:

552.246–71 Final Inspection and Tests.

As prescribed in GSAR 546.312, insert the following clause:

* * * * *

9. Section 552.246–72 is amended to revise the introductory paragraph to read as follows:

552.246–72 Responsibility for Supplies (Rejected Supplies).

As prescribed in GSAR 546.316–70, insert the following clause:

* * * * *

10. Section 552.246–73 is amended to revise the introductory paragraph, the date in the clause title, and paragraphs (a)(1), (a)(2), and (d) of the clause to read as follows:

552.246–73 Source Inspection.

As prescribed in GSAR 546.302–71, insert the following clause:

Source Inspection (February 1986)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or a designated representative or (b) the Contractor or its subcontractor is authorized by inclusion of the Contractor Inspection Requirements clause in this contract to ship supplies. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Inspection responsibility will be assigned, by written notice, to the Contract Management Division of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontract to notify, that office at least 10 calendar days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Contract Management Division unless release is otherwise authorized by inclusion of the Contractor Inspection Requirements clause in this contract.

* * * * *

(d) *Additional cost of inspection and testing.* The Contractor will be charged for any additional cost of inspecting/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of clause 52.246–2, Inspection of Supplies—Fixed-Price.

If supplies purchased on an f.o.b. destination basis were source-inspected by Government personnel, but the supplies are not delivered or are delivered in a condition requiring Government reinspection of the same or replacement material, the Contractor will be charged for the cost of such reinspection. Charges for inspection or testing are specified elsewhere in the contract.

11. Section 552.246–74 is amended to revise the introductory paragraph and the asterisk at the end of the clause to read as follows:

552.246–74 Charges for Inspection and Testing.

As prescribed in GSAR 546.302–72, insert the following clause:

* * * * *

* The rates to be inserted in the clause are determined and published by the Commissioner, Federal Supply Service, or a designee.

12. Section 552.246–75 is amended to revise the introductory paragraph, the date in the clause title, and paragraphs (a), (b), (b)(1), and (c) of the clause to read as follows:

552.246–75 Guarantees.

As prescribed in GSAR 546.710(b), insert the following clause:

Guarantees (February 1986)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b) If, within any guarantee period, the Contracting Officer finds that guaranteed work needs to be repaired or changed because of the use of materials, equipment, or workmanship is inferior, defective, or not in accordance with the terms of the contract, the Contracting Officer shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Government:

(1) Place in a satisfactory condition all guaranteed work;

* * * * *

(c) Any special guarantees that may be required under the contract will be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.

* * * * *

13. Section 552.246–76 is revised to read as follows:

552.246–76 Warranty of pesticides.

As prescribed in GSAR 546.710(a), insert the following clause:

Warranty of Pesticides (February 1986)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for the period of 1 year after the date of shipment, all pesticides furnished under this contract shall meet the regulatory requirements of Pub. L. 92–516, as amended, and shall be registered with the Administrator, Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) Contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

[End of Clause]

14. Section 552.246–77 is added to read as follows:

552.246–77 Contractor Inspection Requirements.

As prescribed in GSAR 546.301, insert the following clause:

Contractor Inspection Requirements (Feburary 1986)

(a) The Contractor shall provide and maintain a quality control system that complies with all requirements of the Federal Standard 368 edition in effect on the date the solicitation was issued and shall ship supplies found by the Contractor to meet contract requirements. The Contractor shall prepare a written description of the quality control system. This description must be made available to the Government prior to award and must be kept current and available to the Government during contract performance and for as long afterwards as the contract requires. Any changes to the system during contract performance must be reported to the cognizant quality assurance office.

(b) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies. Although the Government will normally rely upon the Contractor's quality control system to ensure the quality of items shipped, it reserves the right to inspect before acceptance at all times and places including the point of manufacture. When the Government advises the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify, or arrange for its subcontractor to notify, the cognizant quality assurance office at least 10 calendar days before the date the supplies will be ready for inspection. The material will not be shipped until the Government has inspected it.

(c) During the contract period, a Government representative will periodically select samples of material produced under the contract for Government verification, inspection, and testing.

(d) The Government may reject defective supplies or services, in writing, within * days after delivery, notwithstanding the provisions of any other clause concerning conclusiveness of acceptance. The Contractor shall in such event replace, correct, or repair the rejected supplies or services, at the Contractor's expense, within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct.

(e) If material in process, shipped, or awaiting shipment to fill Government orders is defective or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receiving such a notice, the Contractor shall take immediate corrective action and suspend shipment of items covered by the QDN until the defects or deficiencies are corrected. Within 5 workdays of receiving the QDN, the Contractor shall notify the cognizant quality assurance office of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming materials will be returned at the Contractor's expense and may be cause for termination of the contract for default. Delays due to the need for corrective action pursuant to this clause will not constitute excusable delays under the Default clauses. Failure to complete corrective action in a timely manner may result in termination of this contract.

(f) This contract may be terminated for default if subsequent Government inspection discloses that plant quality and progress controls are not being maintained, subspecification material is being shipped, or for failure to comply with any of the provisions contained in this clause.

[End of Clause]

* Contracting officers shall normally insert 365 days as the period for replacing defective material. However, when the material being bought has a shelf life of less than 1 year, the shelf life period should be used, or in instances where a longer period may reasonably be expected to be available, the longer warranty period should be used.

15. The Table of Contents for Part 553 is amended to add a new entry for Section 553.370–3539 as set forth below:

PART 553—FORMS

Subpart 553.3—Illustration of Forms

Sec.

* * * * *

553.370–3539 GSA Form 3539, Quality Deficiency Notice

* * * * *

Editorial Note: The forms listed above are illustrated in and made a part of the regulation. However, the forms are not illustrated in the Federal Register or the Code of Federal Regulations. Individual copies may

be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

16. Section 553.173 is amended by adding GSA Form 3539 to the table in paragraph (c) to read as follows:

553.173 Responsibility for the maintenance of forms.

(c) * * *

GSA form number	Responsible office
3539	F

Dated: March 3, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-5455 Filed 3-12-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Hymenoxys Texana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Hymenoxys texana*, to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. This plant occurs on private land in Harris County, Texas. The one remaining population is currently threatened by destruction of habitat due to residential development. This action implements the protection provided by the Act.

EFFECTIVE DATE: The effective date of this rule is April 14, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Botanist, Region 2, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys texana was collected by F.W. Thurow in 1889 and 1890 in the vicinity of Hockley, Texas. Coulter and Rose (1891) described it as *Actinella texana*. The species was transferred to the genus *Picradenia* by Greene (1898) and was later transferred to the genus *Hymenoxys* by Cockerell (1904). A then-unidentified specimen was collected by Palmer around 1879–1880 from southwest Texas, between the Nueces and Frio Rivers on the Old San Antonio Road. However, recent field research has been unsuccessful in relocating this population (Mahler, pers. comm., 1984). The only currently known population of *Hymenoxys texana* is located near Houston in Harris County, Texas (Mahler, 1982). The population occurs on private land, and is located in an area of active residential development.

Hymenoxys texana is a member of the aster family (Asteraceae). It is a small, single-stemmed or branching annual reaching up to 10 centimeters (3.9 inches) tall. The basal leaves are 4 to 5 millimeters (0.16–0.20 inches) broad with entire to toothed margins; the upper stem leaves are linear with entire margins. The flower heads are 4 to 6 millimeters (0.16–0.24 inches) tall, yellowish, with phyllaries partially indurate and keeled, in two series which are basally united. Flowering usually occurs in late March to early April. The one population of *Hymenoxys texana* occurs in the northern part of the Gulf Coastal Prairie. It is found in poorly drained swales or depressions in open grasslands with few other plants. The surrounding prairie vegetation is composed of plants measuring about 10 centimeters (3.9 inches), with none over 15 centimeters (5.9 inches). These largely barren areas are sparsely vegetated with scattered individuals of a member of the carrot family *(Limnosciadium pumilum)* and the soil is covered with a blue-green alga (*Nostoc* sp.). The population biology and ecology of *Hymenoxys texana* are unknown and additional studies are needed.

Federal action involving this species began with section 12 of the Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of Section 4(c)(2), now Section 4(b)(3)(A) of the Act, and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. *Hymenoxys texana* was included in the Smithsonian petition and the 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of the withdrawal of that portion of the June 16, 1976, proposal that had expired, along with four other proposals that had expired. A revised list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, **Federal Register** (45 FR 82480), and it included *Hymenoxys texana* as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the appropriateness of their being listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hymenoxys texana*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Hymenoxys texana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published March 6, 1985 (50 FR 9095), constituted the next required finding that the petitioned action was warranted in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9095) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted

and requested to comment. A newspaper notice was published in the *Houston Chronicle* on Wednesday, March 27, 1985, which invited general public comment. Seven comments were received and are discussed below. No public hearing was requested or held.

The International Union for Conservation of Nature and Natural Resources (IUCN) supported the proposal. The Texas Parks and Wildlife Department stated that, after a review of the proposal, listing appears to be appropriate. The National Park Service stated that the species does not occur on Big Thicket National Preserve and hopes that listing the plant will guarantee its survival. Mr. Harold E. Beaty, leader of the Texas Plant Recovery Team, commented that it is the team's feeling that the species should be listed as endangered and that additional attention and study should be given to the plant. Two professional botanists responded with no additional substantive information, but one of them made a statement supporting the proposed listing based on his knowledge of Dr. Mahler's previous work. James W. Kessler, who has monitored the status of the plant for the past four years, reported that two populations have been destroyed by bulldozing activities associated with residential development. This information has been incorporated into the final rule. Mr. Kessler also indicated there is local interest in relocating some plants to Mercer Arboretum, a County-owned plant and wildlife sanctuary in northern Harris County. The Service responds that this interest is appreciated and will be helpful in recovery planning.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hymenoxys texana* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys texana* (Coulter and Rose) Cockerell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to *Hymenoxys texana* is habitat destruction. The plants occur in an area of rapid development at the northern edge of metropolitan Houston. At the time of the proposal to list the species as endangered, three populations were known. Since then two of these have been destroyed by residential housing development and the remaining population is located on private land adjacent to a residential development. If current development continues, as is anticipated, the one remaining population could be destroyed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist, but potential exists for uncontrolled collecting and vandalism. The population on private land will not be protected from taking by the Endangered Species Act, and it is easily accessible.

C. *Disease or predation.* There is no known threat to this plant from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hymenoxys texana* is not protected by either Federal or State laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* The presence of only one population makes the existence of this species particularly precarious. Because of the low number of plants, there is a small gene pool, possibly reducing the ability of the species to tolerate stress or change.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hymenoxys texana* as endangered without critical habitat.

Endangered status seems appropriate because only one known population remains and is subject to the possibility of destruction by residential development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to its low numbers and restriction to one population. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem, as the habitat of *Hymenoxys texana* is located on private land along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of critical habitat descriptions for this species would make it more vulnerable to taking or vandalism. Therefore, it would not be prudent to determine critical habitat for *Hymenoxys texana* at this time. The location of publications of this plant will be brought to the attention of appropriate agencies and other involved parties through regular communications. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hymenoxys texana* is not known to occur on Federal lands, and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that

apply to all endangered plant species. With respect to *Hymenoxys texana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Hymenoxys texana*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681; to be codified at 50 CFR 17.62). At present, no populations of *Hymenoxys texana* are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Cockerell, T.D.A. 1904. The North American species of *Hymenoxys*. Bulletin of Torrey Botanical Club 31(9):461–509.

Coulter, J.M., and J.N. Rose. 1891. *Actinella (Hymenoxys) texana*, n. sp. Botanical Gazette 16:27–28.

Greene, E.L. 1898. Studies in the Compositae VII. Pittonia 3:264–298.

Mahler, W.F. 1982. Status report on *Hymenoxys texana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The primary author of this final rule is Heather A. Stout, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). The editor was E. LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Hymenoxys texana	None	U.S.A. (TX)	E	218	NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–5531 Filed 3–12–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 51192–5219]

Pacific Coast Groundfish Fishery

AGENCY: NOAA, Commerce.

ACTION: Preliminary inseason adjustment and request for comments.

SUMMARY: NMFS announces and requests comments on a preliminary inseason adjustment to the 1986 annual specifications for two species of Pacific coast groundfish off the coasts of Washington, Oregon, and California. This adjustment would increase the acceptable biological catch (ABC) and optimum yield (OY) for Pacific whiting to 295,800 metric tons (mt), and the acceptable biological catch for yellowtail rockfish to 4,000 mt. This action makes use of the best available scientific information for estimating the 1986 specifications. The intended effect of this action is to promote full utilization of the groundfish resource without biological stress to these or any other species.

DATE: Comments on this preliminary inseason adjustment will be accepted through March 28, 1986.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NW., BIN C15700, Seattle, WA 98115; or E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. The aggregate data upon which these proposed inseason increases are based are available for public inspection at the Northwest Regional Office during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten, 206–526–6150, or E. C. Fullerton, 213–548–2575.

SUPPLEMENTARY INFORMATION: Implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at § 663.24 state that the

annual specifications of ABC and numerical OY for groundfish will not exceed by more than 30 percent the ABC and numerical OY specified at the beginning of the previous fishing year. The FMP also provides for inseason increases that cumulatively do not exceed by more than 30 percent the ABC or numerical OY set at the beginning of the fishing year.

An ABC is an estimate of the annual catch that could be taken without jeopardizing a resource's biological productivity. A numerical OY sets the maximum amount of fish (in round weight) that may be taken and retained, or landed each year from the fishery conservation zone (3–200 nautical miles) and the territorial sea (0–3 nautical miles) off the coasts of Washington, Oregon, and California. An OY is based on socioeconomic as well as biological factors and thus is not necessarily equal to an ABC.

The ABC and OY specifications for 1986 were developed in public meetings of the Pacific Fishery Management Council (Council) in September, October, and November 1985. The recommendations by the Council were published in a notice (50 FR 49590, December 3, 1985, and corrected at 50 FR 51436, December 17, 1985), which stated that the 1986 annual specifications, particularly the Pacific whiting ABC/OY and the yellowtail rockfish ABC, could not exceed the 1985 specifications by more than 30 percent despite the best available scientific information supporting larger increases. (Yellowtail rockfish is in the multispecies *Sebastes* complex of rockfish and does not have a numerical OY.) Thus, when the final specifications for 1986 were announced (51 FR 1255, January 10, 1986), the Pacific whiting ABC/OY was set at 227,500 metric tons (mt) and yellowtail rockfish ABC was set at 3,900 mt, both 30 percent higher than in 1985 but below the levels supported by the best available scientific data. Accordingly, the Council recommended the following inseason increases (Tables 1 and 2) to the Pacific whiting ABC/OY and the yellowtail rockfish ABC based on the Groundfish Management Team's analyses which are considered to be the best available scientific information, in concurrence with the Groundfish Advisory Subpanel and the Scientific and Statistical Committee.

TABLE 1.—FINAL ESTIMATES OF ABC FOR 1986 IN METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA BY INPFC AREAS

[Preliminary revision to table 1 at 51 FR 1255]

Species	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Pacific whiting						295,800
Other Rockfish:						
Yellowtail		1,100	* 2,600	300		4,000

NOTE.—Only those portions of Table 1 and its footnotes at 51 FR 1255 pertaining to Pacific whiting and yellowtail rockfish are revised and printed here. All other portions of that table remain unchanged.

* For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°22' N. latitude), and ABCs for the Columbia area are prorated as follows:

	Columbia area (total)	Columbia area north of Coos Bay	Columbia area south of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining rockfish	3,700	3,300	400

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1986 IN THOUSANDS OF METRIC TONS FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA

[Preliminary revision to table 2 at 51 FR 1255]

Species	Total OY	DAP	JVP	DAH	Reserve	TALFF
Pacific whiting	295.8	15.0	120.0	135.0	59.2	101.6

NOTE.—Only those portions of Table 2 at 51 FR 1255 pertaining to Pacific whiting are revised and printed here. All other portions of that table, including footnotes, remain unchanged.

Pacific whiting. The Council recommended a 30 percent increase for Pacific whiting, which would raise the ABC/OY from 227,500 mt to 295,800 mt, the maximum amount allowable under current regulations. The regulations at § 663.22(b) requires that the following factors be considered in a determination to increase a numerical OY during the fishing year.

- The exploitable biomass for Pacific whiting is estimated to be about 300,000 mt annually for the next few years which well exceeds the levels needed to support the maximum sustainable yield (MSY) of about 175,000 mt. (MSY is the largest average catch which can be taken continuously from a stock over a period of years.)
- The Pacific whiting fishery is dominated by a relatively small number of large year classes. At this time a strong 1977 year class is present in the fishery, and a strong 1980 year class is entering the fishery such that incoming recruitment will be unusually high. The Council's intent is to encourage full utilization of this variable resource by increasing the allowable catch of fish which otherwise would die of natural causes, with the knowledge that the resource could not indefinitely sustain catches near 300,000 mt.
- Because landings of Pacific whiting have averaged about 50 percent of OY since implementation of the FMP in

1982, landings in 1986 will not likely reach the proposed increased OY although they may be higher than in 1984 and 1985.

• Pacific whiting are caught fairly selectively; therefore, the proposed increase in OY should have little or no impact on other species.

Because domestic shore-based processing and joint venture needs for Pacific whiting already were accommodated when the initial 1986 OY of 227,500 mt was announced (50 FR 49590, December 3, 1985), the entire proposed increase to the Pacific whiting OY would be split between the reserve which provides for unforeseen increases in U.S. demand and the total allowable level of foreign fishing (TALFF). Accordingly, the reserve (20 percent of OY) would become 59,200 mt, increased from 45,500 mt, and the TALFF would become 101,600 mt, increased from 47,000.

Yellowtail rockfish. The Council recommended increasing the 1986 ABC for yellowtail rockfish from 3,900 mt to 4,000 mt. This proposed 100 mt increase would apply to the Columbia area because the best available data indicate the ABC for yellowtail rockfish in this area should be 2,600 mt, rather than the 2,500 mt set at the beginning of the year. The Columbia area ABC is divided into northern and southern parts at Coos Bay, Oregon (43°22' N. latitude). The northern part contains most of the yellowtail rockfish population and supports the bulk of the harvest; therefore this proposed 100 mt increase would be assigned entirely to the Columbia area north of Coos Bay. This would increase the ABC for that area from 2,400 mt to 2,500 mt. As a result, the harvest guideline for the *Sebastes* complex (which includes yellowtail rockfish) in the Columbia area north of Coos Bay would increase from 2,400 mt to 2,500 mt. This will increase the total harvest guideline north of Coos Bay, including the Vancouver Area, from 10,100 mt to 10,200 mt, the sum of the ABCs of the species in the complex (see 51 FR 1255, January 10, 1985, Table 1). This proposed increase would be too small to necessitate changes to the trip limits for this complex.

Classification

This preliminary inseason adjustment is made under the authority of §§ 663.22 and 663.23 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing.

(16 U.S.C. 1801 et seq.)

Dated: March 7, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-5481 Filed 3-12-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowance and Post Differential; Nonforeign Areas

Correction

In FR Doc. 86–4831 appearing on page 7799 in the issue of Thursday, March 6, 1986, make the following correction: In the first column, in the "**DATES**" paragraph, second line, "March 3, 1986" should read "March 31, 1986".

BILLING CODE 1505–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Public Hearing Concerning Hazards Associated With All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Anchorage, Alaska, on March 25, 1986, to obtain safety-related information on All Terrain Vehicles (ATVs). This will be the sixth hearing the Commission has held on the hazards associated with ATVs. Hearings were also held in Jackson, Mississippi, on May 30, 1985; in Dallas, Texas on June 17, 1985; Concord, New Hampshire on July 25, 1985; Milwaukee, Wisconsin on September 3, 1985; and in Los Angeles, California on October 17, 1985.

The Commission is aware of at least 324 deaths associated with ATVs occurring between 1982 and September, 1985. Estimates on the number of hospital emergency room-treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 78,000 ATV related injuries were treated in hospital emergency rooms in the first nine months of 1985. This nine month estimate is approximately 44 percent higher than the estimated injuries treated during the same time period in 1984.

The Alaska hearing will be conducted by the Acting Chairman of the Consumer Product Safety Commission. The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in obtaining information on the uses of ATVs in Alaska for recreation, utility and transportation purposes, ATV training, information and educational efforts and state and local legislation or ordinances regulating the use of ATVs. Participation in the hearing is requested from owners and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involved with ATV safety, training or state or local legislation; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

DATES: The hearing will be held on Tuesday, March 25, 1986, beginning at 9:00 a.m. Requests from persons who wish to make presentations must be received by the Consumer Product Safety Commission, at the address below, no later than March 19, 1986. Persons who wish to testify must submit a written copy or summary of their testimony to the Consumer Product Safety Commission no later than March 21, 1986. Presentations at the hearing should be limited to approximately 5 minutes.

ADDRESSES: The hearing will be held at 9:00 a.m. at the Sheraton Hotel, Kuskokwim Room West, 401 East 6th Street, Anchorage, Alaska. For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Joan Bergy at the address listed under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Joan Bergy, Consumer Product Safety Commission, 6046 Federal Office Building, 909 First Avenue, Seattle, Washington 98174, or call her at 206–442–5276.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has held a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Commission issued an advance notice of proposed rulemaking (ANPR), which formally commenced a rulemaking proceeding. 50 FR 23139 (May 31, 1985). In the ANPR, the Commission discussed methods by which any unreasonable risks of injury which may be associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, and administrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA and/or the dissemination of safety-related information.

The Commission staff recently prepared a preliminary report of a survey of all-terrain vehicle-related injuries treated in hospital emergency rooms. The information presented in the report is preliminary and is subject to revision following the evaluation of additional data from later phases of the survey. The results of the survey included the following information:

- 18 percent of the persons treated at emergency rooms were hospitalized; one passenger was dead on arrival at the emergency room. The hospitalization rate was extremely high for certain hazard patterns: 24 percent for collisions with stationary objects and 36 percent for ATVs which flipped forward,
- 19 percent of the injured persons were under 12 years of age; 46 percent were under 16 years of age,
- 20 percent of the injured persons were passengers,
- 53 percent of the accidents occurred at speeds estimated to be under 16 miles per hour,
- 68 percent of the ATVs hit a terrain irregularity or larger obstacle during the sequence of events leading to the injury,
- 35 percent of the accidents were classified as collision,
- 41 percent of the accidents were classified as overturned: 24 percent rolled sideways, 10 percent flipped backwards, 7 percent

flipped forward. Another 7 percent were classified as tipped (did not overturn),

31 percent of the drivers had passengers on the ATV,

29 percent of the drivers were under 14 years old; 17 percent were under 12 years old,

56 percent of the drivers wore no protective equipment,

44 percent wore some safety equipment: helments (37 percent), gloves (13 percent), heavy boots (10 percent), goggles (8 percent),

26 percent of the drivers had less than one month's experience (13 percent were first time users); 54 percent of the drivers had at least one year's experience.

About 35 percent of the accidents involved practices that the ATV manufacturers warned against: carrying passengers and driving on paved roads. The characteristics of this group were similar to the remaining accidents with respect to frequent collisions and overturning, hitting objects, turning and driving at speeds estimated as low.

B. Request for Public Participation at Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards which may be associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about any unique characteristics of ATV handling and use in Alaska.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received by March 25, 1986.

Dated: March 7, 1986.

Sadye E. Dunn,

Secretary, Office of the Secretary.

[FR Doc. 86-5332 Filed 3-12-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD11-85-06]

Anchorage Regulations; San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard establishes anchorage grounds on the navigable waters of the United States for purposes of navigation safety. The San Diego Unified Port District (SDUPD) has requested that Coast Guard change the federal anchorage regulations for San Diego Bay. The proposed change would revise paragraph 33 CFR 110.210(a), deleting the establishment of all of San Diego Harbor as an anchorage ground, but maintain those anchorage areas described elsewhere in § 110.210(a). In addition, the proposed rule would designate the Laurel Street Roadstead, a small craft anchoring area developed by SDUPD, as a special anchorage area, and delete an unnecessary non-anchorage area presently established in the regulations. References to Commandant, Eleventh Naval District, which no longer exists, would be changed to Commander, Naval Base San Diego. The intended effect of these rules is to provide safe moorage for the large number of nonrecreational vessels, to conform the regulations to current practice and to establish federal regulations consistent with planned port development and anchorages to be established by the San Diego Unified Port District.

DATES: Comments must be received on or before 8 May 1986. The public hearing will be at 9:00 a.m. on 3 April 1986.

ADDRESS: Comments should be mailed to Commander (mps), Eleventh Coast Guard District, Suite 709, Union Bank Building, 400 Oceangate, Long Beach, CA 90822. Telephone: (213) 590-2301. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address. The public hearing will be held in Room 4S13 of the San Diego Federal Building at 880 Front Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Francis McClain, (213) 590-2301.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (11-85-06) and the specific section of the proposal to which their comments appiy, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period and at the public hearing will be considered before final action is taken on this proposal. Persons wishing to present oral statements at the hearing must notify: Lieutenant Francis McClain at Commander (mps), Eleventh Coast Guard District, Suite 709, Union Bank Building, 400 Oceangate, Long Beach, CA 90822, telephone (213) 590-2301; or Lieutenant Mike McCoy at the USCG Marine Safety Office, 2710 North Harbor Drive, San Diego, CA 92101, telephone (619) 293-5860. Such notification should include the approximate time required to make the presentation.

Drafting Information

The drafters of these regulations are Commander K. B. Allen and Ensign J. D. Czamanske, project officers, Eleventh Coast Guard District Marine Safety Division, and Lieutenant J. R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Eleventh Coast Guard District Office received a formal request for federal rulemaking concerning small craft anchorages in San Diego Harbor from the San Diego Unifed Port District (SDUPD) on 24 July 1985. The request was made as part of their Baywide Small Craft Mooring and Anchorage Plan. The Coast Guard has received many comments from San Diego area residents concerning this plan. The plan envisions the establishment of four new anchorage grounds (A-4, A-6, A-7, & A-8), the designation of the Laurel Street Roadstead as a special anchorage area (A-3), and a prohibition of anchoring outside designated anchorages without the permission of the SDUPD.

Federal anchorages are established under 33 U.S.C. 471. This statute authorizes the Secretary of Transportation to define and establish anchorage grounds in all harbors of the United States whenever necessary for safe navigation. The Secretary may adopt suitable rules and regulations relating to these anchorages. This power has, in general, been delegated to each Coast Guard District Commander (33 CFR 1.05-1(1)). Any anchorage, federal or non-federal, may be designated as a special anchorage area by the Coast Guard under the Inland Navigation Rules (33 U.S.C. 2030(g)). Such designation merely means that vessels less than 20 meters in length, while anchored there, need not display anchor

lights and day shapes nor are they required to sound fog signals which would otherwise be required by the applicable navigation rules. (Note: Any vessels navigating on the navigable waters of the United States must abide by the applicable navigation rules.)

State and local authorities may adopt regulations concerning anchoring that are not inconsistent with the federal statutory and regulatory scheme. Thus, this proposed rule, by deleting the section establishing all of the Bay as an anchorage, would make room for local regulations addressing the land use and aesthetic concerns of the Post of San Diego, providing they are consistent with the federal scheme. In any event, the Coast Guard retains the authority to establish temporary safety and security zones (33 CFR Part 165, Subparts C and D, respectively) and to control vessel movement (33 CFR Part 6 and 33 CFR 160.111) throughout San Diego Harbor, paramount to any state designated use areas, in the interest of navigation, port and environmental safety. Future preemption of state deisgnated use areas through establishment of permanent federal anchorages, regulated navigation areas, restricted areas, danger zones, safety zones, or security zones must be addressed by the agency establishing those areas during the rulemaking process.

In light of the above and after review of the SDUPD request, the Baywide Small Craft Mooring and Anchorage Plan and supporting documents, and the public comments received, it is the position of the Coast Guard that:

(1) It is in the best interest of navigation that the SDUPD's Laurel Street Roadstead anchorage be designated a Special Anchorage Area. This would be accomplished by the proposed paragraph (c) in 33 CFR 110.90.

(2) The justification for some of the proposed anchorages contained in DSUPD's plan (A–4, A–6, A–7, & A–8) is primarily based on important state and local land use and aesthetic concerns. These factors go beyound the Coast Guard's statutoy authority for regulating navigation and it is inappropriate at this time that they be established as federal anchorages.

(3) All of San Diego Harbor was established as an anchorage ground early in the twentieth century to meet the needs of navigation and marine commerce at that time. In the ensuing years, the needs of navigation, commerce and national security have changed, making the designation of the entire Bay inconsistent with traditional usage and other federal regulations. Presently there is a large amount of navigation, including naval traffic, commercial traffic, fishing vessels and pleasure craft. All of these vessels require paths of unobstruced navigation as well as safe areas to anchor. The revision of 33 CFR 110.210(a) deleting all of San Diego Harbor as an anchorage ground from the anchorage regulations, while maintaining the existing designated anchorage grounds and designated special anchorage areas, and designating an additional special anchorage area in this proposal, would meet these needs. The Coast Guard thus proposes to revise paragraph 33 CFR 110.210(a) to delete wording designating all of San Diego Harbor an anchorage ground.

Because 33 CFR 110.210 is being restructured in addition to being amended, the oppotrunity to make the following editorial change will be taken. Commandant, Eleventh Naval District is a position which no longer exists. When the position did exist, the authority granted to him by the current regulation was redelegated to Commander, Naval Base, San Diego, CA. This proposed regulation grants the authority directly to Commander, Naval Base, San Diego, CA.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Laurel Street Roadstead is presently used as an anchorage area with SDUPD having provided some order through the placement of mooring buoys. Designation as a special anchorage area will relieve users from certain regulatory requirements. The revision of § 110.210 will have minimal impact on maritime commerce and navigation because even though it changes the existing status of San Diego Harbor as an anchorage ground, it does not impose any additional restrictions on anchorage in the harbor. One possible result of this regulation could be restrictions on anchorage in certain areas of San Diego Harbor by the San Diego Unified Port District. It would be inappropriate to speculate on the economic impact of any regulations which may be adopted by the San Diego Unified Port District. The only other change embodied in this proposed regulation is simply editorial in nature.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33 of the Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(e) and 33 CFR 1.05–1(g).

2. Section 110.90 is revised to read as follows:

§ 110.90 San Diego Harbor, California.

(a) Area A–1. In the Municipal Yacht Harbor, the water area enclosed by a line beginning at latitude 32°42'56.5" N., longitude 117°13'44" W.; thence southwest to latitude 32°42'53.4" N., longitude 117°13'48.2" W.; thence northwest to latitude 32°43'01.1" N., longitude 117°13'56" W.; thence northeast to latitude 32°43'02.4" N., longitude 117°13'52.4" W.; thence southeast to latitude 32°42'59.6" N., longitude 117°13'47.3" W.; thence to the point of beginning.

(b) Area A–2. In the Commercial Basin, the water area enclosed by a line beginning at latitude 32°43'13.9"-N.; longitude 117°13'21.0" W.; thence northeast to latitude 32°43'16.2" N., longitude 117°13'13.2" W.; thence northwest to latitude 32°43'22.1" N., longitude 117°13'23.7" W., thence west to latitude 32°43'22.0" N., longitude 117°13'26.8" W.; thence southwest to latitude 32°43'19.0" N., longitude 117°13'29.2" W.; thence southwest to the point of beginning.

(c) Area A–3. In North San Diego Bay, north of the "B" Street Merchant Vessel Anchorage, the water area enclosed by a line beginning at latitude 32°43'30.4" N., longitude 117°10'24.4" W., thence southwest to latitude 32°43'29.7" N., longitude 117°10'29.7" W., thence southwest to latitude 32°43'25.6" N., longitude 117°10'33.0" W., thence northwest to latitude 32°43'29.6" N., longitude 117°10'44.9" W., thence northeast to latitude 32°43'36.0" N longitude 117°10'41.6" W., thence southeast along a line parallel to, and 200 feet bayward of, the shoreline of San Diego Bay adjoining Harbor Drive to the point of beginning.

(d) Area A–5. In Glorietta Bay, the water area enclosed by a line beginning at latitude 32°40'42.0" N., longitude

117°10'00.0" W.; thence southwest to latitude 32°40'41.0" N., longitude 117°10'03.5" W.; thence northwest to latitude 32°40'46.0" N., longitude 117°10'12.5" W.; thence northeast to latitude 32°40'46.5" N., longitude 117°10'11.0" W.; thence southeast to the point of beginning.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

3. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, California.

(a) *The anchorage grounds.* (1) Special anchorage for U.S. Government vessels. Shoreward of a line extending from Ballast Point Light approximately 351°30' to the shore end of the Quarantine Dock.

(2) "B" Street Merchant Vessel Anchorage. Due west from the southwest corner of the "B" Street pierhead to latitude 32°43'00", longitude 117°11'00"; thence northeasterly to latitude 32°43'20", longitude 117°10'51"; thence due east to the shoreline; thence following the shoreline and pier to the point of beginning.

(b) *The regulations.* (1) The special anchorage described in paragraph (a)(1) of this section is reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in this area except by special permission obtained in advance from the Commander, Naval Base, San Diego, California.

(2) The area described in paragraph (a)(2) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while awaiting a berth.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not unreasonably obstruct the approaches to the wharves in the harbor.

Note.—Mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District.

Dated: March 4, 1986.

A.B. Beran,

Rear Admiral (lower half), U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 86-5560 Filed 3-12-86; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

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

Soil Conservation Service

Wolf-Loosahatchie River Basins Land Treatment Plan and Water Management Plan, Tennessee and Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Availability of Records of Decision.

SUMMARY: Donald C. Bivens, responsible Federal official for projects administered under the provisions of Pub. L. 87–639, 76 Statute 438 (16 U.S.C. 1009) in the State of Tennessee, is hereby providing notification that records of decision to proceed with the installation of the Wolf-Loosahatchie River Basins Land Treatment Plan and Water Management Plan are available. Single copies of these records of decision may be obtained from Donald C. Bivens at the address shown below.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB–USCH, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 736–5471.

Dated: March 6, 1986.

Donald C. Bivens,

State Conservationist.

[FR Doc. 86–5480 Filed 3–12–86; 8:45 am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Massachusetts Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on April 3, 1986, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to continue planning the Committee's proposed study of housing discrimination in the Boston area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, March 7, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–5432 Filed 3–12–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Medal of Technology Nomination Evaluation Committee; Meeting

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee charter was renewed on February 10, 1986. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters dealing with the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

Time and place: The meeting will begin at 9:30 a.m. and end at 5:00 p.m. on March 27, 1986. The meeting will be held in Room 250 of the National Academy of Sciences Building, 21st Street and Constitution Avenue, NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Goodman, Executive Director, National Medal of Technology Nomination Evaluation Committee, Room 4829, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230, (202) 377–0825.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, (202 377–4217).

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 86–5508 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–18–M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of

Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–274R. Applicant: National Oceanic and Atmospheric Administration, Atlantic Oceanographic and Meteorological Laboratory, 4301 Rickenbacker Causeway, Miami, FL 33149. Instrument: Mass Spectrometer System, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended use: Original notice of this resubmitted application was published in the **Federal Register** of September 5, 1985.

Docket Number: 85–311R. Applicant: Lahey Clinic Hospital, Incorporated, 41 Mall Road, Box 541, Burlington, MA 01805. Instrument: Kidney-Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended use: The instrument is intended to be used for the following research projects.

1. Collection of data on lithotripsy cases which will be used to perform epidemiological research relating to the incidence, location, type and composition of kidney stones,

2. A study involving a comparison of rapid jet ventilation versus epidural anesthesia for patients undergoing lithotripsy treatment and

3. Development of a technique for dissolving gall stones located in the common duct.

Original of this resubmitted application received by Commissioner of Customs: October 1, 1985.

Docket Number: 86–123. Applicant: Geisinger Medical Center, North Academy Avenue, Danville, PA 17822. Instrument: Extracorporeal Shockwave Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: This instrument is intended to be used for studies of renal structure and function both pre- and post-lithotripsy procedure, kidney stones, the effect of shockwave lithotripsy on orthopedic prosthetic replacement and the potential of lithotripsy in the shockwave destruction of gall stones. In addition, the instrument will be used for the training of physicians and medical students. Application received by Commissioner of Customs: February 10, 1986.

Docket Number: 86–125. Applicant: Rush-Presbyterian-St. Luke's Medical Center, 1753 W. Congress Parkway, Chicago, IL 60612. Instrument: Electron Microscope, Model JEM–1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used for studies of the ultrastructure of tumor cells, red blood cells and ocular and endocrine tissues from experimental animals and from patients with pathological disorders. In addition, the instrument will be used for training of medical and graduate students, residents and fellows. Application received by Commissioner of Customs: February 12, 1986.

Docket Number: 86–126. Applicant: University of Illinois Urbana-Champaign, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801. Instrument: Combined Sputtered Neutral Mass Spectrometry and Secondary Ion Mass Spectrometry Analysis System, Model INA–3. Manufacturer: Leybold-Heraeus, West Germany. Intended use: The instrument is intended to be used for quantitative in-depth analysis of a wide range of materials such as metals, semiconductors and ceramics. The object of such analysis is to measure dopants and their depth distributions, to quantitatively determine thin film composition and to measure interfacial compositions with very high depth resolution. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86–127. Applicant: UMDNJ-Rutgers Medical School, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM–100CX with X-Ray Analyzer. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument is intended to be used for the following research purposes:

1. Characterization of plasma membrane receptor for protein secretion in a bacterial cell model.

2. Studies on the secretory organelles in a hyper-secretor mutant of cellulase producting fungus *Trichoderma reesei.*

3. Immunoelectron microscopic determination of intracellular movement of cellulase from the site of synthesis to secretion in *Trichoderma reesei.*

4. Study of toxin secretion from *Shigella dysenterie.*

5. Detection of mycoplasma in diseased plants.

6. Developing a new method for quantitative analysis of asbestos fibers in water before and after processing for drinking. The instrument will also be used for teaching electron microscopy to postdoctoral students and scientists. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86–128. Applicant: Washington University School of Medicine, 660 South Euclid Avenue, St. Louis, MO 63110. Instrument: Microtome Cryostat with Accessories. Manufacturer: Hacker/Bright, United Kingdom. Intended use: The instrument is intended to be used for studies of vertebrate and invertebrate tissues in order to better understand the importance of the macromolecules under investigation in the development and maintenance of cellular and tissue structure and function. Some experiments will involve quantitative study of the three dimensional distribution of tissue macromolecules. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86–129. Applicant: Purdue University, FREH Building, West Lafayette, IN 47906. Instrument: Kinetics Sample Handling Unit, Model SF–3L/SFL–43. Manufacturer: Hi-tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for the study of metal peptide complexes in solution. Ratio and sequential mixing of chemical species with stopped-flow observation over wide temperature ranges will be carried out to determine chemical reactivities, reaction rates and intermediates formed in the reactions of metal-peptide complexes. In addition the instrument will be used to instruct students in the use of its capabilities and application to research problems. Application received by Commissioner of Customs: February 13, 1986.

Docket Number 86–130. Applicant: Georgetown University Hospital, Department of Neurology, 3800 Reservoir Road, N.W., Washington, DC 20007. Instrument: Cerebral Blood Flow Unit with Accessories. Manufacturer: Scan-Detectronic A/S, Denmark. Intended use: The instrument will be used to measure the cerebral blood flow in patients who have had cardiac arrest, patients who are chronically hypotensive and those in coma to try to determine what has happened to a brain which has been deprived of oxygen. The instrument will also be used for physician and resident training. Application received by Commissioner of Customs: February 13, 1986.

Docket Number: 86–131. Applicant: State University of New York at Stony Brook, Department of Anatomical Sciences, Health Sciences Center, Stony Brook, NY 11794. Instrument: Reflected Light Microscope with Accessories. Manufacturer: Sluzba Vyzkumu, Czechoslovakia. Intended use: Studies of the teeth of extant and extinct mammals and reptiles in which the instrument is used to observe dental tissues that lie deep to the surficial, and relatively structureless, layer of enamel. Application received by Commissioner of Customs: February 14, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–5507 Filed 3–12–86; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held Wednesday, April 2, 8:30 am–5:00 pm, the Herbert Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202/377–4217. For further information, contact Liga L. Hagenah, 202/377–4959.

Dated: March 10, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–5502 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–25–M

The Electronic Instrumentation Technical Advisory Committee and the Computer Systems and Technical Advisory Committee; Joint Closed Meeting

A joint meeting of the Electronic Instrumentation Technical Advisory Committee and the Computer Systems Technical Advisory Committee will be held on April 3, 1986, 8:30 am–5:00 pm, Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW, Washington, DC.

The Committees will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

Copies of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4217. For further information or copies of the minutes contact Liga L. Hagenah, 202/377–4959.

Dated: March 10, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–5501 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–25–M

Minority Business Development Agency

Financial Assistance Application Announcement; District of Columbia

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $764,706 for the project performance of July 1, 1986 to June 30, 1987. The MBDC will operate in the Washington, DC, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $650,000 in Federal Funds and a minimum of $114,706 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 14, 1986. Applications must be postmarked on or before April 14, 1986.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377–8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 6, 1986.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 86–5470 Filed 3–12–86; 8:45 am]

BILLING CODE 3510–21–M

San Juan, Puerto Rico; Financial Assistance Application Announcements

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve months is estimated at $590,000 for the project performance of August 1, 1986 to July 31, 1987. The MBDC will operate in the San Juan, Puerto Rico Metropolitan Statistical Area (MSA). The first cost for the MBDC will consist of $590,000 in Federal funds and a minimum of $104,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). This announcement was previously advertised in the November 7, 1985 issue of the **Federal Register.** This previous announcement has been cancelled.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is April 21, 1986. Applications must be postmarked on or before April 21, 1986.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Gina Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 7, 1986.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 86-5466 Filed 3-12-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting and Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, March 31–April 4, 1986, in Wrightsville Beach, NC, to discuss large pelagics, data collection, spiny lobster and king and Spanish mackerel. The Council also will convene a public hearing, April 1, 1986, at 7:30 p.m. to present the mackerel stock assessment report and to receive public comment on any fishery conservation zone fisheries. A detailed agenda will be available for the public on March 17, 1986. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone (803) 571–4366.

Date: March 10 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-5482 Filed 3-12-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

Correction

In the issue of Thursday, March 6, 1986, on page 7846, in the first column, a correction to FR Doc. 86-2725 appeared. The last sentence was inaccurate and should have appeared as follows:

In the first column of the table, third line from the bottom, "569" should read "659"

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has provided the following information collection requirements to OMB to facilitate further consideration of amended Regulation 1.35 (51 FR 2684 (January 21, 1986)) by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments must be submitted no later than April 14, 1986.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231. For further information contact Thomas M. McGivern, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, (202) 254–8955

Title: Trade Timing Standards and Exchange Audit Trail Systems.

Form No.: SF–83.

Action: Extension of the expiration date of an approved collection currently authorized under OMB Control Number 3038–0022.

Respondents: Business (excluding small businesses).

Estimated Annual Burden: Not determinable at this time; there may be no change or there may be a decrease or an increase, depending upon the system selected by each exchange for compliance.

Estimated Number of Respondents: 213 under Control Number 3038–0022.

Issued in Washington, DC, on March 10, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–5567 Filed 3–12–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review; Department of the Army

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

DOD Standard Tender of Freight Services

Tenders are used by DOD to select carriers for 700,000 freight shipments annually. Tenders are currently submitted via the OF 280 which is undisciplined and requires excessive manual processing time. The proposed form will support MTMC automation initiatives and DOD objectives to reduce paper burden or manual operations.

Business
Responses: 9,350
Burden Hours: 10,519.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 695–1671.

Patricia H. Means,

OSD, Federal Register Liaison Officer, Department of Defense.

March 7, 1986.

[FR Doc. 86–5445 Filed 3–12–86; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 1, 1986; Tuesday, April 8, 1986; Tuesday, April 15, 1986; Tuesday, April 22, 1986; and Tuesday, April 29, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 7, 1986.

[FR Doc. 86–5446 Filed 3–12–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 4, 1986.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet April 3, 1986 from 8:00 a.m. to 5:00 p.m. and April 4, 1986 from 8:00 a.m. to 3:00 p.m. at AF Armament Division Headquarters, Eglin AFB FL, Building 1, Room 118.

The purpose of this meeting is to review and discuss selected programs and projects relating to the mission of the Armament Division and to advise the Commander on these programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86–5465 Filed 3–12–86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Pacific Basin Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet April 7, 1986, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues

related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: March 7, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-5500 Filed 3-12-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-85-032; OFP Case No. 55192-9292-20-24]

Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978; Kelco Division of Merck and Co., Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Kelco Division of Merck and Company, Inc., exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Kelco Division of Merck and Company, Inc. The permanent cogeneration exemption permits the use of gas as the primary energy source for the optimization of its cogeneration facility located in San Diego, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on May 12, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749

SUPPLEMENTARY INFORMATION: On September 17, 1985, Kelco Division of Merck and Company, Inc., filed a petition requesting a permanent cogeneration exemption from the prohibitions of FUA. Kelco proposes to optimize the engine efficiency of its natural gas/liquid fuel-fired 27 megawatt cogeneration facility at its manufacturing location in San Diego, California. The electricity produced by this facility in excess of its needs is to be sold to San Diego Gas and Electric. The project also provides Kelco's manufacturing facility with steam for its process needs (designed at 180,000 lbs/hr—maximum with supplemental firing). The major components of the cogeneration facility are three gas turbine generators, three waste heat recovery boilers, and associated support equipment.

The modification will permit more efficient operation by increasing the fuel input to 120 million Btu/hr on a single unit (360 million Btu/hr for all three units together). Kelco estimates that the facility will save 10.5×10^{12} Btu of oil and gas equivalent per yer. The incremental savings resulting from this increased fuel input amounts to 270.5×10^{9} Btu/yr of oil and gas equivalent. The facility is currently operating and will commence operation at the higher fuel input if ERA provides its approval.

Basis for Permanent Exemption Order: The permanent exemption order is based upon evidence in the record including Kelco Division of Merck and Company, Inc., certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements: In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 1, 1985 (50 FR 39755), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 15, 1985; no comments were received and no hearing was requested.

NEPA Compliance: After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Kelco Division of Merck and Company, Inc., satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Kelco Division, to permit the use of gas as the primary energy source for its upgraded cogeneration facility.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on March 6, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-5551 Filed 3-12-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-13-NG]

Koch Hydrocarbon Co.; Application To Import National Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 24, 1986, of an application filed by Koch Hydrocarbon Company (Koch), an operating division of Koch Industries, Inc., for blanket authorization to import from Canada up to 100,000 Mcf of natural gas per day, or a total of 182.5 Bcf over a five-year period beginning on approval of its application. The gas would be supplied by a Koch affiliate and other Canadian suppliers and sold by Koch to a wide range of U.S. customers. Koch proposes to file quarterly reports with the ERA within 45 days of each quarter on a confidential basis showing the suppliers, price and volumes.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 14, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-9622.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice of parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral persentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Koch's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m, Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 7, 1986.

Paula A. Daigeault,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 86-5552 Filed 3-12-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-2598-000 et al.]

Natural Gas Companies; Tenneco Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

March 10, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf 1,000 ft³	Pressure base
G-2598-000, D, Feb. 20, 1986	Tenneco Oil Company P.O. Box 2511 Houston, Texas 77001.	Trunkline Gas Company, McAllen Field, Hidalgo County, Texas.	[1]	
G-3966-001, D, Mar. 3, 1986	Sun Exploration & Production Co., P.O. Box 2880 Dallas, Texas 75221-2880.	Texas Gas Pipeline Corporation, Nome Field, Jefferson County, Texas.	[2]	
G-5181-000, D, Feb. 18, 1986	....do....	Northern Natural Gas Company, Guyman-Hugoton Field, Texas County, Oklahoma.	[3]	
G-6342-008, D, Feb. 25, 1986	Conco Inc., P.O. Box 2197, Houston, Texas 77252....	El Paso Natural Gas Company, Lockhart A-27 No. 5 (Drinkard) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-009, D, Mar. 3, 1986	....do....	El Paso Natural Gas Company, Lockhart B-14A No. 1 (Blinebry) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-010, D, Mar. 3, 1986	....do....	El Paso Natural Gas Company, Hawk B-3 No. 22 (Blinebry) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6342-011, D, Mar. 3, 1986	....do....	El Paso Natural Gas Company, Lockhart A-35 No. 3 (Tubb) Well, Monument Area, Lea County, New Mexico.	[4]	
G-6670-000, D, Mar. 3, 1986	Sun Exploration & Production Co....	Transcontinental Gas Pipe Line Corporation, North Bay City and North Markham Fields, Matagorda County, Texas.	[5]	
G-7193-008, D, Feb. 18, 1986	Union Oil Company of California, et al., P.O. Box 7600 Los Angles, Calif. 90051.	Williston Basin Interstate Pipeline Company, Worland Field, Bighorn and Washakie Counties, Wyoming.	[6]	
G-10122-005, D, Feb. 27, 1986	Conoco Inc....	Tennessee Gas Pipeline Company, West Delta Block 52, Offshore Louisiana.	[7]	
G-1263-000, D, Feb. 19, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Texas Eastern Transmission Corporation, Yoward Field, Bee Country, Texas.	[8]	
CI61-737-004, D, Feb. 18, 1986	Shell Western E&P Inc., P.O. Box 4684 Houston, Texas 77210.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	[9]	
CI64-26-016, Feb. 26, 1986	Chevron U.S.A. Inc., 935 Gravier Street, New Orleans, La. 70112.	Texas Eastern Transmission Corporation, False River Area, Pointe Coupee Parish, Louisiana.	[10]	
CI66-988-001, D, Mar. 3, 1986	Shell Western E&P Inc....	Panhandle Eastern Pipe Line Company, South Feldman Field, Hamphill County, Texas & South Bishop Field, Ellis County, Oklahoma.	[11]	
CI66-1283-002, D, Feb. 27, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northwest Central Pipeline Corporation, South Bishop Field, Ellis County, Oklahoma.	([12])	
CI67-13-000, D, Mar. 3, 1986	....do....	Northwest Central Pipeline Corporation, South Bishop Field, Roger Mills County, Oklahoma.	([12])	
CI68-1271-001, D, Feb. 27, 1986	....do....	Panhandle Eastern Pipe Line Company, South Bishop Field, Roger Mills County, Oklahoma.	([12])	
CI72-556-002, D, Feb. 18, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	K N Energy, Inc., Reydon Field, Roger Mills County, Oklahoma.	([13])	
CI76-221-001, D, Feb. 18, 1986	....do....	El Paso Natural Gas Company, Phantom Draw Field, Eddy County, New Mexico.	([14])	
CI76-287-001, D, Feb. 18, 1986	....do....	Transwestern Pipeline Company, Kennedy Farms Field, Eddy County, New Mexico.	([15])	
CI76-677-001, D, Feb. 18, 1986	....do....	El Paso Natural Gas Company, Drinkard Field, Lea County, New Mexico.	([16])	
CI78-209-001, D, Feb. 14, 1986	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Texas 79189.	Northern Natural Gas Company, Vici Field, Woodward County, Oklahoma.	([17])	
CI86-204-000, A, Feb. 13, 1986	Diamond Shamrock Exploration Co., LTV Center—Suite 1500, 2001 Ross Avenue, Dallas, Texas.	Pacific Transmission Company, Green River Basin, Lincoln County, Wyoming.	([18])	
CI86-205-000, B, Feb. 14, 1986	Shell Western E&P Inc....	Florida Gas Transmission Company, SW Helen Gohlke Field, Victoria County, Texas.	([19])	
CI86-206-000 (G-4998) (G-4999) (G-13255) (CI69-1143), B, Feb. 14, 1986.	....do....	Texas Eastern Transmission Corporation, Helen Gohlke Field, De Witt and Victoria Counties, Texas.	([19])	
CI86-207-000, B, Feb. 18, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252..	Shell Oil Company and Exxon Company U.S.A. (Succ. in Interest to The Carter Oil Co.), Bayou Field, Carter County, Oklahoma.	([20])	
CI86-208-000 (CI73-65), B, Feb. 18, 1986.	Sun Exploration & Production Co....	Tennessee Gas Pipeline Company, Glenmora Field, Rapides Parish, Louisiana.	([21])	
CI86-209-000, B, Feb.20, 1986	Houston Oil & Mineral Corp....	Tennessee Gas Pipeline Company, North Magnolia City field, Jim Wells County, Texas.	[22]	
CI86-212-000 (CI83-79-000), B, Feb. 20, 1986.	Mesa Petroleum Co, P.O. Box 2009, Amarillo, Texas 79189.	Northern Natural Gas Company, Henderson #1-64 well, East Gem Prospect, Hemphill County, Texas.	[17]	
CI86-213-000, A, Feb. 24, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	[23]	
CI86-215-000, F, Feb. 25, 1986	Union Oil Company of California (Succ. in Interest to Sun Exploration & Production Co.), P.O. Box 7600, Los Angeles, Calif. 90051.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	[24]	
CI86-217-000, F, Feb. 25, 1986	TXO Production Corp. (Succ. in Interest to Amoco Production Company), First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Arkansas Louisiana Gas Company, Colquitt Field Clairborne Parish, Louisiana.	[25]	
CI86-220-000, B, Feb. 21, 1986	C F Braun & Co., 3131 Turtle Creek Blvd., Suite 100, Dallas, Texas 75219-5478.	Trunkline Gas Company, Southwest Splendora Field, Montgomery County, Texas.	[26]	
CI86-221-000, B, Feb. 21, 1986	George R. Brown, 1450 One Allen Center, 500 Dallas Street, Houston Texas 77002.	Texas Eastern Transmission Corporation, N. Panther Reef Field, Calhoun County, Texas.	[27]	
CI86-222-000, B, Feb. 21, 1986	Petro-Lewis Funds, Inc., P.O. Box 2250, Denver, Colorado 80201.	Arkanasas Louisiana Gas Company, Colquitt Field, Claiborne Parish, Louisiana.	[28]	
CI86-227-000 (G-15380), B, Feb. 25, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	West Lake Natural Gasoline Company, Lake Trammel Field, Nolan County, Texas.	[29]	
CI86-228-000, F, Feb. 27, 1986	Union Oil Company of California (Succ. in Interest of Sun Exploration and Product Co.).	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	[24]	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf 1,000 ft³	Pressure base
CI86-231-000, (CI78-1060-000), D, Feb. 27, 1986.	TXP Operating Company, P.O. Box 1396, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, East Cameron Block 263, Offshore Louisiana.	[30]	
CI86-232-000 (CI81-422-000), B, Feb. 27, 1986.	Southern Union Exploration Company	ANR Pipeline Company, Woodward Area, Major County, Oklahoma.	[31]	
CI86-233-000 (CI80-458), B, Feb. 27, 1986.	Phillips Petroleum Company (Succ. in Interest to Phillips Oil Company) (Formerly: Aminoil, Inc.) 336 Home Savings & Loan Bldg., Bartlesville, Okla. 74004.	Tennessee Gas Pipeline Company, South Timbalier Block 36 Field, Offshore Louisiana.	[32]	
CI86-235-000 (G-13973), B, Feb. 28, 1986.	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Transcontinental Gas Pipe Line Corporation, Rousseau Field, LaFourche Parish, Louisiana.	[33]	
CI86-236-000, B, Feb. 28, 1986	Revere Corporation, P.O. BOX 1765, Fort Smith, Arkansas 72902.	Arkansas Louisiana Gas Company, Bonanza Field, Sebastian County, Arkansas.	[34]	
CI86-238-000, B, Feb. 28, 1986	Pintail Minerals Corporation, P.O. Box B, Shreveport, La. 71161-0010.	United Gas Pipe Line Company, Cannisnia Lake Field, DeSoto Parish, Louisiana.	[35]	
G-6686-000, F, Mar. 3, 1986	Union Texas Petroleum (Succ. in Interest to Sun Exploration and Production Company), P.O. Box 2120, Houston, Texas 77252-2120.	El Paso Natural Gas Company, Certain acreage in Lea County, New Mexico.	[36]	
CI62-1497-000, D, Mar. 3, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Panhandle Eastern Pipe Line Company, Mocane-Laverne Area, Beaver County, Oklahoma.	[37]	
CI86-223-000, B, Feb. 24, 1986	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Texas Gas Transmission Corporation, North Maurice Field, Lafayette Parish, Louisiana.	[38]	
CI66-1278-001, D, Mar. 3, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northern Natural Gas Company, Ellwood Field, Ellis County, Oklahoma.	[39]	
CI77-735-002, Feb. 5, 1986	Odeco Oil & Gas Company, P.O. Box 61780, New Orleans, La. 70161.	Trunkline Gas Company, South Timbalier 86, Federal Domain, Offshore Louisiana.	[40]	

[1] Assignment of certain dedicated leases.
[2] Property sold to King Sherwood Oil Company.
[3] Property sold to Cities Service Oil & Gas Corporation.
[4] Well was reclassified by the New Mexico Oil Conservation Division from a gas well to an oil well.
[5] Property sold to Marathon Oil Company.
[6] To produce the Phosphoria formation which has been shut-in since 1967. Two wells are to be production tested and will produce associated sour gas. Williston Basin is unable to receive, or treat, the 30% H2S content gas. Abandonment is requested in order that the gas can be delivered and sold to the Spectrum Energy, Inc. gas plant where it will be processed and sweetened for resale in intrastate markets.
[7] Partial assignment of acreage to Despot Exploration, Inc. on 3-27-74.
[8] Effective 9-1-85, property was sold to B & T Oil Company.
[9] A portion of the Catesby Field was assigned to Maynard Oil Company effective 12-1-85.
[10] Applicant is filing for an additional delivery point.
[11] All acreage, in the South Feldman Field and all acreage, except for the rights below the base of the Tonkawa formation in the South Bishop Field, have been assigned to Maynard Oil Company effective 12-1-85.
[12] All acreage, except for the rights below the base of the Tonkawa formation, has been assigned to Maynard Oil Company, effective 12-1-85.
[13] Property sold to Kenneth W. Cory.
[14] Property sold to Craig, Ltd.
[15] Property sold to CDC, Inc.
[16] Property sold to Brady W. Production, Inc.
[17] Production ceased and depletion of reserves.
[18] Applicant is filing under contract dated 4-24-79.
[19] All acreage has been assigned to Rosewood Resources, Inc.
[20] Normal depletion and contract passed its primary term.
[21] Last producing property under contract sold to Seleco Resources Ltd.
[22] Sale of all dedicated leases. Houston Oil & Minerals Corporation no longer has an interest in any of the acreage dedicated under contract.
[23] Applicant is filing under Gas Purchase Agreement dated 2-17-81.
[24] By a Partial Assignment and Bill of Sale document executed 8-2-85, Sun Exploration and Production Company assigned all of its right, title and interest in certain acreage in Harper County, Oklahoma effective 7-1-85.
[25] By an Assignment effective 8-1-85, Applicant acquired from Amoco certain property.
[26] The well from which gas was sold under the Gas Contract dated 5-19-76, The Friendswood Development Co. No. 1, was plugged and abandoned 10-31-77. The Contract terminated according to its provisions when the committed reserves were depleted.
[27] The only well on the dedicated acreage ceased producing and was plugged and abandoned on 10-26-80, continuation of service is no longer warranted following depletion, dedicated lease has expired for lack of production and gas purchase contract has been terminated.
[28] Well ceased to produce prior to October 1981 and lost lease in October 1981.
[29] Originaal contract dated 3-6-56 was a percent of proceeds contract with a minimum price. Rollover contract dated 1-1-82 is a percent of proceeds contract without a minimum price.
[30] The lease dedicated under Gas Purchase Contract has expired; reserves are depleted and all wells will be plugged and abandoned.
[31] Contract terminated by its own terms on 3-1-86. The only well dedicated to the contract was plugged and abandoned in accordance with State Agency Regulations on 2-6-84. The well was depleted.
[32] The South Timbalier Block 31 Well No. 2 was the only well covered by the rate schedule. Production ceased and the well was plugged and abandoned on 4-22-85. The lease expired by its own terms on 2-26-85.
[33] The gas reserves attributable to this field have been depleted. There are no plans for further development.
[34] Uneconomical.
[35] Basic contract expired on 1-1-85 and Purchaser has informed Seller that Purchaser is unable to take delivery of gas produced from the wells which were covered by the expired contract and which gas is dedicated to interstate commerce.
[36] Certain acreage was assigned to Union Texas Petroleum on 9-1-84.
[37] ARCO no longer owns an interest in subject acreage.
[38] All interest assigned to a small producer. To Amoco's knowledge service continues under a small producer certificate.
[39] A portion of the Ellwood Field was assigned to Amoco Production Company effective 12-1-85.
[40] Applicant is filing to change delivery point.
Filing Code: A-Initial Service; B-Abandonment; C-Amendment to add acreage; D-Amendment to delete acreage; E-Total Succession; F-Partial Succession.

[FR Doc. 86-5515 Filed 3-12-86; 8:45 am]
BILLING CODE 6717-01-M

Application Filed With the Commission

March 7, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No: 2543-004.

c. Date Filed: September 26, 1985.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County near Milltown, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert J. Labrie, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, 406-723-5421.

i. Comment Date: March 3, 1986.

j. Description of Project: The existing project consists of: (1) A dam in four sections: A 244-foot concrete abutment wall, a 152-foot concrete gravity section (maximum height about 45 feet), integral with the powerhouse, a 52-foot long concrete sluice gate section containing four steel gates 9 feet by 14 feet and a 216-foot long rock crib spillway beyond the concrete sluice; (2) a reservoir with a capacity of approximately 300 acre-feet

at maximum pond elevation of about 3,260 feet; (3) a brick powerhouse containing five units with a total installed capacity of 3,040 kilowatts; and (4) a 2.3 kv bus at the plant.

Licensee proposes a rehabilitation of the project components consisting of modification of the spillway section of the dam, replacement of the sluice gate section of the dam, improvement of other water retaining sections of the dam and replacement of the turbine/generation equipment.

The existing generating units would be replaced by four new vertical tube units producing a total of 4,300–kW at a flow of 2,000 cfs and at a net operating head of 29 feet. The rehabilitated project would be operated run-of-river maintaining the reservoir elevation at about 3,259.7 feet MPC datum.

Licensee estimates that the average annual energy generation of the rehabilitated project would be 30,547,000—kWh and that the 1988 direct construction costs would be $14,688,000.

k. Purpose of Amendment: Licensee's proposal would correct deficiencies in the project components and would provide for more efficient use of the water resource at the site. In order to preclude further damages to the facility prior to repair, the application for rehabilitation is receiving expeditous processing.

l. This notice also consists of the following standard paragraphs: B, C.

B. *Comments, Protest, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5514 Filed 3–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8399–003]

City of Ellensburg, WA; Surrender of Preliminary Permit

March 4, 1986.

Take notice that the City of Ellensburg, Washington, Permittee for the Swauk-Teanaway Project No. 8399, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8399 was issued on May 21, 1985, and would have expired on April 30, 1987. The project would have been located on Swauk Creek and Teanaway River in Kittitas County, Washington.

The Permittee filed the request on January 27, 1986, and the preliminary permit for Project No. 8399 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5516 Filed 3–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–3–32–000, 001]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

March 7, 1986.

Take notice that Colorado Interstate Gas Company (CIG), on March 6, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1986.

The proposed tariff changes reflect a decrease in the rates charged to its jurisdictional customers of 14 cents per Mcf. This decrease consists of a reduction related to a rate change by Northwest Pipeline Corporation proposed to become effective April 1, 1986, of approximately $.7 million and an expected decrease in CIG's annual gas purchased costs of approximately $19.4 million which CIG believes it can accomplish through continued successes in gas purchase contract negotiations with various producers.

CIG also requests waivers of the Natural Gas Act, the Commission's regulations thereunder, and its tariff provisions in order to make this special rate reduction filing and for it to be effective April 1, 1986. CIG states that good cause exists for such waiver since it and its customers are encountering difficulties in marketing gas at present price levels.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5517 Filed 3–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI86–229–000]

Diamond Shamrock Exploration Co. and Diamond Shamrock Offshore Partners Limited Partnership; Application

Issued: March 10, 1986.

Take Notice that on February 27, 1986, Diamond Shamrock Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership (jointly referred to as "Diamond Shamrock") filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-term

abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pregranted abandonment to cover transportation of gas sold under authorization therein.

These authorizations are being requested, effective April 1, 1986, to permit continuation of sales and deliveries of gas previously initiated under Diamond Shamrock's marketing programs and to permit Diamond Shamrock to maximize its efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas with a ceiling price in excess of the maximum lawful price under NGPA Section 109.

Any person desiring to be heard or to make protest with reference to said application should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Diamond Shamrock is otherwise advised, it will be unnecessary for Diamond Shamrock to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5518 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-45-001]

El Paso Natural Gas Co.; Compliance Filing

March 7, 1986.

Take notice that on March 5, 1986, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, First Revised Sheet Nos. 229 through 231 and First Revised Sheet Nos. 234 through 236 to Original Volume No. 1-A of its FERC Gas Tariff.

El Paso states that the tendered tariff sheets, submitted in compliance with the Commission's order issued February 28, 1986 in this proceeding, reflect the elimination of paragraphs 19.9 and 20.8 regarding non-payment of bills from the operating provisions governing interruptible and firm transportation service approved for inclusion as part of El Paso's Original Volume No. 1-A Tariff by the Commission's February 28, 1986 order.

El Paso requests waiver of the Commission's Regulations as may be necessary to permit the tendered tariff sheets to become effective upon receipt of a final Commission order in this proceeding.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP86-45-000, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5519 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-55-000]

El Paso Natural Gas Co.; Tariff Filing

March 7, 1986.

Take notice that on February 28, 1986, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) regulations under the Natural Gas Act, Second Revised Sheet No. 466 to special Rate Schedule X-31 contained in its FERC Gas Tariff, Third Revised Volume No. 2. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 5, 1986.

Special Rate Schedule X-31 is comprised of the San Juan Gathering Agreement dated January 31, 1974, as amended ("Agreement"), between El Paso and Northwest Pipeline Corporation ("Northwest") which provides for the gathering and exchange of natural gas produced in the San Juan Basin area of northwest New Mexico and southwest Colorado and was authorized by Federal Power Commission order issued January 22, 1974 at Docket No. CP73-331, *et al.* By Letter Agreement dated December 27, 1985, El Paso and Northwest agreed to allow each other to schedule production from wells in which they own a majority interest into the other party's gathering system in accordance with their respective market requirements. The parties further agreed to waive (not charge or collect) the gathering charge set forth in the Agreement during the effectiveness of the December 27, 1985 Letter Agreement which, by its terms, will commence on the first day of the month following the month in which the Letter Agreement may be implemented pursuant to Commission Regulations and continue for a period of twelve (12) calendar months and month-to-month thereafter until terminated by either party. El Paso states that tendered Second Revised Sheet No. 466, when accepted by the Commission and permitted to become effective, will reflect the parties, agreement to so waive the gathering charge.

El Paso requests that the tendered tariff sheet be accepted by the Commission and permitted to become effective thirty (30) days after the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5520 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-35-002]

Great Lakes Gas Transmission Compliance Filing

March 7, 1986.

Take notice that on February 28, 1986, Great Lakes Gas Transmission Company (Great Lakes) tendered for filing the following tariff sheets in compliance with Ordering Paragraph (B) of the Commission's January 30, 1986, Order:

First Revised Volume No. 1
Alternate Fifteenth Revised Sheet No. 4
Alternate Original Sheet No. 57 (i)
Alternate Original Sheet No. 57 (ii)
Original Volume No. 2
Alternate Twentieth Revised Sheet No. 53
Alternate Eleventh Revised Sheet No. 77
Alternate Tenth Revised Sheet No. 151
Alternate Fifth Revised Sheet No. 152
Alternate Fifth Revised Sheet No. 223
Alternate Fifth Revised Sheet No. 245
Alternate First Revised Sheet No. 269
Alternate First Revised Sheet No. 270
Alternate Third Revised Sheet No. 294

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 4, 1986.

The rates included in the above filed tariff sheets were computed utilizing the overall cost of service filed by Great Lakes in this proceeding on December 31, 1985 and reflect the fully allocated, rolled-in rate design methodology ordered by the Commission in its Order on Remand in Docket No. RP79-10-018, *et al,* issued on January 7, 1986. This rate design methodology has been utilized for Rate Schedules T-6, T-8, T-9 and T-10.

TransCanada PipeLines Limited filed on February 6, 1986 a Request for Rehearing of the Commission's Order on Remand of January 7, 1986. If after rehearing the fully allocated, rolled-in rate design methodology is required to be implemented, Great Lakes believes Rate Schedules T-6, T-8, T-9 and T-10 should be included among the rate schedules subject to Great Lakes' Purchased Gas Adjustment ("PGA") tariff provisions consistent with all other rate schedules included in Great Lakes' FERC Gas Tariff. Additionally, Great Lakes believes that Rate Schedule T-11 should also be included among the rate schedules subject to Great Lakes' PGA tariff provisions. Accordingly, if such rate design methodology for the Great Lakes' system is placed into effect, Great Lakes will file to be effective concurrently the appropriate tariff changes for Rate Schedules T-6, T-8, T9, T10 and T-11 so as to make those rate schedules subject to Great Lakes' PGA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)) All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5521 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-5-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

March 7, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on March 5, 1986, tendered for filing Fifty-Seventh Revised Sheet No. 57 and Sixth Revised Sheet No. 52 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provided for a new pricing arrangement related to gas purchased from Great Lakes by Inter-City Gas Corporation, Peoples Natural Gas Company, and Michigan Power Company ("Smaller Customers"). Under the new pricing provisions for Inter-City Gas Corporation, the gas cost component of the monthly demand charge will be reduced form the current rate of $15.21 pr Mcf of contract demand each month to $12.35 per Mcf of contract demand per month, with no change in the existing commodity component. Under the new pricing provisions for Michigan Power Company ("Michigan Power") and Peoples Natural Gas Company ("Peoples") the charge for the gas cost component will be reduced from a rate of $3.73 pr MMBtu to $3.44 per MMBtu. The estimated annual savings based on deliveries during the twelve month period ended November 30, 1985 would result in savings to the Smaller Customers of approximately $555,000 annually and a reduction in the cost of company use gas of approximately $9,000,000 annually. All of the above noted pricing arrangements are subject to periodic adjustments by the application of monthly indexes designed to maintain market oriented prices for these customers in their respective market areas.

At the present time Michigan Power and Peoples are in the same Gas Purchase Contract Group (Group 5) because the gas cost component of the commodity rate for each company is the same. The gas price indexing for Michigan Power and Peoples, referred to above, established a different index for each company based on their respective geographic markets. Accordingly, Great Lakes filed Sixth Revised Sheet No. 52 to implement a separate Gas Purchase Contract Group for Michigan Power (Group 5A) and Peoples (Group 5B).

Great Lakes is requesting an effective date of February 21, 1986, for Fifty-Seventh Revised Sheet No. 57 and Sixth Revised Sheet No. 52. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5522 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-52-000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1986.

Take notice that on February 28, 1986, Kentucky West Virginia Gas Company ("Kentucky West") tendered for filing proposed changes to the following tariff sheets of its FERC Gas Tariff:

FERC Gas Tariff, First Revised Volume No. 1

Third Revised Sheet No. 5
Superseding Second Revised Sheet No. 5
First Revised Sheet No. 6
Superseding Original Sheet No. 6
First Revised Sheet No. 7
Superseding Original Sheet No. 7
Ninth Revised Sheet No. 8
Superseding Eighth Revised Sheet No. 8
Fifth Revised Sheet No. 13
Superseding Fourth Revised Sheet No. 13
Fourth Revised Sheet No. 24
Superseding Third Revised Sheet No. 24
Thirty-Fifth Revised Sheet No. 27
Superseding Thirty-Fourth Revised Sheet No. 27
Eighteenth Revised Sheet No. 27A
Superseding Seventeenth Revised Sheet No. 27A
Third Revised Sheet No. 45
Superseding Second Revised Sheet No. 45

The proposed changes are filed pursuant to §154.38(d)(4)(vi) of the Commission's Regulations and the increased rates provided for therein are based upon actual costs for the base period ended November 30, 1985, adjusted only for changes occurring in that period. The annual volumes experienced for the base period have been adjusted upward to a representative level of 39,000,000 dth for sales, shrinkage and transportation.

Kentucky West states that the new base tariff rates reflected on the proposed tariff sheets do not fully recover Kentucky West's cost of service and that, for competitive reasons, Kentucky West has limited the increase in its base tariff rates to a level below that which is supported by its cost of service, resulting in a deficiency amounting to $2,072,958.

The new base tariff rates filed by Kentucky West for Rate Schedule PLS–1 reflect a demand commodity rate structure base upon the modified fixed variable rate design methodology. In addition, the proposed new rates relating to Rate Schedule PLS–1 provide for a Market Incentive Purchased Gas Cost Charge for volumes taken in excess of two-thirds of the contract quantity. The Market Incentive Purchase Gas Cost Charge is available only to the extent that Kentucky West can arrange with its suppliers to purchase and sell said excess volumes at a price that will permit Kentucky West to recover its Company Used Gas Charge and Delivery Charge as set out on its currently effective Sheet 27A.

The new base tariff rates are to be effective March 1, 1986 subject to refund pursuant to the requirements of § 154.38(d)(4)(vi) of the Commission's regulations.

Kentucky West further states that copies of its filing have been served upon each of its customers and the Public Service Commissions of Kentucky, Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5523 Filed 3–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–237–000]

The Louisiana Land and Exploration Company and LLOXY Holdings, Inc.; Application

Issued: March 10, 1986.

Take Notice that on February 28, 1986, The Louisiana Land and Exploration Company and LLOXY Holdings, Inc. (jointly referred to as "Applicants") filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-term abandonment of sales of gas released by purchasing pipelines and the resale of that gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pre-granted abandonment to cover transportation of gas sold under authorization therein.

These authorizations are being requested, effective April 1, 1986, to permit continuation of sales and deliveries of gas previously initiated under Applicants' marketing programs and to permit Applicants to maximize their efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas with a ceiling price in excess of the maximum lawful price under NGPA section 109.

Any person desiring to be heard or to make protest with reference to said application should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicants are otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–5224 Filed 5–12–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–224–000 et al.]

Loyd B. Sands et al.; Applications for Partial Limited-Term Abandonment Authorization

March 10, 1986.

Take notice that each of the Applicants listed herein has filed an application for an expedited partial limited-term abandonment of the sale of gas to Natural Gas Pipeline Company of America (NGPL) from Applicant's interest under a September 1, 1967, contract covered by Applicants' small producer certificates. Applicants propose to abandon for a limited term sales of gas from their interests in the Arco-operated Tubb Estate #1–25 Well. Applicants state that the Tubb Estate #1–25 is an NGPA section 104 recompletion well and has an expected optimal flow rate of 18 to 24 MMcf/d. This well has been completed for quite some time according to Applicants and NGPL has not connected. Applicants further state that the gas is sour and NGPL's application for a permit to operate a 1.5 MMcf/d sweetening facility has been delayed by protests from a local land owner, and it is not known when, if ever, this permit will be granted. Applicants further state that these filings are being made with NGPL's knowledge and consent and are pursuant to the seller's reservations section of the referenced contract which reads in part:

Seller shall have the right to take gas from the gas reserves for the sale of gas to others on an interim basis, provided that any

arrangement entered into by Seller pursuant thereto shall be intrastate in nature, and shall, by its terms, be expressly terminable by Seller and shall be terminated by Seller on or before the date Pipeline completes the construction of facilities adequate to enable the receipt of the applicable quantity hereunder.

Applicants also state that the Urantia Corporation has a transportation line within 25 to 50 feet of the Tubb Estate #1-25 to which the well can be connected in approximately eight hours; interim gas purchasers will be Lone Star Gas Company and Enserch Gas Company, both of which are intrastate.

Applicant states that the agreements with both provide that they are terminable by Applicants as required in the above-quoted section of the contract. Applicants state that it is in the public interest that the expedited partial release be granted on an interim basis so that this gas can flow to market.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in the proceedings herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-224-000, B, Feb. 24, 1986	Loyd B. Sands, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1-25 Well, Winkler County, Texas.	[1] [2]	
CI86-225-000, B, Feb. 24, 1986	Caroline Hunt Trust Estate, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1-25 Well, Winkler County, Texas.	[1] [3]	
CI86-226-000, B, Feb. 24, 1986	Caroline Hunt Schoellkopf, 2600 Thanksgiving Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America, Tubb Estate #1-25 Well, Winkler County, Texas.	[1] [4]	

[1] This well produces sour gas and has not been connected to Natural pending receipt by Natural of an EPA permit for operaiton of a sweetening plant. Applicant proposes to sell to intrastate purchasers, as contemplated by the reservation section of the subject contract with Natural, until such time as Natural connects the well.
[2] Operates under small producer certificate in Docket No. CS76-969.
[3] Operates under small producer certificate in Docket No. CS84-76.
[4] Operates under small producer certificate in Docket No. CS84-77.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-5525 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-41-000, 001]

Southwest Gas Corporation; Change in Rates Pursuant to Purchased Gas Cost Adjustment

March 7, 1986.

Take notice that Southwest Gas Corporation (Southwest) on March 5, 1986, tendered for filing Thirtieth Revised Sheet No. 10, Eleventh Revised Sheet No. 10A and Sixth Revised Sheet No. 31 pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect a decrease in rates occasioned by a decrease in rates from Northwest Pipeline Corporation, Southwest's sole supplier of gas in northern Nevada, effective April 1, 1986. Southwest also proposes to change the methodology of calculating the surcharge adjustment contained in its PGAC Provision. The proposed effective date for Southwest's filing is April 1, 1986.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5526 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1691-003]

Paul J. Sullivan; Filing

March 10, 1986.

Take notice that on March 3, 1986, Paul J. Sullivan tendered for filing notice that as of April 1, 1986 all his officerships and directorates with Public Utilities will have been terminated.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5527 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

Docket No. GP86-17-000

Texaco Inc.; Petition for Declaratory Order

March 7, 1986.

Take notice that on February 7, 1986, Texaco Inc. (Texaco) filed with the Commission a petition for a declaratory order under Rule 207 of the Commission's rules of practice and procedure. Texaco seeks a ruling that the Natural Gas Policy Act of 1978 (NGPA) permits it to waive its contractual right to extract ethane from only certain gas streams, depending on

the price Texaco is entitled to receive for the gas stream, and that the NGPA permits it to adopt a certain accounting method to relect the new ethane extraction procedure it seeks to follow.

Texaco states that it provides and sells to Florida Gas Transmission Company (Florida Gas) residue natural gas which is processed at Texaco's Alligator Bayou plant, located in St. Martin's Parish, Louisiana. Different prices apply to the different gas streams sold to Florida Gas. For some gas streams, a maximum lawful price under the NGPA is the applicable price, while for other gas streams, the price is a certain percentage of the equivalent MMBtu price of No. 6 fuel oil.

Texaco states that at present, it is exercising contract rights to recover ethane, propane, and other heavier hydrocarbons from all the different-priced gas streams at its Alligator Bayou plant. Texaco also states that because of the relative values of ethane and residue gas, it is economically disadvantageous to recover ethane from some of the gas streams processed at that plant. Texaco intends to waive its right to recover ethane from some gas streams, but not from others, depending upon the price applicable to the particular gas stream. Texaco will continue to recover propane and heavier hydrocarbons from all gas streams. Texaco also states that it intends to change the plant accounting method at the Alligator Bayou plants to a Btu basis to make a proper allocation of the ethane Btu reduction. Texaco requests that the Commission issue an order declaring that the proposed ethane extraction and accounting procedures are consistent with the NGPA.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of Rules 214 or 211 of the Commission's rules of practice and procedure. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5528 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-18-002]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

March 7, 1986.

Take notice that on March 4, 1986 Texas Gas Transmission Corporation (Texas Gas) tendered for filing Second Substitute Third Revised Sheet No. 10 and Substitute Third Revised Sheet No. 10A to its FERC Gas Tariff, Original Volume No. 1.

The revised tariff sheets are being filed to reflect rate revisions from Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Co. pursuant to Ordering Paragraph (C) of the Commission's Order issued January 31, 1986, in Docket No. TA86-3-18-000 and TA86-3-18-001.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5529 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-30-002]

Trunkline Gas Co.; Change in Tariff

March 7, 1986.

Take notice that on March 5, 1986 Trunkline Gas Company (Trunkline) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Tenth Revised Sheet No. 21-F
Second Revised Sheet No. 21-F.1

An effective date of March 1, 1986 is proposed.

Trunkline states by the Order dated February 28, 1986, the Federal Energy Regulatory Commission (Commission) accepted for filing and suspended, subject to refund and conditions, tariff sheets filed by Trunkline in the above-referenced proceeding.

Ordering Paragraph (D) of the Commission's Order dated February 28, 1986 directed Trunkline to file revisions to its tariff language within 30 days of the date of the Commission's Order to the extent necessary to implement the new methodology for treatment of exchange gas imbalances.

Trunkline states that these revised tariff sheets reflect compliance with Ordering Paragraph (D) of the Commission's Order dated February 28, 1986.

The filing of these revised tariff sheets by Trunkline in compliance with the Commission's February 28, 1986 order in this proceeding is without prejudice to Trunkline's rights to seek rehearing of the conditions in the February 28, 1986 order.

Copies of this letter and enclosure are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5530 Filed 3-12-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59210A; FRL-2983-2]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances

Control Act (TSCA), TME–86–10. The test marketing conditions are described below.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Room E–609, 401 M Street SW., Washington, DC 20460 (202–382–3394).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–10

Date of Receipt: January 21, 1986.

Notice of Receipt: January 31, 1986 (51 FR 4029).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: Publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six months.

Commencing on: March 5, 1986.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 5, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–5497 Filed 3–12–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of these submissions are available from Doris Benz, FCC, (202) 632–7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395–7231.

OMB No.: 3060–0135
Form No.: FCC 6024B
Title: Supplemental Return Notice for the General Mobile Radio Service
Action: Extension
Estimated Annual Burden: 60 Responses; 15 Hours.

OMB No.: 3060–0040
Form No.: FCC 404/404A
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority
Action: Revision
Estimated Annual Burden: 28,514 Responses; 4,762 Hours.

OMB No.: 3060–0136
Form No.: FCC 574T
Title: Temporary Permit to Operate a General Mobile Radio Service System
Action: Extension
Estimated Annual Burden: 1,500 Recordkeepers; 150 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–5489 Filed 3–12–86; 8:45 am]

BILLING CODE 6712–01–M

[FCC 86–93]

Designation of Defense Commissioner

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This Order designates Chairman Mark S. Fowler as Defense Commissioner, replacing Commissioner Mimi Weyforth Dawson.

EFFECTIVE DATE: February 27, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Office of Managing Director, (202) 632–3906.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Designation of Defense Commissioner.

Adopted: February 26, 1986.
Released: February 27, 1986.
By the Commission.

1. This order designates Chairman Mark S. Fowler as the Defense Commissioner for the Federal Communications Commission. The position of Defense Commissioner had been previously held by Commissioner Mimi Weyforth Dawson. This action is in accordance with § 0.181 of the FCC Rules and Regulations, 47 CFR 0.181, which specifies that a Defense Commissioner be designated by the Commission.

2. The Defense Commissioner directs the overall national security and emergency preparedness activities of the Commission. As part of this responsibility, the Defense Commissioner keeps the Commission informed of the significant developments in the field of emergency preparedness, defense mobilization and

any defense activities that involve formulation and revision of Commission policy in any area of Commission responsibility.

3. Authority for this action is contained in sections 1, 4(i), 4(j), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155(c)(1) and 303(r).

4. Accordingly, it is ordered that, effective immediately, Mark S. Fowler is designated as Defense Commissioner for the Federal Communications Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-5484 Filed 3-12-86; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 84-467; FCC 86-98]

Preparations for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band.

AGENCY: Federal Communications Commission.

ACTION: Second report.

SUMMARY: The FCC recommended to the State Department that the United States propose to the Conference: (1) The use of an Allotment Plan rather than an Assignment Plan to govern the use of the frequencies being added to the existing AM band, and (2) a general station power maximum of 10 kW.

FCC customarily recommends to the Department of State proposals that are made on behalf of the United States to international conferences concerning use of the radio spectrum.

Allotment planning, which designates frequencies that signatory countries may use anywhere in wide areas, is more flexible than assignment planning, which necessitates the advance specification of the exact location, power and station characteristics of stations on designated frequencies. It is therefore more convenient for use as an internationally agreed basis for developing the use of a bank newly allocated to radio broadcasting. A 10 kW ceiling on station power appropriately balances the need for service areas with adequate signals against the need for multiple stations on each frequency.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, FCC, (202) 632-7792.

Second Report

In the matter of: Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band: Gen. Docket No. 84-467.

Adopted: March 5, 1986.

Released: March 6, 1986.

By the Commission.

Introduction

1. Our *First Report* in this proceeding was adopted on July 29, 1985. In that decision we announced FCC recommendations for United States proposals to the Region 2 Administrative Radio Conference to establish a Plan for the broadcasting service in the band 1605-1705 kHz. The *First Report* has been forwarded to the International Telecommunication Union and distributed to the administrations of the Region for their consideration in the upcoming Conference. We noted that the *First Report* would be supplemented later by additional proposals relating to the form of plan and maximum power, which required further study. Our recommendations on these subjects and observations on the question of spectrum sharing with other, non-broadcast services are set out in the Appendix hereto.

Form of Plan

2. The choice we are faced with in planning the use of a spectrum band lies between an assignment plan and an allotment plan. Under the former, an assignment for each station is entered into the plan with a specific location, power and other pertinent characteristics. This limits the use that can be made of a planned assignment unless and until the administration desiring to use other locations or station characteristics completes the process of obtaining a modification of the plan, after obtaining the consent of all affected administrations. An allotment plan offers more flexibility. It makes designated frequencies available for use anywhere within a specified area. Also, while an allotment plan, like an assignment plan, limits the radiation that an assignment may direct toward neighboring countries, it does so in a manner that permits more range of choice of station power and other operating characteristics.

3. Because of the greater freedom it affords for the development of a radio broadcasting service, allotment planning is the preferred method for planning the use of a band newly allocated for that use. For this and other reasons set out more fully in the Appendix, the Commission recommends that the United States propose to the Conference that allotment planning be used for the new medium frequency broadcast band 1605 to 1705 kHz.

Maximum Power

4. The question of power arises twice in allotment planning. First is the determination of the power and antenna presumed for the purpose of developing the plan and determining the agreed levels of interference. For the reasons noted in the Appendix, we suggest a 1 kW station power and a ¼ wavelength non-directional antenna.

5. The power used for planning purposes need not limit the permissible power for individual stations. Therefore, at the assignment stage, actual power may vary so long as the agreed protection arrived at through the use of the power presumed in the plan is provided. Higher power makes possible service to larger areas with stronger signals, while lower power increases the potential number of assignable stations, and reduces the amount of cumulative interfernce. We believe that a generally applicable maximum of 10 kW would achieve a desirable balance. It takes into account the fact that usable signal range is lower at the upper end of the medium frequency broadcasting band than at lower frequencies, while at the same time avoiding the severe limits on potential numbers of stations, and the greater interference levels that are inescapable when still higher power is used. Additionally, limiting transmitter power to 10 kW mimimizes the potential for inter-regional interference. This recognizes that other regions of the world (Europe, Africa, and Asia) use this new band, 1605-1705 kHz, for non-broadcast services. The Commission therefore recommends that the United States propose that the Region 2 plan be prepared using power levels of 1 kW, but that stations be permitted to use power of up to 10 kW, provided that neighboring countries are protected from interference as specified in the plan.

6. For the reasons stated in the final portion of the Appendix it is not considered to be necessary or appropriate that the Conference establish criteria relating to intra-regional sharing of the 1605-1705 kHz band with other services.

7. Therefore, pursuant to sections 4(i), 303 and 405 of the Communications Act of 1934, as amended, it is ordered, that the appended Recommended Proposals are adopted for submission to the Department of State.

8. Further information may be obtained from Wilson A. LaFollette (202) 632–5414, or Jonathan David at (202) 632–7792.

Federal Communication Commission.

William Tricarico,

Secretary.

Note: The Appendix of this document, Additional Proposals Recommended by the FCC...", will not be printed herein due to the continuing effort to minimize publishing costs. Copies of the complete text of this document may be obtained from the International Transcription Service, 1919 M St. NW., Washington, DC 20554, (202) 857–3800.

[FR Doc. 86–5288 Filed 3–12–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–758–DR]

Amendment to a Major-Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–758–DR), dated February 21, 1986, and related determinations.

DATED: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

The notice of a major disaster for the State of California, dated February 21, 1986, 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 February 21, 1986:

Alameda, Contra Costa, Fresno, and San Mateo Counties for Individual Assistance.
Madera County as an adjacent area for Individual Assistance.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 86–5439 Filed 3–12–86; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Waterfront Shipping Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2718
Name: Waterfront Shipping Company, Inc.
Address: 3433 Tremley Point Road, Linden, NJ 07936
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 1578
Name: BBC International
Address: 426 W. Florence Avenue, Inglewood, CA 90504
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2119
Name: AMJ International Shipping, Inc.
Address: 516 Fifth Avenue, New York, NY 10036
Date Revoked: February 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2349
Name: Harold Lloyd Burke dba Burke International
Address: 1050 Dominquez Street, Carson CA 97046
Date Revoked: February 26, 1986
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86–5537 Filed 3–12–86; 8:45 am]

BILLING CODE 6730–01–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts meeting scheduled for March 13, 1986 is cancelled. Our next scheduled meeting is Thursday, April 17, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC March 6, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 86–5469 Filed 3–12–86; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Reports; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1985 annual reports for the following Federal advisory committees utilized by the Centers for Disease Control have been filed with the Library of Congress:

Board of Scientific Counselors, National Institute for Occupational Safety and Health
Immunization Practices Advisory Committee
Mine Health Research Advisory Committee
Safety and Occupational Health Study Section

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC (telephone 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, NHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC.

Dated: March 7, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–5471 Filed 3–12–86; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 84P–0279]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to Rogers Walla Walla, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catherine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Rogers Walla Walla, Inc., P.O. Box 998, Walla Walla, WA 99362, and Continental Can Co., Inc., 51 Harbor Place, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Rogers Walla Walla, Inc., and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36925).

Rogers Walla Walla, Inc., and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to Rogers Walla Walla, Inc., and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5435 Filed 3–12–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0278]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to the Lakeside Packing Co. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identy for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Lakeside Packing Co., P.O. Box 1127, Manitowoc, WI 54220, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Lakeside Packing Co. and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36924).

The Lakeside Packing Co. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to the

Lakeside Packing Co. and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, exept that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5436 Filed 3–12–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0277]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to Truitt Brothers, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petiton to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Truitt Brothers, Inc., P.O. Box 309, Salem OR 97308, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Truitt Brothers, Inc., and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36924).

Truitt Brothers, Inc., and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of indentity for canned green beans proceeds. The permit holders also requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to Truitt Brothers, Inc., and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5437 Filed 3–12–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0281]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to the Friday Canning Corp. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned green beans which the permit holder submitted jointly with other sponsors.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFOMRATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–485–0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Friday Canning Corp., 150 West First St., P.O. Box 129, New Richmond, WI 54017, and

Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004, to market test canned green beans containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Friday Canning Corp. and Continental Can Co., Inc., was published in the **Federal Register** of September 20, 1984 (49 FR 36925).

The Friday Canning Corp. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned green beans proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 500,000 cases of number 303 cans and 250,000 cases of number 10 cans. These quantities are in addition to the 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product provided for by the existing permit, but which have not been distributed.

The Continental Can Co., Inc., jointly with other sponsors, in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.120 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to the Friday Canning Corp. and Continental Can Co., Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested persons who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: March 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–5438 Filed 3–12–86; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Refugee Resettlement Program; Proposed Formula for Allocations to States of Fiscal Year 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

Correction

In FR Doc. 86–4270 beginning on page 6943 in the issue of Thursday, February 27, 1986, make the following correction: On page 6944, in the third column, first line, insert the following before "U.S.": "State is below the national average for all time-eligible refugees/entrants in the".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register** on July 5, 1985 (50 FR 27694). The notice being revised, which is published in its entirety below, is titled "Contract Files—Interior, GS–5".

The existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Two new compatible routine disclosures to the General Services Administration and the Department of Commerce are also added. The retention and disposal statement is amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before April 14, 1986, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: February 28, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/USGS–5

SYSTEM NAME:

Contract Files-Interior, GS–5.

SYSTEM LOCATION:

The primary location of this system of records is in the Branch of Procurement and Contracts, Geological Survey, National Center, Reston, VA 22092. These records are also maintained in several Survey administrative field offices. A listing of these locations may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contracts with the Geological Survey. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of contract information, from inception of requirement, through contract award, contract administration and completion of the contract. Copies of contractor technical and cost proposals, documentation pertaining to the award, contract, miscellaneous correspondence, and information on debts owed by a contractor as a result of overpayment, default, disallowed costs or other contractual obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in awarding and administering contracts through their completion. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee; or the issuance of a security clearance, license, contract, grant or other benefit; (6) to the General Services Administration for entry into the Federal Procurement Data System; (7) to the Department of Commerce for publication in the Commerce Business Daily.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, and in automated form through the Procurement Management Information System.

RETRIEVABILITY:

By name of individual contactor and by contract number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 802–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Procurement Policy Section, Branch of Procurement and Contracts, Geological Survey, Department of the Interior, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURES:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her must be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager, signed by the requester and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual contractor.

[FR Doc. 86–5456 Filed 3–12–86; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM 58299]

New Mexico; Realty Action; Direct Sale of Public Land in Sierra County

The following described parcel of public land has been examined and found suitale for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value of $200/acre. The land will not be offered for sale until 60 days after the date of this notice.

New Mexico Principal Meridan

T. 12 S., R. 4 W.,

Sec. 19, lot 3, a portion thereof.

Containing approximately 9.85 acres.

The lands are proposed to be offered to the Sierra County Commissioners, who plan to use the land to operate a sanitary landfill. The sale is not in conflict with the Bureau's planning system; the lands are not critical to any resource program and have been found suitable for use as a sanitary landfill. It has been determined that sale of this parcel of land to the Sierra County Commission will serve important public objectives.

The patent, when issued, will be subject to all valid and existing rights and will contain the following reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the land so patented. Such minerals shall be subject to the rights to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).

3. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005. Objections will be reviewed by the BLM State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

March 6, 1986.

Richard T. Watts,

Acting District Manager.

[FR Doc. 86–5476 Filed 3–12–86; 8:45 am]

BILLING CODE 4130–FB–M

[NM 64122]

Realty Action—Recreation and Public Purposes; Lease and Sale of Lands in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on a recreation and public purpose lease/patent with Aztec Municipal School District #2.

SUMMARY: Pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et. seq.), the following described lands have been determined to be suitable for disposal by R&PP:

New Mexico Principal Meridian

T. 30 N., R. 11 W.,
Sec. 7, SW¼NE¼NE¼, S½SE¼ NE¼NE¼, NE¼NW¼NE¼, N½SE¼ NW¼NE¼, SW¼SE¼NW¼NE¼.

The areas described total 32.50 acres.

The public lands indentified for disposal are located in the City of Aztec and are adjacent to a residential development. An elementary school is planned for construction on the site. The identified lands are surrounded on three sides by private land, which has a high potential for further residential development.

This R&PP proposal is consistent with recommendation L–1.4 in the Management Framwork Plan (MFP). The land is not within a grazing allotment.

The public lands would be leased for five years. At the end of five years or when the project is completed the lands would be sold for $2.50 per acre and a patent would be issued.

Lands included in this R&PP will be subject to the following conditions:

When the patent is issued it will be subject to all existing valid rights.

The United States will reserve all the coal, oil, gas and geothermal mineral desposits in the land.

During the five year lease the Aztec Municipal Schools will pay a $50.00 rental fee. The land will be patented once development has occurred.

This notice segregates these lands from operation of the public land laws, including the mining laws, but not from the mineral leasing laws.

Detailed information including the evnironmental assessment and land report is available for review at the BLM, Farmington Resource Area Office, 900 La Plata Highway, Farmington, New Mexico.

For a period of 45 days after publication of this notice, interested parties may submit comments to the Albuquerque District Manager, PO Box 6770, Albuquerque, New Mexico 87197–6770.

Dated: February 25, 1986.

L. Paul Applegate,

District Manager.

[FR Doc. 86–5477 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-FB-M

Environmental Statements; Colorado; Pacific Shale Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of record of decision.

SUMMARY: The purpose of this notice is to announce the availability of the Record of Decision (ROD) for the Pacific Shale Project. The decision is to implement the Agency's Preferred Alternative as designated in the Final EIS.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has decided to approve the Agency's Preferred Alternative as designated in the FEIS dated December 7, 1984. The ROD summarizes the EIS scoping process, alternatives considered, components of the preferred alternative, decision rationale, mitigation, and monitoring.

Availability: Single copies of the ROD may be obtained from: EIS Team Leader, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81506, (303) 243–6552, FTS 323–0011.

Dick Freel,

District Manager, Grand Junction District.

[FR Doc. 86–5472 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-JB-M

[A-20346-J]

Realty Action; Exchange of Public Lands, Maricopa and Yavapai Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 6 N., R. 3 E.,
Sec. 35, E½NW¼SE¼NW¼;
Sec. 36, Lots 14, 21.
T. 5 N., R. 4 E.,
Sec. 6, Lot 6–7, E½SW¼;
Sec. 7, Lot 1.
T. 6 N., R. 4 E.,
Sec. 4, Lot 11;
Sec. 7, S½NE¼, N½SE¼;
Sec. 8, NE¼SE¼;
Sec. 9, Lot 1, SE¼NE¼, NE¼SE¼, S½SE¼.

Yavapai County

T. 12 N., R. 1 E.,
Sec. 21, NW¼.
T. 13 N., R. 1 E.,
Sec. 4, Unpatented portion;
Sec. 9, Unpatented land in NW¼NW¼ surrounded by Lot 3;
Sec. 24, E½E½, SW¼SW¼, E½SW¼, W½SE¼;
Sec. 25, Lots 1–4, N½, S½S½.
T. 13 N., R. 1½ E.,
Sec. 1, Lot 4;
Sec. 11, Lots 1–4;
Sec. 12, NW¼NW¼, S½SW¼—less mining patent, SW½SE½ less mining patent;
Sec. 13, All except E½NE¼ and M.S. 3917;
Sec. 14, Lots 1–4;
Sec. 24, W½;
Sec. 25, NW¼, N½SW¼, SW¼SW¼.
T. 15 N., R. 2 W.,
Sec. 12, SW¼SW¼.

Containing approximately 3,535 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 4, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86–5473 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-32-M

[OR-23560]

Exchange of Public and Private Lands in Baker County, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 7 S., R. 41 E.,
Sec. 11: SW¼SE¼;
Sec. 14: NW¼NE¼.

Comprising 80.00 acres of public lands.

In exchange for these lands, the United States Government will acquire the following described lands from The Nature Conservancy:

Willamette Meridian

T. 7 S., R. 48 E.,
Sec. 18: N½NW¼.
Comprising 80.00 acres of private lands.

The purpose of the exchange is to dispose of scattered tracts with no legal public access, while obtaining land with wildlife and recreational values. The public interest will be served by completing the exchange. This proposal is consistent with Bureau planning for the lands involved and has been discussed with state and local officials.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by The Nature Conservancy of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of right-of-way ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

3. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

4. The mineral estates tied to the public land and The Nature Conservancy properties also will be exchanged.

The publication of this notice segregates the public lands described above from the operation of the pubic land laws including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication.

Information related to this exchange, including the environmental assessment and land report is available for review at the Baker Resource Area Office, P.O. Box 987, Baker, Oregon 97814.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Vale District Manager, Bureau of Land Management, P.O. Box 700, Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: March 3, 1986.

David Lodzinski,

Action District Manager.

[FR Doc. 86–5474 Filed 3–12–86; 8:45 am]

BILLNG CODE 4310-33-M

[M-66958]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action M–66958—Exchange of public and private lands, in Blaine County, Montana.

SUMMARY: This exchange will be between the United States of America and Brad Tilleman. The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:.

Principal Meridan Montana

T. 34 N., R. 21 E.,
Sec. 1, SW¼;
Sec. 2, E½SE¼;
Sec. 11, NE¼NE¼.
Aggregating 280 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridan Montana

T. 34 N., R. 21 E.,
Sec. 2, SW¼, W½SE¼;
Sec. 3, NE¼SE¼;
Sec. 11, NW¼NE¼.
Aggregating 320 acres.

DATES: For a period of 45 days from the date of this notice, interested parties submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final detemination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A detailed description of this reservation, which will be incorporated in the patient document, is available for review at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment of $3,500.00 will be paid by Brad Tilleman.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and plannings and has been discussed with local officials. The public interest will be served by completion of this exchange as it will provide more effective management of the rangeland.

Dated: March 7, 1986.

David E. Little,

Acting Director Manager.

[FR Doc. 86–5475 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-DN-M

Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Survey plat filings.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 30, 1986.

Willamette Meridian

OR T. 27 S., R. 9 W.,
OR T. 15 S., R. 10 W.,
WA T. 8 N., R. 14 E.

All of the above listed plats represent dependent resurveys, a corrective dependent resurvey, and subdivisional lines.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 5, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-5460 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-33-M

Safford District, AZ; Closure of San Pedro River to Public Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands along the Upper San Pedro River to public use.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8364.1, that the Safford District, Bureau of Land Management (BLM) is closing the recently acquired public land along the upper San Pedro River to public use (see map). To prevent conflicts with existing lessees and damage to fragile resource values, the land will be closed to all public uses until the existing leases expire and a land use management plan is prepared. The closure is effective with this notice and is expected to last until approximately May 31, 1988. The land will be open for the administrative and land use planning needs of BLM and any other use authorized by the Area Manager in conjunction with management and planning for the land.

FOR FURTHER INFORMATION CONTACT: Lyle K. Rolston, Area Manager, Safford District, 425 E. 4th Street, Safford, AZ 85546, Telephone (602) 428-4040 .

SUPPLEMENTARY INFORMATION: On March 7, 1986, BLM acquired, through exchange, 43,371 acres of private land along the upper San Pedro River in western Cochise County, Arizona (see map). The land is comprised of two Spanish land grants, the San Juan de las Boquillas y Nogales and the San Rafael del Valle, as well as other land adjoining the land grants. The purpose of the exchange was to place in public ownership high-value natural resources. Specifically, the land includes about 30 miles of some of the finest riparian habitat in Arizona. In addition, the land also includes significant cultural and paleontological resources, diverse and extensive wildlife populations, and varied recreation opportunities.

The land is currently under lease to a local rancher and two sand and gravel operators. As a condition of the exchange, BLM will honor the existing leases through their expiration.

To prevent disruption of the existing lessee's operations and to prevent damage to the fragile riparian ecosystem, certain wildlife species, and cultural and paleontological resources, all of the land is closed to all public use for the remainder of the lease periods and until BLM completes a land use management plan. The closure is effective with this notice and is expected to remain in effect until approximately May 31, 1988. Another notice will be placed in the **Federal Register** upon opening of the land to public use. A legal description of the land is available for inspection in the Safford District Office at the above address.

This closure will not apply to BLM personnel involved in administration and management of the land. Nor will the closure apply to those persons or groups BLM specifically authorizes to go onto the land to assist them in the development of a management plan or in the administration and management of the land. Requests for authorization to access the land may be made to the Area Manager at the above address or phone number.

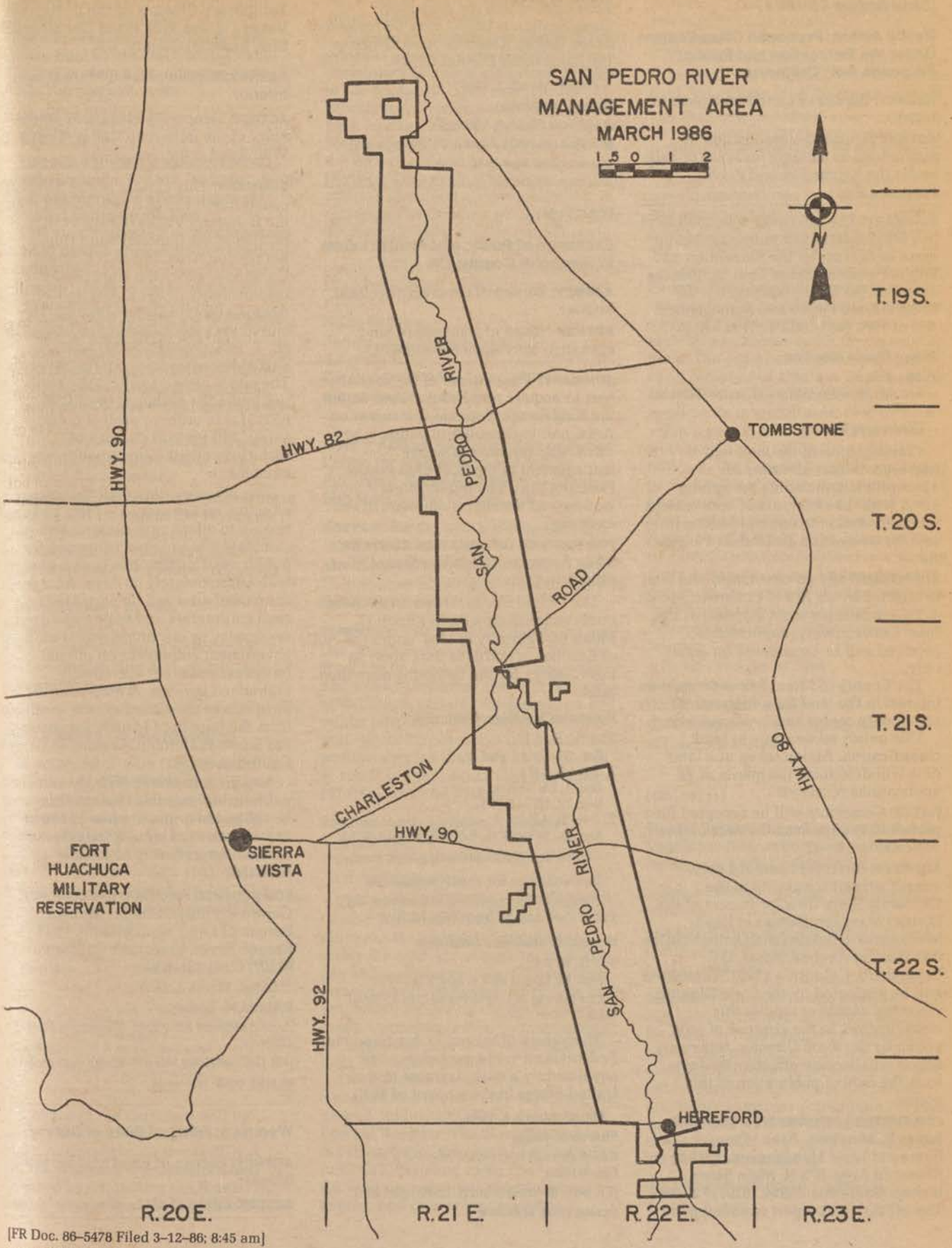
Any person who fails to comply with the closure may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: March 7, 1986.

Lester K. Rosenkrance,

District Manager.

BILLING CODE 4310-84-M



[FR Doc. 86-5478 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-84-C

[Serial Number CA 17459]

Realty Action; Proposed Classification Under the Recreation and Public Purposes Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed classification of public land as suitable for lease or sale under the Recreation and Public Purposes Act.

SUMMARY: The following described land has been determined to be suitable for lease or sale under the Recreation and Public Purposes Act of June 15, 1926, as amended (43 U.S.C. 869 et seq.): the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.):

Mount Diablo Meridian

T. 5S., R. 31E.,
Sec. 30, SE¼SW¼SE¼NE¼, SW¼SE¼ SE¼NE¼.
Containing 5 acres.

Classification of the land will segregate it from all forms of appropriation, including the mining laws, with the exception of applications received under the mineral leasing laws and the Recreation and Public Purposes Act.

SUPPLEMENTARY INFORMATION: The land is affected by an Act of Congress, March 4, 1931, which prevents disposal at this time. Consequently, applications received will be considered for lease only.

The County of Mono has expressed an interest in the land for a fire station/ community center and local park site.

This notice relates only to land classification. Action taken at a later date will determine the merits of all applications received.

DATES: Comments will be accepted for a period of 45 days from the date of this notice.

ADDRESS: Interested persons may submit written comments to the California State Director in care of the District Manager, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301. Comments will be evaluated by the State Director who may vacate or modify this classification. In the absence of any action by the State Director, this realty action will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: James S. Morrison, Area Manager, Bureau of Land Management, Bishop Resource Area, 873 N. Main Street, Bishop, California 93514; (619) 872–4881. The official land report examining the facts upon which the proposed classification is based, may be reviewed at the Bishop Resource Area Office or the Bakersfield District Office.

Dated: March 7, 1986.

Rory E. Raschen,

Associate District Manager.

[FR Doc. 86–5535 Filed 3–12–86; 8:45 am]

BILLING CODE 4310–40–M

[CA 16414]

Exchange of Public and Private Lands in Humboldt County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of the exchange was to acquire non-Federal land within the King Range National Conservation Area, and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. The public interest was well served through completion of the exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4815..

The United States issued an exchange conveyance document to Kermit C. Miller on February 6, 1986, under the Act of October 21, 1970 (84 Stat. 1067; 16 U.S.C. 460y), for the following described land:

Humboldt Meridian, California

T. 3 S., R. 2 E.,
Sec. 35, Lots 1 and 2.
T. 1 N., R. 4 E.,
Sec. 1, SE¼SE¼;
Sec. 12, NE¼NW¼,
T. 2 N., R. 4 E.,
Sec. 25, W½NE¼, SE¼NE¼, and SE¼.
Containing 429.54 acres of public land.

In exchange for these lands, the United States acquired the following described lands from Mr. Miller:

Humboldt Meridian, California

T. 3 S., R. 1 E.,
Sec. 19, Lots 3 and 4, and E½SW¼.
Containing 161.26 acres of non-Federal land.

The values of the public land and non-Federal land in the exchange were equalized by a cash payment to the United States in the amount of $875.

Dated: March 5, 1986.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86–5534 Filed 3–12–86; 8:45 am]

BILLING CODE 4310–40–M

Temporary Closure of the Buttercup Valley/ Grays Well Road Construction Site, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure to public entry of the Buttercup Valley/Grays Well Road construction site.

SUMMARY: This closure notice affects the construction site of a new access road in the Buttercup Valley/Grays Well portion of the Imperial Sand Dunes Recreation Area, Imperial County, California, under the administrative responsibility of the El Centro Resource Area, California Desert District. The closed area is located in Sections 27 and 28, T. 16 S., R. 20 E., SBM, and encompasses approximately 200 acres. The site is closed to all public entry and use under the authority of 43 CFR 8364.1(a) in order to protect public safety and prevent damage of disturbance to the construction site and equipment.

This closure order shall become effective on February 25, 1986, and shall remain in effect until construction is complete and the road is opened for public use. Construction is expected to take approximately 60 days. Access to the closed area will be permitted only to road contractors and their employees, emergency or law enforcement officers, government employees on official business, and other specifically authorized persons. A map showing the locations of the closed area is available from the Bureau of Land Management, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both, under authority of 43 CFR 8364.1(d).

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351–6386.

Dated: March 3, 1986.

Richard M. Barbar,

Acting District Manager, California Desert District.

[FR Doc. 86–5451 Filed 3–12–86; 8:45 am]

BILLING CODE 4310–40–M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., February 27, 1986.

Sixth Principal Meridian

T. 51 N., R. 72 W.

The plat showing a subdivision of certain sections, T. 51 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted February 20, 1986.

This supplemental plat was prepared to meet certain administrative needs of the Bureau.

T. 45 N., R. 115 W.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, T. 45 N., R. 115 W., Sixth Principal Meridian, Wyoming, Group No. 477, was accepted February 20, 1986.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: February 28, 1986.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 86-5536 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-22-M

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a) will be issued to Evansville, Inc. The lands involved are in the vicinity of Evansville, Alaska.

Serial No.	Land description	Approximate acreage
F-19328-A	A tract of land within T. 24 N., R. 18 W., Fairbanks Meridian.	121.47
F-19328-A, F-19328-B	A tract of land within T. 24 N., Rs. 18 and 19 W., Fairbanks Meridian.	187.30

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until April 14, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-5512 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-JA-M

Realty Action; Classification of Public Lands for Recreation and Public Purposes, Serial Number CA-18108, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease/Conveyance of Lands for Recreation and Public Purposes.

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, et seq.), and the regulations thereunder (43 CFR 2740 and 2912):

San Bernardino Meridian, California

T. 6N., R. 3W.,
Section 32, SE¼SW¼SW¼.
Containing 10 acres.

The Apple Valley County Water District has filed an application to purchase the above described land under the said Act of June 14, 1926, for use as an administrative, maintenance, and equipment storage facility. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR 2410 and 2430. The tract is situated near significant populations centers and convenient access is provided by paved county roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926 are as follows:

1. The United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable laws.

Publication of this notice in the **Federal Register** shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. The segregative effect will end upon issuance of a patent, or 18-months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit coments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 28, 1986.

Richard M. Barbar,

Acting District Manager.

[FR Doc. 86-4911 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-18111]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease/conveyance of lands for recreation and public purposes.

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, et seq.), and the regulations thereunder (43 CFR 2740 and 2912):

San Bernardino Meridian, California

T. 11 N., R. 9 W.,

Sec. 34 NW¼NE¼NW¼NW¼,
NE¼NW¼NW¼NW¼.

containing 5.14 acres.

The County of Kern has filed an application to acquire patent to the above described land under the said Act of June 14, 1926, for use as the North Edwards Park. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register.** The classification is consistent with the regulations set forth in 43 CFR 2410 and 2430. The tract is situated near several communities and convenient access is provided by existing roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926 are as follows:

1. The United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable laws.

Publication of this notice in the **Federal Register,** shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. The segregative effect will end upon issuance of a patent, or 18 months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 3, 1986.

Richard M. Barbar,

Acting, District Manager.

[FR Doc. 86-5459 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-40-M

[N-42424]

Realty Action; Lease for Recreation and Public Purposes; Elko County, NV

The following described lands have been examined and found suitable for classification and lease under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, and amended (43 U.S.C. 869 et. seq.). The lands will not be offered for lease until at least 60 days after the date of publication of this Notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 28 N., R. 58 E. (unsurveyed),
Sec. 30, N½NE¼SE¼.

This land contains approximately 20 acres.

These lands are hereby classified for public purposes use as a sanitary landfill. Elko County has made application for and intends to use these public lands in west centrol Ruby Valley, Nevada to establish a sanitary landfill.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

All mineral deposits in the lands so leased, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may describe.

The land is not required for any Federal purpose. The lease is consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the **Federal Register,** the subject lands will be segregated from appropriation under any other public land law, including locations under the mining laws. If after 18 months following the publication of this Notice in the **Federal Register,** an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in this Notice shall return to their former status without further action by the Authorized Officer.

Detailed information concerning this action, is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this Notice in the **Federal Register,** interested parties may submit comments to District Manager, Elko District Office of the Bureau of Land Management, 3900 E. Idaho St., Elko, Nevada 89801. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, on the 60th day from the date of this publication in the **Federal Register,** this realty action will become the final determination of the Department of the Interior.

Dated: February 28, 1986.

Rodney Harris,

District Manager.

[FR Doc. 86-5553 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Cliffs Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Cliffs Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6116, Block 465, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore based located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on March 3, 1986.

ADDRESS: A copy of the Subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to

affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 5, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5463 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0757, Block 118, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section-Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: March 5, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-5464 Filed 3-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Locations and Dates of Public Hearings Regarding the Draft Environmental Impact Statement for the 5-Year Outer Continental Shelf Oil and Gas Leasing Program for January 1987-December 1991

On February 19, 1986, a **Federal Register** notice (51 FR 6043) announced the availability of the draft environmental impact statement (DEIS) for the 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for January 1987-December 1991 indicating that the exact dates, times and locations of public hearings on the DEIS would be announced at a later date.

The public hearings are schedule on the following dates and times at the following locations:

April 7, 1986

Anchorage, Alaska, William A. Egan Civic Convention Center, 555 West 5th Avenue, 12:00 p.m. to 5:00 p.m., Contact: Jim Seidl, (907) 261-4633

April 8, 1986

Tallahassee, Florida, Haydon-Burns Building—Auditorium, 605 Suwannee Street, 9:00 a.m. to 12:00 p.m., Contact: Jake Lehman, (504) 838-0792

Los Angeles, California, Los Angeles Convention Center—Room 212, 1201 S. Figueroa Street, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

San Francisco, California, Cathedral Hill Hotel, 1101 Van Ness Avenue, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

April 9, 1986

Washington, DC, Department of the Interior Building—Auditorium, 18th and C Streets NW., 10:00 a.m. to 5:00 p.m., Contact: George Valiulis, (202) 343-6264

April 10, 1986

Portland, Oregon, Bonneville Power Building—Auditorium, 1002 NE. Holladay, 8:30 a.m. to 5:00 p.m., Contact: Fred Jacobs, (213) 894-3389

April 11, 1986

Metairie, Louisiana (New Orleans area), Imperial Office Building—Room 437, 3301 North Causeway Boulevard, 9:00 a.m. to 12:00 p.m., Contact: Jake Lehman, (504) 838-0792

April 15, 1986

Somerville, Massachusetts (Boston area), Holiday Inn of Boston-Somerville, 30 Washington St., 10:00 a.m. to 5:00 p.m., Contact: Heino Beckert, (703) 285-2303

April 17, 1986

Savannah, Georgia, De Soto Hilton, 15 East Liberty St., 10:00 a.m. to 5:00 p.m., Contact: Heino Beckert, (703) 285-2303

Hearings may be held beyond the listed closing time depending on the number of witnesses present. Also, hearings may be concluded earlier if all scheduled witnesses have testified.

The hearings will provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential environmental effects of adopting the proposed program. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular area at least five (5) days prior to the hearing. Time limitations make it necessary to limit the length of each oral presentation to ten (10) minutes. An oral statement may be

supplemented, however, by a more complete written statement which should be submitted to the hearing officer at the time of oral presentation. Written statements presented in person at the hearings will be considered as part of the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, others will be given an opportunity to be heard.

Written comments on the DEIS from those unable to attend the hearings will be accepted until May 8, 1986. All comments should be mailed to the Deputy Associate Director, Offshore Leasing (MS 644), Minerals Management Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Specifiy on the envelope 5–Year OCS Program draft EIS.

After the public hearing testimony and written comments on the DEIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: March 7, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86–5433 Filed 3–12–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-280X)]

Burlington Northern Railroad Co., Exemption; Abandonment in Snohomish County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903 *et seq.* to abandon its 8.11-mile line of railroad between Snohomish and Hartford, in Snohomish County, WA, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 14, 1986. Petitions to stay must be filed by March 24, 1986. Petitions for reconsideration must be filed by April 2, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 208X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Louis E. Gitmor, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20432, or call 289–4357 (DC Metropolitan area), or toll-free 800–424–5403.

Decided: March 3, 1986.

By the Comission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–5504 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-No. 171X)]

Seaboard System Railroad, Inc.; Abandonment Exemption; in Giles County, TN and Limestone County, AL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exemption Abandonments* to abandon 24.3 miles of railroad between milepost 265.9, at Pulaski, TN and milepost 290.2, near Athens, AL, in Giles County, TN and Limestone County, AL.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective April 12, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 24, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 2, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–5505 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–12 (Sub-No. 97)]

Southern Pacific Transportation Co.; Abandonment in Los Angeles County, CA; Findings

This Commission has issued a certificate finding that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 5.243-mile line of railroad between Culver City (milepost 494.650) and Santa Monica, CA (milepost 499.893) in Los Angeles, County, CA.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–5506 Filed 3–12–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Petroleum Helicopters, Inc.

In accordance with the Departmental policy, 28 CFR 50.7, notice is hereby given that on February 7, 1986 a proposed consent decree in *United States* v. *Petroleum Helicopters, Inc.*, Civil Action No. 84–2333 was lodged with the United States District Court for the Western District of Louisiana. The proposed consent decree concerns the abatement of unpermitted discharges into the Vermillion River in violation of the Clean Water Act. The proposed consent decree requires the defendant to bring its discharges within specified parameters, and to operate in the future in conformity with the Clean Water Act. The defendant is also required to pay civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Petroleum Helicopters, Inc.*, D.J. Ref. 90–5–1–1–2201.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, 3312 Federal Building, 500 Farrin Street, Shreveport, Louisiana, and at the Region V Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–5532 Filed 3–12–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Mallinckrodt, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General, shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacturer of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 10, 1986, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II
Opium Plant Form (9650)	II
Concentrate of Poppy Straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 14, 1986.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 5, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–5509 Filed 3–12–86; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–19]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting changes.

SUMMARY: The scheduled meeting on March 13–14, 1986, of the National Commission on Space, published in the **Federal Register** March 7, 1986 (51 FR 8052), NASA Notice 86–16, has been changed as follows:

Date and Time: March 20, 1986, 10 a.m. to 3 p.m.

ADDRESS: Griffin's, 20–24 Market Street, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Ted Simpson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW., Washington, DC 20024 (202/453–8685).

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 7, 1986.

[FR Doc. 86–5483 Filed 3–12–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel Systematic Anthropological Collections; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Anthropological Collections.

Date and Time: April 3, 1986.

Place: National Science Foundation, 1800 G Street NW., Room 543, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mary W. Greene, Associate Program Director, Anthropology Program, Room 320, National Science

Foundation, Washington, DC 20550; (202) 357–7804.

Purpose of Meeting: To provide advice and recommendations concerning support for systematic anthropological collections.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 10, 1986.

[FR Doc. 86–5511 Filed 3–12–86; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date and Time: April 2, 3 and 4, 1986; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–7958.

Purpose of Committee: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 10, 1986.

[FR Doc. 86–5510 Filed 3–12–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corp., Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of 10 CFR 50.48, Fire Protection, to Wisconsin Public Service Corporation (the licensee) for the Kewaunee Nuclear Power Plant, located at the licensee's site in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The Exemption would permit the licensee to operate shutdown-related systems in a non-inerted (PWR) containment not separated by more than 20 feet and free of intervening combustibles and fire hazards.

Need for Proposed Action

The proposed Exemption is needed in order to permit the licensee to use an alternate fire protection configuration that achieves an equivalent level of safety compared to that attained by compliance with Section III.G.2.d of 10 CFR 50.48. In addition, compliance with the rule would accrue unreasonable costs to the licensee without an increase in safety.

Accordingly, the NRC staff agrees that this exemption from a portion of 10 CFR 50.48 is appropriate.

Environmental Impact of the Proposed Action

The proposed Exemption would not affect the environmental impact of the facility. As the Exemption would not degrade the level of safety attained by compliance with the rule, there would be no change in accident doses to the environment.

The Exemption does not otherwise affect radiological plant effluents. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with this Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Exemption.

Since we have conlcuded that there are no measurable negative environmental impacts associated with this Exemption, any alternatives would not provide any significant additional protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and applicable documents referenced therein that support this Exemption for Kewaunee. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

Based upon this environmental assessment, we conlcude that this action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this action.

For details with respect to this action, see the licensee's request for exemption dated May 15, 1985. This document, utilized in the NRC staff's technical evaluation of the exemption request, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301. The staff's technical evaluation of the exemption request will be published with the exemption and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 7th day of March 1986.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate No. 1, Division of PWR Licensing-A.

FR Doc. 86–5540 filed 3–12–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–436), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, April 3, 1986
Thursday, April 10, 1986
Thursday, April 17, 1986
Thursday, April 24, 1986

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from 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 establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because 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, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632–9710.

William B. Davidson, Jr.,
Chairman, Federal Prevailing Rate Advisory Committee.
March 6, 1986.

[FR Doc. 86–5568 Filed 3–17–86; 8:45 am]
BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Mainstem Passage Amendments; Correction

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments; correction.

SUMMARY: In FR Doc. 86–4730 beginning on page 7647 in the issue of Wednesday, March 5, 1986, a line was inadvertently omitted. This document corrects that omission. On page 7649 in Action 32.2 under "All projects," add the following after the first sentence in the first paragraph. "Submit the plan to the Council by February 15 and implement it by April 1 of each year. [section 404(b)(1)–(9), (16)–(17).]"

FOR FURTHER INFORMATION CONTACT: John M. Volkman, Associate Counsel, Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or (503) 222–5161, or (toll-free) 1–800–222–3355 (in Montana, Idaho or Washington) or 1–800–452–2324 in Oregon.

Edward Sheets,
Executive Director.

[FR Doc. 86–5468 Filed 3–12–86; 8:45 am]
BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

[Docket No. A86–14]

Croydon, Utah 84018, Ted London, et al., Petitioners; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued March 6, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher, Bonnie Guiton; Patti Birge Tyson.

Docket number: A86–14
Name of affected post office: Croydon, Utah 84018
Name(s) of petitioner(s): Ted London and others
Type of determination: Closing
Date of filing of initial appeal papers: February 25, 1986
Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,
Secretary.

February 25, 1986—Filing of Petition.
March 6, 1986—Notice and Order of Filing of Appeal.
March 24, 1986—Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)].
April 4, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115(a) and (b)].
April 24, 1986—Postal Service Answering Brief [*see* 39 C.F.R. 3001.115(c)].
May 9, 1986—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
May 16, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

June 25, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-5450 Filed 3-12-86; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974: Matching Program—Postal Service/Government of the District of Columbia, Department of Human Services (DC-DHS)

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/ Government of the District of Columbia, Department of Human Services.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to conduct a computer matching program through a comparison of its Payroll System File (USPS 050.020, Finance Records-Payroll System) with the Government of the District of Columbia, Department of Human Services (DC-DHS) file of welfare benefit recipients.

DATE: It is anticipated that the match will begin on or about March 27, 1986.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, D.C. 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Record Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: At the request of the DC-DHS, the USPS has agreed to match data in USPS payroll system files with the DC-DHS's file of welfare benefit recipients in order to identify postal employees in the District of Columbia and in the States of Maryland and Virginia who are receiving benefits to which they are not entitled. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and Government of the District of Columbia, Department of Human Services (DC-DHS)

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the DC-DHS will provide to the USPS a computer tape of its Aid to Families with Dependent Children, General Public Assistance, Food Stamp, and Medicaid program files which the Postal Service will match, using name and Social Security account number (SSAN), against its Payroll System file of employees who work in the District of Columbia and in the States of Maryland and Virginia. The purpose of this match is to identify postal employees under those programs who are receiving benefits to which they are not entitled. In instances where employee SSANs match, i.e., "hits," the USPS will disclose to the DC-DHS the following information from its payroll file: Name, SSAN, facility where employed, home address, and annual gross wage information.

The validity of "matched" employee/benefit recipient information will be verified by an investigator of the DC-DHS's Office of Management Systems. An investigation will be conducted and, if appropriate, the amount of the grant may be adjusted, the case may be terminated, or the case may be referred for fraud prosecution. If suspected fraud is uncovered, the information in such cases will be provided by the DC-DHS's Office of Management Systems to the DC-DHS's Office of Inspection and Compliance and to the District of Columbia's Corporation Counsel. Further, the USPS Inspection Service may participate in the investigation of "hits" as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 50 FR 28862 of July 16, 1985.

c. *Period of the Match:* The matching program will be on a one-time basis and is to begin in March 1986 and end no later than September 1987.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the DC-DHS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to DC-DHS will be used by authorized DC-DHS personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by the DC-DHS and will return it to the DC-DHS within six months from the date of its receipt. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that it relates to a legitimate, nonfraud situation.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-5442 Filed 3-12-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14786]

Application and Opportunity For Hearing; Citicorp

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of January 1, 1986 under which certificates evidencing interests in a pool of mortgatge loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to

have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance or various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On January 16, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of January 1, 1986 (the "1985-M Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc. under which there were issued on January 16, 1985 Mortgage Pass-Through Certificates, Series 1985-M 10.50% Pass-Through Rate (the "Series 1985-M Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-M Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $76,841,670.62 at the close of business on January 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-M Certificates. On January 16, 1986, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-M Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-M Certificates, to be liable for 5.5% of the initial aggregate principal balance of the 1985-M Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-M Guaranty. The 1985-M Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-M Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-M Certificates were registerd under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–780) as part of a delayed or continuous offering of $1,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-M Certificates were offered by a Prospectus Supplement dated December 11, 1985, supplemental to a Prospectus dated October 9, 1985. The 1985-M Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985-M Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-M Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-M Agreement.

(5) The Applicant Company has waived notice of hearing, waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–14786, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC

Notice is Further Given that any interested person may, not later than March 31, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5544 Filed 3–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14973; 812–6298]

Continental U.S. Government Plus Fund Trust et al.; Application To Permit a Contingent Deferred Sales Load and Certain Offers of Exchange

March 7, 1986.

Notice is hereby given that Continental U.S. Government Plus Fund Trust, Continental Capital Appreciation Plus Fund Trust, Continental Option Income Plus Fund II Trust, Continental Money Market Fund Trust and Continental Tax-Exempt Money Market Fund Trust (the "Trusts or "Applicants"), each at 180 Maiden Lane, New York, NY 10038, filed an application on February 4, and amendments thereto on February 20, 1986, and March 4, 1986, for an order (1) pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Trusts from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder to permit the assessment, waiver and variation of a contingent deferred sales load on certain redemptions of shares of the Trusts' initial and future series, and (2) pursuant to section 11(a) of the Act to permit the exchange of shares of the Trusts' initial and future series for shares of the Trusts' other series on the basis of relative net asset values per share at the time of exchange, subject to a $25.00 service charge for any exchange in excess of four exchanges per individual shareholder per year. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Trusts are registered under the Act as diversified, open-end, management investment companies, and are organized as Massachusetts business trusts. Applicants state that each Trust filed a registration statement under the Act and the Securities Act of 1933 on January 21, 1986. Applicants further state that none of the Trusts have, as of the date of the application, issued any shares. Applicants represent that the Trustees of each Trust have the power under each Trusts' respective Declarations of Trust to create additional series. Therefore, Applicants request that the order requested herein extend prospectively to any additional series sold on substantially the same basis as shares of the Trusts' existing series and in connection therewith, Applicants undertake that such prospective relief shall be availed of only on the terms and conditions described in the application.

According to the application, the Trusts are managed by Continental Equities Corporation of America ("Continental Equities"), which also acts as principal distributor of shares of each Trust. CIC Asset Management Corporation (the "Adviser"), will act as investment adviser for the Trusts. Both Continental Equities and the Adviser are wholly-owned subsidiaries of The Continental Corporation. Greenwich Investment Associates, Inc. will act as a sub-investment adviser to share responsibility with the Adviser for certain investment decisions relating to the Continental Option Income Plus Fund II Trust.

Applicants state that shares of each Trust will be sold subject to an initial sales load of 2.5% of the public offering price. The Trusts propose to finance distribution expenses in excess of the initial sales load by (1) instituting plans of distribution (the "Plans") in accordance with Rule 12b–1 under the Act and (2) offering shares of each Trust subject to a contingent deferred sales load ("CDSL"). The proceeds of the Plans and the CDSL will be payable to Continental Equities, as distributor, and will be used by Continental Equities to defray in whole or in part costs incurred in connection with the sale and distribution of the Trusts' shares. Applicants represent that no combination of the initial sales load and the CDSL will exceed applicable limitations imposed by the National Association of Securities Dealers, Inc.

Applicants represent that the CDSL will be imposed only if a shareholder's redemption causes the current value of that shareholder's holdings in the Trusts to fall below the total dollar amount of such shareholder's purchases of the Trusts' shares within the preceding six years. No CDSL will be imposed for redemptions of amounts representing (1) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (2) increases in the value of a shareholder's holdings representing reinvestment of dividend or capital gain distributions ("Reinvestment Value") or (3) purchase payments made more than six years prior to the redemption date ("Old Capital").

To calculate the CDSL due, if any, upon a redemption, the Trusts will first deduct from the dollar amount of the redemption request those amounts representing New Appreciation Value, Reinvestment Value and Old Capital. The balance, if any, will be subject to the CDSL, which will be calculated by determining the number of years that have elapsed since the shareholder made the purchase from which an amount is being redeemed and then discounting that amount in accordance with the following schedule:

Years since purchase payment was made	Contingent deferred sales charge (percent)
1	6
2	5
3	4
4	3
5	2
6	1
7, or more	0

According to the application, in performing this calculation it will be assumed that the purchase payments, if any, being redeemed, are from the earliest possible purchase payments made by the redeeming shareholder. In addition, the Trusts represent that the CDSL will be applied based on the redeeming shareholder's aggregate investment in all of the Trusts without reference to which Trust the purchase payments were applied or from which Trust the shares are being redeemed.

Moreover, the Trusts propose to waive the CDSL under circumstances delineated in the application. The Trusts also propose to institute a reinstatement privilege whereby a shareholder who redeems shares of a series of a Trust and reinvests the proceeds of that redemption in the same series within thirty days will receive a credit against the CDSL, if any, paid upon the redemption. The percentage of the CDSL credited to the shareholder would be the same as the percentage of the redemption proceeds reinvested.

The Trusts also propose an exchange privilege whereby a shareholder may exchange shares of a series of a Trust for shares of any other series of the Trusts on the basis of their relative per share net asset values. The Trusts will perform such transactions at no charge for up to four such transactions per individual shareholder per year. Beyond that, however, a flat $25.00 service fee per exchange will be charged.

Applicants submit that all the elements of their proposals are in the interest of the Trusts' shareholders and are consistent with the policies underlying the Act. Applicants believe that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate Continental Equities for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicants assert that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicants represent that they will comply with Rule 22d–1 of the Act in connection with any variations in, or eliminations of, the CDSL.

With respect to the exchange privilege, Applicants represent that because the Trusts' series pursue a variety of investment objectives and policies, the exchange privilege gives shareholders an inexpensive and convenient means of responding to changes in investment needs or market conditions. Applicants represent that the imposition of a $25.00 service fee for exchanges in excess of four per shareholder per year for this service is fair and consistent with the protection shareholders and with the policies underlying the Act in that the fee (1) is used only to defray administrative expenses, which would otherwise be borne by the shareholders as a whole, most of whom will not use the exchange privilege as frequently as those being subjected to the fee, and (2) is only imposed in situations where the frequency of exchanges suggests that the service is not being used to serve the ends for which it was designed.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 31, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated

above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5545 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14975; 812-6259]

Heritage Capital Appreciation Trust et al.; Application Requesting Approval Under Section 11(a) of the Act of Certain Offers of Exchange

March 7, 1986.

Notice is hereby given that Heritage Capital Appreciation Trust ("Capital Appreciation"), and Heritage Cash Trust ("Cash Trust") (together, "Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management companies, and Raymond, James & Associates, Inc. ("Raymond, James" and together with Funds, "Applicants"), the principal underwriter of the Funds, 1400 66th Street North, St. Petersburg, Florida 33710, filed an application on December 11, 1985, requesting an order of the Commission approving certain offers of exchange to be made by the Funds, or by other investment companies which may be served in the future by Raymond, James as principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Each Fund has registered its shares for sale to the public pursuant to the securities Act of 1933. Raymond, James, a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, intends to maintain a continuous offering of Cash Trust shares at their net asset value without a sales charge, and of Capital Appreciation shares at their net asset value without a sales charge, and of Capital Appreciation shares at their net asset value plus a maximum sales load of 3.0% of the offering price (3.09% of the net amount invested). The sales load that is applicable to purchases of Capital Appreciation shares is reduced for larger share purchases and certain other factors, such as rights of accumulation and statements of intention as described in the prospectus. Applicants state that Raymond, James also may serve as principal distributor to additional investment companies not yet in existence, each of the shares of which may be issued either with or without a sales charge. The offerings of shares of any such new investment companies will conform in general characteristics to the offering of the Funds.

Applicants propose to permit a shareholder of Capital Appreciation to exchange all or a portion of his shares which have been held for at least 30 days (including shares acquired through reinvestment of dividends and capital gains distributions) for shares of Cash Trust based upon the relative net asset values of the Funds at the time of the exchange without any sales charge. Shareholders could thereafter re-exchange some or all of those Cash Trust shares (and shares acquired with dividends paid on such shares) for shares of Capital Appreciation without paying an additional sales charge. When a shareholder exercises this proposed re-exchange privilege, those shares which could be exchanged at net asset value without a sales charge will be exchanged first. A $5.00 administrative will be charged for each such exchange, or re-exchange.

Applicants further propose to permit investors to exchange shares of Cash Trust at any time for shares of Capital Appreciation based upon the relative net asset values of the Funds at the time of the exchange, plus the payment of the sales charge which would be payable if the Capital Appreciation shares were acquired directly. A $5.00 administrative charge would also be charged for each such exchange.

It is stated that each initial exchange between the Funds will be required to involve shares with a minimum value of $1,000, and that subsequent exchange transactions involve a minimum value of $500. Shareholders of the Funds will be notified of the proposed exchange privileges by means of the Funds' prospectuses, and sales literature. Applicants represent that no other specific communications are to be made to shareholders, and that salesmen for shares of the Funds will not specifically solicit the exercise of these privileges by investors. It is also stated that under no circumstances will any sales person be able to realize any additional compensation by virtue of a shareholder's exercise of the proposed exchange offers.

Applicants represent that terms of any exchange privilege offered by any future investment company distributed by Raymond, James would conform in all material respects to the terms of the exchange offers proposed to be made by the Funds, as described above. Accordingly, Applicants also request Commission approval of such exchange offers as may be extended to investors on substantially the same terms as herein proposed by Raymond, James-distributed investment companies that may be organized in the future.

Applicants represent that the purpose of the proposed exchange offers is to permit a shareholder to convert his investment by means of a simple transaction, made on an equitable basis, to accommodate a change in investment objectives. Many of the proposed exchanges may comply with section 11(a) because they will be made on the basis of the Funds' relative net asset values per share without any sales charge. However, it is stated, a shareholder of Cash Trust, for example, who changes his or her investment objective typically could exchange to Capital Appreciation only by paying the applicable sales charge. If these exchanges were to be made at their relative net asset values, it is asserted, the distribtuion system of Capital Appreciation could be disrupted because an investor could easily avoid the sales charge by first purchasing Cash Trust shares and immediately exhanging them for Capital Appreciation shares. The basis for these exchanges proposed by Applicants would avoid this problem, would be equitable to all shareholders and would benefit exchange shareholders by crediting them for sales charges previously paid, Applicants contend.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5546 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24045; 70-7226]

Louisiana Power & Light Co.; Proposal To Issue and Sell up to $200 Million of Secured Notes; Exception From Competitive Bidding

March 7, 1986.

Louisiana Power & Light Company ("Company"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The Company proposes to issue and sell, pursuant to a negotiated private placement with an institutional investor(s), not to exceed $200 million aggregate principal amount of intermediate-term secured notes ("Notes").

The Notes would be sold at the price of 100% of the principal amount, would have a maturity of approximately seven years, would bear interest at a fixed rate per annum estimated not to exceed 10.50%, and would possibly be redeemable, at the option of the Company, subject to certain restrictions on redemption.

It is contemplated that the Notes would be secured initially by a second lien on certain of the Company's assets (subordinate to the lien of the Company's Mortgage), and that as soon as practicable after the Company's earnings were sufficient to support the issuance of first mortgage bonds in the principal amount equal to, or slightly in excess of, the outstanding principal amount of the Notes, the Company would issue and pledge such bonds ("Collateral Bonds") as security for the Notes and the subordinate lien theretofore granted to secure the Notes would be released. In connection with the Company's obligation subsequently to issue Collateral Bonds as security for the Notes, the Company would covenant that during the period through December 31, 1986 but only until the Notes were secured by the Collateral Bonds, the Company would not issue additional first mortgage bonds for any other purpose, except for the purpose of refunding and paying maturing first mortgage bonds. Further, in the event that by December 31, 1986, the Notes were not secured by the Collateral Bonds, the fixed interest rate on the Notes would therafter be increased by up to .50% and the Notes would remain secured solely by the second lien until maturity. The Notes would not be subject to any mandatory redemption or sinking fund or other analogous requirement.

Due to the Company's current earnings coverage problems, the lack of an existing market for secured notes issued by the Company and investors' recent concern over the Company's regulatory environment and financial condition, (a discussion of the Company's and MSU's financial position is set forth in more detail in the declaration) the Company believes that the Notes would be extremely difficult to maket to the public. Consequently, the interests of the Company, its investors and consumers require that the Company have the flexibility to sell the Notes by means of a negotiated private placement with institutional investors in order to effect a successful sale of the Notes on the best available terms. Further, the Company states that it does not believe application of the competitive bidding requirements of Rule 50 would be appropriate with respect to the proposed issuance and pledge of the Collateral Bonds as security for the Notes. The Company, therefore, reqests, pursuant to Rule 50(a)(5) under the Act, that the proposed issuance and sale of the Notes, and the related issuance and pledge of the Collateral Bonds, be excepted from the competitive bidding requirements of Rule 50, and that the Company be authorized to proceed to select an investment banking firm or firms to act as agent on behalf of the Company to assist the Company in effecting a private placement of the Notes with an institutional investor or investors. The exceptions requested by the Company are hereby granted.

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 March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 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 amended declaration, as filed or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5547 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24047; 70-6867]

Middle South Energy, Inc.; Proposal To Amend Credit Agreement and Nuclear Fuel Lease

March 7, 1986.

Middle South Energy, ("MSE") 225 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a post-effective amendment to its application and amendments thereto with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

On October 17, 1979, MSE entered into a lease ("Lease") with Port Gibson Energy, Inc. ("Port Gibson"). Under the Lease, MSE leases from Port Gibson the nuclear fuel, including facilities incident to its use, to be used in Unit No. 1 at MSE's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"). Under the terms of the Lease, Port Gibson makes payments (or MSE makes payments and is reimbursed by Port Gibson) to suppliers, processors and manufacturers necessary to carry out the terms of MSE's contracts for nuclear fuel used for Grand Gulf 1.

Port Gibson finances these obligations under the Credit Agreement, as amended, between Port Gibson and a group of banks (the "Banks") with Union Bank of Switzerland ("UBS") acting as agent for such Banks. Under the Credit Agreement, Port Gibson may issue its commercial paper, supported by an irrevocable letter of credit ("Letter of Credit") issued by UBS and Norwest Bank Minneapolis, N.A. ("Norwest") and can obtain revolving credit loans evidenced by promissory notes.

Port Gibson proposes to enter into a Fifth Amendment to the Credit Agreement to eliminate references to Libor Rate Loans, to change the interest rate payable on any future revolving credit loans from 110% to 125% of the Base Rate, to change the penalty interest

rate on future drawings under the Letter of Credit or under the revolving credit loans from 125% to 135% of the Base Rate, and to amend the definition of the "Termination Date" in the Credit Agreement. The proposed Termination Date will be June 1, 1987 rather than October 15, 1987 (unless extended by agreement of the parties), or, in certain limited circumstances, the Termination Date shall be the "Termination Settlement Date" as defined in the Lease. Concurrently, MSE and Port Gibson will amend the Lease to provide that the Lease will also terminate on June 1, 1987 (unless extended by agreement of the parties) or on the "Termination Settlement Date".

The amended application and any further 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 March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant 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 of 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 amended application, as filed or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 86-5548 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14972; 812-6292]

Paribas Trust for Institutions; Application for Exemptive Order Permitting a Contingent Deferred Sales Load

March 7, 1986.

Notice is hereby given that Paribas Trust for Institutions ("Applicant"), 30 Rockefeller Plaza, New York, NY 10020, filed an application on January 29, 1986, and amendments thereto on February 25, and 28, 1986, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to permit a contingent deferred sales load ("CDSL") on certain redemptions of shares of its existing and future portfolios (the "Portfolios"). With respective to the prospective relief requested on behalf of any future Portfolios Applicant undertakes to avail itself of such relief under the terms and conditions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant represents that it is registered under the Act as an open-end management investment company and that it is organized as a Massachusetts business trust. Applicant states that it is presently comprised of two Portfolios and that it has filed a registration statement pursuant to which it seeks to register shares of said Portfolios. According to the application, Paribus Asset Management, Inc. is Applicant's investment adviser and Paribus Corporation (the "Distributor") acts as Applicant's underwriter.

Applicant proposes to offer shares of the Portfolios without a front-end sales load but the Distributor's expenses will be defrayed in whole or in part under a Plan of Distribution adopted by Applicant pursuant to Rule 12b-1 of the Act. Additionally, Applicant proposes to pay to the Distributor the proceeds of the CDSL upon certain redemptions of the Portfolios' shares. Applicant states that the combination of the CDSL and the Plan of Distribution facilitates its ability to sell shares without a sales load being deducted at the time of purchase.

Applicant represents that the CDSL will be determined on the basis of the table set forth below. Applicant further represents that the CDSL will not be imposed upon redemptions of shares of the Portfolios derived from reinvestment of distributions, nor upon amounts representing capital appreciation of the particular shares being redeemed. Applicant states that for purposes of determining whether a CDSL will be imposed it will be assumed that a redemption is made, first, of shares derived from reinvestment of distributions, second, of shares for which no CDSL is payable in accordance with the table and/or shares representing capital appreciation, and third, of shares for which a CDSL is payable in accordance with the table. When imposing the CDSL, the amount of the charge will depend upon the number of years elapsed since the shareholder made the purchase payment from which an amount is assumed to be redeemed from, and upon the aggregate amount invested in all Portfolios, according to the following table:

Amount invested	Amount of CDSL as a percentage of the amount redeemed if redemption occurs within the following number of years of the date of purchase year—				
	1	2	3	4	5
Up to $250,000	4.0	3.0	2.0	1.0	0.0
Over $250,000 to $1,000,000	2.5	1.5	1.0	0.0	0.0
Over $1,000,000 to $4,000,000	1.0	0.0	0.0	0.0	0.0
Over $4,000,000 to $10,000,000	0.5	0.0	0.0	0.0	0.0
Over $10,000,000	0.0	0.0	0.0	0.0	0.0

Applicant states that in determining the rate of any applicable CDSL, it will be assumed that a redemption is made of shares of the Portfolios on which the lowest charge is imposed. In addition, where shares are purchased on more than one occasion, the "Amount Invested" in the table for any particular share being redeemed will equal the total purchase price of all shares in the Portfolios purchased by that shareholder immediately after the purchase of that share. For example, if a shareholder initially purchased $600,000 of shares of a Portfolio and two months later purchased an additional $600,000 of shares of the same or any other Portfolio (so that at the time of the second purchase the investor's total purchases amounted to $1,200,000) and then two years after the second purchase (and assuming for ease of illustration that there has been no change in net asset value of the shares) redeems $700,000 worth of shares, the shareholder will be deemed to be redeeming all $600,000 worth of shares purchased in the second purchase (for which after two years after the purchase there is no contingent deferred sales charge) and $100,000 worth of the shares purchased in the first purchase (for which at that time there is a 1% contingent deferred sales charge). If such shareholder redeemed only $400,000 worth of shares (rather than $700,000) and two days later redeemed an additional $200,000 worth of shares, both the initial $400,000 redemption and subsequent $200,000 redemption will be deemed to have been made out of the $600,000 worth of shares purchased in the second purchase (for which two years after the purchase there is no contingent deferred sales charge). Alternatively, if a shareholder initially purchased $200,000 of shares of

a Portfolio and 25 months later purchased another $200,000 worth of shares of the same or any other Portfolio and then one year after the second purchase redeemed $250,000 worth of shares (assuming again no dividends or distributions are paid on the shares and that there has been no change in the net asset value of the shares) the shareholder will be deemed to be redeeming all $200,000 worth of the shares initially purchased (for which a 1% contingent deferred sales charge will be imposed) and $50,000 of the shares purchased in the second purchase (for which a 1.5% contingent deferred sales charge will be imposed).

Applicant contends that the proposed CDSL is consistent with all provisions of the Act and that it is fair and in the best interest of its shareholders. Applicant believes that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate the Distributor for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicant asserts that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicant represents that the implementation and assessment of the CDSL will be fully disclosed in the applicable prospectus and that it will comply with Rule 22d-1 of the Act in all respects.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 31, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5549 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14974; File No. 812-6238]

Western Reserve Life Assurance Co.; Application and Opportunity for Hearing

March 7, 1986.

Notice is hereby given that Western Reserve Life Assurance Co. of Ohio (the "Company"), WRL Series Life Account (the "Series Account"), and Pioneer Western Distributors, Inc. ("PW Distributors"), referred to collectively herein as "Applicants", 201 Highland Avenue, Largo, Florida 33540, filed an application on October 30, 1985, for an order for the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting certain proposed transactions from the provisions of 6e-3(T)(c)(2) under the Act.[1] Applicants assert that, for the reasons set forth in the Application, the requested exemption involves technical and unforeseen matters under Rule 6e-3(T), the exemptive rule under the Act for separate accounts offering flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

Applicants state that the Company is a stock life insurance company organized under the laws of the State of Ohio and is admitted to do business in 48 states, the District of Columbia and in Europe under the Department of Defense authority. Applicants state the Company is the sponsor-depositor for the Series Account. Applicants state that the Series Account, a segregated investment account of the Company, has registered under the Act as a unit investment trust. Applicants state that the Series Account meets all conditions set forth in section (a) of Rule 6e-3(T) under the Act and was established for the purpose of funding individual flexible premium variable life insurance contracts ("the Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T).

The application states that PW Distributors, a registered broker-dealer, is the principal underwriter of the Contracts. The application states that each Sub-Account of the Series Account invests exclusively in shares of a particular Portfolio of the WRL Series Fund, Inc. (the "Series Fund").

[1] Applicants also requested an exemption from section 27(d) of the Act and subsection (b)(13)(v)(A) of Rule 6e-3(T). This request, however, will be withdrawn by an amendment to the application.

Applicants state that the Series Fund has registered under the Act as an open-end, diversified management investment company. Applicants state that the Series Fund is presently segmented into three portfolios. Applicants state that the Company is the investment adviser to the Series Fund, although it has entered into a sub-advisory agreement with Janus Capital Corporation.

According to the registration statement (File No. 33-506) that is incorporated by reference into the application, the Contracts are designed to give the contractowner ("Owner") maximum flexibility by permitting the Owner to vary the frequency and amount of purchase payments. Applicants state that a Contract's death benefit may, and its cash value will, increase or decrease based on the investment performance of the Sub-Accounts of the Series Account. Applicants state that the Contracts also allow the Owner to increase or decrease the Specified Amount under the Contracts, which allows the Owner to provide for changing insurance needs. The Applicants state that optional incidental insurance benefits are available by riders to a Contract.

Applicants request an exemption from paragraph (c)(2) of Rule 6e-3(T) to the extent that the Contract's Disability Waiver Rider (the "Rider") may not be deemed to meet the definition of "incidental insurance benefits" in that paragraph. Applicants state that the Rider provides that, in the event of disability of the insured, as defined therein, the Company will waive the monthly cost of insurance charge and any rider charges during the period of disability. Applicants state that the monthly cost of insurance charge can vary with the investment experience of the Series Account in certain respects. However, Applicants argue that the benefits, *i.e.*, the waiver of the monthly cost of insurance and rider charges, is predominantly a fixed benefit. Applicants represent that these charges are waived regardless of how much the cash value and the net amount at risk vary. Thus, Applicants submit that the Rider should be treated as "fixed" for purposes of Rule 6e-3(T). Applicants, therefore, request relief from Rule 6e-3(T)(c)(2), to the extent necessary, to permit the payment for the Rider to be deemed payment for an incidental insurance benefit.

Applicants represent that if and to the extent that Rule 6e-3(T) is amended to provide relief in terms different from any relief granted to them by order, they shall take all necessary steps to comply

with the final Rule 6e–3, to the extent Rule 6e–3 is applicable.

For the reasons stated above, Applicants submit that the requested relief involves "technical and unforeseen matters," and is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5550 Filed 3–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22981; File No. S7–433]

Joint Industry Plan; Order Approving Amendment to the Consolidated Tape Association Plan Relating to Regulatory Halt Periods

I. Background and Description of Amendments

The participants in the Consolidated Tape Association ("CTA") on January 20, 1986 submitted to the Commission, pursuant to Rules 11Aa3–1 and 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 under the Securities Exchange Act of 1934" ("CTA Plan").[1] The amendment alters the regulatory halt provisions of the CTA Plan, enabling the CTA Plan Processor to disseminate indications of interest immediately after the primary market terminates the regulatory halt and last sale information 15 minutes thereafter. The Commission has solicited public comment on this amendment.[2]

II. Approval of Amendment

The Commission received no response to its solicitation of comment. The Commission believes that the amendment will provide the investing public with faster access to market information, thereby contributing to the national market system objectives regarding dissemination of last sale information under sections 11A(a)(1)(C) and D) and 11A(a)3)B) of the Act. Accordingly, the Commission finds that approval of this amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

It is ordered, pursuant to section 11A to the Act, and Rules 11Aa3–1 and 11Aa3–2 thereunder, that the amendment to the CTA Plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(29).

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–5542 Filed 3–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22983; File No. SR–NYSE–86–9]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Extension of the Pilot Program for Procedures for Pricing Standard Odd-Lot Market Orders of the American Telephone and Telegraph Divestiture Issues

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 February 12, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension of a pilot program relating to procedures regarding the pricing of standard odd-lot market orders in the following issues: American Telephone and Telegraph Co., American Information Technologies Corporation, Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, and U.S. West, Inc. (hereafter referred to collectively as the "AT&T divestiture issues"). The pilot program was originally approved for a period of nine months, was subsequently extended another six months to February 21, 1985, and was subsequently extended for one year to February 21, 1986. At this time the Exchange is requesting an additional eighteen month extension of the pilot to August 21, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As explained in SR–NYSE–83–49, the purpose of the original nine-month pilot program was to provide a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in the AT&T divestiture issues. The Exchange observed in that filing that it believed the pilot program's odd-lot pricing procedures would be necessary to ensure maximum capacity for odd-lot order processing in the AT&T divestiture issues. The procedures specified in SR–NYSE–83–49 would remain in effect, without change, for the duration of the extended pilot program.

In SR–NYSE–84–30, the Exchange noted that "Prior to the expiration of the nine-month period, the Exchange expects either to submit a formal codification of the procedures, revised as appropriate based on the Exchange's experience with the pilot, or to request

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[1] *See* Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

[2] *See* Securities Exchange Act Release No. 22850 (January 31, 1986), 51 FR 5136.

an extension of the time period for the pilot pending further study and evaluation." In SR–NYSE–84–30, the Exchange requested a six-month extension of the pilot program pending further study and evaluation. In that filing, the Exchange noted that its member organizations were satisfied with the quality and timeliness of odd-lot executions, and with the timeliness of reports, in the AT&T divestiture issues. As of the date of this filing, member organizations continue to express satisfaction with the handling, processing, and execution of odd-lot orders in the AT&T divestiture issues.

At this time, the Exchange requests an additional eighteen month extension of the pilot program to continue to study the effectiveness and economy of this odd-lot procedure as it may be applicable to overall trading on the Exchange. In addition, the Exchange is currently evaluating the appropriateness of certain systems enhancements to provide for more efficient handling and processing of all odd-lot orders, and expects to complete this study during the extension.

During the eighteen month period, the Exchange will evaluate the appropriateness of making systems enhancements to the odd-lot execution process and expects to advise the Commission, at the conclusion of the pilot, whether formal changes to its odd-lot procedures will be proposed.

As noted above, the procedures specified in SR–NYSE–83–49 regarding odd-lot order processing for the AT&T divestiture issues would remain in effect unchanged for the duration of the extended pilot program.

(2) Statutory Basis

The proposed rule change provides for efficient execution, reporting, clearance, and settlement of odd-lot orders, and is consistent with those provisions of the Securities Exchange Act of 1934 (the "Act") which encourage the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See sections 11A(a)(1) and 17A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not justified in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing therof, in that the pilot program was scheduled to expire on February 21, 1986, and further extension of the pilot will permit the NYSE to evaluate the need for specific systems enhancements to the odd-lot execution process in connection with any future proposals to the Commission for changes to the NYSE's odd-lot procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 3, 1986.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 7, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–5555 Filed 3–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22968; File No. SR–PSE–85–37]

Self-Regulatory Organizations; the Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change

On January 9, 1986, the Pacific Stock Exchange, Incorporated ("PES" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's trade comparison and reconciliation process.

The proposed rule change was noticed in Securities Exchange Act Release No. 22818 (January 21, 1986), 51 FR 3540 (January 28, 1986). No comments were received on the proposed rule change.

The proposed rule change provides, among other things, that PSE member organizations that are clearing members of the Options Clearing Croporation ("OCC") may delegate trade checking authority to other member organizations and may make electronic display terminals available to floor members to facilitate such process. The proposal also rescinds a PSE requirement that member organizations who are clearing members of the OCC must maintain Exchange-approved offices. In addition, the proposed rule change revises the method of calculation for determining the amount of loss resulting from uncompared trades.

In its filing, the PSE states that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is intended to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1985).

[3] 15 U.S.C. 78f (1982).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: March 5, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-5556 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

March 6, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Chyron Corporation
Common Stock, $0.01 Par Value (File No. 7-8857)
The Coleman Company, Inc.
Common Stock, $1.00 Par Value (File No. 7-8858)
Dean Foods Company
Common Stock, $100 Par Value (File No. 7-8859)
International Technology Corporation
Common Stock, $1.00 Par Value (File No. 7-8860)
Kaneb Energy Partners Ltd.
Depository Units (File No. 7-8861)
Legg Mason, Inc.
Common Stock, $0.10 Par Value (File No. 7-8862)
Showboat, Inc.
Common Stock, $1.00 Par Value (File No. 7-8863)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1986, 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, DC 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.

John Wheeler,

Secretary.

[FR Doc. 86-5557 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 6, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Texas Air Corporation
Common Stock, $0.01 Par Value (File No. 7-8855)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1986 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, DC 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.

John Wheeler,

Secretary.

[FR Doc. 86-5558 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6182]

Issuer Delisting; Application To Withdraw From Listing and Registration; the New York Stock Exchange; Ticor; 9½ percent Sinking Fund Debentures Due 2008

March 6, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Ticor determined that because the securities are held of record by such a small number of holders (92 as reflected in the Form 15), the majority of the securities outstanding are held in institutional investors, and trading in the securities is minimal, continued listing of the Securities of the New York Stock Exchange is not warranted.

Any interested person may, on or before March 27, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Committee, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5554 Filed 3-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Jefferson County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, in cooperation with the Kentucky Transportation

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

Cabinet, intends to prepare an EIS for a proposed highway project located in eastern Jefferson County. The proposed action involves the construction of a new interchange with Interstate 64 to provide access to and from an industrial area. This 4-lane project begins south of I-64 in Jeffersontown, at the intersection of Watterson Trail (KY 1819) and Electron Drive and extends 4.2 miles northeast to its terminus at the intersection of Shelbyville Road (US 60) and Main Street in Middletown.

Possible alternates under consideration include (1) the do-nothing alternative, (2) alternate travel modes, (3) project postponement, and (4) seven design alternates on new alignment. These alternates involve different combinations of the various alignments.

Proposed Scoping Process: Public meetings and an Interdisciplinary Team Meeting have been held. The input received at the meetings was useful in determining what alternatives would be considered as viable for study in the draft environmental impact statement. No formal scoping meeting is scheduled. A design public hearing will be held.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, Federal Highway Administration, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602-0536, Phone (502) 227-7321, FTS 352-5468. To ensure that a full range of issues related to this proposed action are addressed and all significant impacts are identified, suggestions are invited from all interested parties. Comments or questions should be directed to the above person.

The Draft EIS is estimated to be ready for public review and comment in May 1986.

Issued on: March 7, 1986.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 86-5457 Filed 3-12-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Casper, WY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed improvement to a city street in Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Dean F. Berwick, Field Operations Engineer, P.O. Box 1127, Cheyenne, WY 82003, Telephone (307) 772-2005.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wyoming State Highway Department and the City of Casper, will prepare an environmental impact statement (EIS) on a proposal to improve one half mile of Beverly Street (Urban Route 4127) in Casper, Wyoming. The proposed improvement will reconstruct and widen six blocks of Beverly Street between the Chicago and Northwestern Railroad track and 4th Street to alleviate present congestion and accommodate forecasted traffic demands.

Alternatives under consideration are: (1) No action; (2) A one-way couplet composed of Beverly Street and Lennox Street; (3) Widening to four lanes with options to widen to the east side, the west side or both sides; and (4) A four lane divided street.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. A series of public meetings were held during the alternative formulation phase; therefore, no formal scoping meetings are planned at this time. A public hearing will be held after the draft EIS has been made available for public and agency review. Public notice will be given of the time and place.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: March 7, 1986.

Frederick L. Cooney, P.E.,

Division Administrator, Cheyenne, Wyoming.

[FR Doc. 86-5453 Filed 3-12-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Counties of Fairfax and Loudoun, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Counties of Fairfax and Loudoun, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone (804) 771-2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to provide for the widening of existing Route 28 to an eight-lane divided facility from the intersection of existing Interstate 66 and Braddock Road to Route 7.

The proposed project will allow for an increased traffic capacity to access the rapidly developing Route 28 corridor.

There are also three alternatives to the proposed project under consideration:

1. Null or No-Build Condition—which includes all elements of the Regional Transportation Plan with the exception of the proposed project.

2. Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

3. Traffic System Management—to evaluate the ability of non-major construction activities on the existing roadway network to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The DEIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: March 7, 1986.

George K. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 86-5458 Filed 3-12-86; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. USIA is requesting approval of an information collection using a form IAP–94, Travelers Funded by USIA, which has been approved previously by OMB clearance number 3116–0183, expiration 5/31/86.

DATE: Comments must be recieved by April 30, 1986.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–8676. And OMB review: Mr. Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: *Title:* Travelers Funded by USIA. Abstract: A report is required for submission to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee listing all individuals, with their organizations, who in the preceding five years made two or more trips involving foreign travel financed in whole or in substantial part by grants from USIA's Office of Private Sector Programs. The information must be obtained from grantees, which necessitates the information collection.

Dated: March 7, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–5564 Filed 3–12–86; 8:45 am]

BILLING CODE 8230–01–M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval for the renewal of form IAP–87, Update of Information on Exchange Visitor Program Sponsor, which was cleared previously by OMB and assigned clearance number 3116–0011, expiration 4/30/86.

DATE: Comments must be received by April 11, 1986.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485–8676. And OMB revew: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: Information on Exchange Visitor Program Sponsor. The USIA form IAP–87 is used by Exchange Visitor sponsors when they wish to change the name of their organization or change the names of the personnel involved or their telephone numbers. The form is also used as a quick means to order other forms or code books.

Dated: March 7, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–5565 Filed 3–12–86; 8:45 am]

BILLING CODE 8230–01–M

[Delegation Order No. 86–2]

Authority Delegations; Inspector General

Pursuant to the authority vested in me as Director of the United States Information Agency (hereinafter "the Agency") by Reorganization Plan No. 2 of 1977, the Accounting and Auditing Act of 1950 (Pub. L. 81–784 as amended), by Executive Order No. 12301 of March 26, 1981, by the Federal Managers Financial Integrity Act (Pub. L. 97–255), be Executive Order 12048 of March 27, 1978, and by Executive Order No. 12388 of October 14, 1982, I hereby delegate to the Inspector General the authority:

1. To conduct and supervise audits, inspections, and investigations relating to programs and operations of the Agency;

2. To provide leadership and coordination, and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, Agency programs and operations;

3. To keep the Director fully and currently informed about how well the Agency's programs and operations are being administered, problems and deficiencies existing in such programs and operations, and the necessity for and progress of corrective actions;

4. To recommend a candidate or candidates for the position of Assistant Inspector General for Audits who shall have the responsibility for supervising the performance of auditing activities relating to such programs and operations;

5. To recommend a candidate or candidates for the position of Assistant Inspector General for Inspections who shall have the responsibility for supervising the performance of auditing activities relating to such programs and operations;

6. To recommend a candidate or candidates for the position of Assistant Inspector General for Investigations and Management who shall have the responsibility for: (a) Supervising the performance of investigating activities relating to such programs and operations, and (b) providing overall direction, control, and coordination of the planning, policy and procedures, and administrative functions of the Office of the Inspector General;

7. To select in accordance with Agency regulations all other subordinate officers and supporting staff personnel to assist the Inspector General in the discharge of functions delegated hereunder;

8. To provide policy direction for and conduct, supervise, and coordinate audits, inspections, and investigations relating to the programs and operations of the Agency which are necessary and desirable, in the judgment of the Inspector General, and with particular regard to the activities of the

Comptroller General of the United States, in order to avoid duplication and ensure effective coordination and cooperation;

9. To recommend policies for, and conduct, supervise, or coordinate activities carried out or financed by the Agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting waste, fraud and abuse in, its programs and operations;

10. To recommend policies for, and conduct, supervise, or coordinate relationships between the Agency and other Federal agencies, State and local governmental agencies, and nongovernmental agencies with respect to all matters relating to (a) the promotion of economy and efficiency in the administration of, or the prevention and detecting of fraud and abuse in, its programs and operations administered or financed by the Agency, or (b) the identification of participants in such fraud or abuse;

11. To conform to standards established by the Comptroller General of the United States as they relate to the audit of Agency programs, activities, and functions;

12. To establish guidelines for determining when it shall be appropriate to use non-Federal auditors, and take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General of the United States;

13. To request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Order from any Federal, State, or local governmental agency or unit thereof;

14. To receive and investigate complaints or information from employees of the Agency or others concerning the possible existence of activities constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety;

15. To refer to the Federal Bureau of Investigation matters in need of further investigation as possible violations of Federal criminal or civil laws, and, in exceptional cases following consultation with the General Counsel, to refer matters for prosecutive review to the Attorney General;

16. To prepare and transmit, as requested, reports to Congress summarizing the activities of the Office;

17. To have prompt and unrestricted access to all records, reports, documents, papers, or other material existing within the Agency or available to the Agency which relate to programs and operations with respect to which the Inspector General has responsibilities under this Order, and report the circumstances to the Director whenever information or assistance requested is unreasonably refused or not provided in the judgment of the Inspector General;

18. To have direct access to the Director or the Deputy Director when necessary for any purpose pertaining to the performance of functions and responsibilities under this Order;

19. To represent the Agency on the Coordinating Conference of the President's Council on Integrity and Efficiency and evaluate the Agency's follow-up system on General Accounting Office recommendations that are accepted by the Agency;

20. To provide technical assistance in the Agency's effort to evaluate and improve internal controls and advise the Director whether the Agency's internal control evaluation process has been conducted in accordance with Guidelines for the Evaluation and Improvement of and Reporting for Internal Control Systems in the Federal Government issued by OMB in December 1982;

21. To prepare for and participate in international conferences and negotiations with respect to the functions delegated hereunder, in association with other elements of the Agency as may be appropriate, and with the assistance and participation of the General Counsel in all negotiations of consequence;

22. To exercise any authority or discharge any responsibility arising out of any existing interagency agreement between the United States Information Agency and the Department of State, or between either of the foregoing and any other agency or department, or component thereof, which agreement was concluded under functions delegated or transferred to the Director or to the Agency and is related to the authorities granted herein;

23. To enter into interagency agreements to further the discharge of responsibilities set forth herein;

24. To issue requisitions for personal property and services to be acquired by the Agency Procurement Executive, but not to make grants or acquisition contracts; and

25. To redelegate any authority granted herein together with the power of further redelegation.

Except as otherwise expressly provided, all delegations of authority to other officers of the Agency in force on the date of this Order and related to the exercise of functions and responsibilities herein granted to the Inspector General shall remain in force.

Notwithstanding any other provision of this Order, the Director may at any time exercise any function or authority delegated herein.

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to an in effect on the Date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or suspended.

This Order supersedes Delegation Order No. 83–10 of December 1, 1983 and takes effect immediately.

Dated: March 5, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86–5562 Filed 3–12–86; 8:45 am]

BILLING CODE 8230–01–M

English-as-a-Foreign Language, English-as-a-Second Language Institute, South Africa

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) plans to sponsor an English-as-a-Foreign Language (EFL)/ English-as-a-Second Language (ESL) Summer Institute for twenty-five South African secondary school teachers and teacher trainers. Participants will be individuals involved with English teaching in black education and will be drawn from schools, teacher training institutions, and the non-formal sector. Minimum qualification will be a two-year teacher training diploma beyond secondary school. Very few (if any) participants will have studied in or have visited the United States. USIA is asking for detailed proposals from U.S. institutions of higher education which have an acknowledge reputation in the field of EFL/ESL and special expertise in administering cross-cultural programs.

The general objective of the Institute is to support and encourage the upgrading of secondary education for blacks in the field of teaching English. The program should be designed for secondary-level classroom teachers with responsibilities in curriculum planning and course material development, and teacher trainers with responsibilities in supervision and staff training.

Time Frame and General Description

The Institute should be programmed to last four and one half weeks, beginning on or about July 8 and ending on or about August 11, 1986. Following

the program at the University, participants will have a two-week professional/cultural tour of the U.S. which will be handled by a separate contract agency.

The applicant is asked to design a program with the emphasis on methodology, supervision and teaching techniques in EFL/ESL which will meet the special needs of secondary school teachers/teacher trainers, as well country specific needs. It should start with an orientation to the United States and the university community. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practicums. Lengthy lectures should not be the usual format. The academic program should be complemented by ample time for interaction with American students, faculty, and administrators, and the local community, to improve the participants' understaning of the United States.

In this regard, the Institute should incorporate cultural features such as community/cultural activities, educational tours, home visits, sports, civic events, or other opportunities for interacting with Americans.

Program Objectives

Some specific areas to address in the Institute are:

1. English-as-a-Foreign Language/English-as-a-Second Language training in theory and practice, methodology, and supervision; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English.

2. Language enhancement in communication, pronunciation, syntax, writing, and reading.

3. Enhancement of pedagogical skills, curriculum development, development of teacher-made materials; development of curriculum materials (during the Institute) which can be used in home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers; training teachers to handle individual and small group needs in classes with fifty or more students.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training service programs for teachers; designing and conducting workshops to train EFL/ESL teachers.

6. Visits to on-going EFL-ESL classes in local educational or community centers, providing participants with opportunities to practice EFL/ESL skills.

7. Involving participants in American culture through community/clutural activities. This must include interaction with a variety of ethnic groups.

8. Evaluation of various components of the Institute as well as the entire Institute.

A two-week professional/cultural tour of selected sites in the United States (beginning in Washington) will follow the Institute. A separate contract agency will be responsible for the post-Institute tour, and will handle all programming and logistics, management, and expenses of the tour. USIA will inform the Institute grantee of these arrangements at the time of the grant award.

The university hosting the Institute will be expected to provide consultation and advice to the organization responsible for programming the post-Institute tour. (During the post-Institute tour participants will have diverse opportunities to interact with Americans; visit various EFL/ESL programs to supplement those of the Institute; discuss civic and local affairs with state and local officials; and tour state or national cultural and historical sites. The final two to three days will culminate with debriefing sessions at the port of departure.)

Requirements

All Institute programming and domestic travel logistics and on-site university arrangements will be the responsibility of the university, including enrolling participants in Teachers of English to Speakers of Other Languages (TESOL). USIA will be responsible for all communication to and from the U.S. Embassy in South Africa, and will provide the university with participants' biodata and itineraries, and offer any advice or guidance the university might find useful. USIA will also handle travel arrangements from South Africa to host institution. When participants arrive at the host institution they should be met by the university program staff.

If your university decides to sumit a proposal, it should provide the following:

1. A detailed plan in response to the needs and priorities outlined above. The detailed narrative should outline the structure and organization of the Institute, including a day-by-day agenda. It should also include a proposed list of appropriate books, readings or preparatory materials which would be sent to participants before their departure for the U.S., providing them with the topics to be discussed, as well as practical suggestions for preparing for their stay at the university.

2. Current *curricula vitae* of proposed faculty and consultants.

3. A *specific* and *detailed line item budget* for both *administrative* and *program* costs. The budget should elaborate and include each of the following:

a. Tuition, salaries, and benefits or services (including support staff) for the EFL/ESL program plus overhead costs;

b. Housing and board at the university, for example, faculty residences, graduate dormitories, home stays, or other if necessary.

c. Transportation costs for *all* travel during the course of the on-site University Institute (International travel arrangements will be made by USIA and U.S. Embassy in South Africa, and other domestic travel will be handled by the agency programming the post-Institute tour);

d. Miscellaneous costs such as daily maintenance allowance ($10.00 per participant), honorria, film rental, certificates, cultural activities, support material, supplemental book allowance ($150 per participant), and TESOL membership fees.

e. University contributions or cost sharing and/or private sector contributions; and

f. Indirect costs which should be held to a *minimum*.

For your guidance, our experiences with similar Institutes would indicate that the cost to the U.S. Government for this Institute should probably not exceed $90,000. Based on the final number of participants, some modifications may be necessary following the grant award.

All applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for the academic and cross-cultural components of the Institute. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans.

A panel of senior USIA officers experienced in EFL/ESL, the exchange of international educators, and African affairs will use the following criteria in evaluating proposals:

1. Quality, creative, imaginative design of the EFL/ESL Institute.

2. Clear evidence of the ability to deliver a substantive academic and pedagogical EFL/ESL program.

3. Demonstrated high quality EFL/ESL programs—experience with South Africa is desirable.

4. Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

5. The experience of professionals and staff assigned to the Institute.

6. The ability to tap local and state resources for the orientation and Institute.

7. Access to EFL/ESL professionals and programs from various universities and organizations.

9. A quality evaluation at the conclusion of the Institute.

10. *Cost-effectiveness.*

Applicants should submit 10 copies each of a 500 word summary, a proposal not to exceed 15 typed double-spaced pages, the detailed budget, and a completed and signed application cover sheet (enclosed). Final proposals must be received by close of business April 28, 1986. The proposal package should be submitted to: Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, Attn: E/AEA, U.S. Information Agency, 301–4th Street, SW., Room 849, Washington DC 20547.

We will provide the grantee with any other participant related information prior to the beginning of the program so adjustments can be made to suit participant needs. If you have any questions, please contact Dr. Winnie D. Emoungu, E/AEA, Bureau of Educational and Cultural Affairs, USIA, 301 4th Street, Washington, DC 20547; or you may call her at (202) 485–7355.

Dated: March 5, 1986.

Curtis Huff,

Chief, Academic Exchanges, African Branch.

[FR Doc. 86–5563 Filed 3–12–86; 8:45 am]

BILLING CODE 8230-01-M

English as a Foreign Language Institute for Togo

The Bureau of Educational and Cultural Affairs of the United States Information Agency plans to sponsor an *English as a Foreign Language (EFL) Summer Program* for *fifteen* English teachers, inspectors, curriculum specialists, and supervisors from Togo. The six and one-half week program will be conducted in July and August 1986, beginning either the week of July 7th or 14th. The final date will depend upon consultations between the United States Information Agency (USIA) office in Lome, Togo and the schedules of the institution which receives the grant.

The summer program will be a component of the Agency's Teacher-Text-Technology (TTT) Initiative which is designed to support the efforts of African countries to upgrade secondary education and related teacher training in the fields of English, math, and science. During the summers of 1984 and 1985, specialists from Togo participated in five and six week EFL programs. Based upon these successful summer programs, the Bureau of Educational and Cultural Affairs will sponsor a program with the following major components.

The summer program will have three distinct components. One component will be a university EFL Institute which will provide an intensive *four* week period of plenaries, presentations, workshops, and practicums designed to meet the special needs of fifteen English teachers, supervisors, curriculum specialists, and inspectors. During the Institute, the host university will incorporate cultural features as well as academic sessions and practicums.

A second component will be a *two* week study tour and practicum at the Northwest Regional Educational Laboratory (NWREL) in Portland, Oregon. The program at NWREL should supplement the activities of the university Institute.

The third component will be a *three* to *four* day educational and cultural visit to New York City. During this period final debriefings will be held with USIA officers. If the EFL program is located in New York, the university must arrange a three or four day visit to another east coast city.

The grantee will be expected to handle *all* international and domestic travel and logistics, on-site university arrangements, coordination of activities at the NWREL, and the educational and cultural tour. The four week EFL Institute will orient the Togolese participants to university resources and those in the surrounding community. While the overall university Institute should address general EFL issues for all fifteen participants, it must also design particular workshops and academic lectures to address needs of various types of participants. The USIA is especially concerned that a relative balance be maintained among lectures, workshops, and practicums. Extensive lectures should not be the usual format.

Information from Togo indicates that the fifteen participants will likely be English "junior secondary and senior secondary" teachers, inspectors, and teacher trainers or supervisors. The participants have a B.A. or a diploma in TEFL; some have received training from non-Togolese sources in Togo such as the local USIA branch or the British Council Technical Assistance Program. Regular classes may have forty or more pupils; and over 100 teachers may be involved in one EFL training workshop. Upon their return to Togo, some inspectors and teacher trainers will help design an intensive program for teacher training to cover the entire country. The inspectors and supervisors spend approximately one-half the time with school inspection and training; upon their return, about one-quarter of their time will be devoted to administration and the remaining portion with teacher training. Inspections for individual teachers occur once every two to five years with the schools receiving the results two to four weeks later.

For participants, appropriate plenary and joint academic seminars and workshops should be undertaken on topics such as communication, psycholinguistic understanding, microteaching, and traditional and contemporary audiovisual equipment and material for EFL. Language enhancement and practical classroom training are also particular needs, in some cases. Administration and supervision, evaluation, and teacher training are special needs for the Togolese. The substantive content and pedagogical methods should be blended with ample time for interaction with American students, faculty, administrators, and the local community to develop and enhance linguistic skills and experience English as a living language. In this context, the host university should discuss plans for continually incorporating cultural components in the EFL Institute—educational tours, home visits, sports, civic events, and sightseeing.

Throughout the entire EFL program African participants should have diverse opportunities to develop their linguistic skills; have extensive opportunities to interact with various American minority groups in their local milieux; discuss civic affairs with state and local officials; and tour state and national historical and cultural sites.

If your institution decides to submit a proposal, it should provide a detailed plan in response to the above needs. Insofar as possible, outstanding professionals from other universities, including those representing minority groups, should be involved. The professionals may be in either linguistics applied to EFL or aspects of American culture.

The proposal must clearly demonstrate quality management capabilities for the orientation, university EFL Institute, the NWREL, and the educaional and cultural tour. The EFL specialists may wish to work with their university Office of International Programs on some

administrative components. At least one escort should be at NWREL; and two escorts (which may include the director of the overall EFL program) should assist the group in New York. The overall quality and effectiveness of the program hinges upon good administrative and managerial capabilities to enhance positive interactions between African educators and Americans.

The program should include a two to three day orientation to the USA and the university community. Some specific areas to address in the overall EFL program are:

(1) Developing and evaluating standard and flexible curriculum materials and texts;
(2) Providing creative instruction to enhance a set curriculum designed to prepare students for standard examinations;
(3) Designing pedagogical training to develop skills in classroom teaching and management—including current TEFL methodology;
(4) Designing, administering, and evaluating diagnostic tests;
(5) Arranging teacher training and supervisory sessions to handle individual student and small group needs in classes with forty or more students;
(6) Presenting language enhancement sessions to improve the participants' language skills: pronunciation, syntax, and reading;
(7) Visiting on-going EFL or ESL classes in local education or community centers which present African participants the opportunity to practice EFL skills;
(8) Developing curriculum material at the university Institute and the regional EFL laboratory and centers; and
(9) Designing and conducting workshops to train EFL teachers;
(10) Conducting observation and evaluation sessions for classroom teachers;
(11) Organizing and conducting training sessions for supervisors, particularly through workshops and other practicums; and
(12) Observing foreign language classes in American public or private schools.

A panel of senior USIA officers experienced in EFL, the exchange of international educators, and African affairs will evaluate the proposals based on the above general considerations and the following specific criteria:

(1) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL program;
(2) Demonstrated high quality EFL programs—experience with Francophone Africa is desirable;
(3) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;
(4) A quality evaluation at the conclusion of the university EFL Institute and after the overall program;
(5) The experience of professionals and staff assigned to the institute;
(6) The ability to tap local and state resources for the university Institute, including the orientation and cultural component;
(7) Access to EFL professionals and programs from various universities;
(8) The ability to arrange a one week program at regional or metropolitan laboratories and centers in another geographical area;
(9) The design and plans for implementing the educational and cultural tour in New York; and
(10) *Cost effectiveness.*

The proposal should provide a *specific* and *detailed line item budget* for *both administrative* and *program costs*. The budget should elaborate and include each of the following:

(1) Tuition, salaries, benefits, or services (including support staff and escorts—escorts at same per diem rates as participants) for the entire EFL program plus overhead costs;
(2) Housing and board at the university, NWREL, and in New York, (for example, faculty residences, graduate dormitories, home stays, and hotels);
(3) Transportation costs for *all* travel during the course of the overall EFL program (this includes international travel from Lome, Togo and domestic travel);
(4) Miscellaneous costs such as daily maintenance allowance ($20 per participant), honoraria, film rental, certificates, cultural activities, support material, and supplemental book allowance ($200 per participant);
(5) University contributions or cost sharing and/or private sector contributions; and
(6) *Indirect costs, which should be held to a minimum.*

Our experiences with similar institutes indicate that the cost for this Institute *must not exceed* $140,000. Based upon the final number of participants, some budget modifications may be necessary following the award.

Applicants should submit *10* copies each of a 500 word summary, a proposal not to exceed 20 typed double-space pages including all attachments such as resumes, and the detailed budget. The budget must be signed by the appropriate university budget and/or contract office.

Final proposals must be *received* by close of business on April 7, 1986 for funding in May 1986. Proposals should be submitted to: Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th St., SW., Washington, DC 20547.

We will provide the grantee with biographical and related information on participants prior to the beginning of the program so adjustments can be made to suit participants' needs. The program will likely begin July 7 or 14, 1986. If you have questions, please contact Dr. Beverly Lindsay, TTT Coordinator, Bureau of Educational and Cultural Affairs, USIA, 301 4th St., SW., Washington, DC 20547; or you may call her at 202–485–7335.

Dated: March 10, 1986.

Curtis Huff,

Chief, Academic Exchanges, African Branch.

[FR Doc. 86–5566 Filed 3–12–86; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Career Development Committee: Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101 will be held in the Crystal 5 Room of the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202, April 2 through 4, 1986 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–389–2317) prior to March 28, 1986.

The meeting will be closed from 9 a.m. to 5 p.m. on April 2 through 4 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of

personal privacy. Accordingly, closure of the portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–389–2317).

Dated: March 5, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–5441 Filed 3–12–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 49
Thursday, March 13, 1986

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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Affiliation of MidAmerica Commodity Exchange with the Chicago Board of Trade.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-5597 Filed 3-11-86; 10:51 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., March 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-5598 Filed 3-11-86; 10:52 am]
BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Friday, March 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters.

Application of First Financial Mutual Savings Bank, an operating noninsured savings association located in Flourtown, Pennsylvania, for Federal deposit insurance.

Memorandum regarding the Corporation's assistance agreements with insured banks.

Resolution re: Amendments to the delegations of authority relating to the approval of incentive awards.

Resolution re: Amendments to the delegations of authority relating to administrative expenses and to liquidation and receivership activities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: March 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-5603 Filed 3-11-86; 11:17 am]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:07 p.m. on Thursday, March 6, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Tekamah, Tekamah, Nebraska, which was closed by the Senior Deposit Deputy Comptroller for Bank Supervision , Office of the Comptroller of the Currency, on Thursday, March 6, 1986; (2) accept the bid for the transaction submitted by Nebraska National Bank, Omaha, Nebraska; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The City National Bank of Plainview, Plainview, Texas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, March 6, 1986; (2) accept the bid for the transaction submitted by First National Bank of Plainview, Plainview, Texas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-5604 Filed 3-11-86; 11:18 am]
BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86-5039.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 13, 1986, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Revised Draft AO 1986-

6—Jan W. Baran, Fund for America's Future, Inc.

* * * * *

DATE AND TIME: Tuesday, March 18, 1986, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, March 20, 1986, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–5654 Filed 3–11–86; 3:34 pm]

BILLING CODE 6715–01–M

6

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, March 20, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED:

Docket No. 36180—
San Antonio, Texas, Acting By and Through Its City Public Service Board
Finance Docket No. 30186—
Tongue River Railroad Company—Rail Construction and Operation—In Custer, Powder River, and Rosebud Counties, MT.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275–7252.

James H. Bayne,

Secretary.

[FR Doc. 86–5503 Filed 3–10–86; 2:22 pm]

BILLING CODE 7035–01–M

7

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 2:30 p.m., Monday, March 17, 1986 (Rescheduled from February 18, 1986).

PLACE: 1325 G Street NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376–2623.

AGENDA:

I. Appointment of Temporary Chairman
II. Election of:
  Chairman
  Vice Chairman
III. Approval of Minutes, January 8, 1986
IV. Executive Director's Activity Report
V. Audit Committee Report
VI. Treasurer's Report

Winnie D. Morton,

Assistant Secretary.

[FR Doc. 86–5543 Filed 3–10–86; 4:23 pm]

BILLING CODE 7510–01–M

8

POSTAL SERVICE BOARD OF GOVERNORS

By telephone vote on March 7, 1986, a majority of the members contacted and voting, the Board voted to add to the agenda for the closed session on Monday, April 7, 1986, the following item:

Consideration of a proposed capital investment for long-life vehicles.

The Board determined that pursuant to section 552(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirement of the government in the Sunshine Act because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 86–5644 Filed 3–11–86 2:22 pm]

BILLING CODE 7710–12–M

Federal Register

Thursday
March 13, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 262, 263 and 271

Hazardous Waste Management System: Exports of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 263, 271

[FR 2939-7]

Hazardous Waste Management System; Exports of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). These amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) require EPA to promulgate rules to implement new section 3017 regarding exports of hazardous waste. Accordingly, to implement section 3017 and improve upon its existing program, EPA is today proposing and requesting public comment on revisions to its current regulations governing exports of hazardous waste. Consistent with HSWA, the regulations proposed today would prohibit the export of hazardous waste unless certain requirements are met. These requirements include advance written notification to EPA of the plan to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the receiving country's written consent to the manifest accompanying each waste shipment, and conformance of the shipment to such consent. These requirements would apply except to the extent EPA promulgates any different requirements set forth in any international agreement the United States may enter into with a receiving country which establishes different notice, export and enforcement procedures for the transportation, storage and disposal of such waste. In addition to provisions concerning the preceding requirements, today's proposal includes provisions governing special manifest requirements, exception reporting, annual reporting, recordkeeping, transporter responsibilities, confidentiality, and State authorization.

DATE: Comment on this proposal will be accepted until April 28, 1986. The proposed Parts 260, 262, 263 and 271 standards applicable to exports of hazardous waste will be effective 30 days after the date of publication in the **Federal Register** of the final rules.

ADDRESSES: Comments on this proposal should be submitted to Carolyn K. Barley at the address cited below. The official record for this rulemaking is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for review from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202) 382-2217, Office of Solid Waste, Room S-257 (WH-563), 401 M Street SW., Washington, D.C. 20460 or the toll-free RCRA Hotline: 800/424-9346 (in Washington, D.C., call 202/382-3000).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3002, 3003, 3006, 3007, 3008 and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6922, 6923, 6926, 6927, and 6937.

II. Background

A. Existing Export Regulations

On February 26, 1980 EPA promulgated regulations under the Resource Conservation and Recovery Act of 1976 (RCRA) governing exports of hazardous waste. 45 FR 12732, 12743-12744 (codified at 40 CFR Parts 262 and 263). These regulations place certain requirements on generators and transporters regarding exports of hazardous waste in light of the special circumstances involved in international shipments. Since RCRA did not expressly address exports of hazardous waste, these provisions were promulgated primarily under sections 3002 (Standards Applicable to Generators of Hazardous Waste) and 3003 (Standards Applicable to Transporters of Hazardous Waste) of RCRA and are limited in scope.

Essentially, current Subpart E of Part 262 requires any person exporting hazardous waste to comply with the requirements generally applicable to generators such as initiating the manifest, using proper labels and containers, offering placards, and complying with the recordkeeping and reporting requirements of RCRA. A generator must also notify EPA before the initial shipment of hazardous waste to each foreign country in a calendar year. This notification requirement was established to allow EPA to inform a foreign country or an intended export and to assist EPA in tracking exports of hazardous waste. The content of this notification, however, is minimal: A generator must only identify the waste and consignee. Notification of the quantities of waste, frequency of shipment, or the manner in which such waste will be transported to, treated, stored or disposed in the receiving country is not required. Current regulations also do not require prior written consent of the receiving country prior to shipment. Accordingly, under current regulations, EPA has no authority to prohibit the export of hazardous waste if the foreign country objects to its receipt; any action to stop the shipment must be taken by the receiving country. As a further means of tracking the waste, Subpart E regulations also require that the generator require the consignee to confirm delivery of the waste. Special manifest and exception reporting requirements are also included in Subpart E.

In addition to the export provisions set forth in Subpart E and elsewhere in Part 262 (Standards Applicable to Generators), certain requirements regarding exports of hazardous waste are also included in Part 263 (Standards Applicable to Transporters of Hazardous Waste). These include a requirement that the transporter note on the manifest the date the waste left the United States, sign and retain one copy

of the manifest, and return a signed copy to the generator. Transporters must also deliver the entire quantity of waste to the place outside the United States designated by the generator unless the generator directs otherwise and the manifest is revised. These requirements were established to further enable EPA to track exports of hazardous waste.

B. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program. Among other things, they add a new section 3017 to RCRA specifically addressing hazardous waste exports. In enacting this provision, Congress was concerned that EPA's existing notification system was inadequate to address the present and potential environmental, health, and foreign policy problems which occur when wastes are exported to nations which do not wish to receive them or lack sufficient information to manage them properly. *See, e.g.*, S. Rep. No. 98–284, 98th Cong., 1st Sess. 47 (1983). Congress also expressed concern that the failure to effectively regulate exports may be creating a major loophole for circumvention of U.S. hazardous waste laws. 129 Cong. Rec. H8163–H8164 (daily ed. Oct. 6, 1983) (Statements of Rep. Mikulski and Rep. Florio). Thus, Section 3017 expands current notification requirements and requires prior written consent by the receiving country before the shipment can take place.

Generally, subsection (a) of section 3017 provides that, beginning 24 months after enactment of HSWA, the export of hazardous waste is prohibited unless the person exporting such waste: (1) Provides notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies each waste shipment; and, (4) the shipment conforms to the terms of such consent. In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an international agreement establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste and the shipment conforms to the terms of the agreement.

Subsection (c) of section 3017 sets forth the requirement to notify the Administrator before the shipment leaves the United States and specifies the information to be included in such notification. Subsections (d) and (e) establish procedures for obtaining the receiving country's consent to accept the waste. Subsection (f) addresses the effect of an international agreement on the requirements of section 3017. Subsection (b) requires the Administrator to promulgate regulations necessary to implement section 3017. Subsection (h) authorizes the Administrator to establish other standards for the export of hazardous waste under sections 3002 and 3003 of RCRA. Finally, Congress also amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of HSWA contains one additional requirement with which exporters must comply immediately: Subsection (g) requires any person exporting hazardous waste to file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year. EPA recently codified this statutory requirement in its export regulations. 50 FR 28702, 28746 (July 15, 1985).

C. Proposed Regulations

Today EPA is proposing amendments to its hazardous waste export regulations to implement section 3017 and improve upon its current program governing exports. New Subpart E of 40 CFR Part 262 would address only exports of hazardous waste and replace existing regulations governing such exports now contained in that Subpart. Since Subpart E currently also includes special requirements governing imports of hazardous waste and the disposition of waste pesticides by farmers, these provisions would be moved to new Subparts F and G respectively with no substantive changes. Amendments are also proposed to 40 CFR Parts 260 regarding confidentiality, 263 pertaining to transporters of hazardous waste, and 271 with respect to State authorization.

III. Detailed Discussion of Proposed Regulation

The following is a detailed section-by-section discussion of the proposed changes to the export regulations.

A. Applicability [§ 262.50]

This section describes the applicability of Subpart E. Subpart E requirements would be applicable to exports of hazardous waste. As discussed more fully below, the term "exporter" is proposed to be defined as the person required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. As such, exporters would be required to comply not only with the special requirements of Subpart E but also with Part 262 requirements applicable to generators (except to the extent Subpart E specifically provides otherwise).

This section also provides that the requirements of Subpart E apply to all exports of hazardous waste unless an international agreement is entered into between the United States and a receiving country which provides for different requirements. As the U.S. government has yet to enter into any such agreements, § 262.58 is proposed to be reserved to set forth any requirements placed on private parties by international agreements which are different from those required by the proposed regulations.

B. Definitions [§ 262.51]

Current regulations do not include a definitional section. This section has been added to provide definitions of new terms used in implementing section 3017 and for purposes of clarity.

1. "Receiving Country"

Congress did not define the term "receiving" country in enacting section 3017. Accordingly, EPA has the discretion to define that term to best effectuate Congressional intent. EPA's interpretation of this term is important because section 3017 requires prior consent of the "receiving country" to accept a hazardous waste; otherwise the export cannot take place. This prior consent requirement is the key element of new section 3017.

EPA believes that under most circumstances there will be only one foreign country involved in an export transaction: The country actually accepting the waste for purposes of its ultimate disposition in that country. However, circumstances may arise where a hazardous waste is transported through or temporarily stored for a short period (for example, at a loading dock or transfer facility) in another country en route to its final destination. Under the

latter circumstances, the question arises as to what constitutes the "receiving country" for purposes of obtaining consent to accept the shipment.

The term "receiving country" could be limited to the first country through which the waste travels or in which a waste may be temporarily held in the course of transportation even if ultimately destined for another country. Under this theory, once the waste enters the initial foreign country, it would then be the responsibility of that country to regulate any further export of such waste. Thus, consent would only be required from the initial country the waste enters. On the other hand, the term "receiving country" could include both transit countries and the country ultimately receiving the waste thus requiring consent from all countries involved. Finally, the term "receiving country" could be limited to the country of ultimate destination of the waste.

After considering the preceding alternatives, EPA proposes to define the term "receiving country" to mean only the foreign country of ultimate destination of the waste. Thus, consent must be obtained from the country in which the hazardous waste ultimately will be treated, stored or disposed. Consent would not be required from countries through which a shipment is transported or in which a shipment is temporarily held in the course of transportation to its ultimate destination. EPA realizes, however, that there may be limits to an exporter's knowledge of the ultimate destination of the waste. Accordingly, if the exporter does not know and cannot reasonably ascertain the country of ultimate destination, the receiving country would be the last country to which the waste will be sent that is known to the exporter.

EPA believes this proposed definition best reflects Congressional intent. It does not appear as though Congress contemplated that consent be obtained from both transit countries and the country ultimately handling the waste. The statutory language itself refers to "receiving country" not "receiving countries." Furthermore, section 3017 specifically requires exporters to notify EPA of the name and address of the "ultimate" treatment, storage or disposal facility. This requirement is indicative of Congressional concern with the "ultimate" destination of the waste. Moreover, Congressional discussions leading up to the enactment of section 3017 focus on the "dumping" or "disposal" of hazardous waste in unsuspecting foreign countries as the activity of primary concern, not the transportation through or temporary storage in a foreign country en route to its final destination.[1] *See, e. g.*, 129 Cong. Rec. H8163–8164 (daily ed. October 6, 1983) (Remarks of Rep. Mikulski and Rep. Florio). EPA believes that requiring consent only from the country actually accepting the waste for purposes of its ultimate disposition also best serves Congressional intent to impose a minimum of additional regulatory burdens on U.S. generators and administrative burdens on EPA while establishing a more comprehensive and responsible export policy. *See* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Sen. Mitchell).

EPA also rejected the alternative of limiting the meaning of the term "receiving country" to the first foreign country the waste may enter or in which it may be temporarily held in the course of transportation to its final destination. Again, Congress specifically requires notification of the "ultimate" treatment, storage or disposal facility thereby indicating an intent to ensure consent by the country handling the "ultimate" disposition of the waste. And, as noted above, Congressional discussions leading up to HSWA also focused on the actual "disposal" of the waste. Moreover, EPA does not believe it appropriate to relinquish authority over the export of such waste at the point it simply enters another country in the course of transportation where it is known that such waste will ultimately be disposed of elsewhere. Were "receiving country" defined in such a limited manner, exporters could avoid consent requirements of countries to which the waste is ultimately being sent simply by rerouting the waste through another country. EPA especially requests comments on its definition of the term "receiving country."

2. "Consignee"

EPA has chosen to use the term "consignee" to refer to the "ultimate" treatment, storage or disposal facility to which the hazardous waste will be sent in the receiving country. The place of ultimate destination of the waste is to be distinguished from a facility at which any short term storage of the waste might occur incidental to transportation (e.g., at transfer facilities, loading docks). Thus, for example, if a waste is being exported to London via Portsmouth and the waste may be held temporarily in Portsmouth awaiting transportation to London, the consignee would be the facility to which the waste is being sent in London. The type of storage incidental to transportation which EPA tends to distinguish from the "ultimate" destination of the waste is similar to that type of storage discussed in the preamble to the rule clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. *See* 45 FR 86966 (Dec. 31, 1980). However, for purposes of determining who is the consignee, as between a temporary storage facility at which the waste may be stored incidential to transportation and the ultimate destination of the waste, no time limit on the length of such storage is being proposed as is the case in the rule referenced above. EPA believes it would be extremely difficult, if not impossible, due to unforeseen events occurring in transit abroad, for an exporter to know prospectively whether a shipment might be stored, for example, for more than ten days at a storage facility in the course of transportation and would thus become the "consignee." Accordingly, the consignee is the facility of ultimate destination of the waste and is not a temporary storage facility where a waste may be stored for a short period of time incidental to transportation.

3. "Transit country"

A definition of transit country is included in light of EPA's proposal, discussed in detail below, to provide notification to transit countries. A transit country is any foreign country through which a hazardous waste passes en route to a receiving country.

4. "EPA Acknowledgment of Consent"

The "EPA Acknowledgment of Consent" is defined as the cable prepared by the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent. This cable will be transmitted to EPA via the Department of State in Washington and hence to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. As explained more fully below, EPA proposes to use this document to constitute the "consent" of the receiving country for purposes of section 3017, as opposed to a reproduction of the actual communication from the receiving country, for purposes of uniformity, to

[1] As discussed in detail below, however, EPA is proposing that the United States notify transit countries pursuant to the authority of section 3017(h), although consent will not be required. EPA believes that such notification is important from a foreign policy perspective and that, in light of the nature of the activity occurring in transit countries, notification alone is appropriate and sufficient.

provide an English translation to the exporter of the terms and conditions of consent, and to allow expeditious transmission of consent telegraphically to expedite communication and meet the statutory time frames for transmitting consent to the exporter.

5. "Exporter"

Section 3017 requires "any person" who exports hazardous waste to comply with the notification, consent, and reporting requirements of that section. EPA believes that several persons could be involved in a single export transaction (e.g., a generator, transporter, and a broker). The statutory language, however, does not specify which of such parties should, for example, provide the notification information to EPA, receive the EPA Acknowledgment of Consent, and attach a copy of such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. In order to avoid confusion as to which party is responsible for specific export requirements and avoid duplicative notification, EPA proposes to place the primary statutory responsibilities for exports on a single party in each transaction.

EPA thus proposes to define the term "exporter" to be the person who is required to prepare the manifest in accordance with 40 CFR Part 262, Subpart B for a shipment of hazardous waste which specifies a treatment, storage, or disposal facility in the receiving country as the facility to which the waste will be sent. EPA believes that the person preparing the manifest for such shipments is in the best position to provide EPA with the notification information, receive the EPA Acknowledgment of Consent, attach such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)), and ensure that the shipment initially conforms with the terms and conditions of the receiving country's consent. Such party is often in the best position to know the types and quantities of the waste to be exported. Generally, such party will have contracted with the consignee for receipt of the waste and will know the name of the consignee and be most able to obtain information on the manner in which the waste will be handled. Because such party will be preparing the manifest (or shipping paper for exports by rail or water (bulk shipment)), he should also know the details of transportation to the receiving country. And, because he will be initiating the shipment, he should also be in the best position to receive and attach the EPA Acknowledgment of Consent to the manifest accompanying the waste shipment, and ensure initial compliance with the terms of the EPA Acknowledgment of Consent.

Under the proposed definition, an "exporter" could be a generator as defined in 40 CFR 260.10 or other person required to assume generator responsibilities, i.e., a transporter who mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container pursuant to 40 CFR 263.10(c) or the owner or operator of a treatment, storage or disposal facility who initiates a shipment of hazardous waste pursuant to 40 CFR 264.71(c) or 265.71(c). Current regulations for exports place notification requirements on generators. The proposed regulations simply clarifies that an exporter is a generator or other person required to assume generator responsibilities such as provided in 40 CFR 263.10(c), 264.71(c), and 265.71(c).

EPA considered the alternative of defining "exporter" to be "any person" who intends to export a hazardous waste. Under such a definition, all parties involved in the export, the generator (or person assuming generator responsibilities), transporter, and any export broker would be required to comply with the exporter requirements and could be held liable for failure to comply with such requirements. Similar treatment has been afforded generators where several parties meet the definition of generator. *See* 45 FR 72024, 72026 (Oct. 30, 1980). Under such a definition, EPA would expect one party, however, to assume and perform particular duties on behalf of all the parties. Guidance on who the agency would prefer to assume such responsibilities would be provided in the preamble. Enforcement actions, could, however, be taken against all parties for any violation where equitable and in the public interest.

This option was rejected because EPA believes that it would be difficult to define the point at which the "intent to export" would occur. The most tangible evidence of such "intent" is the point at which a manifest is prepared specifying a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Only at that point does it become clear that an export will occur. Moreover, EPA believes that unlike in the situation governed by the rule noted above, a particular party, the generator (or person required to assume generator responsibilities) stands out as the predominant party in all cases. In addition, in the case of exports, EPA believes its proposed definition would cause less confusion and delay and that certain parties, such as transporters, shoud not be ostensibly subject to liability for responsibilities more appropriately placed on generators or persons required to assume generator responsibilities. Transporter responsibilities should include such matters as refusing to accept waste for export unless an EPA Acknowledgment of Consent is attached to the manifest, ensuring that the EPA Acknowledgment of Consent accompanies each waste shipment in transit, and that the shipment is not altered in transit contrary to the terms of the receiving country's consent. Generators (or persons required to assume generator responsibilities) are, on the other hand, in a better position to supply the notification and ensure initial compliance of the shipment with the receiving country's consent. Thus, the liability of such parties should relate to those duties for which such parties are in the best position to assume. As far as export brokers are concerned, such parties woud be acting on behalf of a generator (or person assuming generator responsibilities) as an agent. Under the definition of exporter as proposed, the generator (or person required to assume generator responsibilities) would remain liable for any violations of the duties imposed upon him when performed by a broker on his behalf. Of course, if a broker engages in activities which make him a generator or other person required to assume generator responsibilities under EPA regulations, the exporter requirements would apply to such party under the definition as proposed.

EPA particularly requests information on the nature of the export industry and comments on the appropriate liabilities and responsibilities which should be placed on brokers, transporters, and generators.

Under EPA's proposed definition of "exporter," Subpart E requirements would not be applicable to exports of hazardous waste initiated by persons not required to prepare a manifest under 40 CFR Part 262 Subpart B or an equivalent provision in an authorized State program. Thus, exports of hazardous wastes that are exempt from the manifest requirements of 262 Subpart B would not be subject to Subpart E requirements (see discussion later in this Preamble). EPA recognizes that section 3017 requires notification and consent for exports of "any hazardous waste identified or listed under this subtitle." However, it is not clear whether in using this language Congress intended to regulate wastes

exported more stringently than domestic wastes or to expand existing export requirements to cover exports not currently covered (e.g., some recycled wastes). EPA requests comments on the proposed continuation of an exemption of such exports from regulations especially whether there are any strong policy reasons to extend coverage of Subpart E to such exports.

C. General Requirements [§ 262.52]

This section sets forth the general requirements applicable to exports of hazardous waste. It provides that exports of hazardous waste are prohibited except in compliance with the applicable requirements of Subpart E and summarizes the general statutory prohibitions on exports set forth in section 3017(a) as implemented by proposed Subpart E.

D. Notification of Intent to Export [§ 262.53]

Subsection (c) of Section 3017 requires that any person who intends to export a hazardous waste shall, before such waste is scheduled to leave the United States, provide notification to the Administrator. This subsection also sets forth the minimum information which must be included in such notification. The primary purpose of this notification requirement is to provide sufficient information to a receiving country to allow it to make an informed decision on whether to accept the waste and, if so, to manage it in an environmentally sound manner. S. Rept. No. 98–284, 98th Cong., 1st Sess. 47 (1983). Coupled with the prohibition on exports in the absence of the consent of the receiving country, this provision is also intended to ensure that environmental, public health, and U.S. foreign policy interests are safeguarded. *Id.; see also* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Senator Mitchell). This notification requirement is further intended to assist EPA in determining the amounts and ultimate destination of exports of U.S. generated hazardous waste so as to enable EPA and Congress to gauge whether the right to export is being abused. 130 Cong. Rec. S9152, *supra*.

The notification requirements proposed today are intended to implement the broad statutory requirements for notification set forth in section 3017(c) and ensure that sufficient information is obtained to satisfy Congressional intent. Accordingly, proposed § 262.53(a) requires an exporter to notify EPA of an intended export before the waste leaves the United States. Such notifications should be submitted sixty days prior to the intended date of the initial shipment. This sixty-day advance time is included in order to allow a reasonable amount of time for transmission of the notification to the receiving country, receipt of the receiving country's consent or objection to the export, and transmission of an EPA Acknowledgment of Consent to the exporter. In this respect, it should be noted that the statute itself sets forth the time frame (30 days) within which a complete notification must be transmitted to the receiving country after receipt by EPA and the time frame (30 days) within which the consent or objection must be transmitted to the exporter after receipt by the Secretary of State. Since EPA believes the information can be transmitted in less time than statutorily required (see discussion in Part III E), this 60-day advance time allows approximately thirty days for the receiving country to provide its consent or objection to the Department of State. Of course, EPA cannot require a receiving country to respond within a specific number of days. And, since an export is prohibited in the absence of consent, the shipment cannot take place until such consent has been obtained even though the notification may have been submitted sixty days prior to shipment. Thus, exporters are encouraged to submit notifications at the earliest possible date.

The regulation would also require such notification to be in writing and signed by the exporter. This requirement is intended to ensure the accurate transmission of the required information to EPA and the usefulness of the document in enforcement actions. A single notification may cover more than one shipment; a separate piece of paper providing notification for each shipment is not necessary. This appears consistent with legislative intent since the statute itself specifies that a notification include information on the "frequency of shipment." Comments are specifically requested, however, on whether a separate notification should be required for each shipment. The proposal limits a notification to shipments occurring over a maximum period of twenty-four months. The agency considered allowing a notification to cover a twelve month period but rejected this option in favor of the 24-month period as a better balance between concerns for currency and accuracy of information and imposition of administrative burdens on exporters. However, EPA specifically requests comments on whether it would be appropriate to restrict this period of time to twelve months.

Regarding the content of a notification, the statute itself requires that a notification include the following information:

(1) The name and address of the exporter;

(2) The types and estimated quantities of hazardous waste to be exported;

(3) The estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) The ports of entry;

(5) A description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) The name and address of the ultimate treatment, storage or disposal facility.

To implement these broad informational requirements, the proposed regulation identifies certain specific information which would be required. Accordingly, notification would be required to contain the following:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subpart C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171–177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(v) A description of the manner in which the waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling); and

(vii) The name and site address of the consignee and any alternate consignee.

As discussed in detail below, the United States intends to provide notification to transit countries as well as receiving

countries. Conset from transit countries, however, would not be required. Accordingly, the proposal also requires, pursuant to the authority of section 3017(h), designation of any transit countries through which the waste will pass and information on its handling while there.

Paragraph (b) of proposed § 262.53 specifies the place to which notification must be sent. Paragraph (c) requires renotification, consent from the receiving country, and EPA Acknowledgement of Consent for changes in the conditions specified in the original notification. This would include changes in the amount of waste to be exported in excess of the estimate originally provided since EPA believes a foreign country would not consent to receiving more waste than contemplated when consent was given. EPA believes this section is necessary since "consent" arguably has not been received for any shipment differing from the shipment of which the receiving country was notified. Since this provision is likely to be used when unforeseen circumstances arise necessitating a change in the export close to the date of the intended initial shipment, EPA will act expeditiously to obtain consent to such changes. However, exporters should keep in mind that an export deviating from the description in the original notification has not been consented to and, therefore, cannot take place until consent to the changes has been obtained and a new EPA Acknowledgement of Consent has been received.

Paragraph (d) would allow EPA to obtain any additional information from an exporter in the event the receiving country requests further information in order to respond to a notification of intent to export.

Paragraph (e) provides that EPA will forward a complete notification to the receiving country and any transit countries. A notification would be complete when EPA receives all information EPA determines is necessary to satisfy the requirements of § 262.53(a). This paragraph also provides that, if a claim of confidentiality is asserted with respect to any of the required notification information, EPA may find a notification not "complete" until any such claims are resolved in accordance with § 260.2. For a discussion of the basis for and purpose of this provision, see the section below on confidentiality.

Paragraph (f) provides that exporters will be notified of any responses by receiving and transit countries. Where the receiving country consents to the shipment, an EPA Acknowledgement of Consent will be provided the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment.

EPA specifically requests comments on the proposed notification requirements especially regarding whether any additional information would be appropriate to satisfy Congressional intent.

E. Procedures for the Transmission of Notification, Consent and Objection

Subsections (d) and (e) of section 3017 set forth the procedures involving EPA and the Department of State for notifying the receiving country on an intended export, obtaining the receiving country's response to the notification, and notifying the exporter of such response. These statutory provisions require the Department of State to transmit notification of the intended export to the government of the receiving country within thirty days of receipt by EPA of a complete notification from the exporter. EPA must then notify the exporter of the receiving country's consent or objection to the intended export within thirty days of receipt by the Department of State of the receiving country's response.

EPA is not proposing any specific regulations regarding procedures for the exchange of information among EPA, the Department of State, receiving countries and transit countries because these actions are administrative in nature and impose no requirements on the public. For informational purposes, however, a discussion of such procedures follows.

In order both to meet the statutory time frames noted above and expedite transmission of information, EPA anticipates notifying the Department of State within five days of receipt of the exporter notification. The Department of State anticipates notifying the receiving country within ten days of receipt of the information from EPA. The Department of State anticipates notifying EPA of the receiving country's response within ten days of receipt of such response, and EPA anticipates notifying the exporter of such response within five days of receipt of the response from the Department of State. This amounts to a total of thirty days transmission time for notification and consent. Thus, as previously discussed, EPA has proposed that exporters notify EPA at least sixty days prior to the intended first shipment to allow time for the receiving country to respond. Thirty days remain for the receiving country to provide its consent to the export. Exporters are reminded, however, that an export cannot take place without consent of the receiving country and, therefore, the shipment could be delayed if the receiving country does not respond within that time period.

The Department of State will use its telegraphic system to notify the receiving country of an intended export and to transmit the response back from the U.S. Embassy in the receiving country to the Department of State in Washington. Thus, EPA will draft a cable incorporating the details of the exporter notification which the Department of State will transmit to the U.S. Embassy in the receiving country. The U.S. Embassy will then pass the information on to the appropriate authorities in the receiving country with a request to respond expeditiously to the notification by providing the U.S. Embassy with a written consent or objection to the intended export. Upon receipt of the written response of the receiving country, the Embassy will then translate this response into English, if necessary, and cable it to the Department of State in Washington. This cable would then be forwarded to EPA. Where the receiving country fully consents to the shipment or consents with specified modifications, this cable will constitute the EPA Acknowledgment of Consent and would then be forwarded to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment. Where the foreign country rejects the shipment, EPA will so notify the exporter in writing. Meanwhile, the original written communication from the receiving country would be sent to the Department of State in the diplomatic pouch used by the Department of State to transmit documents from foreign posts to the Department of State. This document would then be forwarded to EPA for retention. A copy will also be forwarded to the exporter. EPA will work closely with the State Department to establish procedures to ensure that cables prepared by the U.S. Embassy in the receiving country include all of the relevant information contained in the exporter's original notification, as well as an exact reiteration or translation of the receiving country's written consent to the notification. This will provide U.S. Customs officials with the information necessary to check the shipment against the receiving country's consent to the notification.

Telegraphic transmission of information between the United States and receiving countries is necessary to expeditiously transmit notification and consent information. Mailing actual reproductions of such documents would

take considerably longer, making it difficult to meet the statutory deadlines for transmission of such information and necessitating earlier notification by the exporter than that proposed. In light of the use of cables, a copy of the exporter's actual notification letter will not be transmitted to receiving countries. Similarly, a copy of the receiving country's actual consent document does not need to be attached to the manifest (or shipping paper for exports by rail or water (bulk shipments)). As stated earlier, the cable received from the U.S. Embassy in the receiving country will constitute the EPA Acknowledgment of Consent document and will be used to transmit the receiving country's consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)). Use of such a document not only allows the exporter to be notified expeditiously of the cabled response of the receiving country but also makes possible the inclusion of an English translation of the terms and conditions of the receiving country's response where such response is in a foreign language. Without such a translation, it would be difficult for the exporter to ensure conformance with such consent.

Thus, EPA interprets the statutory language of subsection (d) of section 3017 which requires that "a copy of the notification" be forwarded to the receiving country to mean forwarding the information contained in the notification from the exporter to the receiving country. And, EPA interprets the statutory language of subsection (a) requiring attachment of a "copy of the receiving country's written consent" to the manifest accompanying each waste shipment to mean attachment of the EPA Acknowledgment of Consent incorporating the terms and conditions of such consent. Similarly, EPA interprets the statutory language of subsection (e) which references the written consent, objection, or other communication from the receiving country and provides that "such a consent, objection or other communication" be forwarded to the exporter to mean forwarding the information contained in the foreign country's response to the notification. EPA believes the means it proposes to transmit information is consistent with Congressional intent to ensure notification, consent, attachment of such consent to the manifest, and conformance of the shipment to the consent while ensuring that the statutory time frames for transmission are met.

EPA considered developing a standard form to incorporate all of the relevant information contained in the exporter's notification. This form would provide a concise transmission (in consistent format) of the information relevant to the export. In preparing this form, EPA would include only that information needed by U.S. Customs to determine whether the shipment was in conformance with the receiving country's consent. Copies of the receiving country's consent or an exact translation of that consent would be sent directly to the exporter in order to inform the company of all of the receiving country's conditions of acceptance. However, EPA rejected this option in favor of the proposed one for the following reasons: (1) The amount of time required to prepare the form would add a few days to the process of notification; and (2) by working closely with the U.S. Department of State to ensure that the cable prepared by the U.S. Embassy in the receiving country includes all of the relevant information, the cable will provide Customs officials with the information necessary to monitor shipments at the border. EPA requests comments on whether a form rather than a copy of the cable which includes a reiteration of all of the receiving country's conditions of acceptance should be prepared.

As required by section 3017, in notifying receiving countries of intended shipments, the government of the receiving country will be advised that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the waste. The notification will include a request to provide the Department of State with a response to the notification which either consents to the full terms of the notification, consents to the notification with specified modifications, or rejects receipt of the hazardous waste. Also, in accordance with statutory requirements, a description of the Federal regulations which would apply to the treatment, storage and disposal of hazardous waste in the United States will be provided the receiving country.

F. Notification of Transit Countries

EPA has been a full and regular partner in extensive international consultations concerning the international shipment of hazardous waste under the auspices of the Organization for Economic Cooperation and Development (OECD). U.S. experts along with those of other OECD member countries have worked to develop agreed-upon principles governing international shipments of hazardous waste. In February of 1984, the United States, along with other OECD member countries, voted to adopt a formal decision and recommendations for implementing such decision regarding the control of international shipments of hazardous waste. The OECD decision provides:

> . . . Member countries shall control the transfrontier movements of hazardous waste and, for this purpose, shall ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements.

The term "countries concerned" is defined to include exporting, importing and transit countries. To implement this decision, the OECD Council recommended that countries apply certain principles concerning transfrontier movements including the following:

> . . . [C]ountries should take the measures necessary to ensure that the entities within their jurisdiction provide, directly or indirectly, the authorities of the exporting, importing and transit countries with adequate and timely information.

Accordingly, EPA has exercised its authority pursuant to section 3017(h) to require exporters to notify EPA of any countries through which a hazardous waste will pass en route to the receiving country. The requirement to provide information regarding the approximate length of time the waste will remain in a transit country and the nature of its handling while there is proposed in order to provide sufficient information to a transit country regarding the nature of the transit of the waste through such country. EPA, in conjunction with the Department of State, plans to provide such countries with the information contained in the exporter's notification and will inform the exporter of any response by such countries.

EPA, however, does not propose to require consent from transit countries. Section 3017 requires consent only of receiving countries and EPA's proposed regulation defines "receiving country" to mean the country in which the waste will be ultimately treated, stored or disposed. Exporters should keep in mind, however, that the transit country may take action to prohibit entry of the waste into that country. Accordingly, EPA recommends that exporters make every effort to reroute the waste should a transit country object to the entry of such waste into that country.

EPA's plan to notify transit countries is intended to implement the OECD Decision and Recommendations and is also intended to respond to the legitimate interests of transit countries

in light of the nature of the activity which would occur in such countries, i.e., transit through or temporary storage in such countries. In EPA's view, it is important for protection of human health and the environment as well as foreign relations to provide notification to transit countries. This will enable transit countries to stop shipments which are unwelcome, to ensure safe handling during transit and be prepared to deal with any incidents (such as spills) which may occur during transit. EPA specifically requests comments on its proposed treatment of transit countries. Related to this issue is the alternative considered by EPA (and discussed above) to define "receiving country" to include both the ultimate country receiving the waste and transit countries. Were this alternative adopted, consent from transit countries would also be required before the shipment could take place.

G. Special Manifest Requirements [§ 262.54]

This section sets forth special manifest requirements pertaining to exports of hazardous waste in light of the special circumstances relative to such shipments. Accordingly, as specified in the proposed rule, some of the proposed requirements are in lieu of the provisions applicable to generators in Part 262 while others are in addition to such Part 262 requirements.

Paragraph (a) of proposed § 262.54 retains the current requirement that an exporter enter on the manifest the name and address of the consignee in place of the designated permitted facility. Paragraph (b) is added to make clear that the exporter may enter the name of any alternate consignee for which consent has been obtained in lieu of a permitted alternate facility in the United States.

Paragraph (c) retains the current requirement of § 262.50(b)(3)(ii) to identify the point of departure of the waste from the United States. This requirement was originally included in the regulations in order to provide additional information on the movement of an international waste shipment. Paragraph (d) requires an exporter to add to the certification on the manifest in Item 16 that the shipment conforms to the EPA Acknowledgment of Consent. This certification is included for purposes of enforcement. Paragraph (e) retains the current § 262.50(b)(4) requirement which specifies where the exporter should obtain the manifest form. This requirement deviates slightly from the requirement set forth in § 262.21 pertaining to domestic shipments since the waste is being sent outside the United States. Paragraph (f) essentially retains current § 262.50(b)(2) that requires the exporter to require the consignee to confirm delivery as a condition of their business agreement. A copy of the manifest signed by the foreign consignee may be used for this purpose. EPA proposes to add the requirement that the exporter require the consignee to describe any significant discrepancies as defined in 40 CFR 264.72(a) between the manifest and the shipment. This requirement is for enforcement purposes and is similar to current manifest discrepancy requirements for domestic shipments.

Paragraph (g) applies in lieu of § 262.20(d). This section is intended to place the responsibility on the exporter for hazardous waste that cannot be delivered to a facility to which the foreign country has consented pursuant to the original notification. Thus, an exporter has three choices in such a situation: (a) He can obtain new consent; (b) he can have the waste returned to himself; or (c) he can designate another facility in the United States. EPA realizes that new consent may be difficult to obtain expeditiously which could result in practical problems regarding what should be done with the waste in the meantime. However, it is provided as an option even though EPA believes that the other options noted above are preferable. The proposed regulation also requires the exporter to instruct the transporter to revise the manifest in accordance with the exporter's instructions regarding where the waste should be taken. This ensures that an accurate record of the hazardous waste will be maintained.

Paragraph (h) is proposed to ensure attachment of the EPA Acknowledgment of Consent to the manifest (or shipping paper for exports by rail or water (bulk shipments)) as required by RCRA section 3017. EPA regulations allow a shipping paper to accompany shipments by rail and water (bulk shipments) in lieu of a manifest (*see* 40 CFR 263.20). Accordingly, the EPA Acknowledgment of Consent would accompany the shipping paper under such circumstances. In EPA's view, Congress provided that consent be attached to the manifest to ensure that consent traveled with the document identifying the waste. Accordingly, attachment of the EPA Acknowledgment of Consent to the shipping paper under these circumstances would satisfy this intent.

EPA considered requiring an additional copy of the manifest which the transporter would give to a U.S. Customs official at the border. Customs officials would periodically forward the copies it collected to EPA. Upon receipt EPA would compare these copies with the agreed-upon terms of export to determine compliance. The Agency decided not to propose this requirement, however, because there is no evidence that exporters are violating current notification requirements under § 262.50. Further, the receiving country could request such a review if there was concern about violations of exporter notifications. EPA specifically requests comment on whether such a monitoring system is necessary.

H. Exception Reports

Proposed pragraphs (a) and (b) retain current requirements for exception reporting which deviate somewhat from exception reporting for domestic shipments in light of the special circumstances involved in international shipments. For domestic shipments, exception reports are required where a copy of the manifest is not returned to the generator by the designated facility. Since EPA has no jurisdiction over a foreign facility to require it to return a copy of the manifest, EPA regulations require the exporter to require the consignee to confirm delivery of the waste. As a back-up to tracking the waste in light of EPA's lack of jurisdiction over foreign facilities, EPA regulations also require the transporter to sign a copy of the manifest, enter the date the waste left the United States and return a copy to the generator (40 CFR 263.20(g)). Thus, the proposed exception reporting requirements hinge upon the lack of receipt of the transporter's copy of the manifest and the failure to receive confirmation from the consignee that the waste was received.

Exception reporting is an important tracking and enforcement tool for exports of hazardous waste. It allows notification to EPA that a waste has not left the United States or has left the United States but has not been received by the consignee. Thus, EPA can determine whether the waste remains in the United States or has reached the foreign country but not reached the consignee. The proposed regulation also requires submission of an Exception Report where the waste is returned to the United States. This requirement is proposed to be added because EPA believes that it is in the interest of U.S. foreign policy to know that a hazardous waste shipment was rejected when consent by the foreign country was provided.

I. Annual Reports [§ 262.56]

As discussed above, section 3017(g) of RCRA imposes a new annual reporting

requirement for exports of hazardous waste.

On July 15, 1985 (50 FR 28702), EPA codified the language of section 3017(g) due to the immediate effectiveness of this requirement. Today's proposal would amend this annual reporting requirement to require specific reporting information to implement the broad statutory reporting requirements to summarize the types, quantities, frequency, and ultimate destination of all exported waste. Thus, EPA proposes to require annual reporting of: (1) The EPA ID number, name, and mailing and site address of the exporter; (2) the calendar year covered by the report; (3) the name and site address of each consignee; (4) a description of each waste exported including the EPA hazardous waste number and DOT hazard class; (5) the name and U.S. EPA ID number (where applicable) for each transporter used; (6) the total amount of waste shipped pursuant to each notification; and (7) the number of shipments pursuant to each notification. Items (4) through (7) would be provided by consignee for each hazardous waste exported. As with the biennial reporting requirements for domestic shipments, a certification requirement is included. The address of the place reports would be sent is also specified. These reporting requirements would assist EPA in using the annual report as an enforcement tool and aid Congress and EPA in determining whether the export right is being abused and additional controls are necessary or desirable.

Because the annual report provides the agency with information on exports of hazardous waste, today's proposal would eliminate the requirement of § 262.41 which requires generators to include in the biennial report information relative to exports.

EPA plans to change the instructions to the form in future printings of the biennial report form to clarify this reporting requirement. Exporters should note, however, that authorized States may continue to require generators to include information on exports in the biennial report and may also require exporters to send a copy of the annual report to the States.

The agency considered retaining the requirement for generators to include in the biennial report information on exports and eliminating the requirement to file an annual report during those years in which a biennial report was required. This option was not selected, however, because the agency believes eliminating export information from the biennial report would not place a greater workload on generators since most generator retain separate records on domestic and exported shipments and, thus, are in a position to file separate reports on those activities. Further, copies of the reports must be submitted to different addressees, i.e., the annual report must be submitted to EPA Headquarters and the biennial report to EPA Regional Administrators. In addition, it is administratively less burdensome for the agency to receive two separate reports, because EPA will not then have to pull out information on exports from the biennial report to keep Congress informed on the issue of exports. Furthermore, it appears that Congress intended that reporting of exports be separated out from information on other shipments by enacting section 3017(g). The agency requests comments on this requirement.

J. Recordkeeping [§ 262.57]

The recordkeeping provisions proposed today are consistent with current recordkeeping requirements of § 262.40 which require generators to retain for a period of three years copies of manifest and biennial and exception reports. For enforcement purposes, the proposed regulation includes requirements to retain for a period of three years those special documents relative to exports: (a) The notification of intent to export; (b) the EPA Acknowledgment of Consent; (c) the confirmation of delivery (if not the manifest); and (d) the annual report. Also consistent with § 262.40, the proposal includes a requirement that the specified periods of retention are extended automatically during the course of any unresolved enforcement action or as requested by the Administrator.

There are several reasons for requiring the exporter to retain copies of notifications, Acknowledgments of Consent, and annual reports. Primary among these is that EPA considers the burden of proof, in general, to be on the generator/exporter. Generators, on the whole, are required to keep copies of biennial reports and manifests (40 CFR 262.40, 262.40(b)). Copies of notifications of intent to export and Acknowledgments of Consent are similarly necessary for the exporter to show compliance with the export standards. In addition, unique to exports, notifications, Acknowledgments of Consent, and annual reports pass between the exporter and EPA Headquarters. The Regions and State Directors are not directly part of the paperwork flow or approval process. They are, however, in the direct line of enforcement. For this reason, Regional and State enforcement personnel should have access to those documents when they visit or inspect an exporter's site which is best accomplished if these records are required to be retained by the exporter.

K. International Agreements [§ 262.58]

This section has been reserved for future regulatory provisions which would set forth different requirements established in any international agreements the United States may enter into with a foreign country regarding exports of hazardous waste. In this respect, section 3017 of HSWA provides that where such an agreement exists, only the requirements of subsections (a)(2) and (g) apply. Subsection (a)(2) provides that no person shall export a hazardous waste from the United States to a receiving country where an international agreement pursuant to subsection (f) has been entered into unless the shipment conforms with the terms of such agreement. Subsection (g) requires annual reporting. Section 3008(d)(6) of HSWA provides for criminal enforcement action for exports not in conformance with such agreements.

L. Transporter Responsibilities [§ 263.20]

To implement section 3017(a)(1)(c) and for purposes of enforcement, EPA proposes to amend § 263.20 to prohibit a transporter from accepting waste from an exporter unless, in addition to a manifest, an EPA Acknowledgment of Consent is attached to the manifest. This section would also be amended to require transporters to ensure that an EPA Acknowledgment of Consent accompanies the hazardous waste en route. Current §263.20(g) also requires the transporter to send a copy back to the generator. This provision would not be changed.

M. Small Quantity Generators

EPA proposes to define an exporter as the person required to prepare a manifest pursuant to 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a foreign country as the facility to which the waste will be sent.

Under the existing rules, generators of less than 1,000 kg of non-acutely hazardous waste in a calendar month (i.e., small quantity generators) are not subject to Subpart B of Part 262 (or any other Part 262–266 or 270 regulations), provided the small quantity generator complies with § 262.11 (hazardous waste determination) and ensures delivery of his waste to an on-site facility or off-site facility which is:

1. Permitted under Part 270;
2. In interim status under Part 270 and 265;
3. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271;
4. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or
5. A facility which beneficially uses, reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial use, reuse, or legitimate recycling or reclamation.

A small quantity generator who exports his waste would be unable to comply with any of the above requirements since (1) through (4) require approval by a government entity while item 5 would require that the generator somehow "assure" that his waste is "legitimately" recycled by a foreign facility, a difficult requirement with which to comply when a foreign facility is involved. Consequently, the existing § 261.5 rules require that all small quantity generators comply with the manifesting provisions of Part 262. These generators would, therefore, qualify as exporters under today's proposal. The effect of this situation is to subject small quantity generators who export their wastes to full Part 262 requirements including the proposed export requirements while the small quantity generators who ship to any of the five kinds of domestic facilities identified above are currently excluded from the Part 262 requirements.[2]

Based upon the notifications which EPA has been receiving since 1980, the agency is not aware of any exports by small quantity generators. Accordingly, EPA does not propose to change the existing applicability of Part 262 (which would also require compliance with the proposed export requirements if finally promulgated) to all such small quantity generators.

However, EPA requests comments from generators of less than 1,000 kg/month on whether they intend to export hazardous wastes. In addition, EPA requests comments (with supportive explanation) from generators intending to export such wastes on whether they should be subject to full Part 262 requirements in addition to the export requirements, some of Part 262 requirements in addition to the export requirements, only the export requirements or none of Part 262 requirements and none of the export requirements. The agency will consider these alternatives in issuing any final rule.

On the one hand, it is arguable that generators of 100 kg/mo or less exporting hazardous waste should be exempt from Part 262 requirements and the export requirements on the grounds that EPA should not be more concerned about exports from such generators than domestic shipments by such generators. By the same token, however, foreign policy concerns (including human health and the environment concerns) may indicate that such generators at least comply with the export requirements [3] especially since the regulations exempting such generators from Part 262 requirements require shipment to appropriate facilities in order to obtain the benefit of the exemption. This evidences some concern for such waste handled domestically which may indicate that foreign countries would have some concern and therefore should be accorded notification, etc.

Nevertheless, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

For generators generating between 100–1,000 kg/mo of hazardous waste, current regulations subject such generators to certain manifest requirements which are imposed pursuant to 40 CFR 261.5 but which are similar to some Part 262 requirements. Accordingly, again, these generators arguably also should not be regulated more stringently for exports than for domestic shipments and therefore should not be subject to full Part 262 requirements. It may be better to require these generators to comply with partial Part 262 requirements such as those currently imposed pursuant to 40 CFR 261.5. In other words, apply general Part 262 requirements only to the extent they are required for domestic off-site shipment for such generators. Foreign policy concerns for requiring such generators to at least comply with the export requirements are stronger than for generators of 100 kg/mo or less since generators of between 100 and 1,000 kg/mo are regulated more stringently domestically than generators of 100 kg/mo or less. This evidences more domestic concern with such waste which indicates that a foreign country would have increased concerns and therefore should be notified, etc. Again, on the other hand, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

Thus, EPA will consider these options for handling small quantity generators in light of any comments received. In addition, EPA points out that it recently proposed new requirements generally for small quantity generators on August 1, 1985 at 50 FR 31278. Any decision EPA makes in its final rulemaking regarding exports will take into consideration any decisions EPA makes in issuing a final rule regarding that proposal.[4]

N. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States

[2] Generators of between 100 and 1,000 kg of hazardous waste in a calendar month are currently subject to certain manifest provisions mandated by section 3001(d) of the HSWA. However these manifest requirements are not imposed pursuant to Part 262, Subpart B and thus do not subject these generators to the exporter definition.

[3] If this option were selected, since such generators are not required to prepare a manifest, the EPA Acknowledgment of Consent would only be required to travel with any other shipping document accompanying the shipment as opposed to the requirement that the EPA Acknowledgment of Consent be attached to the manifest.

[4] It should be noted that the proposed amendments to the small quantity generator rules would remove generators of between 100 kg and 1,000 kg of hazardous waste in a calendar month from the conditional exclusion provisions of § 261.5 and subject them instead to regulation under Part 262. As a result, if the August 1, 1985, amendments are finalized, generators of 100–1,000 kg/mo would fall within the definition of exporter and would be subject to the export requirements and portions of Part 262.

until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's announcement proposes standards that would be effective in all States since the requirements are imposed pursuant to section 3017 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6937. The rule setting forth these standards would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect simultaneously in all States regardless of their authorization status.

2. Effect on State Authorizations

Under current regulations (40 CFR 271.10(e)), States are required to include provisions respecting international shipments which are equivalent to those at 40 CFR 262.50, except that advance notification of international shipments, as required by 40 CFR 262.50(b)(1) must be filed with the Admininstrator of EPA. Upon receipt of the notification, EPA then forwards the information, in conjunction with the Department of State, to the receiving country. Thus, unlike other provisions of Part 262, States were not authorized to carry out § 262.50 in its entirety.

Consistent with existing procedures, EPA does not propose to allow States to assume the authority to receive notifications of intent to export. In addition, States would not be authorized to transmit such information to foreign countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. In EPA's view, foreign policy interests and exporters' interests in expeditious processing are better served by EPA's retaining these functions. This will provide the Department of State with a single point of contact in administering the export program which will better allow for uniformity and expeditious transmission of information between the United States and foreign countries. Accordingly, States would be required to include requirements equivalent to those proposed today with the exceptions noted above. EPA requests comments on the alternative of allowing States to assume the functions covered by the exceptions. The rule proposed today also would require that annual reports and exception reports be provided the Administrator. Of course, States can also require that such documents be submitted to State Directors. This requirement is necessary in light of EPA's participation in the export scheme and in light of foreign policy interests.

EPA also proposes to amend § 271.11 to require State programs to include the requirements that transporters also carry a copy of the EPA Acknowledgment of Consent.

3. Schedule for Receiving Authorization

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to 40 CFR 271.10(e). The procedures and schedule for State program modifications under Section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for Section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without satisfying § 271.10(e) as amended. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to those in § 271.10(e) within the time periods discussed above.

4. "Hazardous Waste" in Authorized States

EPA intends that where a State obtains authorization, "hazardous waste" for purposes of export requirements would be those hazardous wastes identified or listed by the State as part of its authorized program plus any hazardous wastes which EPA identifies or lists pursuant to HSWA. This is consistent with EPA's usual interpretation of "identified or listed under this subtitle" as referring to an authorized State's universe of hazardous waste plus HSWA wastes. This approach allows an exporter to function on the basis of the State universe of hazardous waste, with which he is already familiar, expanded by those wastes EPA adds pursuant to the HSWA. One drawback to this approach is that notification would be required for waste "A" exported from a State which considers it to be hazardous but would not be required in another State where waste "A" is not considered hazardous. This might be confusing to foreign countries.

Alternatively, EPA could base implementation on only the Federal universe of hazardous wastes. While this approach would be easier for foreign countries to understand and perhaps better from a foreign policy perspective, it would require that exporters become familiar with the entire Federal universe in addition to the State universe under which the exporters otherwise function. EPA requests comments on which universe of hazardous wastes should apply in authorized States.

O. Confidentiality [§§ 260.2, 262.53(e)]

Title 40 CFR 260.2 provides that information submitted to EPA under Parts 260 through 265[5] of 40 CFR will be made available to the public to the extent authorized by, among other statutory provisions, Section 3007(b) of RCRA as implemented by the regulations of Part 2, Subpart B of 40 CFR. Section 260.2 also provides that a person submitting such information to EPA may submit a claim of confidentiality covering all or part of such information by following the procedures set forth in 40 CFR 2.203(b). Under such circumstances EPA will disclose such information only in accordance with Part 2, Subpart B, of 40 CFR. Part 2, Subpart B, sets forth the standards for determining the validity of a claim of confidentiality and the procedures for processing such claims and disclosing such information determined not to be entitled to confidential treatment.

EPA proposes to amend § 260.2 to provide that information for which a claim of confidentiality is made will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B, except that information contained in a notification of intent to export a hazardous waste pursuant to proposed § 262.53(a) will be provided to appropriate authorities in receiving countries and the Department of State regardless of such a claim. Information will otherwise be disclosed to the public and transit countries in accordance with 40 CFR Part 2.

This approach to the confidentiality of Section 3017 notices is based upon EPA's interpretation of RCRA. There is an apparent conflict on the face of the statute between section 3007(b) and section 3017. Section 3007(b) could be read as prohibiting *all* disclosure of any

[5] This reference to Part 265 has been changed in the proposed regulation to Part 266 so as to include new Part 266 (50 FR 666, January 4, 1985) consistent with the intent of 40 CFR 260.2 to cover all the hazardous waste regulations.

confidential business information contained in a notice of intent to export. However, this reading would contradict section 3017. Because the statute must be interpreted to give the fullest possible effect to both section 3007(b) and section 3017, EPA interprets section 3017 to require provision of the notification information to a receiving country through the Department of State even if the information in the notice is confidential but to prohibit disclosure by EPA of such confidential business information to other persons. The purpose of the notification is to allow receiving countries to make an informed decision as to whether to accept the waste and, if so, how to deal with that waste. Moreover, section 3017 prohibits the export of hazardous waste in the absence of consent by the receiving country. Thus, unless such information can be divulged to the Department of State and receiving countries, informed consent could not be obtained and the export would be prohibited.

There is no statutory purpose for EPA to receive notices under section 3017 unless EPA can give such notices to the receiving country. Nor could EPA implement the requirement to obtain the consent of such governments unless such notice can be provided. Accordingly, EPA must divulge such information to the Department of State and receiving countries to implement section 3017.

The disclosure of additional information to the Department of State and receiving countries pursuant to a request from a receiving country for further information beyond that required by § 262.53 will be governed by section 3007(b) and implementing regulations at 40 CFR Part 2. In EPA's view, Congress specifically delineated in section 3017(c) the information minimally necessary to allow a foreign country to take appropriate action in response to a notification of intent to export and authorized EPA to impose any additional requirements if deemed necessary. The proposed notification provision accomplishes this and any further information which a receiving country may request should be treated in the same manner as other Subtitle C information. However, exporters should keep in mind that if such information is not disclosed to a receiving country, consent may not be forthcoming and the export could not take place.

As previously discussed, EPA also plans to notify transit countries. Since EPA proposed to define "receiving countries" not to include transit countries, section 3007(b) would govern provision of notification information to transit countries. Accordingly, any claims of confidentiality will be processed in accordance with 40 CFR Part 2 with respect to transit countries. However, as provided in proposed § 262.53(e), a notification may be deemed not to be complete until any claims of confidentiality made with respect to the information required by § 262.53(a) are resolved.

Under this proposal, EPA would have the discretion to determine whether the information claimed confidential in a notification is information which must be provided a transit country unless determined by EPA to be entitled to confidential treatment. Thus, the time frame set forth in section 3017(d) for submission of a "complete" notification to a receiving country will not begin to run until a determination by EPA of the validity of any such claims has been made. Only upon EPA's completion of such processing of confidentiality claims will the notification information be provided to receiving countries and any nonconfidential information provided to transit countries. Since an export cannot take place in the absence of the consent of the receiving country, exporters should be aware that claims of confidentiality could therefore significantly delay shipment.

If an exporter claims only portions of the notification information confidential and EPA determines that the information not claimed confidential is sufficient to provide necessary infromation to a transit country, EPA may find the notification complete and proceed to notify the receiving country of all notification information and transit countries of that information not claimed confidential, thereby avoiding delay. For example, if an exporter claims only the name of the consignee confidential, EPA could reasonably conclude that this information is not significant with respect to transit countries and that the remaining information is sufficient to provide necessary information to the transit country. Thus, EPA may find the notification complete, and proceed with notification.

EPA believes that notification of transit countries is important to protect human health and the environment as well as important from a foreign policy standpoint. Therefore, EPA wishes to inform transit countries of as much information as possible. This policy, however, is constrained by the need to maintain the confidentiality of validity confidential business information. In order to satisfy both these policies, EPA's proposal would allow EPA to delay transmission of notification information until such confidentiality claims are resolved where it determines such action to be necessary. Once resolved, EPA will proceed with providing receiving countries with all notification information and transit countries with all information determined not to be entitled to confidential treatment in accordance with 40 CFR Part 2, Subpart B. This provision is proposed under the authority of section 3017(h).

EPA puts exporters on notice, however, that EPA does not believe that notification information generally is entitled to treatment as confidential business information. This belief is supported by EPA's experience that existing notifications, which consist of identification of the exporter, waste and consignee, have not been claimed by exporters to be confidential. Furthermore, EPA believes that exporters will not be able to demonstrate that the availability of such information is likely to cause substantial harm to the business's competitive position or that this information is not otherwise obtainable without the business's consent. For example, much of this information is required on manifests which may be available from State authorities. Moreover, if a situation arises where confidentiality may be a valid concern, EPA believes that it would generally be sufficient to assert a claim as to only a single piece of information, such as the consignee, to ensure protection. EPA requests comments on its proposed treatment of confidentiality claims.

IV. Enforcement

A. EPA

Noncompliance with RCRA section 3017 or regulations promulgated thereunder is subject to enforcement actions under section 3008. As the legislative history of section 3017 states:

> The requirements of this section should be vigorously enforced using all the tools of section 3008. To accomplish this, the Agency should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of the section. Violations should then be vigorously pursued. S. Rep. No. 98–284, 98th Cong., 1st sess. 48.

Most importantly, the HSWA amendments include an amendment to section 3008(d) of RCRA authorizing criminal penalties for knowingly exporting a hazardous waste without the consent of the receiving country or in nonconformance with an international agreement between the U.S. and a receiving country. Section 3008

establishes a penalty of $50,000 per day for knowingly exporting a hazardous waste without a consent or in violation of a bilateral agreement. Prison terms may be up to two years. Penalties and prison terms may be doubled for second offenses. EPA intends to prosecute violators of the export rule to the fullest extent.

B. Customs

The new HSWA provision on the export of hazardous waste raises issues concerning cooperation between EPA and the U.S. Customs Service on enforcement matters. As noted above, Congress intended that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of [Section 3017]." To further this legislative intent, EPA is presently consulting with the U.S. Customs Service in order to develop an effective program to monitor and spotcheck hazardous waste exports.

The United States Customs Service has independent authority to stop, inspect, search, seize, and detain suspected illegal exports of hazardous wastes under the Export Administration Act, 50 U.S.C. App. 2411, as amended by the Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985), case law, and U.S. Customs Service regulations (e.g., 19 CFR Part 162). Exporters who violate the Export Administration Act or U.S. Customs Service regulations may also be subject to enforcement actions under those authorities.

C. Other Agencies

Exporters of hazardous waste also may be required to comply with pertinent export control laws and regulations issued by other agencies. For example, regulations promgulated by the Bureau of the Census, Department of Commerce, require exporters to file Shipper's Export Declarations for shipments valued over $1,000. 15 CFR Part 30. It may very well be possible that hazardous waste exported for purposes of recycling would have a value over $1,000. The "Schedule B—Statistical Classification of Domestic and Foreign Commodities exported from the United States" contains a statistical reporting number for certain waste and scrap. This number (793.0000) must be used in preparing Shipper's Export Declarations, as required by 13 U.S.C. 301 and 15 CFR Part 301. EPA is consulting with the Bureau of the Census about the advisability of adding a reporting number for hazardous waste to "Schedule B."

Failure to file a Shipper's Export Declaration is subject to civil penalties as authorized by 13 U.S.C. 305. It is also unlawful to knowingly make false or misleading representations in such documents. This constitutes a violation of the Export Administration Act. To knowingly make false or misleading statements relating to information on the Shipper's Export Declaration is a criminal offense subject to penalties as provided for in 18 U.S.C. 1001.

V. Effective Date of Final Regulations

EPA proposes that any final regulatory provisions issued pursuant to section 3017(c) setting forth export notification requirements shall become effective 30 days after promulgation.

Section 3010(b) provides that regulations promulgated under Subtitle C shall have an effective date six months after the date of promulgation. That section also allows the Administrator to provide for a shorter period prior to the effective date under specified conditions. Section 3017(b) also sets forth the requirement that regulations be effective six months (180 days) after promulgation. It does not mention specifically, however, the Administrator's discretion to allow a shorter time. Thus, the question arises as to whether section 3010(b) or section 3017(b) is controlling. It is EPA's view that section 3010(b) is controlling. Where Congress intended that the Administrator have no discretion to shorten the period prior to the effective date, Congress used specific language to that effect. Thus, section 3001(d)(9) provides that "the last sentence of § 3010(b) shall not apply to regulations promulgated under this Section." Accordingly, since Congress did not specifically provide otherwise under section 3017, the Administrator retains the authority to shorten this period.

EPA believes a shorter effective date is appropriate with respect to the export rules since the regulated community does not need six months to come into compliance with these rules. These rules are not complex and simply involve the exchange of general information. In addition, at this point in time, it is unlikely that these regulation can be effectuated by November 8, 1986,[6] and still allow for a 180 day period prior to the effective date. Yet, EPA believes it important to have rules in effect to properly implement section 3017 by that date.

[6] Section 3017(a) provides compliance with that section 24 months after enactment of HSWA (November 8, 1986).

Assuming, however, that section 3010(b) is not controlling, EPA believes that its scheme for effectuation of these rules is also authorized by section 3017 itself. This scheme comports with Congressional intend that this section go into effect by November 8, 1986, and that regulations be in place by that time. Although section 3017 also provides that regulations promulgated under that section take effect 180 days after promulgation, it is unlikely that, at this point in time, final regulations will be promulgated sufficiently in advance of November 8, 1986, to allow for effectuation by that date as well as a 180-day period between promulgation and effectuation. Under such circumstances, and because regulatory provisions interpreting section 3017 are important to the proper implementation of that section, it is EPA's view that the November 8, 1986 date must control for purposes of the effective date of the export regulations. Where EPA is unable to satisfy both of these statutory time frames, surely the November 8, 1986 deadline for implementing section 3017 is more important than the number of days between promulgation and effectuation.

VI. Economic, Environmental and Regulatory Impacts

A. Impact on Small Quantity Generators

Because of the small number of Small Quantity Generators EPA expects will export hazardous waste, the impact on Small Quantity Generators should be minimal.

B. Executive Order 12291—Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

This proposed regulation is not major because it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, under Executive Order 12291, today's action is not "major." This proposed regulation has been submitted to the Office of Management and Budget (OMB) for review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from: Nanette Liepman: Information Management Branch; EPA; 401 M. Street, SW. (PM–223); Washington, D.C. 20460 or by calling 202–382–2742. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for EPA, 726 Jackson Place NW., Washington, D.C. 20503. The final rule will respond to OMB or public comments on the information collection requirements.

D. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, a regulatory flexibility analysis must be performed if the regulatory requirements have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Since 1980, generators exporting hazardous waste have been required by EPA to notify the Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year. Based upon an analysis of those notifications received, the Agency has determined that no small entities have filed notifications of intent to export. EPA does not anticipate that the universe of generators exporting hazardous waste will significantly change in the future. Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a regulatory flexibility analysis. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous Waste, Liquids in Landfills.

40 CFR Part 262

Hazardous material transportation, Hazardous waste, Imports, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 263

Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Lee M. Thomas,

Administrator.

March 4, 1986.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is proposed to be amended by revising paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by §262.53(a) which is submitted in a notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

3. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

4. Section 262.41 is proposed to be amended by revising the introductory text of paragraph (a) and paragraphs (a)(3), (a)(4) and (a)(5) and adding two sentences to the end of paragraph (b) to read as follows:

§ 262.41 Biennial Report.

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700–13A, must cover generator activities during the previous year, and must include the following information:

* * * * *

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped.

* * * * *

(b) * * *

Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

5. Subpart E consisting of §§ 262.50–262.58 of 40 CFR Part 262 is proposed to be by revised to read as follows:

Subpart E—Exports of Hazardous Waste

Sec.

Subpart E—Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. An exporter of hazardous waste must comply with the special requirements of this subpart except to the extent § 262.58 provides otherwise. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

"Consignee" means the ultimate treatment, storage or disposal facility in the receiving country to which the hazardous waste will be sent.

"EPA Acknowledgment of Consent" means the cable sent to EPA from the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Exporter" is the person who is required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in the receiving country as the facility to which the hazardous waste will be sent.

"Receiving country" means the foreign country of ultimate destination of the hazardous waste.

"Transit country" means any foreign country through which a hazardous waste passes en route to a receiving country.

§ 262.52 General Requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart. No person shall export any hazardous waste unless:

(a) Notification in accordance with § 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment is attached to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each hazardous waste shipment; and

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

§ 262.53 Notification of intent to export.

(a) An exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twenty-four (24) month or lesser period. The notification must be in writing, signed by the exporter and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171–177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of International Activities (A–106), EPA, 401 M Street SW., Washington, D.C. 20460.

(c) When the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes has been obtained and the exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, an exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

§ 262.54 Special manifest requirements.

An exporter must comply with the manifest requirements of 40 CFR 262.20–262.23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted

alternate facility, the exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of § 262.21, the exporter must obtain the manifest form from the exporter's State if that State supplies the manifest form and requires its use. If the exporter's State does not supply the manifest form, the exporter may obtain a manifest form from any source.

(f) The exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the exporter's instructions.

(h) The exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) which must accompany the hazardous waste shipment.

§ 262.55 Exception Reports.

In lieu of the requirements of § 262.42, an exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

§ 262.56 Annual Reports.

(a) Exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such harardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification; and

(5) A certification signed by the exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(b) Reports shall be sent to the following address: Office of International Activities (A–106), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

§ 262.57 Recordkeeping.

(a) For all exports an exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter;

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.58 International Agreements [Reserved].

6. Title 40 CFR Part 262 is proposed to be amended by adding new Subpart F consisting of § 262.60 to read as follows:

Subpart F—Imports of Hazardous Waste

§ 262.60 Imports of Hazardous Waste.

(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:

(1) In place of the generator's name, and address and EPA identification number, the name address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. Importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if that State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.

7. Title 40 CFR Part 262 is proposed to be amended by adding a new Subpart G consisting of § 262.70 to read as follows:

Subpart G—Farmers

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a

manner consistent with the disposal instructions on the pesticide label.

Appendix—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

8. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

* * * * *

Exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the attached Acknowledgment of Consent."

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

9. The authority citation for Part 263 is proposed to be revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925, and 6937).

10. Section 263.20 is proposed to be amended by revising paragraphs (a), (c), (e)(2), and (f)(2) to read as follows:

§ 263.20 The Manifest System.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from an exporter or other person unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent attached to the manifest.

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies hazardous waste for export.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

12. Section 271.1(j) is proposed to be amended by adding the following entry to Table 1 in chronological order:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* *	* *
March 13, 1986	Exports of Hazardous Waste.

13. Section 271.10 is proposed to be amended by revising paragraphs (e) introductory text and (e)(1) and (e)(2) to read as follows. The note remains unchanged.

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director); and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and exporters of foreign countries' responses in accordance with 40 CFR 262.53.

14. Section 271.11 is proposed to be amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to also carry a copy of the EPA Acknowledgment of Consent to the shipment.

* * * * *

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Thursday
March 13, 1986

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Changes to the Diagnosis-Related Group (DRG) Classification System; Proposed Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-357-PN]

Medicare Program; Changes to the DRG Classification System

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

ACTION: Proposed notice.

SUMMARY: In the final rule published September 3, 1985 on the prospective payment system for inpatient hospital services (50 FR 35646), we stated that we would publish a later notice addressing issues related to the Diagnosis-Related Group (DRG) classification system. This is that notice. In this proposed notice, we respond to comments received on the DRG classification system, discuss Medicare coverage changes affecting the DRG system, list procedures for which new identifying codes (in the coding system of the International Classification of Diseases on which DRG assignments are based) have been proposed, and propose certain changes in the DRG classification system to resolve some of the problems identified by comments and analysis to date.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 14, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-357-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC; or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-357-PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Linda Magno (301) 594-9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prospective Payment System—General

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment for inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. The list of DRGs currently contains 471 specific categories. All but 3 DRGs are categorized into 23 major diagnostic categories (MCDs).

The formula used to calculate payment for a specific case takes a hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

B. Basic DRG Classification System

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician enters into a patient's medical record the principal diagnosis, any additional diagnoses, and any procedures performed during the stay. This information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). The principal diagnosis, as many as four additional diagnoses, the principal procedure, and as many as two additional procedures are reported, along with a patient's age, sex, and discharge status, to the hospital's fiscal intermediary on the hospital request for payment.

The intermediary then enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished. During this process, cases such as the following are selected for further development:

- Cases that are obviously improperly coded (for example, diagnoses are shown that are inappropriate given the sex of the patient).
- Cases that include surgical procedures not covered under Medicare (for example, electromagnetic hearing aid implants).
- Cases that require more information (for example, certain biopsies are identified so that the intermediary can determine through development whether the case actually involved an open biopsy (a procedure warranting assignment to a surgical DRG) or a closed biopsy (a procedure warranting assignment to a nonsurgical DRG)).
- Cases with principal diagnoses that do not usually justify admission to the hospital (for example, benign hypertension).

After screening through the Medicare Code Editor and any further development of the claims, cases are classified by the GROUPER computer program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights, and to classify current cases for purposes of determining payment.

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders procedures by resource intensity) and medical DRGs. Medical DRGs are differentiated on the basis of diagnosis only. Generally, GROUPER does not look at other procedures; that is, those not surgical or those minor surgical procedures generally not done in an operating room and therefore not recognized as surgical by GROUPER.

C. Changes to the DRG Classifications and Weighting Factors

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify diagnoses and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. These adjustments are made to reflect changes in resource consumption,

treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress was that we would make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

D. Implementation of the DRG System

1. General

During the initial operating period of the prospective payment system, we learned that the DRG method of classification is dynamic rather than static and that the need to maintain and improve it posed some operational challenges that we needed to address further. Operational experience and technological advances have led us to identify situations that require positive actions to resolve. These cases include the following:

- Cases that can be classified more accurately with revisions to GROUPER.
- Cases in which we discover that there are unintended omissions or inequities in the classification system (for example, mechanical or conceptual flaws).
- Cases in which an addition to Medicare coverage requires assignment of a new item, service, or procedure to an existing or new DRG.

2. Publication of Proposed and Final Rules—1985

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (50 FR 24366) to update the prospective payment system in general. As part of that NPRM, and as required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986. The classification changes were described in Table 6 of the addendum to the NPRM. We proposed to use these new groupings in a revised GROUPER program that was used to classify cases prior to recalibrating the DRG weights published in Table 5 of the addendum to the NPRM.

On September 3, 1985, we published a final rule in the **Federal Register** (50 FR 35646) concerning the prospective payment system. We included in that rule the classification changes proposed in the June 10 proposed rule as we had modified them in response to comments and suggestions we received on the NPRM. We also included some additional changes that followed the principles discussed in the proposed rule or that were similar to them. (As a result of the Emergency Extension Act of 1985 (Pub. L. 99–107) and subsequent extensions of that Act (Pub. L. 99–181, 99–189, and 99–201), the classifications and weights established by the September 3, 1985 final rule will not go into effect until March 15, 1986.)

We indicated in the final rule that we could not address certain classification issues that were raised in the NPRM comment period for various reasons; we also noted that those comments would be analyzed and reviewed during the several months after publication of the final rule and that actions on them would be published in a notice early in 1986. Also, in keeping with our commitment to review classification changes on an ongoing basis, we solicited comments on any other proposed classification changes, and provided an address for such comments.

II. Public Comments

In keeping with our commitment to publish proposed reclassification changes prior to the annual notice of proposed changes to the prospective payment rates, we have prepared this document. We have included in this proposed notice responses to comments that were raised in the NPRM comment period which, as just mentioned, we were unable to respond to in the September 3 final rule, and others that we have received on the DRG weights and the classification process since publication of the September 3 final rule. We expect these proposed changes to represent the major portion of reclassifications for Federal fiscal year 1987. However, we are continuing to study several issues, such as thoracoabdominal aortic aneurysm repairs, major head and neck procedures, hand and upper extremity procedures, and burn cases. Therefore, it is possible that a few additional classification changes may be proposed in the June notice of proposed prospective payment system changes. These comments and our reponses follow and are generally set forth in MDC order.

A. Comments on MDC 1: Diseases and Disorders of the Nervous System

Comment: One commenter believes that it is inappropriate to classify cases of myasthenia gravis (ICD–9–CM codes 3580 and 3581) that involve plasmapheresis into DRG 34 (Other Disorders of the Nervous System, Age over 69 and/or complications or comorbidities [1]).

Response: Myasthenia gravis is not classified in DRG 34. The GROUPER classifies all cases with a principal diagnosis of myasthenia gravis into DRG 12 (Degenerative Nervous System Disorders), regardless of whether plasmapheresis is or is not used as a treatment. While we recognize that plasmapheresis is a costly procedure, it is not a surgical procedure. Accordingly, cases involving plasmapheresis are necessarily assigned to medical DRGs, which are differentiated by principal diagnosis, not by treatment procedures. To the extent that plasmapheresis is used to treat myasthenia gravis, the resources associated with such treatments would be reflected in the weight for DRG 12.

In addition, we note for general reference that since DRG 34 is specific to patients over age 69 or those with complications or comorbidities, a given diagnosis would never be assigned exclusively to that DRG, but would also be assigned to DRG 35 (Other Disorders of Nervous Systems, Age Under 70 without C.C.). Whenever a DRG is split on age and/or complications or comorbidities, it is identical to one or two other DRGs except for the age range of patients assigned to it and the presence or absence of complications/comorbidities. That is, all diagnoses and/or procedures assigned to one DRG specific to a particular age group are assigned to the DRG(s) specific to all other age groups.

B. Comments on MDC 2: Diseases and Disorders of the Eye

Comment: One commenter disagrees with HCFA's decision to classify lens extractions involving anterior chamber injections (procedure code 1292) into DRG 39 (Lens Procedures With or Without Vitrectomy), as was set forth in the September 3, 1985 **Federal Register** publication. Rather, the commenter believes such cases should be classified into DRG 42 (Intraocular Procedures Except Retina, Iris, and Lens).

Response: While the average standardized charges for lens procedures with anterior chamber injections are slightly higher (less than 5 percent) than for lens procedures without such injections, we believe that this differential is minimal. Moreover, we note that anterior chamber injections occurred in less than one percent of the more than 400,000 cases in DRG 39. We believe this confirms our position that anterior chamber injections are incidental to lens procedures classified in DRG 39.

Comment: One commenter was concerned that DRG 42 (Intraocular

[1] Complications or comorbidities is henceforth, where appropriate, abbreviated C.C.

Procedures Except Retina, Iris, and Lens), with an average length of stay of 3.7 days, did not reflect lengths of stay or adequately pay for costs associated with mechanical vitrectomy (procedure code 1474) for cases of acute endophthalmitis (diagnosis codes 36001 through 36019).

Response: We have reviewed these concerns and examined the charges associated with endophthalmitis in DRG 42, with and without mechanical vitrectomy. Our review of the cases within this DRG in fact indicates that average standardized charges for endophthalmitis cases involving procedure code 1474 are slightly lower than the average standardized charges for endophthalmitis cases not involving the procedure. Therefore, we have not accepted this comment. We would also note, however, that the length of stay data in the tables of weights published in the September 3, 1985 final rule, as well as in previous **Federal Register** documents pertaining to the prospective payment system, are for illustrative purposes only. They are not intended to be prescriptive treatment goals. Rather, each entry merely reflects the averages (arithmetic and geometric) of all cases assigned to that DRG. Moreover, unless all cases assigned to a given DRG had an identical length of stay, there will always be both cases with shorter lengths of stay and cases with longer lengths of stay than the average.

Comment: One commenter expressed concern that the average length of stay and weight for DRG 36 (Retinal Procedures) do not adequately compensate for cases involving insertion of a radioactive plaque (procedure code 1427) to treat malignant tumors of the choroid (diagnosis code 1906). The commenter also believes it is inappropriate to group such cases to DRG 36, since they are not retinal procedures, but instead involve the choroid.

Response: That this DRG encompasses both choroid and retinal procedures is not surprising, given that a number of procedures, including procedure code 1427, are specifically defined as chorioretinal procedures by ICD–9–CM. Our data indicate that while the average standardized charges for DRG 36 cases involving procedure code 1427 are somewhat higher than for the DRG as a whole, implantation of a radioactive plaque is a relatively rare procedure (65 Medicare cases out of more than 19,000 in this DRG during FY 1984). Moreover, such a distribution of cases around the mean is common to all DRGs; we find that neither the disparity in average standardized charges nor the volume of cases is sufficient to warrant a classification change. In that regard, we note that the comment included no specific recommendation as to a more appropriate classification of these cases.

C. Comments on MDC 4: Diseases and Disorders of the Respiratory System

Comment: A comment was received stating that several bacterial-specific pneumonias are included within DRGs 79, 80 and 81 (Respiratory Infections and Inflammations; Age over 69 and/or C.C., Age 18–69 without C.C., and Age 0–17, respectively), while others are included in DRGs 89, 90 and 91 (Simple Pneumonia and Pleurisy; Age over 69 and/or C.C., Age 18–69 without C.C., and Age 0–17, respectively). In the September 3 final rule, DRGs 79, 80 and 81 are assigned relative weights of 1.9546, 1.4403, and .8652, respectively, while the weights for DRGs 89, 90 and 91 are relatively lower at 1.1768, .8900, and .8216 respectively. It has been recommended that all gram-negative pneumonias contained within DRGs 89, 90, and 91, with the exception of Hemophilus influenzae (diagnosis code 8422), be classified into DRGs 79, 80, and 81, since these gram-negative pneumonias tend to be as serious and resource-intensive as those pneumonias currently found in the higher-weighted DRGs 79, 80, and 81.

Response: We have conducted an analysis reviewing all of the bacterial-specific pneumonias contained within DRGs 79, 80, 89 and 90 with respect to the number of stays, the average length of stay, and the average standardized charge for each principal diagnosis in FY 1984. We did not review data for DRGs 81 and 91 since one of these (DRG 81) is a low-volume DRG with a weight based on data from Maryland and Michigan. Based on the data that we used in our review, principal diagnosis 4828 (Bacterial pneumonia NEC), which includes E. Coli and Proteus pneumonias, is the only diagnosis code contained within DRGs 89 and 90 that warrants placement into DRGs 79 and 80, which have higher relative weights. Our analysis indicates there is a significant difference between the average length of stay and average standardized charge for this principal diagnosis (4828) as compared to the remaining simple pneumonias contained within DRGs 89 and 90. Both the average length of stay and average standardized charges of cases with principal diagnosis 4828 are more comparable to those found for the bacterial-specific pneumonias already contained within DRGs 79 and 80.

Therefore, based on this analysis, we propose removing diagnosis code 4828 (Bacterial pneumonia NEC) from DRGs 89, 90, and 91 and placing this code into DRGs 79, 80, and 81. Due to the low volume of cases having this principal diagnosis, as compared to the total volume of cases in DRGs 79, 80, 89, and 90, the total impact of this proposed change on the relative weights of the affected DRGs is expected to be minimal. Although our analysis was limited to DRGs 79, 80, 89 and 90, we believe it is appropriate to propose to remove code 4828 from DRG 91 and to place it into DRG 81, to maintain the existing parallels among the respiratory infection DRGs (79, 80, and 81) and the pneumonia DRGs (89, 90, and 91), since they are identical except for age and complications/comorbidities.

D. Comments on MDC 5: Diseases and Disorders of the Circulatory System

Comment: We received several comments concerning Percutaneous Transluminal Coronary Angioplasty (PTCA). The commenters were concerned with our move in the September 3 final rule, of procedure code 360 (Removal of Coronary Artery Obstruction), which includes PTCA as well as other angioplasty procedures, from DRG 108 (Other Cardiovascular or Thoracic Procedures, with Pump) to DRG 112 (Vascular Procedures Except Major Reconstruction, without Pump). The commenters, including the Prospective Payment Assessment Commission (ProPAC), recommended that PTCA be assigned a separate procedure code, that data on cost and price should be collected, and that the final decision as to DRG assignment (either to an existing DRG or the creation of a new DRG) be based on the data collected. (However, in the interim, ProPAC recommended that PTCA be assigned to DRG 112.) It was also pointed out that by not having a separate procedure code for PTCA, any changes made to the DRG assignment of the procedure code affects a number of other procedures that fall within that procedure code.

Response: These comments suggest that this classification change was made in the absence of data. We would note that we based our decision on the change in the classification of cases involving code 360 on an analysis of all claims with this procedure code for discharges in FY 1984. Although there is not currently a separate code for PTCA, we can infer that the vast majority of the cases with procedure code 360 represent PTCA because our medical consultants advise us that it is relatively rare to remove a coronary artery obstruction using an open thoracic procedure

without use of a pump (code 3961). Moreover, while the nearly 7600 discharges with code 360 without pump may include a few of the more complex angioplasty procedures, it is significant to note that the average standardized charges for all discharges with code 360 without pump are somewhat less than the average standardized charges for all other cases in DRG 112. Since the recalibrated weights are based on charges, the large number of cases coded 360 without pump now in DRG 112, with relatively low charges, would have dominated the relatively high charges for the 900 cases now in DRG 108 and thus reduced the recalibrated weight of DRG 108 by more than 50 percent—from about 4.8 to about 2.3—if PTCA had been left in DRG 108, while leaving the weight of DRG 112 virtually unchanged. This would have resulted in significant under-reimbursement of virtually all cases in DRG 108 except angioplasty.

We have, however, taken steps to obtain, through the Federal inter-agency committee mentioned later in section III.C. of this notice, a discrete code for PTCA to allow us to distinguish this procedure from other procedures coded 360 without pump. If approval for a discrete code is obtained, the coding system would permit such differentiation, and it would then be possible to evaluate resource use for removal of coronary artery obstructions via open thoracic procedures versus PTCA, and to modify the classification further should the resource use warrant such a change.

Comment: We received two comments concerning reimbursement for DRG 117 (Cardiac Pacemaker Replacement and Revision Except Pulse Generator Replacement Only). Both commenters expressed concern with an apparent lack of homogeneity and believed that the DRG encompassed too wide a spectrum of pacemaker procedures, ranging from the replacement of the whole pacemaker system (pulse generator plus leads) to procedures requiring no pacemaker hardware. Both commenters suggested the procedures involving replacement of both leads and pulse generators be moved to DRG 116 (Permanent Cardiac Pacemaker Implant, without AMI, Heart Failure or Shock). It was suggested that this revision would result in reimbursement more closely related to the resource intensity of the procedure.

Response: It appears that the difficulty experienced by the commenters is a result of inconsistencies in the use of ICD–9–CM codes rather than problems with the DRG classification system. The operating room procedures for DRG 117 include replacement or removal of electrodes or revisions to the system (i.e., repositioning of an electrode). When a new (replacement) total pacemaker system is implanted, other procedure coding is required. None of the procedure codes for DRG 117 is appropriate.

The use of any code for insertion of a permanent pacemaker is appropriate whenever a total pacemaker system is inserted and would result in such cases being grouped to DRG 115 (Permanent Cardiac Pacemaker Implant, with AMI, Heart Failure or Shock) or DRG 116. We believe that careful coding will alleviate some of the difficulties the two commenters encountered.

Comment: A number of comments were received regarding the level and/or the "logic" of the recalibrated DRG weights which were contained in our September 3 final rule. One commenter specifically noted the reduction in the weights for DRGs 124 and 125 (Circulatory Disorders Except AMI with Cardiac Catheterization; with and without Complex Diagnosis, respectively); while another commenter observed that the weight differential between DRGs 132 (Atherosclerosis Age over 69 and/or C.C.) and 140 (Angina Pectoris) was not logical; neither accounting for considerable variation in complexity among these cases nor the commenter's belief that atherosclerosis was a chronic condition that, by itself, would not require hospitalization. Another commenter expressed concern about payment for DRG 128 (Deep Vein Thrombophlebitis), noting that such cases were more complex than cases in DRG 130 (Peripheral Vascular Disorders Age over 69 and/or C.C.) to a degree not reflected by the slight difference in their weights.

Response: The weights for the DRGs of concern were based on the following numbers of Medicare discharges from FY 1984 (before elimination of statistical outliers):

	Number of cases
DRG 124	24,086
DRG 125	55,237
DRG 128	42,184
DRG 130	98,199
DRG 132	124,184
DRG 140	312,386

Since none of these commenters identified specific problems with the types of cases being classified into each of these DRGs, we can only express our confidence that the recalibrated weights for these as for all the DRGs reflect the relative resource intensity of all cases assigned to them.

E. Comments on MDC 6: Diseases and Disorders of the Digestive System

Comment: One commenter noted that the GROUPER program does not recognize a partial pancreatectomy as an O.R. procedure in MDC 6, the MDC to which a principal diagnosis of suppurative peritonitis is assigned.

Response: Partial pancreatectomies are not recognized in MDC 6, which includes the diagnosis code for suppurative peritonitis; hence, cases of suppurative peritonitis with this procedure cannot be classified according to the surgical hierarchy that applies within MDC 6. Diseases involving the pancreas fall into MDC 7 (Diseases and Disorders of the Hepatobiliary System). Therefore, when the principal diagnosis is suppurative peritonitis and partial pancreatectomy is the only procedure performed, the GROUPER must assign the case to DRG 468 (Unrelated Operating Room (O.R.) Procedures). We note that such procedures are rare. Also, if the suppurative peritonitis is due to a pancreatic disorder, the pancreatic disorder should be coded as the principal diagnosis, and the case would group to MSC 7.

Comment: One commenter believes that procedure code 5499 (Other Operations of Abdominal Region) should be recognized as an O.R. procedure because it includes the removal and subsequent modification of a peritoneal-vascular shunt.

Response: Our medical consultants do not agree that procedure code 5499 should be classified as an O.R. procedure. The code is very broad in scope, covering a number of procedures. Some require the use of an operating room while others may be done in a less resource-intensive setting.

F. Comments on MDC 7: Diseases and Disorders of the Hepatobiliary System

Comment: Two commenters expressed concern about the accuracy of the relative weights for DRG 199 (Hepatobiliary Diagnostic Procedure for Malignancy) and DRG 200 (Hepatobiliary Diagnostic Procedure for Non-Malignancy).

Response: In examining these commenters' concerns, we compared the relative weights for DRGs 199 and 200 that were published in the September 1, 1983 **Federal Register** (2.3378 and 2.6286, respectively) with the relative weights for DRGs 199 and 200 that were published in the September 3, 1985

Federal Register (2.4574 and 2.5818, respectively). For both sets of relative weights, DRG 199 has a lower relative weight than DRG 200, even though DRG 199 includes what is often perceived as the more severe cases (that is, the malignancies). Based on the data we have available, we believe the relative weights for DRG 199 and DRG 200 are correct as published in the September 3, 1985 final rule.

Our medical consultants note that clinical practice and experience would suggest no inconsistency in the weights for these two DRGs. First, in order to make a final diagnosis of other than a malignancy, resource consumption could be greater in that a physician frequently requires more time, orders more tests, and uses additional medical resources. In addition, certain non-malignant diseases, such as cirrhosis, abscess, and pancreatitis, are often more difficult to treat than malignancies. Finally, when a patient has a malignancy that may be responsive to treatment, an additional procedure may be performed during the same stay. When this occurs and the procedure is higher in the surgical hierarchy, the discharge is assigned to an entirely different DRG.

G. Comments on MDC 8: Diseases and Disorders of the Musculoskeletal System and Connective Tissue

1. Major Joint Procedures—DRG 471

Twelve comments were received concerning DRG 471 (Bilateral or Multiple Major Joint Procedures of the Lower Extremity), which was established in our September 3, 1985 final rule. This DRG was established to distinguish multiple joint procedures that were included in DRG 209 (Major Joint and Limb Reattachment Procedures) from single joint procedures that were also contained in DRG 209. Three commenters expressed unconditional support for the new DRG. One commenter expressed concern over the precedent set by this decision. We addressed this comment in the September 3 final rule (50 FR 35652). The remaining 8 comments are discussed below.

Comment: One commenter expressed concern that the parameters for DRG 471 do not adequately reflect the services required by patients undergoing multiple joint replacements. It was suggested that the new DRG 471 not be implemented until further study of the issue is completed.

Response: In establishing the relative weighting factor for DRG 471, we utilized actual billing information from our FY 1984 Part A Tape Bill (PATBILL) file for the Medicare patients who underwent multiple major joint replacements of the lower extremity during that year. We did not, as was suggested by the commenter, increase the weight of the DRG by the cost of an additional prosthesis to distinguish a multiple joint procedure from a single joint procedure. Rather, the charges for all services provided, including additional inpatient days, the prosthesis, and other ancillary services, were considered. The methodology employed in computing a weighting factor for the new DRG 471 was identical to the one that is generally used, and is thus identical to the methodology used to weight DRG 209 as it existed before DRG 471 was created.

The universe of cases used to establish the weighting factor for DRG 471 may not have included every multiple major joint procedure performed during FY 1984, due to the inability to identify every multiple joint procedure case as such from the billed information for cases included in DRG 209. However, the number of cases identified and used to establish the weight is large enough to produce an accurate measure of relative resource use. In fact, we believe only a very small percentage of the universe of the major multiple joint procedures furnished to Medicare beneficiaries was omitted. We believe postponing implementation of this new DRG 471 while we gather more refined data would only compound the potential problem of inadequate payment for the procedure during this time of continued data analysis.

As we expressed in the September 3 final rule, we intend to monitor payments in this area. However, the Emergency Extension Act, and its extensions, have so far delayed implementation of this DRG, along with all the other DRG classification changes made in the September 3 final rule, thus delaying our effort to gather more refined data and performing further data analysis. If we find further adjustments are necessary, they will be made during the future recalibrations.

Comment: One commenter expressed the desire that more multiple major diagnoses/procedure DRGs be developed, without citing what those specific conditions might be.

Response: We developed DRG 471 out of a recognition that the clinical and resource use issues associated with multiple major joint procedures of the lower extremity warranted a distinction from single joint procedures. We believe that the situation presented in multiple major joint procedures of the lower extremity was unique from a clinical perspective, insofar as performing multiple major joint procedures during a single admission is the approach preferred by some physicians, while performing multiple procedures over two admissions is the course preferred by other physicians. We did not want the payment system to affect the exercise of clinical judgment. This situation is unlike those cases in which a patient has multiple diagnoses or requires more than one surgical procedure which, for clinical, social and/or emotional reasons, are better done in a single admission than in multiple admissions. While the DRG classification system does not always differentiate these cases, we believe that when such a case is substantially more resource intensive than the average case assigned to the DRG, it is likely to become an outlier. Additional payment under the prospective payment system may be made for these situations.

If we discover other specific situations in which specific multiple procedures generally result in inadequate payment, we will consider further changes in the classification methodology. However, such changes will be considered only to the extent that they comport with the basic goals of the DRG system.

Comment: Three commenters expressed concern that the development of DRG 471, which was created to distinguish multiple joint procedures from single, may lead to pressure to perform multiple major joint replacements in one admission when separate admissions may be more medically appropriate for the patient.

Response: Our intent in developing DRG 471 was specifically to establish a mechanism for adequate Medicare payment when performance of multiple major joint procedures during a single inpatient stay is medically appropriate. DRG 209 continues to exist and reflects the relative resource use associated with single major joint replacements. Physicians may freely choose the most appropriate course of treatment for these cases. Therefore, we do not anticipate that problems will arise when physicians determine that a subsequent admission for a second major joint procedure is medically necessary. However, we will monitor actions by the Utilization and Quality Control Peer Review Organizations (PROs) in this regard and will issue clarifying instructions if necessary.

Comment: Three commenters believe that there is a problem with acceptance of duplicate procedure codes by the Medicare Code Editor (MCE). These commenters believe bilateral major joint procedures would continue to group to DRG 209 rather than DRG 471. One commenter pointed out that even if this

problem were corrected, the weighting factor for DRG 209 would remain inappropriately high due to inclusion of such bilateral procedures in the data used to calculate the weight for DRG 209.

Response: While the MCE does prohibit the inclusion of duplicate diagnosis codes, it does not edit for duplicate major joint procedure codes. Thus, when bilateral procedures are appropriately coded by listing the procedure twice, the case will not be edited out by the MCE but will be classified by GROUPER into DRG 471.

We acknowledge that there are no explicit instructions or guidelines on coding bilateral procedures where a single code has not been established to identify bilateral procedures. However, we have found that most hospitals have reported such cases by duplicating the single procedure code on the bills. In this regard, we note that approximately 600 of the nearly 1,700 cases used in computing the weighting factor for DRG 471 were classified to that DRG due to the presence of duplicate major joint procedure codes.

With respect to the concern that the weighting factor for DRG 209 continues to reflect bilateral procedures, we recognize that some bilateral procedures may not have been duplicatively coded and, therefore, were included in the computation of the DRG 209 weighting factor. However, due to the inability to specifically identify such cases as multiple joint procedures, we had no reasonable alternative but to include the charges for such cases in the DRG 209 data base. We believe that the additional payment available in DRG 471 will provide sufficient incentive to ensure that all future bilateral joint procedures of the same site are accurately coded to reflect the multiple procedures. Thus, any resulting current upward distortion in the weighting factor for DRG 209 should be corrected in future recalibrations. Again, as we expressed in the September 3 final rule, we intend to monitor payment in this area.

2. Surgical Hierarchy

Comment: One commenter suggested that wound debridement (procedure code 8622) assigned to DRG 217 (Wound Debridement and Skin Graft Except Hand, for Musculoskeletal and Connective Tissue Disorders) be placed above amputations assigned to DRG 213 (Amputations for Musculoskeletal and Connective Tissue Disorders) in the MDC 8 surgical hierarchy. This change was made in the September 3 final rule (50 FR 35742). Another commenter believes that wound debridement often is not done in the operating room. Thus, its place in the MDC 8 hierarchy obscures other procedures done during the same admission.

Response: It is true that there is some variability in the resources associated with procedure code 8622 (wound debridement). Sometimes the procedure may not require the use of an operating room. However, we have found the vast majority of such cases are very resource intensive, as is evidenced by the weighting factor assigned to DRG 217. The relative weight for this DRG is the third highest in the MDC. We also note that the arithmetic average length of stay for cases in this DRG is the second highest in MDC 8. We believe these facts substantiate that our decision as to the placement of wound debridement in the hierarchy of surgical procedures for MDC 8 is appropriate, despite the fact that on occasion wound debridement may not be very resource intensive.

3. Movement of Specific Codes between MDCs

Four commenters suggested reclassification of specific codes currently assigned to MDC 8. One of the comments, recommending reclassification of code 7248 (Other Back Symptoms) to DRG 243 (Medical Back Problems) was accepted and included in the September 3 final rule (50 FR 35740). The remaining comments are as follows:

Comment: One commenter believes diagnosis codes 99691 through 99699, which relate exclusively to complications of a reattached extremity or body part, should be reassigned from DRG 249 (Aftercare Musculoskeletal System and Connective Tissue) to DRG 468 (Unrelated O.R. Procedure). The commenter noted that these diagnosis codes indicate complications of transplant organs.

Response: We are not able to accept this commenter's suggestions for a number of reasons. First, DRG 468 is a classification reserved for cases where none of the surgical procedures performed is related to the principal diagnosis. There are no specific diagnoses or procedure codes assigned to this DRG.

Second, DRG 468 is a surgical DRG; that is, all cases assigned to this DRG involve surgical procedures. DRG 249 is a medical DRG and cases assigned to this DRG do not involve surgical procedures. Therefore, it would be inappropriate to combine such non-surgical cases with the cases in DRG 468, all of which involve operating room procedures.

Finally, diagnosis codes 99691 through 99696 are specific to a particular organ system, the musculoskeletal system and connective tissues. That is, such codes relate exclusively to complications of a reattached extremity or body part. Unlike the codes for complications of transplanted organ, such as 9968, which can be used for numerous organ systems, codes 99691 through 99696 and 99699 may be used only for diseases and disorders of the musculoskeletal system and connective tissue. If cases with these principal diagnoses are treated non-surgically, they are appropriately classified into DRG 249. If treated surgically, (i.e., if a reattached limb must again be reattached), they are assigned to DRG 209 (Major Joint and Limb Reattachment). In this regard, we note that there are procedure codes distinct from these diagnosis codes identifying the limb and extremity reattachment procedures. Finally, if surgery is performed and all the surgical procedures are unrelated to these principal diagnoses, the case would then group to DRG 468.

Comment: One commenter stated that replacing or repairing a major joint prosthesis was as resource intensive as the initial major joint procedure and, therefore, should be assigned to DRG 209 (Major Joint and Limb Reattachment) in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) rather than DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) in (Injuries, Poisonings and Toxic Effects of Drugs).

Response: This commenter's concern goes beyond the simple reclassification of a single procedure. Indeed, a similar argument could be made about any number of such revisions. The root of this problem lies in the fact that the ICD–9–CM coding system does not generally differentiate infections and complications of procedures by major organ system. Thus, under the current coding system, a large proportion of such infections and complications, when cited as the principal diagnosis, group to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs). Because the principal diagnosis dictates the MDC to which a case is assigned, principal diagnoses that are non-specific as to organ system must necessarily be assigned to an MDC that is similarly not specific to a single organ system. They cannot appear in all the MDCs for which they might be appropriate. Unlike procedures, which can appear in several MDCs, diagnoses are confined to a single MDC.

We recognize that it would be advantageous to further refine the ICD–9–CM coding system for such indications. However, it would be

inappropriate for HCFA to unilaterally and independently implement revisions in the ICD–9–CM coding system without cooperation and consultation with other programs and consideration of the effects on the users of ICD–9–CM data. In addition, ICD–9–CM coding system is structured to coincide with the ICD codes developed by the World Health Organization for international use. We will, however, keep this comment in mind as we continue to evaluate improvements in the ICD–9–CM codes.

Finally, we would point out that revision of a major joint procedure to correct a malfunction of a prosthesis is currently classified into DRG 209 (Major Joint and Limb Reattachment Procedures). Thus, should future modification of the International Classification of Diseases allow for precise organ system identification of other complications and/or infections, it is reasonable to assume that such new diagnosis codes would be assigned to the same MDC and DRG as the diagnoses necessitating the original procedure.

Comment: One commenter objected to the addition of procedure code 031 (Division Intraspinal Nerve Root) to DRGs 214 and 215 (Back and Neck Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) contained in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue). The commenter noted that the procedure was already included in MDC 1 (Diseases and Disorders of the Nervous System). Noting that resources associated with the procedure would be similar regardless of the diagnosis, the commenter recommended that code 031 be retained in MDC 1.

Response: We do not believe the addition of procedure code 031 to DRGs 214 and 215 in MDC 8 is inappropriate. This procedure is commonly performed on patients with diseases and disorders of the musculoskeletal system as well as those with diseases and disorders of nervous system. In fact, we found the procedure occurring more than twice as frequently in musculoskeletal diagnoses (379 cases) as in nervous system diagnoses (181 cases).

The current DRG classification system is based on diagnosis rather than procedures. There are a number of procedures that are classified into two or more major diagnostic categories, depending upon the principal diagnosis of the patient. We believe it is appropriate, therefore, to classify a given procedure code in as many MDCs as medically appropriate in order to prevent a large number of cases from grouping inappropriately to DRG 468 (Unrelated O.R. Procedures). In this regard, we would point out that procedure code 031 has been included not only in MDC 1 but also in MDC 17 (DRGs 400 (Lymphoma or Leukemia with Major O.R. Procedure), 406 (Myeloproliferative Disorder or Poorly Differentiated Neoplasms with Major O.R. Procedures and C.C.), and 407 (Myeloproliferative Disorder or Poorly Differentiated Neoplasms with Major O.R. Procedures without C.C.), and MDC 21 (DRGs 442 and 443—Other O.R. Procedures for Injuries; Age over 69 and /or C.C., and Age under 70 without C.C., respectively), since the initial implementation of the DRG classification system.

Finally, we note that the weighting factors assigned to DRGs 214 and 215 reasonably approximate the cost of treating cases in which division of intraspinal nerve root (procedure code 031) was reported. The average standardized charges for all 25,000 cases in DRG 214 were about 17 percent higher than the average standardized charges for the 195 cases within the DRG showing procedure code 031. Similarly, the average standardized charges for the nearly 16,000 cases in DRG 215 are about 32 percent higher than those for the 184 cases showing procedure code 031 in DRG 215. Thus, we find no reason to reconsider the appropriateness of our addition in the September final rule of this code to MDC 8. Finally, adding this procedure to MDC 8 does not mean it was moved out of any of the other MDCs to which it is assigned.

H. Comments on MDC 9: Diseases and Disorders of the Skin, Subcutaneous Tissue, and Breast

Comment: One commenter objected to our addition of 10 procedure codes to DRGs 269 and 270 (Other Skin, Subcutaneous Tissue and Breast O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in the September 3 final rule (50 FR 35745), citing that this change reduced the clinical homogeneity of the DRGs.

Response: We addressed this comment in our September 3 final rule (50 FR 35649), where we indicated that most of the procedures added were relatively minor and were omitted from the original DRG system through oversight. We continue to believe that the 10 procedure codes are clinically suited to the DRG, in which they are now grouped.

Comment: Another commenter recommended that the surgical hierarchy of MDC 9 be modified to place skin grafts above breast procedures.

Response: Although not specifically addressed in the preamble to the September 3 final rule, this recommended change was accepted and appeared in Table 6, Item D.3, page 35742 of the September 3 rule.

Comment: The GROUPER logic was modified in our September 3 final rule to search out any diagnosis of breast malignancy rather than only a principal diagnosis of malignancy. One commenter believes the initial search on open breast biopsy cases should be limited to breast malignancy rather than any malignancy.

Response: Although the description of the DRG logic change uses the term "any malignancy," GROUPER does recognize only breast malignancies in this search. We believe the explanation of this change in table 6, Item A.2, (page 35736 of the September 3, 1985 **Federal Register**) makes this point clear.

Comment: One commenter expressed concern that a patient initially admitted to a hospital with a skin disorder included in MDC 9, who ultimately undergoes a mastectomy due to carcinoma, would be classified into DRG 261 (Breast Procedure for Non-Malignancy Except Biopsy and Local Excision). The commenter believes such cases should be classified in DRG 468 (Unrelated O.R. Procedures).

Response: We note that MDC 9 recognizes breast malignancy diagnoses as either the principal or secondary diagnosis and mastectomy as an operating room procedure. Such cases are grouped into one of DRGs 257 and 258 (Total Mastectomy for Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) or DRGs 259 and 260 (Subtotal Mastectomy for Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively). As long as the claim identified breast malignancy as one of the diagnoses, the GROUPER would classify such cases into one of DRGs 257 through 260. Generally, cases only group to DRG 468 when all of the surgical procedures are not related to the principal diagnosis. In most MDCs, the GROUPER logic is such that a coupling of any of the principal diagnoses within an MDC and an operating room procedure associated with that MDC will result in classification to a specific surgical DRG within that MDC. While admittedly in some cases the surgical procedure may not be directly related to the principal diagnosis but to a secondary diagnosis in the same MDC, we believe payment in the specific surgical DRG is more appropriate than the result that would obtain if we

structured the DRG logic to "force" cases into DRG 468.

I. Comments on MDC 11: Diseases and Disorders of the Kidney and Urinary Tract

Comment: One comment concerned the DRG classification and reimbursement for implantation of the artificial urinary sphincter (AUS). This procedure is currently being coded under 5799 (other bladder procedures) and is grouped to DRGs 308 and 309 (Minor Bladder Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), which have relative weights of 1.1490 and .8665, respectively. The commenter suggested that reimbursement was inadequate and that this procedure should be grouped to DRGs 304 or 305 (Kidney, Ureter and Major Bladder Procedures for Non-Neoplasm; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), which have relative weights of 2.0323 and 1.4894, respectively.

Response: Procedure code 5799 is used for a range of bladder procedures not elsewhere classified, some of which may be very simple and others relatively complex. There currently is not a unique ICD–9–CM code to identify AUS as distinct from the other procedures. (See section III.C.6. for proposed changes.) Therefore, we are unable to analyze data specific to AUS cases to determine whether classification in DRGs 304 and 305 is appropriate, and we cannot effect a GROUPER change that moves only the AUS cases and no other cases coded 5799. Moreover, we note that, on average, cases involving procedure code 5799 are not the most resource intensive in DRGs 308 and 309.

Recognizing the inadequacy of the coding system to permit specific identification of AUS cases, we nevertheless reviewed Medicare discharge data for all cases in DRGs 308 and 309 for which procedure code 5799 was present.

In DRG 308, the average standardized charge for cases with procedure 5799 was 96 percent of the average standardized charge for all other cases in the DRG, and those cases represented less than 2 percent of the 14,000 cases assigned to DRG 308. In DRG 309, while the average standardized charges for cases involving procedure 5799 were somewhat higher than the average standardized charges of all other cases in the DRG, there were only 63 cases, or just over 2 percent of the total in DRG 309. Moreover, the average standardized charges for DRGs 304 and 305 are 81 percent and 35 percent higher, respectively, than the average standardized charges for cases involving procedure 5799 in DRGs 308 and 309, respectively.

In light of these disparities in average standardized charges, we do not believe the commenter's concern is fully borne out by the Medicare discharge data. Since we cannot at this time effect a classification change that moves only AUS cases coded 5799, we have not proposed to adopt this commenters recommendation.

Comment: We received a number of comments on reimbursement for extracorporeal shock wave lithotripsy (ESWL). All commenters expressed concern that this procedure was not appropriately grouped and that reimbursement was inadequate.

Response: As we indicated in the September 3, 1985 **Federal Register**, we will monitor the classification of ESWL to assess its appropriateness. However, since this procedure was only recently covered under Medicare, very little Medicare data are available for analysis at this time. (We have also proposed a new ICD–9–CM code for ESWL (see section III.C.5. of this notice)). As these data become available, we will evaluate the relative resource intensity of this procedure to determine what, if any, changes should be made.

J. Comments on MDC 12: Diseases and Disorders of the Male Reproductive System

Four comments were received regarding MDC 12 issues. After publication of the June 10, 1985, proposed rule (50 FR 24366), containing proposed DRG classifications and weighting factors, one commenter recommended that the surgical hierarchy of MDC 12 be revised to order penis procedures above transurethral prostatic resections. This change was made and included in the September 3, 1985 **Federal Register** (50 FR 35742). Even though the average length of stay is greater in transurethral resection cases, the charge data indicate that penis procedures are more resource intensive than transurethral prostatic resections.

Comment: After final publication of the change just discussed, we received a comment objecting to the above-mentioned revision. This commenter stated that many patients diagnosed for benign prostatic hypertrophy undergo both transurethral prostatectomy and internal urethrotomy (a penis procedure). The revised surgical hierarchy assigns such cases based on urethrotomy; therefore, such cases are assigned to DRG 341 (Penis Procedures) rather than to DRGs 336 or 337 (Transurethral Prostatectomy; Age over 69 and/or C.C., or Age under 70 without C.C., respectively). The commenter further noted that physicians practicing at this hospital were objecting to the new DRG assignment.

Response: The commenter seems to believe mistakenly that this results in lower payment levels. In fact, the weighting factor for DRG 341 is slightly higher (.9974) than that for DRG 336 (.9871) or that for DRG 337 (.7788). We find no reason to believe the surgical hierarchy of MDC 12 needs further revision. Patients undergoing both penis procedures and prostate procedures should be assigned to the more resource intensive DRG. While admittedly an internal urethrotomy itself may not be as resource intensive as a transurethral prostatectomy, we continue to believe that penis procedures in general tend to be more resource intensive than prostate procedures.

If, as the commuter further alleged, physicians are complaining about this assignment, we can merely speculate that such complaints are prompted by the trend in many hospitals to place inappropriate emphasis on the average length of stay of DRGs. Since the average length of stay for DRG 341 is less than that of DRG 336, it would be quite reasonable for a physician to complain if he or she were being pressured to discharge prostectomy patients in order to meet the average length of stay of patients classified into DRG 341. As we have noted in the prospective payment update notices, the mean lengths of stay in the DRG tables are furnished only for purposes of illustration, for establishing the day outlier thresholds, and for computing payments to transferring hospitals. Although they are based on the actual length of stay distribution of cases within each DRG, they are not intended to reflect treatment norms. We believe that the physician is the appropriate individual to decide the proper length-of-stay for a particular patient.

Comment. Two commenters expressed concern that the payment for insertion of penile prostheses under DRG 341 is inadequate. One of these commenters particularly noted that there are two distinct types of prostheses commony utilized—inflatable and semi-rigid—with significant cost difference. This commenter recommended the creation of a new DRG to correct this problem.

Response: In analyzing the cases assigned to DRG 341 (Penis Procedures), we find little reason to believe reclassification is necessary. We cannot, at present, differentiate inflatable penile prosthesis from semi-rigid prosthesis

under the procedure codes presently in use; therefore, we cannot fully analyze the merits of adopting the commenters' suggestion of establishing a separate DRG for more costly penile procedures.

The adoption of a unique procedure code for this prosthesis, if finalized by the ICD–9–CM Coordination and Maintenance Committee (see Section III.C.7 of this notice), should significantly increase the quality of data in this regard. We will continue to monitor payments in this area and may consider changes in the future if analyses and data indicate they are necessary.

K. Comments on MDC 13: Diseases and Disorders of the Female Reproduction System

Comment: Several commenters wrote in identifying surgical hierarchy and logic problems in MDC 13. Specifically, two commenters noted that ovarian cancers, among the most common gynecological malignancies, involve extensive treatment of patients who are frequently malnourished and acquire a wide range of resources. In this regard, the commenters expressed concern that an ovarian malignancy, treated surgically with the uterine and adenexa procedures, was classified appropriately in DRG 357 (Uterus and Adenexa Procedures, for Malignancy) with a weight of 2.1101, but that when a hysterectomy was also performed, the case would group to DRGs 354 or 355 (Non-Radical Hysterectomy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) with weights of 1.2335 and .9767, respectively. A similar comment was made with respect to procedures further down in the hierarchy of MDC 13, where a uterine or adenexa procedure for non-malignancies is classified into DRG 358 (Uterus and Adenexa Procedures, for Non-Malignancy Except Tubal Interruption), with a weight of 1.1185. If an incisional tubal interruption is performed during the same admission, the GROUPER classifies the case into DRG 359 (Incisional Tubal Interruption for Non-Malignancy), with a weight of .5044.

Response: We began our analysis by comparing three groups of cases assigned to each of DRGs 354 and 355: those with a principal diagnosis of malignancy, where both a hysterectomy and uterine/adenexa procedures were performed; cases of malignancy where a hysterectomy was performed without uterine/adenexa procedures; and cases of hysterectomy for principal diagnoses other than malignancy. We compared the average standardized charges across the groups, and found a significant difference among the hysterectomy cases in both DRGs 354 and 355, depending on whether the principal diagnosis was malignancy or not. In DRG 354, the average standardized charge for malignancy cases was 38 percent higher than that for non-malignancies. In DRG 355, the malignancies had an average standardized charge 15 percent higher than that of the non-malignancies.

In addition to the differences between average standardized charges, the relative frequencies of cases—11,000 malignancies versus 19,000 non-malignancies in DRG 354, 4,000 malignancies versus nearly 12,000 non-malignancies in DRG 355—were such that the less expensive non-malignancies were dominating the data used to construct the weights for DRGs 354 and 355.

While these findings suggested that malignancies and non-malignancies should be classified in different DRGs, there were even greater differences between these malignancies and those that grouped to DRG 357 (that is, those without hysterectomy). The average standardized charge for DRG 357 is 35 percent and 91 percent higher than those for DRGs 354 and 355, respectively.

Upon further review, we found that ovarian and adenexa cancers make up more than 70 percent of the cases in DRG 357 and are the most resource intensive of the malignancies in this DRG. In addition, when we examined the ovarian and adenexa malignancies in DRGs 354 and 355 (with hysterectomy), we found that the average standardized charges for ovarian and adenexa cancers are fairly comparable regardless of what procedures are performed. Hence, among the cases examined in these three DRGs, diagnosis had consistently greater explanatory power with respect to resource intensity than did the procedure performed.

With respect to the comment that incisional tubal interruptions changed the assignment of non-malignancies with uterine/adenexa procedures from DRG 358 to DRG 359, we conducted a similar analysis and found that incisional tubal interruptions were more comparable in resource use to DRG 361 (Laparoscopy and Endoscopy (Female) Except Tubal Interruption) than to the uterine/adenexa procedure with which it is currently combined in the surgical hierarchy.

In light of all these findings, we are proposing to restructure DRGs 354, 355, 357, 358, and 359 (except for incisional tubal interruption) as follows:

1. Uterus and adenexa procedures (except for incisional tubal interruption: procedure codes 6631, 6632, 6639 and 6663) will be moved into the same section of the surgical hierarchy for MDC 13 as non-radical hysterectomies are currently in, above reconstructive procedures.

2. Cases involving all these surgical procedures (that is, non-radical hysterectomies, uterus and adenexa procedures) will be divided into those with a principal diagnosis of malignancy and those without.

3. Cases with a principal diagnosis of malignancy will be further subdivided.

a. Those with ovarian and adenexal malignancies (diagnosis codes 1830, 1832, 1833, 1834, 1835, 1838, 1839, 1986 and 2362) will become the proposed new DRG 357 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures, for Ovarian and Adenexal Malignancy).

b. Those cases with a principal diagnosis of malignancy except ovarian and adenexal malignancy will be split on age and complications/comorbidities, and will become the proposed new DRGs 354 and 355 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures for Malignancy Except Ovarian/Adenexal Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

4. Cases with a principal diagnosis of other than malignancy will also be divided on age and complications/comorbidities. They will comprise the proposed new DRGs 358 and 359 (Non-Radical Hysterectomy, Uterus and Adenexa Procedures for Non-Malignancy; Age over 69 and/or C.C., and Age under 70 without C.C, respectively).

We also propose to modify DRGs 361 and 362 as follows:

1. The procedure codes for incisional tubal interruption (6631, 6632, 6639 and 6663) will be moved from DRG 359 and the uterine and adenexa part of the hierarchy to the laparoscopy and endoscopy section of the hierarchy.

2. Cases involving these surgical procedures (that is, laparoscopy, endoscopy, and incisional tubal interruption) will be divided into two groups.

a. If an endoscopic tubal interruption (procedure codes 6621, 6622, and 6629) is the only procedure performed from this section of the hierarchy, the case will be classified into proposed new DRG 362 (Endoscopic Tubal Interruption Only).

b. If, in addition to or instead of endoscopic tubal interruption, another procedure is performed, the case will be classified into proposed new DRG 361

(Laparoscopy, Incisional Tubal Interruption).

Comment: We received one comment concerning the relative weight of DRG 353 (Pelvic Evisceration, Radical Hysterectomy and Vulvectomy). The commenter believed that the relative weight did not reflect the resource intensity of the extensive surgery and post-operative care of the extremely ill patients for whom these radical procedures are indicated. Noting that pelvic evisceration frequently entails bladder and rectal resection, the commenter compared the weight of DRG 353 (1.8818) to that of DRG 147 (Rectal Resection) (2.2737).

Response: Because the weight for DRG 353 was, despite its place in the hierarchy, lower than that for DRG 357, we analyzed the average standardized charges for each procedure in DRG 353. We discovered that there was a bimodal distribution of cases by average standardized charge of procedure.

Moreover, the two lowest-priced procedures—Unilateral vulvectomy (code 7161) and Bilateral vulvectomy (code 7162)—are the only non-radical procedures in this DRG but rank third and fourth by frequency of procedure. The weighted average charges for these two procedures is barely 40 percent of the average standardized charge for all other procedures in DRG 353, but is comparable to the average standardized charge for DRG 360 (Vagina, Cervix and Vulva Procedures). In addition, non-radical vulvectomies are clinically more similar to the other procedures in DRG 360 than to the radical procedures in DRG 353. Accordingly, we are proposing to remove procedure codes 7161 and 7162 from DRG 353 and to place them into DRG 360.

L. Comments on MDC 14: Pregnancy, Childbirth, and the Puerperium

Comment: One commenter believes there is a problem with DRGs 378 (Ectopic Pregnancy), 379 (Threatened Abortion), 380 (Abortion Without D&C), 381 (Abortion With D&C, Aspiration, Currettage, or Hysterotomy), 382 (False Labor), 383 (Other Antepartum Diagnoses Without Medical Complications), and 384 (Other Antepartum Diagnoses With Medical Complications) because the GROUPER program will not assign a discharge to DRG 468 (Unrelated O.R. Procedures) when an operating room procedure is performed.

Response: The development of MDC 14, in which DRGs 378 to 384 are located, was somewhat different from the other MDCs. The basic consideration behind the development of the DRGs in MDC 14 was whether the patient delivered or did not deliver a baby. For DRGs 379, 380, 382, 383, and 384, it was so rare to have an operating room procedure associated with the principal diagnoses that group to these DRGs that the decision was made to define the DRG classification based exclusively on principal diagnosis without regard to surgical procedures. Elective surgery is rarely performed on pregnant women, and when a medical emergency necessitates such surgery, it would most likely be for a principal diagnosis other than the pregnancy, such that the case would not be classified in MDC 14. In certain diagnoses a surgical procedure must virtually always be performed as part of the treatment, so the DRG again was defined only in terms of principal diagnosis. For example, in DRG 378 (Ectopic Pregnancy), there are no procedures listed, only principal diagnoses, since the ectopic pregnancy will have to be treated surgically. Similarly, a surgical procedure must be performed in order for a case to be classified into DRG 381.

The commenters gave no specific example of the type of coding problems that had been encountered, so it is impossible to determine if a problem exists in assigning cases to the DRGs in MDC 14. Since we have neither evidence of specific problems with cases assigned to this MDC, not examples of unrelated surgery performed when the principal diagnosis is pregnancy, we do not see a necessity to redefine these DRGs.

M. Comments on MDC 15: Newborns and Other Neonates With Conditions Originating in the Perinatal Period

Comment: Several commenters objected to including diagnosis code 7746 (fetal/neonatal jaundice, NOS) in DRG 391 (Normal Newborns), believing this represented a change to DRG 391.

Response: The commenters are incorrect in stating that this is a change to DRG 391. DRG 391 has always included 7746 as a diagnosis code. A discharge with a principal diagnosis of 7746 would be assigned to DRG 391. A discharge could also be assigned to DRG 391 if the only secondary diagnosis was 7746, and the principal diagnosis was any one of the other principal diagnoses listed under DRG 391.

The change that we made in our September 3 final rule (50 FR 35737) was to remove 7746 from the list of complications and comorbidities. We believe the diagnosis code 7746 reflects a transient physiologic condition and as such belongs only in DRG 391.

Comment: We received a comment that disagreed with our transferring, in the September 3, 1985 final rule ICD–9–CM codes 7584 (Balanced Autosomal Translocation in Normal Individuals) and 7585 (Other Conditions Due to Autosomal Anomalies) from DRG 390 (Neonates with other Significant Problems) to DRG 467 (Other Factors Influencing Health Status); code 7583 (Autosomal Deletion Syndrome) from DRG 390 to DRG 429 (Organic Disturbances and Mental Retardation); and code 7586 (Gonadal Dysgenesis) from DRG 390 to DRG 352 (Other Male Reproductive System Diagnoses) and to DRG 369 (Menstrual and Other Female Reproductive System Disorders). Although the changes appeared to be logically correct, because of the large differences in relative weights between DRG 390 and the other DRGs (.3486 for DRG 390 versus .7223 for DRG 467, .8424 for DRG 429, .5388 for DRG 352, and .5498 for DRG 369), the commenter does not believe the transfers should be implemented.

Response: Our rationale for the transfer of these four ICD–9–CM codes was presented on page 35736 of our September 3 final rule. The commenter has not presented any evidence to support the belief that the transfer of these codes is inappropriate, and we continue to believe that our rationale is valid. In addition, we would note that this classification change entailed the movement of fewer than 20 cases involving a principal diagnosis of either ICD–9–CM code 7583, 7584, 7585 or 7586 from a DRG in which Medicare cases would rarely be classified (that is, DRG 390, which has been deemed a low-volume DRG) to DRGs 429 (with more than 50,000 Medicare discharges), 467 (with more than 17,000 Medicare cases), 352 (with more than 2,500 Medicare cases), and 369 (with more than 8,000 Medicare cases). Moreover, the average standardized charges for the cases involving a principal diagnosis of 7583, 7584, 7585 or 7586 are similar to or somewhat higher than the average standardized charges for each of the DRGs to which these cases were transferred. Because of the volume of total Medicare cases in the receiving DRGs, we are confident in the weights established for them.

N. Comments on MDC 17: Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms

Comment: One commenter objected to the change, made in the September 3 **Federal Register**, whereby cases in MDC 17 involving other than major surgical procedures group to DRGs 401 (Lymphoma or Leukemia with Other O.R. procedures, Age over 69 and/or C.C.), 402 (Lymphoma or Leukemia with

O.R. procedure, Age less than 70 without C.C.) and 408 (Myeloproliferative Disorder or Poorly Differentiated Neoplasm with Other O.R. procedure). Formerly, if the O.R. procedure was not a major procedure (which groups to DRGs 400 (Lymphoma or Leukemia with Major O.R. Procedure), 406 and 407 (Myeloproliferative Disorder or Poorly Differentiated Neoplasm with Major O.R. procedures, with C.C. and without C.C., respectively), such cases were classified as medical rather than surgical. The commenter believes it would be more appropriate to permit these cases to group to DRG 468 where the O.R. procedure is unrelated.

Response: The nature of the diagnosis in DRGs 401, 402 and 408 either involve multiple organ systems or are non-specific as to organ system. Consequently, it is possible that almost any surgical procedure may be performed in relation to the principal diagnosis.

Accordingly, we believe it is more appropriate to recognize that such cases are surgical, not medical, rather than to classify all cases involving procedures other than the major surgical procedures associated with DRGs 400, 406 and 407 into DRG 468, since the nature of the principal diagnoses lends itself to treatment by a vast range of surgical procedures.

O. Comments on MDC 20: Substance Use and Substance Induced Organic Mental Disorders

Comment: A comment was received concerning the use of the term "substance abuse" for DRGs 434 (Substance Abuse, Intoxification, Induced Mental Syndrome Except Dependency and/or Other Symptomatic Treatments), 435 (Substance Dependence, Detoxification, and/or Other Symptomatic Treatment), 436 (Substance Dependence with Rehabilitation Therapy), and 437 (Substance Dependence, Combined Rehabilitation and Detoxification Therapy), as reconfigured in our September 3 final rule. Previously, the titles of these DRGs had signified drug dependence or alcohol use or dependence. The commenter felt that the new titles could diminish the recognition of alcohol and drug abuse and dependence as specific disease entities and could adversely impact public education efforts regarding treatment and prevention.

Response: Based on the concerns raised, we are changing the titles of DRGs 434 through 437. The term "alcohol/drug" will be substituted for the term "substance." For consistency, we are also making this change in the title of DRG 433 (Substance Use and Induced Organic Mental Disorders, Left Against Medical Advice (AMA)).

P. Comments on MDC 21: Injuries, Poisonings and Toxic Effect of Drugs

Comment: Two commenters were concerned with the weighting factors for DRGs 409 (Radiotherapy) and 410 (Chemotherapy). The commenters noted that, depending on the specific types of carcinoma and the patient's condition, the appropriate course of treatment may result in expensive services and require long lengths of stay. The commenters contend that some hospitals are reporting considerable losses on these cases and recommended reexamination of the weights.

Response: The weighting factors for DRGs 409 and 410 have been calculated, as those for all other DRGs, from the charge information submitted on Medicare inpatient bills for cases within those DRGs. We note that the weighting factors for both of these DRGs procedures have increased by about 20 percent since the weighting factors were initially determined. That is, the weighting factors for DRGs 409 and 410 in the September 1, 1983 **Federal Register** were .8134 and .3527, respectively, while the weights published in the September 3, 1985 **Federal Register** were .9856 and .4285, respectively. Since the weight differential between the two DRGs has remained consistent throughout the updating and recalibration, we find no reason to believe these DRGs are inappropriately weighted.

Comment: Two commenters noted what appears to them to be an illogical differential in the weighting factor of two companion DRGs. The commenters believed that, since DRG 412 (History of Malignancy with Endoscopy) requires a procedure not present in its companion, DRG 411 (History of Malignancy without Endoscopy), the weighting factor for the former should be higher.

Response: We do not believe the presence endoscopy necessarily would indicate a more costly hospital admission. In this regard, we note that a single endoscopy may perform essentially the same diagnostic function as numerous x-rays, scans, and laboratory tests. Thus, total resources expended using endoscopy could reasonably be substantially less than total resources for cases without endoscopy. In addition, we note that our bill data indicate that Medicare patients with a history of malignancy receiving an endoscopy, on average, spent considerably less time hospitalized than those who did not receive the procedure. Given the additional room and board charges for added inpatient days, it is not surprising that the weighting factor for DRG 411 is higher than DRG 412.

Q. Comments on MDC 23: Factors Influencing Health Status and Other Contacts With Health Services

Comment: One commenter stated that the relative weight for DRG 465 (Aftercare with a History of Malignancy as a Secondary Diagnosis) should logically be higher than the relative weight for DRG 466 (Aftercare without a History of Malignancy as a Secondary Diagnosis). The commenter states that patients with a history of cancer appear to require more resources than a patient without such a history.

Response: We do not agree with the commenter's rationale. There are many other medical conditions which, as secondary diagnoses, may be more resource intensive than cancer. In addition, DRG 465 deals with only a limited population of patients—only those with a history of malignancy as a secondary diagnosis, whereas DRG 466 encompasses all other patients. We believe our data and relative weights are accurate for DRGs 465 and 466. The commenter did not present any concrete data to support an opposite position.

R. Comments on DRG 468: Unrelated O.R. Procedures

During the public comment period on the June 10 NPRM, 14 commenters raised questions concerning DRG 468 (Unrelated O.R. Procedure).

Comment: One commenter noted the need for a mechanism within the DRG system to take into account implementation of new technology and new treatment regimens. The commenter recommended the development of a new DRG similar to 468 for assignment of cases involving new technology regardless of the patient's diagnosis. It was suggested that cases would be temporarily assigned to the new technology DRG until sufficient information becomes available to classify the procedure to an appropriate DRG.

Response: We do not believe the creation of a new technology DRG is appropriate or necessary. As we stated in the September 3, 1985 final rule, when Medicare covers a new technology, we believe it is most appropriate to make a decision as to the "best fit" DRG that is within the existing classification system. Should subsequent data indicate the initial classification is inappropriate, a reclassification to a more appropriate DRG would be made.

Also, the commenter's suggestion that a new general type of DRG such as DRG

468 be established indicates a basic misunderstanding of the classification system. The basic framework of the DRG system has been built around 23 MDCs. Cases are assigned to a DRG within the MDC indicated by the patient's principal diagnosis. The creation of a new technology DRG would violate the basic principle of the DRG system in that the classification would no longer be based on diagnosis. Rather, such a system would rely chiefly on procedures for classification.

It is our view that DRG 468 does not present such a violation. Instead, this DRG is reserved specifically for those cases where none of the surgical procedures furnished to a patient is related to the principal diagnosis. Thus, DRG 468 is intended to established a classification cell for those cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication.

We emphasize that this DRG is not a catch-all for cases that do not fit elsewhere, nor does it violate the basic principle of diagnosis-related classifications. Therefore, we do not find the commenter's suggestion concerning a new technology DRG analogous to the basis for establishing DRG 468.

Comment: Two commenters noted the excessive payment made for many cases involving fairly simple surgical procedures assigned to DRG 468. One commenter recommended payment for DRG 468 on a per diem basis. The other commenter recommended PRO denial of surgical procedures that could be done on an outpatient basis.

Response: We, too, are somewhat concerned with the possibility of excessive payments for cases involving simple surgical procedures assigned to DRG 468. In fact, that is the reason we continue to review the procedures on the O.R. list and have added some procedures to MDCs for which they are appropriate, thus precluding assignment of cases involving such procedures to DRG 468. However, as discussed in our September 3 final rule (50 FR 35658), we are not adopting either of the changes recommended by the above two commenters. We do not believe it is appropriate to implement a special payment mechanism for a specific DRG. In addition, payment on a per diem basis for discharges assigned to DRG 468 would present administrative complexities in reconciling interim payments.

It has also been suggested that a significant number of cases assigned to DRG 468 are the result of patients undergoing elective surgical procedures that could have been done on an outpatient basis, while hospitalized for some reason unrelated to the cause of the surgery. It was suggested that such elective procedure be denied upon review by the PRO.

We do not believe there is authority under the current statute to instruct PROs to deny such medically necessary procedures when performed during an unrelated medically necessary hospital stay. We are satisfied, for the present, that the current PRO review procedure of DRG 468 cases is adequate and supported by the law and regulations. We will, however, continue to monitor DRG 468 cases. If the data indicate any further action is necessary, we may modify review procedures in the future.

Comment: One commenter recommended that procedure code 4029 (Excision of the Lymphatic Structures) be included in MDC 5 (Diseases and Disorders of the Circulatory System) to match with diagnosis code 2281 (Lymphangioma) to avoid DRG 468 assignment.

Response: We had already noted that diagnosis code 2281 and procedure code 4029, which often occur in the same admission, had not been classified in the same MDCs, and made a change to resolve this problem in the September 3, 1985 final rule (50 FR 35740, Table 6, Item A.22). However, we determined the more appropriate classification to be to MDC 16 (Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders), rather than to MDC 5 (Diseases and Disorders of the Circulatory System). Therefore, rather than moving the procedure code, we moved diagnosis code 2281 from MDC 5 to DRGs within MDC 16. When treated by excision of the lymphatic structures, the case is grouped to DRG 394 (Other O.R. Procedures of the Blood and Blood Forming Organs); where no surgery is performed, the cases fall into DRGs 398 and 399 (Reticuloendothelial and Immunity Disorders; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

Comment: One commenter recommended that an exception to the GROUPER be made for patients receiving a cardiac pacemaker. Since pacemakers are relatively expensive, the commenter believes all cases involving pacemakers furnished to patients with a principal diagnosis that is not classified into MDC 5 (Diseases and Disorders of the Circulatory System) should be assigned to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock) and DRG 116 (Permanent Cardiac Pacemaker Implant without AMI, Heart Failure or Shock) rather than DRG 468.

Response: In order to operate a classification system successfully, we must maintain some working guidelines for categorizing cases. The most basic working guideline of the DRG system is that classification is based on principal diagnosis. In evaluating requests for changes in the classification system, we made it clear that we would only consider such requests that would not violate the basic principles of the DRG system.

What the commenter is suggesting is for us to make an exception to the basic principle of classification based on principal diagnosis. We continue to believe that classification of cases based on principal diagnoses, age, sex, complications and surgical procedures, is appropriate. To classify all pacemaker cases to DRGs 115 and 116 when the principal diagnosis is not related to diseases and disorders of the circulatory system would in effect result in classification based on primary diagnosis or procedure, rather than principal diagnosis.

We have already responded to the issue of classification based on primary diagnosis in the January 3, 1984 final rule (49 FR 248). The problems associated with classification based on primary diagnosis that are set forth in that response would be further complicated were we to consider such classification only for one specific type of procedure. Such inconsistencies in the classification mechanism would significantly disrupt the GROUPER system.

In addition, the DRG-based prospective payment system is designed to recognize hospital differences related to patient characteristics in preference to hospital differences related to characteristics over which the hospital has control. We believe that classification based on principal diagnosis is more consistent with this goal than classification based on procedure, which establishes incentives to perform more resource-intensive procedures than might be medically appropriate. Further, we believe that the resultant categories, based on principal diagnoses and surgical versus non-surgical treatment, are reasonably homogeneous and promote the goal of encouraging efficiency and prudent hospital management.

Comment: In the September 3 final rule (Item A.10 of Table 6, page 35738), we removed procedure codes 5051 (Ancillary Liver Transplant) and 5059 (Liver Transplant) from DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively) so that

cases involving retransplants due to complications would group to DRG 468. One commenter believes this is inappropriate. The commenter recommends such cases be assigned to DRG 191 (Major Pancreas, Liver and Shunt Procedures).

Response: Like the immediately preceding comment, this suggestion violates the basic principle of the DRG system, that is, that classification be based on principal diagnosis. DRG 191 may only be assigned when a patient's principal diagnosis is for diseases and disorders of the hepatobiliary system and pancreas. Most complication and infection diagnosis codes, such as 996.8, which is used for liver transplant rejection, are not organ-specific. Consequently, they cannot be assigned to an organ-system-specific MDC. Rather, they are assigned to MDC 21 (Injury, Poisoning and Toxic Effects of Drugs.)

We noted that other organ transplant procedures codes, such as kidney and cornea transplants, were not included in MDC 21. Therefore, in order to promote consistency in the treatment of such transplants, we removed procedure codes 5051 and 5059 from these DRGs, causing the cases to group to the higher weighted DRG 468. (Alternatively, we could have included the procedure codes for cornea and kidney transplants in DRGs 442 and 443 but, given the constraints of the current coding system, we decided to follow the direction taken in setting up the DRGs and eliminate the liver transplant procedure codes from MDC 21.)

We should point out that we are evaluating the impact on the DRG system of the current coding systems for complications. However, as mentioned elsewhere, coding revisions cut across many aspects of the health care industry; therefore, we must proceed cautiously. If coding revisions in the future permit identification of specific organ system involvement in complications, the DRG classification system may be modified accordingly to reflect such specificity.

Comment: One commenter stated that in DRGs 256 (Other Musculoskeletal System and Connective Tissue Diagnoses) in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), 280 and 281 (Trauma to the Skin, Subcutaneous Tissue and Breast; Age Over 69 and/or C.C., and Age 18–69 without C.C., respectively) in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), 445 and 446 (Multiple Trauma; Age 18–69 without C.C., and Age 0–17, respectively), in MDC 21 (Injury, Poisoning and Toxic Effects of Drugs), cases showing procedure code 8010 through 8019 (arthrotomy for removal of foreign body) occurring in conjuction with diagnosis codes with the first three digits 890 through 897 and 880 through 887 are assigned to DRG 468. The commenter believes all such procedures should be assigned to MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).

Response: It is difficult to respond to this comment because it appears to stem from some basic misconceptions of DRG classifications. All of the specific DRGs cited in either MDC 8 or MDC 21 are medical DRGs to which cases involving a surgical procedure could not be assigned. If the principal diagnosis is an acceptable diagnosis for either of these MDCs (and numerous diagnostic codes within the ranges specified by the commenter are in these MDCs), the case would be assigned to a surgical DRG within those MDCs, rather than to DRGs 256, 445, 446 or 468.

With regard to DRGs 280 and 281 within MDC 9, the arthrotomy procedure code is not considered in DRG assignment. Should arthrotomy be necessary in such cases, the claim would be appropriately assigned to DRG 468 because the surgical procedure is not related to the principal diagnosis.

Comment: One commenter believes that the scattering of injury codes among the various DRGs has resulted in inappropriate assignment to DRG 468. The commenter recommended further study be given to this issue.

Response: The handling of injury codes by the program is a complicated issue. We agree that further study in this area would be valuable. We will be looking into this issue in the future.

Comment: One commenter noted that extra-intracranial vascular bypass procedures involving the anastomosis of the temporal artery to an intracerebral artery, or the subclavian to an intracerebral artery, to bypass the obstructed carotic arteries is coded with two procedure codes (0124 for burr hole and 3929 for vascular shunt procedures). The commenter believes this results in assignment to DRG 468 rather than to DRG 1 (Craniotomy Age over 17 Except for Trauma), as appropriate.

Response: We do not agree with the commenter as to the appropriate codes for the extra-intracranial vascular bypass procedure. The burr hole in this case is an approach to enter the cranium. ICD–9–CM coding rules specifically exclude use of this code as an operative approach. Thus, the appropriate procedure code for the procedure is 3929 only.

Prior to last year's reclassification of the DRGs, procedure code 3929 was not included in the DRGs under MDC 1 (Diseases and Disorders of the Nervous System). Thus, appropriate coding of the procedure using only 3929 with an MDC 1 diagnosis code would have resulted in DRG 468 assignment. However, the addition of procedure code 3929 to MDC 1, DRG 5 (Extracranial Vascular Procedures) was proposed and adopted during the FY 1986 reclassification. Thus, an appropriately coded extra-intracranial vascular bypass would now be assigned to DRG 5. We recognize that the payment for DRG 5 may understate the cost of such procedures in some cases, but the weighting factor reflects the average resource use of all cases grouped in DRG 5, including that associated with procedure 3929. In addition, we do not believe it is appropriate to violate coding guidelines in allowing an approach to be coded in this instance in order to increase Medicare payment. We will continue to evaluate claims data in this area and will consider further reclassification in the future if the data indicate significant problems exist.

Comment: One commenter suggested that procedure codes 0681 (total parathyroidectomy) and 5299 (urinary implants) be assigned to MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract) to avoid inappropriate DRG 468 assignment.

Response: Procedure code 5299 is not appropriate for urinary implants, but is for other operations on the pancreas. Both procedure codes 0681 and 5799 (the correct code for urinary implants) are presently included in MDC 11, with 0681 assigned to DRG 315 (Other Kidney and Urinary Tract O.R. Procedures) and 5799 grouping to DRGs 308 and 309 (Minor Bladder Procedures, Age over 69 and/or C.C., and Age under 70 without C.C., respectively). We find no reason to believe such cases group to DRG 468.

Comment: One commenter recommended procedure code 5733 (transurethral biopsy of bladder) be considered a valid code for MDC 12 (Diseases and Disorders of the Male Reproductive System) to prevent inappropriate classification to DRG 468.

Response: Procedure code 5733 is currently included in MDC 12, DRGs 344 and 345 (Other Male Reproductive System O.R. Procedures; for Malignancy, and Except for Malignancy, respectively).

Comment: One commenter suggested that procedure codes 8609 (other incision of skin and subcutaneous tissue) and 8699 (other operations on skin and subcutaneous tissue) be added

to the list of acceptable operating room procedures. The commenter believes that code 8609 should be recognized for unspecified surgical DRGs. The commenter also believes code 8699 should be an acceptable operating room procedure for DRG 217 (Wound Debridement and Skin Graft for Musculoskeletal and Connective Tissue Disorders), DRGs 263–266 (Skin Graft and/or Debridement), and DRGs 452 and 453 (Complications of Treatment; Age over 69 and/or C.C., and Age under 70 without C.C., respectively).

Response: Procedure code 8609 is an acceptable operating room procedure under the DRG classification system. It is included in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) under DRGs 269 and 270 (Other Skin, Subcutaneous Tissue, and Breast O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) under DRG 292 and 293 (Other Endocrine, Nutritional and Metabolic O.R. Procedures; Age over 69 and/or C.C., and Age under 70 without C.C., respectively), in MDC 16 (Blood, Blood Forming Organs and Immunological Diseases and Disorders) under DRG 394 (Other O.R. Procedures of the Blood and Blood Forming Organs), and MCD 21 (Injury, Poisoning and Toxic Effects of Drugs) under DRGs 442 and 443 (Other O.R. Procedures for Injuries; Age over 69 and/or C.C., and Age under 70 without C.C., respectively). However, without additional specific information on the additional DRGs in which it is recommended that this procedure be considered, we cannot respond to the commenter's concerns.

Our medical consultants have noted that, due to the general nature of procedure code 8699, there can be a good deal of variability in procedures coded under this item. Some of the procedures identified by this code (such as insertion of skin expander in treatment of postburn cases and release of pedicle or flap graft) may require the use of a dedicated operating room. However, other procedures identified by this code, such as removal of sutures from a limb, may be done in less intensive settings, including at the patient's bedside, without use of anesthesia or other operating room resources. We do not have data available indicating the frequency of such procedures by setting to analyze the merits of the recommendation. We do note, however, that DRGs 452 and 453 are medical DRGs. Thus, even if code 8699 were recognized as an O.R. procedure, cases involving this procedure could not be assigned to these DRGs but would be classified in one or a pair of surgical DRGs.

Comment: Three commenters expressed general concern over the list of procedures assigned in our final rule (pages 35743ff) to the different MDCs to reduce DRG 468 assignment. The commenters believe the added procedures may reduce the clinical homogeneity of the DRGs and reduce payment levels to hospitals.

Response: We do not agree with the commenters that the addition of procedure codes to specific DRGs significantly disrupts the clinical homogeneity of the DRGs. All such additions were made only after careful clinical review and concurrence by physicians. In fact, our reassignment of procedures previously found in DRG 468 was specifically supported by a comment from one of the physicians who was involved in the physician panel that established the original Yale DRGs.

With regard to the allegation that the number of DRG 468 cases will decrease and be spread to DRGs with lower weights, we do not believe this to be an obstacle to more appropriate reclassifications. DRG 468 is intended to reflect only those cases in which none of the surgical procedures is related to the principal diagnosis. When data indicate that a specific procedure is commonly associated with a particular diagnosis, we would be remiss in our statutory duty were we not to reclassify the procedures. This decision must be made independent of payment levels.

We should point out, however, that reclassification changes were made prior to recalibration. That is, all the claims from FY 1984 were regrouped using the revised GROUPER before we recalibrated the DRG weights. Thus, the new weighting factors adequately reflect the charges for the cases assigned to each DRG. To the extent we moved expensive cases out of DRG 468 and into a lower weighted DRG, the reclassified cases would increase the weighting factor for the newly assigned DRG.

S. Other Issues

Comment: One commenter believes that procedure code 8623 (Removal of fingernail, toenail, or nail-fold) should be included on the list of O.R. procedures when there is a secondary diagnosis of insulin-dependent diabetes.

Response: Our medical consultants do not agree that procedure code 8623 should be classified as an O.R. procedure. In the great majority of cases, the procedure is handled in a non-O.R. setting. Moreover, to recognize a specific procedure in conjunction with secondary diagnoses would create unwarranted logic and hierarchy problems confounding the classification of cases into the DRGs.

III. Provisions of This Notice

A. Changes Resulting From Comment Process

Based on the comments, and our responses, just presented in section II of this notice, we are proposing the following changes:

1. MDC 4: Diseases and Disorders of the Respiratory System

We would remove diagnosis code 4828 (Bacterial pneumonia not elsewhere classified) from DRGs 89 (Simple Pneumonia and Pleurisy, Age over 69 and/or CC), 90 (Simple Pneumonia and Pleurisy; Age 18–69 without CC) and 91 (Simple Pneumonia and Pleurisy; Age 0–17). We would place this code into DRGs 79 (Respiratory Infections and Inflammations Age over 69 and/or CC), 80 (Respiratory Infections and Inflammations, Age 18–69 without C.C.), and 81 (Respiratory Infections and Inflammations, Age 0–17).

2. MDC 13: Diseases and Disorders of the Female Reproductive System

We would reconfigure DRGs 353, 354, 355, 357, 358, 359, 360, 361, and 362 to increase homogeneity and thus more accurately reflect resource intensity of cases assigned to these DRGs. (See section II.K of this notice for a thorough discussion of each modification.)

3. MDC 20: Substance Use and Substance Induced Organic Mental Disorders

We would change the titles of DRGs 433 through 437 in MDC 20. Wherever the term "substance" appears in those DRGs we would substitute the term "alcohol/drug".

We recognize that we have not adopted changes in response to most of the comments received. In this regard we should point out that a very large proportion of the comments concerned either appropriateness of weighting factors (which is not generally a DRG classification issue) or were too broad or non-specific to indicate exactly where a classification problem arose. In addition, in several other areas of concern, there are coding problems that must be resolved before we can identify the cases at issue and gather the necessary data to evaluate proposed changes. Finally, we received a few comments that required so much evaluation that we are continuing our analysis. The areas of our ongoing review include major head and neck

procedures, hand and upper extremity procedures, complex aortic aneurysms, injuries, and the burn DRGs. We will continue to evaluate these issues and report our additional findings at least annually.

B. New Coverage Decisions

Under § 412.10(c) of the regulations, we may make interim changes in the DRG classifications to reflect new additions to coverage made by the Medicare program. Such classification changes are to be included in the next annual notice of DRG classification changes and be subject to public comment.

Effective for procedures performed on or after January 24, 1986, Medicare coverage has been extended to implantation of cardiac defibrillators under certain circumstances. The data on the cost of this procedure available at this time is very limited. We have evaluated these data and the clinical similarity of this procedure to others in MDC 5 (Diseases and Disorders of the Circulatory System).

Initially, we decided it would be appropriate, on an interim basis, to pay for this procedure at the relative weight for DRG 104 (Cardiac Valve Procedure with Pump and with Cardiac Catheter). However, this is the highest weighted DRG and available data are not sufficient to assure us that such classification would not result in excessive payments. It may be more reasonable, clinically, to include this procedure in one of several other DRGs in MDC 5. Therefore, although we will pay for this procedure using the weight for DRG 104 for the time being, this may not be our final decision, and we are soliciting comments as to whether it may be more appropriate to use another DRG, such as DRG 109 (Cardiothoracic Procedures without Pump) or DRGs 115 and 116 (Permanent Cardiac Pacemaker Implant; with AMI, Heart Failure or Shock, and Without AMI, Heart Failure or Shock, respectively).

Discrete ICD–9–CM procedure codes for this new technology have not yet been adopted. Consequently , for the present, payment may be made for such claims only on a manual basis when accomplished by appropriate documentation. The ICD–9–CM Coordination and Maintenance Committee is proposing new ICD–9–CM procedure codes for the implantation of cardiac defibrillators. (See section III.C. of this notice.) If these proposed new codes are adopted, we are proposing to add the new procedure codes to the appropriate DRG.

C. New Coding Changes

A Federal inter-agency committee has been formed to evaluate the International Classification of Diseases (ICD) and its modification, updating and use for Federal programs. This group, called the ICD–9–CM Coordination and Maintenance Committee, holds public meetings quarterly for discussion on educational issues and proposed coding changes. The Committee then formulates recommendations, which must be approved by the co-chair agency heads, (that is, the Administrator of HCFA and the Director of the National Center for Health Statistics) before adoption for general use.

Many of the proposed coding changes will result in one or more specific codes to identify discretely those diagnoses or procedures that are currently being coded under a more general diagnosis or procedure.

In order to prevent the unwarranted delay of recognition of new codes by the Medicare program, we are proposing to modify the GROUPER program, to the extent feasible, to recognize any new ICD–9–CM codes adopted in the future by the ICD–9–CM Coordination and Maintenance Committee and, in most cases, to classify discharges with such codes initially in the same DRG as the previous coding assignment. That is, any coding changes adopted prior to July 1, 1986 will be included in the GROUPER program for Federal fiscal year 1987, (October 1986 through September 1987), but will not necessarily result in changes to the classification of cases using these new codes. In addition, we will consider interim revisions of the GROUPER to recognize new ICD–9–CM codes, should the volume of cases indicate it is appropriate. Because the use of most new ICD–9–CM codes will not result in DRG classification changes initially, the new codes will not be published for public comment. Of course, should reclassification become necessary, we will follow the procedures set forth at § 412.10 of the regulations.

New ICD–9–CM codes have been proposed to identify the following:

1. Cochlear Prosthetic Device Implant

2. Percutaneous Transluminal Coronary Angioplasty

3. Cardioverter/Defibrillator

As discussed in section III.B. of this notice, Medicare coverage has been extended to the implantation of cardioverter/defibrillators under certain circumstances effective for procedures performed on or after January 24, 1986. Mid-year DRG assignment for the implant has been DRG 104. We are proposing to modify GROUPER to assign proposed procedure codes to DRG 104.

4. Thoracoabdominal Aortic Aneurysm Repair

Major new advancements have been made in aortic aneurysm repair. The proposed codes have been refined to reflect these advancements. We are still evaluting alternatives for appropriate classification of thoracoabdominal aortic aneurysm repair. We are attempting to acquire data that would allow us to propose a classification change in the procedure as part of the proposed prospective payment system regulation to be published by June 1, 1986.

5. Lithotripsy

Unique codes have been proposed to identify the use of fragmentation of kidney stones (lithotripsy). New codes have also been proposed with respect to percutaneous nephrostomy and extracorporeal shockwave lithotripsy (ESWL).

6. Artificial Urinary Sphincter Implant (AUS)

Increased utilization of artificial urinary sphincters has prompted the proposed creation of a unique ICD–9–CM code for the procedure.

7. Penile Prosthesis—Inflatable and Non-Inflatable

A new code has been proposed to distinguish the types of penile prostheses.

8. Chemonucleolysis

9. Magnetic Resonance Imaging (MRI) and Intraoperative Ventricular Mapping

D. Effective Dates

The changes in DRG classification and adoption of new ICD–9–CM codes proposed in this notice would become effective for discharges occurring on or after October 1, 1986. The impact of these proposed changes on the DRG weighting factors will be discussed in the June notice of proposed changes to the prospective payment rates.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for proposed notices such as this if the implementation of the notice would meet the criteria of a "major rule". A notice would be considered a major rule if its implementation would be likely to 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.

The changes to the DRG classification system and GROUPER program that we are proposing to make would not meet any of these criteria. Therefore, an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for proposed notices such as this unless the Secretary certifies that implementation of the notice would not have a significant economic impact on a substantial number of small entities. We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this notice clearly would affect a substantial number of small entities. However, it is our practice not to consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least 3 percent. The changes we are proposing to the DRG classification system and the GROUPER program would not have results meeting this threshold. Therefore, we have determined and the Secretary certifies that a regulatory flexibility analysis is unnecessary. Accordingly, we have not prepared an initial regulatory flexibility analysis.

V. Information Collection Requirements

This proposed rule contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Response to Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in that notice.

(Secs. 1102, 1871, and 1886(d)(4) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(d)(4)); 42 CFR 412.10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 20, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: March 4, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-5539 Filed 3-13-86; 8:45 am]

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Thursday
March 13, 1986

Part IV

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Conservation Reserve Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Conservation Reserve Program (CRP)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to set forth the terms and conditions of the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99–198). Under the CRP, the Secretary of Agriculture is authorized to enter into long-term contracts with owners and operators of highly erodible cropland to assist such owners and operators in conserving and improving the Nation's soil and water resources. By entering into a contract, the owner or operator agrees to implement a conservation plan approved by the local Conservation District for converting highly erodible cropland normally devoted to the production of an agricultural commodity to a less intensive use. The Secretary will provide technical assistance, share some of the costs of establishing the conservation practices required by the conservation plan, and make an annual land rental payment to compensate the owner or operator for taking the cropland out of production.

DATE: This interim rule shall become effective on March 3, 1986. Comments must be received on or before May 12, 1986 in order to be assured of consideration.

ADDRESS: Comments may be mailed to the Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Mr. Gordell A. Brown, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6221.

SUPPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more. However, no major increase in costs or prices for consumers, individual industries, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will result upon implementation of these provisions. A preliminary regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impacts on the quality of the human environment.

Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The information collection requirements contained in this rule will not become effective until they have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in this rule may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, telephone number (202) 395–7340.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Conservation Reserve Program; Number 10.069, as found in the catalog of Federal Domestic Assistance.

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

Section 1231 of Title XII of the Food Security Act of 1985 (the "Act") directs the Secretary to formulate and carry out a conservation reserve program during the 1986 through 1990 crop years. The Secretary is authorized to enter into contracts with eligible owners and operators of highly erodible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover. The Secretary is authorized to place in the CRP up to 45 million acres of highly erodible cropland during the 1986 through 1990 crop years.

This interim rule implements the Conservation Reserve Program (CRP) established by the Act.

In order to enter into the CRP, a person who owns or operates highly erodible land must meet the eligibility requirements as set forth in these interim regulations at 7 CFR 704.6 and 704.7. First, a person must have owned the highly erodible land for not less than 3 years prior to the close of the applicable signup period for the program or before January 1, 1985, unless the land was acquired by will or succession or the Commodity Credit Corporation (CCC) determines that ownership was not acquired for the purpose of placing the land in the conservation reserve, or a person must have been an operator of the cropland for the period beginning 3 years prior to the close of the applicable signup period, or January 1, 1985, whichever is later.

Second, the highly erodible land must be cropland, i.e., such land must have been planted or considered planted to produce an agricultural commodity (as defined in the Act) in 2 of the 5 crop years, 1981 through 1985, and it must be physically possible for the land to be planted to an agricultural commodity other than orchards, vineyards, or ornamental plantings.

Third, the highly erodible land must be in a field which has been determined to predominantly consist of land classified by the Soil Conservation Service (SCS) as being Class II, III, IV, and V with an average annual erosion rate of 2 times the soil loss tolerance ("T") or greater as announced by the Secretary, or land classified by the SCS as being Class I VI, VII, or VIII. In order to ensure that program participants place under CRP Contracts the most excessively eroding cropland and cropland subject to the most serious deterioration of productivity, the Secretary has determined that only land which is so classified or has such average annual erosion rates is eligible for the CRP.

Section 1234 of the Act provides that the Secretary may, in accepting contract bid offers, take into consideration the extent of erosion and the productivity of the acreage to be diverted. To provide greater assurance that program participants will first place the most excessively eroding cropland under CRP Contact, the Secretary has announced the average annual rate of erosion must be greater than 3T for land classes II through V offered for contract during the 1986 crop year signup.

The Secretary will, in determining which bid offers to accept for the 1987 through 1990 crop year CRP signup periods, apply a formula which considers the extent of erosion and production on the cropland for which a bid has been offered. This formula is intended to optimize erosion reduction and production adjustment at various bid rates.

Land is considered to have been planted if the cropland base or allotment history has been preserved for land because the land was set-aside or diverted from the production of a commodity in the crop years 1981 through 1985 in order to meet the requirements of production adjustment programs or if the producer was prevented from planting such land to a commodity as a result of a natural disaster. The term "agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted and produced in a state. This definition is more inclusive of the various commodities produced on farms and ranches than has been traditionally included in Federal commodity production adjustment programs, because the CRP is not limited to those commodities for which acreage bases, allotments, and quotas have been established.

Section 704.11 of the interim rule describes the obligations of participants under the CRP. All participants in the CRP must: (1) Enter into and carry out the terms and conditions of the CRP Contract; (2) implement the conservation plan developed for the eligible cropland as approved by the local conservation district; (3) reduce the aggregate total of acreage bases, allotments, and quotas for the contract period as designated by the participant for each farm which contains land which is subject to a CRP Contract by an amount based upon the ratio between the total cropland acreage on such farm and the total acreage on such farm subject to the CRP Contract; (4) not produce any agricultural commodity on highly erodible land or converted wetland as defined in Section 1201 of the Act and regulations implementing the Act (unless such land is exempted under Sections 1212 and 1222 of the Act); (5) not allow grazing, harvesting, or other commercial use of any crop grown on the land subject to the CRP Contract; (6) maintain the vegetative cover and other conservation practices specified in the conservation plan for the contract period and take other action that may be required by CCC to achieve the reduction in soil erosion necessary to maintain the production capability of the land throughout the CRP Contract period; (7) comply with the noxious weed laws of the applicable State on land subject to the CRP Contract; and (8) not undertake any action which would tend to defeat the purposes of the CRP.

The conservation plan developed for the eligible cropland will specify the conservation practices which must be established on the eligible cropland in order for adequate erosion control to be achieved and will include a time schedule for establishment of the necessary conservation practices.

In exchange for participation in the CRP, CCC shall: (1) Make an annual rental payment to the program participant; (2) share the cost of establishing the required conservation practices; and (3) provide needed technical assistance to the participant. The annual rental payment shall be determined by the submission of a bid by the owner or operator and is designed to compensate the participant for taking the land out of crop production and devoting it to a less intensive use. The maximum amount of annual rental payments which a person may receive for each year may not exceed $50,000. The annual rental payments received by a person shall be in addition to, and not affected by, the total amount of payments that a person may receive under other provisions of the Act or the Agricultural Act of 1949, as amended.

The cost-share assistance which shall be paid to a participant will not exceed 50 percent of the actual or average cost of establishing the required conservation practices as determined by the CCC. Cost-share payments shall be made available upon a determination that the conservation practice has been correctly established.

An owner or operator of eligible cropland desiring to place such cropland under a CRP Contract with CCC must submit an offer on Form CRP–1 to the local Agricultural Stabilization and Conservation Service (ASCS) office that serves the area in which the farm or ranch is located during the announced sign-up period.

The offer shall be irrevocable for a period of 30 days subsequent to the close of the sign-up period. Once the offer has been received by CCC, it is reviewed and evaluated. The revocation of offers during the 30-day review and evaluation period would require a re-evaluation of bids received and would result in additional administrative expenditures by CCC, as well as increased annual rental payments. It is impossible to compute in advance the actual damages CCC may suffer. Therefore, the applicant shall be assessed liquidated damages if the applicant withdraws the offer during such 30-day period.

CCC will notify persons whose offers are accepted as soon as is practicable after the close of the signup period. CCC will consult with persons whose offer must be modified before CCC will enter into a CRP Contract. CCC will enter into a CRP Contract with such persons if there is an agreement as to the revised terms and conditions of the contract.

It is intended in subsequent years that a conservation plan for the land to be placed into the CRP be completed prior to the submission of an offer. However, due to the need to implement the CRP as quickly as possible and due to staffing constraints, it is probable that conservation plans will not be completed prior to the submission of offers to place land in the CRP during the signup period for the 1986 crop year.

Section 704.19 of the interim rule provides that the CRP Contract may be modified by mutual agreement between CCC and the participant. The interim rule allows CRP Contracts to be modified to: (1) Decrease the acreage under the CRP Contract where the participant desires to devote the land to uses other than agricultural production; (2) permit the production of an agricultural commodity during a crop year to grant relief to a participant in cases of hardship or when the Secretary determines that such production is necessary to meet domestic and foreign needs; and (3) facilitate the practical administration of the CRP.

Contracts may also be modified to add, delete, or substitute conservation practices in the conservation plan if practices fail, through no fault of the participant, to achieve adequate erosion control or it is determined that another conservation practice will achieve adequate erosion control.

Section 704.20 of this interim rule provides that if the right and interest in or the right to occupancy of the land which is the subject of a CRP Contract is transferred to another party, and the new owner or operator does not become a party to the CRP Contract, the participant shall forfeit all rights to future payments with respect to the transferred land and may be forced to refund any payments received in accordance with the CRP Contract.

Section 704.21 of this interim rule sets forth the penalities for violations of the terms and conditions of the CRP Contract. Upon a violation of the terms and conditions of a CRP Contract, CCC

may: (1) Terminate the contract and the participant must forfeit all rights to future payment under the CRP Contract and must either refund all payments received under the CRP Contract together with interest as determined by CCC, or pay liquidated damages if no payments have been received, or (2) require a refund of payments received and make such payment adjustments as are determined to be appropriate.

Section 704.24 of this interim rule provides that representatives of the Department shall have the right of access to land which is the subject of an offer to enter into a CRP Contract or land under a CRP contract and shall have the right to examine any other cropland under the participant or applicant's control to ascertain erosion and cropland classification determinations and program compliance.

Section 704.26 of the interim rule sets forth the administrative appeal procedures which are available to program participants for review of any decision rendered by the Department. All requests for reconsideration or appeal of an administrative determination rendered by the county committee or other ASCS officials shall be conducted in accordance with the administrative appeal regulations found at 7 CFR Part 780. Determinations of land classification or erosion rates may be reviewed in accordance with procedures established by the SCS.

Other Program Provisions

The following regulations are incorporated by reference as a part of the CRP:

(a) 7 CFR Part 713, Feed Grain, Rice, Upland and Extra Long Staple Cotton, and Wheat, specifically §§ 713.109 and 713.150 concerning the fair and equitable division of payments among participants of the CRP Contract and the rights of tenants and sharecroppers;

(b) 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violation, concerns the withholding of payments where the participant harvested or allowed harvesting of drug producing plants or is convicted of planting, growing, or harvesting of any controlled substance during any crop year; and

(c) 7 CFR Part 707, Payments Due Persons Who Have Died, Disappeared, or Have Been Determined Imcompetent, concerning the payment procedures to be followed in case of death, or competency, or disappearance of any participant.

Section 1231(b)(1) of the Act provides that the Secretary shall enter into CRP Contracts covering not less than 5 million acres during the 1986 crop year. Since owners and operators are already making crop planting decisions for the 1986 crop year, it has been determined that this interim rule shall become effective on March 3, 1986, in order to achieve the goal of placing 5 million acres of cropland in the reserve during the 1986 crop year. However, comments from interested persons are requested. Specifically requested are comments and recommendations on how the CRP could be best used to meet environmental concerns while continuing to satisfy all basic program requirements. In addition to the erosion control benefits of the CRP, it should provide significant contributions to reducing off-farm environmental impacts particularly related to water quality problems. Comments must be received by (60 days after the date of publication in the **Federal Register**) in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any changes to these regulations which are determined to be necessary.

Accordingly, the provisions of this interim rule amend Chapter VII of the Code of Federal Regulations to implement the CRP as authorized by Title XII of the Food Security Act of 1985.

Lists of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Interim Rule

Accordingly, Chapter VII of the Code of Federal Regulations is amended by adding the following new Part 704—Conservation Reserve Program:

PART 704—CONSERVATION RESERVE PROGRAM

Sec.

Authority: Secs. 1201, 1231–1244, Public Law 99–198, 99 Stat. 1354.

§ 704.1 General description of the program.

(a) The regulations in this part set forth the terms and conditions for the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99–198). The Secretary of Agriculture is authorized to enter into contracts and make payments to eligible owners and operators of eligible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover in accordance with an approved conservation plan. A conservation plan for specified highly erodible croplands shall be developed in cooperation with the Conservation District (CD) in which the lands are located.

(b) The objectives of the CRP are to: (1) Reduce water and wind erosion, (2) protect our long-term capability to produce food and fiber, (3) reduce sedimentation, (4) improve water quality, (5) create better habitat for fish and wildlife through improved food and cover, (6) curb production of surplus commodities, and (7) provide needed income support for farmers.

§ 704.2 Definitions.

(a) The following definitions shall be applicable for the purposes of this part:

(1) "Agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State;

(2) "Annual rental payment" means the annual payment specified in the CRP Contract which is made to a participant to compensate such participant for placing eligible cropland in the CRP;

(3) "Applicant" means a person who submits an offer to CCC to enter into a CRP Contract;

(4) "Bid" means the per acre rental payment requested by the owner or operator in such owner or operator's offer to participate in the CRP.

(5) "Conservation District (CD)" means a subdivision of a State organized pursuant to the applicable State Soil Conservation District Law or, in instances where a conservation district does not exist, this term shall mean the State Conservationist of the Soil Conservation Service;

(6) "Conservation plan" means the plan describing the conservation practices which must be established on eligible cropland placed in the CRP in order for erosion on such land to be adequately controlled. The conservation plan shall include the approved vegetative cover and other required conservation practices necessary for the establishment and maintenance of vegetative cover;

(7) "Commodity Credit Corporation (CCC)" means a wholly-owned government corporation within the U.S. Department of Agriculture;

(8) "CRP Contract" means the approved agreement, including the conservation plan, entered into in writing between CCC and the participant which sets forth the terms and conditions for participation in the CRP established under this part;

(9) "Cost-share payment" means the payment made by CCC to assist program participants in establishing the conservation practices eligible for cost-share assistance and required in the CRP Contract;

(10) "Department" means the United States Department of Agriculture and includes CCC;

(11) "Eligible cropland" means highly erodible land which meets the requirements of § 704.7;

(12) "Field" means a part of a farm which separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, or cropline in cases where the predominantly eligible cropland and farming practices make it a manageable unit and probable that such cropline is not subject to change during the duration of the contract, or other similar features;

(13) "Field windbreak" means a vegetative barrier with a linear configuration composed of trees or shrubs planted for the purpose of wind erosion control;

(14) "Local ASCS office" means the county office of the Agricultural Stabilization and Conservation Service serving the county or a combination of counties in the area in which the landowner's farm or ranch is located;

(15) "Manageable unit" means a part of a field that can be farmed in a normal manner;

(16) "Operator" means a person who is in general control of the farming operations on the farm;

(17) "Owner" means a person who has legal ownership of farmland including a person who is buying farmland under a purchase agreement;

(18) "Participant" means an owner or operator who has entered into a CRP Contract;

(19) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof;

(20) "Secretary" means the Secretary of the U. S. Department of Agriculture;

(21) "Soil Loss Tolerance (T)" means the maximum average annual soil loss specified for a soil in the Soil Conservation Service (SCS) technical guide available in local SCS offices and is basically the level of soil loss that may occur and still permit a high level of crop productivity to be obtained economically and indefinitely;

(22) "Technical assistance" means the assistance provided to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, inspecting eligibility of a designated area, and implementing and certifying conservation practices;

(23) "Tree planting plan" means the plan that sets forth the silvicultural treatment necessary for planting trees, in order to obtain adequate erosion control on eligible cropland. The plan shall include site location, number of acres, requirements for site preparation, tree species and specifications, planting dates, pre- and post-care of nursery stock, and maintenance to ensure survival; and

(24) "Vegetative cover" means perennial or permanent grasses, legumes, forbs, and shrubs with a life span of 5 or more years, or trees.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitutions of farms, allotments and bases, 7 CFR Part 719.

§ 704.3 Administration.

(a) The program will be administered on behalf of CCC under the general supervision of the Administrator of the Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State ASC Committees (STC) and County ASC Committees (COC).

(b)(1) The land capability class, rate of erosion, suitability of land for permanent vegetative cover, and the adequacy of the planned conservation practice to achieve the necessary erosion control shall be determined by the Soil Conservation Service (SCS).

(2) The SCS will provide such other technical assistance in the implementation of the CRP as is determined to be necessary.

(c) The Forest Service (FS) or the State Forestry Agency shall provide such assistance as is determined to be necessary for developing and implementing conservation plans which include tree planting as the appropriate conservation practice.

(d) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the CRP.

(e) Except as provided in paragraph (b) of this section, the Deputy Administrator, State and County Operations, ASCS (Deputy Administrator), may determine any question arising under the CRP, may reverse or modify any determination made by an STC or COC in connection with the CRP, and may administer any or all phases of the CRP delegated to the COC, STC, or any employee(s) where the COC, STC, or any employee fails to perform a function required in these regulations. In exercising this authority the Deputy Administrator may authorize a person or persons to carry out the CRP or other function(s) for such period of time as is deemed necessary by the Deputy Administrator.

§ 704.4 Applicability.

(a) The CRP is applicable in the 50 States, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States.

(b) The CRP is applicable to private croplands, Indian tribal croplands, and State or local government croplands that otherwise meet the requirements of eligibility set forth in § 704.7.

§ 704.5 Maximum county acreage.

The maximum acreage which may be placed in the CRP may not exceed 25 percent of the total cropland in the county unless CCC determines that such action would not adversely affect the local economy of the county.

§ 704.6 Eligible person.

In order to be eligible to enter into a CRP Contract in accordance with this part, a person must be an owner or operator of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for the period beginning not less than 3 years prior to the close of the applicable signup period or January 1, 1985, whichever is later, and must provide satisfactory evidence that such person will be the operator of such cropland for the CRP Contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for not less than 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The new owner acquired such cropland prior to January 1, 1985; or

(3) It is determined that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP.

§ 704.7 Eligible cropland.

(a) In order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings in 2 of the 5 crop years, 1981 through 1985;

(2) Be physically possible to be planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings; and

(3) Be either:

(i) In a field which is classified by SCS as being predominantly Land Capability Classes II, III, IV, and V with an average annual erosion rate 2T or greater, as announced by the Secretary; or

(ii) In a field which is classified by SCS as being predominantly Land Capability Classes VI, VII, or VIII; and

(4) If a redefined field, be a manageable unit which meets the minimum acreage requirements as established by CCC for the county.

(b) Land subject to a contract under the Great Plains Conservation Program, Agricultural Conservation Program, Forestry Incentives Program, Rural Clean Water Program, or similar program contract or land currently under an annual program with maintenance or lifespan requirements may be eligible to be placed in the CRP if the eligible cropland meets the requirements of paragraph (a) of this section and the conservation practices required unde the CRP are consistent with the requirements of the existing contracts.

(c) A field shall be considered to be predominantly highly erodible if 66⅔ percent of the land in such field meets the requirements of paragraph (a)(3).

§ 704.8 Conservation plan.

(a) The applicant, in consultation with the SCS, shall develop the conservation plan.

(b) The SCS ensure that the conservation practices included in the conservation plan and agreed to by the applicant will achieve the reduction in erosion necessary to maintain the production capability of the soil.

(c) If applicable, a tree planting plan shall be developed by the State Forester and shall be included with the conservation plan.

(d) The CD shall approve all conservation plans.

§ 704.9 Eligible conservation practices.

(a) Eligible conservation practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife that will provide adequate erosion control for the contract period.

(b) Other conservation practices may be determined to be eligible if such practices are required in the conservation plan to assure establishment of permanent vegetative cover.

§ 704.10 CRP Contract.

(a) In order to enter into the CRP, the owner or operator must enter into a CRP Contract with CCC.

(b) The CRP Contract will be comprised of: (1) The terms and conditions for participation in the CRP, (2) the offer to the applicant, and (3) the conservation plan.

(c) In order to enter into a CRP Contract, the applicant must submit an offer to participate on a Form CRP–1 at the local county ASCS office during the announced signup period for the applicable crop year.

(1) The offer shall be irrevocable for a period of 30 days subsequent to the close of the applicable signup period.

(2) The applicant shall be assessed liquidated damages in an amount provided in the CRP Contract if the applicant revokes an offer prior to 30 days after the close of the applicable signup period. Once an offer has been received by CCC, it shall be reviewed and evaluated. The revocation of offers during this 30-day review and evaluation period would require a re-evaluation of bids reviewed and would result in additional administrative expenditures by CCC as well as increased annual rental payments; however, it would be impossible to compute the actual damages suffered by CCC.

(3) CCC may waive payment of liquidated damages if CCC determines that the assessment of such damages in a particular case is not in the best interest of the CRP.

(d) The CRP Contract must be signed within the dates established by the COC by: (1) The applicant, and (2) the owners of the cropland to be placed in the CRP.

(e) The COC or its designee is authorized to approve CRP Contracts on behalf of CCC in accordance with instructions issued by the Deputy Administrator.

§ 704.11 Obligations of the participant.

(a) All participants in the CRP must:

(1) Carry out the terms and conditions of the CRP Contract for a period of 10 crop years from the date the CRP Contract is entered into by the participant and CCC;

(2) Implement the conservation plan:

(i) The participant shall implement the conservation plan in accordance with the schedule of completion dates included in such plan unless an extension of time is granted by the COC for the participant to implement the plan. Such an extension shall be granted only if the participant cannot fully implement the plan for reasons beyond the participant's control; and

(ii) The participant shall establish temporary vegetative cover when required by the conservation plan or the COC to control soil erosion until permanent vegetative cover can be adequately established;

(3) Reduce the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land which is the subject of the CRP Contract by an amount based upon the ratio between the total cropland acreage on such farm and the total acreage on such farm subject to the CRP Contract;

(4) Not undertake any action on other land under the participant's control during the contract period that tends to defeat the purpose of the CRP, including the production of any agricultural commodity on land subject to subtitles B and C of Title XII the Food Security Act of 1985, Pub. L. 99–198;

(5) Not knowingly or willingly allow grazing, harvesting, or other commercial use of any crop from the cropland

subject to the CRP Contract except for those periods of time in accordance with instructions issued by the Secretary in response to drought or similar emergency;

(6) Maintain the vegetative cover and the required conservation practices on the land subject to the CRP Contract and take other actions that may be required by CCC to achieve the reduction in soil erosion necessary to maintain the production capability of the soil throughout the CRP Contract period; and

(7) Comply with the noxious weed laws of the applicable State on land subject to the CRP Contract.

(b) The participant and each other person signing the CRP Contract shall be jointly and severally responsible for compliance with the CRP Contract and the provisions of this part and for any refunds or payment adjustments which may be required for violation of any of the terms and conditions of the CRP Contract and the provisions of this part.

§ 704.12 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible conservation practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of § 704.14;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP Contract; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP Contract.

§ 704.13 Availability of cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that the eligible conservation practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Cost-share payments may be made under the CRP only for the establishment or installation of an eligible conservation practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible conservation practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department.

(d) Cost-share payments may be authorized for the replacement or restoration of conservation practices for which cost-share assistance has been previously allowed under the CRP only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control; and

(2) The failure of the original practice was not due to the lack of proper maintenance by the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the conservation practice.

§ 704.14 Levels and rates for cost-share payments.

(a) CCC will share not more than 50 percent of the actual or average cost of establishing the eligible conservation practices specified in the conservation plan.

(b) The average cost of performing a conservation practice shall be determined by the STC or COC, based upon the recommendation of the State and county Conservation Review Groups as identified in 7 CFR 701.2 (a) and (f), and may be the average cost in a State, a county, or a part of a county or counties.

§ 704.15 Annual rental payments.

(a) Annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP Contract.

(b) The annual rental payment shall be divided among the participants in the manner agreed upon in the CRP Contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at 7 CFR Part 795 shall be applicable in determining whether certain persons as individuals or other entities are to be considered as a separate person for payment limitation purposes.

§ 704.16 Method of payment.

Payments made by the Department under this part may be made in cash, in-kind, or in commodity certificates or in any combination of such methods of payments in accordance with 7 CFR Part 770.

§ 704.17 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payment, in whole or in part, as provided in the regulations at 7 CFR Part 709, Assignment of Payment.

§ 704.18 Payments not subject to claims.

Subject to the regulations found at 7 CFR Part 13, any cost-share or annual payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 704.19 Contract modifications.

(a) CCC, by mutual agreement with the participant, may modify the CRP Contract in order to:

(1) Decrease acreage placed in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP Contract; and

(3) Facilitate the practical administration of the CRP.

(b) The concurrence of the SCS and the CD are necessary when modifications to a CRP Contract involve a technical aspect of the participant's conservation plan.

(c) CCC may modify CRP Contracts to add, delete, or substitute conservation practices when:

(1) The installed conservation practice failed to adequately control erosion through no fault of the participant;

(2) The installed measure deteriorated because of conditions beyond the control of the participant; or

(3) Another conservation practice will achieve at least the same level of erosion control.

§ 704.20 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to CRP Contract, such new owner or operator, upon the approval of the COC, may become a participant to the existing contract with the same terms and conditions or may offer to enter into a new CRP Contract with CCC covering such transferred land.

(2) If the new owner or operator becomes a participant to the existing CRP Contract, the new owner or operator shall assume all obligations under the CRP Contract of the previous participant with respect to the transferred land.

(3) The following provisions shall be applicable if the new owner or operator becomes a participant to the existing CRP Contract or enters into a new CRP Contract with CCC:

(i) Cost-share payments shall be made to the participant who established the

conservation practice as specified in the contract; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided: (A) Between the new participant and the previous participant based upon the period of time during the fiscal year during which such participants had control of the land or (B) as agreed upon the participants and approved by the COC.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, the land subject to CRP Contract and the new owner or operator does not become a participant to the existing CRP Contract or a new CRP Contract in accordance with the provisions of this section, the CRP Contract shall be terminated on the affected portion of the land subject to the CRP Contract, and the participant:

(1) Must forfeit all rights to any future annual rental or cost-share payments with respect to the transferred acreage; and

(2) Must refund all or part of the payments plus interest thereon, as determined by CCC, that have been made on the transferred land, except a portion of the payments may be retained to the extent CCC determines, after consultation with the technical agency and the CD, that the established conservation practices have achieved desired conservation benefits for an acceptable period.

§ 704.21 Violations.

(a) (1) If the participants fails to carry out the terms and conditions of the CRP Contract, CCC may, after considering the recommendations of the CD and SCS, terminate the CRP Contract.

(2) If the CRP Contract is terminated by CCC in accordance with this subsection, the participant shall:

(i) Forfeit all rights to further payments under the CRP Contract and refund all payments received together with interest thereon as determined by CCC; or

(ii) Forfeit all rights to payments under the CRP Contract and pay liquidated damages to CCC in an amount specified in the CRP Contract if no payments have been received by the participant under the CRP Contract.

(3) The purpose of the CRP is to control erosion on highly erodible lands thereby protecting the Nation's soil and water resources for succeeding generations. Once a CRP Contract has been entered into between CCC and the owner or operator, CCC and other segments of the agricultural community will act based on the assumption that the CRP Contract will be fulfilled and the reduction in erosion and production will be obtained. CCC's action includes budgeting and planning for the CRP in subsequent crop years. A participant's failure to carry out the terms and conditions of the CRP Contract undermines the basis for these actions, damages the credibility of CCC's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years in order for the required levels of acreage to be placed in the CRP and in order for an adequate reduction in erosion to be obtained. While the adverse effects on CCC of the participant's failure to comply with the CRP Contract is obvious, it would be impossible to compute the actual damage suffered by CCC. Therefore, participants shall be required to refund all payments received, plus interest, upon the termination of the CRP Contract in accordance with this subsection, or to pay liquidated damages in an amount specified in the CRP Contract if no payments under CRP have been received prior to termination.

(b) CCC may terminate a CRP Contract if the participant agrees to such termination and CCC determines that termination would be in the public interest.

(c) If the participant fails to carry out the terms and conditions of the CRP Contract but CCC determines that such failure does not warrant termination of the CRP Contract, CCC may require such participant to refund payments received under the CRP Contract or to accept such adjustments in the payment as are determined to be appropriate by CCC.

§ 704.22 CRP Contracts not in conformity with regulations.

If, after a CRP Contract is approved by the COC on behalf of CCC, it is discovered that such CRP Contract is not in conformity with the provisions of this part as the result of a misunderstanding of the program procedures by a signatory to the contract, a modification of the contract may be made by mutual agreement. If the parties to the CRP Contract cannot reach agreement with respect to such modification, the CRP Contract shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC in accordance with the provisions of § 704.23.

§ 704.23 Performance based upon advice or action of Department.

The provisions of Part 790 of this chapter, as amended, relating to performance based upon the action or advice of a COC or STC shall be applicable to the CRP.

§ 704.24 Access to land.

Any representative of the Department, or designate thereof, shall have the right of access to land which is the subject of an application for a CRP Contract, or land which is the subject of a CRP Contract and shall have the right to examine any other cropland under the applicant's or participant's control for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP.

§ 704.25 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under a CRP Contract shall be divided fairly and equitably among all participants to the contract and producers who would have shared in the risk of producing crops on the land to be placed in the CRP shall receive equitable treatment in accordance with the regulations set forth in 7 CFR 713.109 and 713.150 which relate to division of payments and the rights of tenants and sharecroppers.

§ 704.26 Appeals.

(a) Except as provided in paragraph (b) of this section, the participant may obtain a review in accordance with the administrative appeal regulations (7 CFR Part 780) of any administrative determination rendered under this program.

(b) Determinations concerning land classification or erosion rates may be reviewed in accordance with procedures established by SCS.

§ 704.27 Depriving others of payments.

If it is determined by CCC that any participant has employed any scheme or device to deprive any other person of cost-share assistance or land rental payments, any part of any program payment otherwise due or paid such participant during the CRP Contract period may be withheld or required to be refunded with interest thereon as determined by CCC. A scheme or device includes, but is not limited to, coercion, fraud, or misrepresentation.

§ 704.28 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under the CRP with respect to the crop year in which the false information or claim was filed.

False information or false claims include a claim for payment for a conservation practice which is not carried out or a claim for payment for conservation practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The withholding or refunding of such payments will be in addition to any other penalty or liability otherwise imposed by law.

§ 704.29 Miscellaneous.

(a) In accordance with the regulations set forth at 7 CFR Part 796:

(1) No payment shall be made to any participant who harvests or knowingly permits to be harvested for illegal use, marihuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by such participant; and

(2) Any participant who is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payments under this part during that crop year and the four (4) succeeding crop years.

(b) In case of death, incompetency, or disappearance of any participant, any payment due shall be paid to the participant's successor in accordance with the provisions of 7 CFR Part 707.

Signed at Washington, DC, on March 6, 1986.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

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