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January 4, 1989

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4. An introduction to the finding aids of the FR/CFR system.

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WASHINGTON, DC

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-212]

Interstate Movement of Citrus Fruit from Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending the citrus canker regulations to allow inspectors to issue certificates for the interstate movement of regulated fruit from certain groves in Florida only if the groves have been found free of citrus canker based on a survey of all trees in the grove. This action requires tree-by-tree inspection of groves that have an increased risk of citrus canker because of exposure to certain personnel, vehicles, or equipment that may have been contaminated with the Asiatic strain of citrus canker. This amendment is necessary to help prevent the interstate spread of citrus canker.

DATES: Interim rule effective December 29, 1988. We will consider written comments postmarked or received on or before February 3, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 88-212. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141 South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The citrus canker regulations, contained in 7 CFR 301.75, prohibit or restrict the interstate movement of certain articles to prevent the interstate spread of citrus canker. Section 301.75-7(b) sets forth the requirements that must be met before an inspector may issue a certificate for the interstate movement of regulated fruit. Regulated fruit from any area of Florida where a primary infestation caused by Asiatic strains has occurred is not eligible for interstate movement with a certificate until 2 years after the last infested plant in the area has been destroyed. Regulated fruit produced in other areas of Florida may be moved interstate with a certificate to any area of the United States, including commercial citrus-producing areas, if the conditions of the regulations are met.

Paragraph (b)(3) of § 301.75-7 provides that a certificate will be issued only if the grove producing the fruit has been found free of citrus canker based upon the results of two surveys, conducted in accordance with the regulations. The regulations do not require that either survey include examination of all trees in a grove. When conducting the first survey, all trees on the perimeter of the grove are examined while driving by them at no more than 2 m.p.h., and a limited number of trees from other parts of the grove are examined on foot. When conducting the second survey, all trees in the first two rows of the grove are examined, as well as trees on either side of every fourth middle and at least twelve trees located in high risk areas of the grove.

We believe that certain groves should be subject to examination of every tree in the grove by an inspector travelling on foot, in order to ensure that these surveys effectively detect the Asiatic strain of citrus canker.

The groves for which we are requiring this type of tree-by-tree survey are groves that may have been exposed to the Asiatic strain of citrus canker due to the movement into these groves of personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker, within the previous two years. These groves face a higher risk of infestation with citrus canker compared to other groves, and a more rigorous survey requirement is commensurate with that risk. The previously required types of surveys will continue to be conducted in groves that have not been exposed to personnel, vehicles, or equipment that were used to maintain or harvest a grove infested with the Asiatic strain of citrus canker.

Personnel, vehicles and equipment used in groves moving fruit under a certificate must be treated to destroy citrus canker in accordance with § 301.75-12 of the regulations. There is concern, however, that treatments may not be 100 percent effective in destroying all citrus canker bacteria. Therefore, we are requiring a tree-by-tree examination, by an inspector travelling on foot, of all trees in groves that have received personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker, in recognition of the higher risk presented by these groves and to compensate for possible treatment failures. We are also revising the definition of "exposed" in section 30175-1 to include exposure due to movement into a grove of such personnel, vehicles, or equipment.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this rule without prior opportunity for public comment. Immediate action is necessary so that regulated fruit can continue to be moved interstate from Florida to commercial citrus-producing areas of the United States, with only a negligible risk of spreading citrus canker, despite the possible exposure of some groves to Asiatic strain citrus canker through movement of certain personnel, vehicles, and equipment. The alternatives we have considered are to add more rigorous survey requirements on an emergency basis, or to suspend issuance of certificates for interstate movement of regulated fruit from Florida. Suspending the issuance of certificates for the interstate movement

of all regulated fruit from Florida would unnecessarily cause serious economic losses to those persons affected.

Because prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, we find good cause under 5 U.S.C. 553 for making this rule effective upon signature. We will consider comments postmarked or received on or before February 3, 1989. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in accordance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Groves that have received personnel, vehicles, or equipment that were used to maintain or harvest a grove infested with the Asiatic strain of citrus canker within the previous two years, and which are otherwise eligible to move fruit under a certificate, number approximately 50 and occupy approximately 2000 acres. Only these groves, and any other that are identified as receiving such personnel, vehicles, or equipment, will be affected by this rule. Conducting the more rigorous tree-by-tree survey in lieu of the type of survey previously required will not impose a substantial economic burden on the owners of these groves. Thousands of other groves, the great majority of groves in Florida, will not be affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation continues to read as follows:

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

2. In § 301.75–1, the definition of "Exposed" is revised to read as follows:

§ 301.75–1 Definitions

* * * * *

Exposed. Suspected by an inspector of containing the bacterium that causes citrus canker because of proximity to an infestation, or because of the movement into a grove of personnel, vehicles, or equipment that were used to maintain or harvest a grove infected with the Asiatic strain of citrus canker.

* * * * *

3. In § 301.75–7, paragraph (b)(3)(iii) is redesignated as (b)(3)(iv), and a new paragraph (b)(3)(iii) is added to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(b) * * *

(3) * * *

(iii) When an inspector has determined that a grove has been exposed to the Asiatic strain of citrus canker due to the movement of personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker at any time during the two years previous to such movement, in lieu of the survey required by § 301.75–7(b)(3)(ii), an inspector must, no more than 90 days before harvest begins, walk through the grove and examine each tree; and

* * * * *

Done at Washington, DC, this 29th day of December, 1988.

James Glosser,

Administrator, Animal and Plant Health Inspection Service.

December 29, 1988.

[FR Doc. 89–94 Filed 1–3–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY–89–001]

Egg Research and Promotion Order Amendments

AGENCY: Agricultural Marketing Service.

ACTION: Interim final rule with request for comments.

SUMMARY: This action amends the Egg Research and Promotion Order to eliminate producer refunds and to limit the total costs that may be incurred by the American Egg Board (AEB) in collecting egg producer assessments and having an administrative staff. These changes are required by the Egg Research and Consumer Information Act amendments, which became effective October 31, 1988.

DATES: Interim rule effective January 1, 1989; comments must be received on or before February 3, 1989.

ADDRESS: Written comments may be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944–South, Post Office Box 96456, Washington, DC 20090–6456. Written comments received may be inspected in the Washington, DC, Standardization Branch office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–447–3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action was reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be non-major because it does not meet the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more or in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It also will not have a significant impact on

competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The majority of producers and handlers under the Egg Research and Consumer Information Act may be characterized as small entities.

The Egg Research and Promotion Order authorizes AEB to collect assessments at the rate of 5 cents per 30-dozen case of commercial eggs marketed or the equivalent thereof. However, effective September 1, 1987, the 5-cent rate of assessment was decreased to 2.5 cents by revising the Egg Research and Promotion Rules and Regulations in § 1250.514 [7 CFR 1250.514]. The American Egg Board (AEB) collects approximately $3.7 million annually from the 2.5-cent assessment. The assessment is refundable upon demand and presently is at the rate of 43 percent of assessments collected. According to AEB statistics, 1,967 producers pay assessments under the amended Rules and Regulations. Approximately 79 percent of such producers currently do not request refunds; therefore, the implementation of a mandatory assessment would have no additional impact on these producers.

A mandatory assessment of 2.5 cents per 30-dozen case of eggs would be equivalent to approximately 0.14 percent of the wholesale price of a 1-dozen carton of Large eggs. This is based on the Economic Research Service's latest annual average wholesale price of 60.6 cents per dozen. The amendment to the Order would impose additional costs on approximately 21 percent of the producers and any other producers who might request refunds in the future. It is estimated that the AEB would collect $3.7 million annually from a mandatory 2.5-cent assessment. This would represent an increase of 43 percent over the current amount retained after refunds. It is anticipated that any additional costs will be offset by the benefits derived from strengthened research and promotion programs as a result of participation by all producers.

Paperwork Reduction

There is no change in the reporting or recordkeeping requirements imposed on producers and handlers as a result of this action. The Office of Management and Budget approval of these requirements (No. 0581–0098) was renewed for use through August 31, 1989.

Background

The Egg Research and Promotion Order in § 1250.349 [7 CFR 1250.349] currently provides that any producer, whose eggs are assessed under authority of the Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) and who is not in favor of supporting the programs authorized thereunder, may request refunds of such assessments. The Egg Research and Consumer Information Act Amendments of 1988 (Pub. L. 100–575, effective October 31, 1988) require the Secretary to amend the Egg Research and Promotion Order to eliminate the producer refund provision. Such an amendment would not be subject to a producer referendum until after the end of an 18-month period from the effective date of the amendment, January 1, 1989.

A poll was conducted by the American Egg Board of all commercial egg producers, which disclosed that 69 percent of producers voting, representing 79 percent of egg production voting, were in favor of eliminating refunds of producer assessments.

In the House of Representatives' report on the 1988 amendments to the Act, it was stated that the Act, as enacted in 1974, contains many of the tools needed to address the issues facing the egg industry today. However, there is not sufficient funding for an effective program of research, consumer and producer education, advertising, and promotion. The report states further that the hallmark of an effective and continuous program must be the contribution by all commercial egg producers of their fair share.

The amended Act requires the Secretary to issue an amendment to the Order to eliminate the refund provision. During the period beginning with the effective date of the amendment until approval by referendum of the amendment, the Board is required to place into an escrow account 10 percent of the assessments received from egg producers. If the amendment to the Order is not approved in the referendum, the escrow account will be used to pay refunds to eligible egg producers who requested a refund pursuant to regulations to be promulgated by the Secretary. If the escrow account does not contain sufficient amounts to refund all eligible producers demanding a refund, then the Board will prorate the amount of refunds demanded by eligible producers. If the amendment to the Order is approved, the amount in the escrow account will be used by the Board in accord with the purposes set forth in the Act. Sections 1250.336 and 1250.349 are amended accordingly.

The 1988 amendments also contain a provision limiting the total costs that may be incurred by the Egg Board in collecting producer assessments and for administrative costs to the amount of the projected total assessments to be collected by the AEB as the Secretary determines to be reasonable. Section 1250.336 of the Order is amended to contain such a provision.

It is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Egg Research and Consumer Information Act Amendments of 1988 require that the Secretary make these amendments to the Order eliminating producer refunds and limiting costs incurred by the AEB; (2) it is desirable to implement the amendments at the beginning of the AEB's fiscal period which is the beginning of the calendar year, January 1; (3) interested persons are afforded a 30-day comment period to submit written comments; and (4) producers will be afforded an opportunity to vote in a referendum to be conducted at a future date, in accordance with the provision of the 1988 amendments.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

For the reasons set forth in the preamble, Title 7, CFR Part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718.

§ 1250.336 [Amended]

2. In 7 CFR 1250.336, paragraphs (g) through (k) are redesignated (j) through (m), respectively.

3. 7 CFR 1250.336 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 1250.336 Duties.

* * * * *

(g) To establish, for the period beginning on January 1, 1989, until approval by producer referendum of the amendments to this subpart, as required by the Egg Research and Consumer Information Act Amendments of 1988 [Pub. Law 100–575], and interest-bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(h) To pay refunds pursuant to § 1250.349(b) to producers requesting refunds in a manner consistent with the following conditions:

(1) If the elimination of the refund provision in § 1250.349(a) of this subpart is not approved pursuant to a referendum, any egg producer shall have the right to demand and receive from the Board a one-time refund of assessments collected from such producer and deposited into the escrow account established pursuant to paragraph (g) of this section.

(2) If the amount in the escrow account required to be established by paragraph (g) of this section is not sufficient to refund the total amount of assessments requested by all such egg producers, the Board shall prorate the amount deposited in such account among all such producers who request a refund of assessments paid.

* * * * *

4. 7 CFR 1250.346 is amended by adding a new sentence after the first sentence to read as follows:

§ 1250.346 Expenses.

* * * The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable.

* * *

5. 7 CFR 1250.349, is amended by designating the current paragraph as (a), revising the first sentence, and adding a new paragraph (b) to read as follows:

§ 1250.349 Producer refunds.

(a) Except as provided in paragraph (b) of this section, any egg producer against whose eggs any assessment is made under the authority of the Act and collected from such producer and who is not in favor of supporting the programs in this subpart shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought.

* * *

(b) Effective January 1, 1989, producer refunds as provided in paragraph (a) of this section are eliminated. If eliminated of the refund provision in paragraph (a) of this section is not approved pursuant to a referendum, any egg producer who is responsible for paying an assessment to the Board, under this subpart, and who is not in favor of supporting the program established under this subpart shall have the right to demand and receive from the Board a refund of such assessment or a prorata share thereof collected from such producer and deposited into an escrow account pursuant to § 1250.336(g) upon submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is sought. Any such demand shall be made by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary.

Done at Washington, DC on December 30, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–30265 Filed 12–30–88; 2:39 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 232, 233, 235, 237, 238, 239, 280, and 299

[INS Number: 1037–88]

Immigration User Fee, Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Pursuant to the Department of Justice Appropriation Act 1987 (Pub. L. 99–591, enacted October 30, 1986), establishing an Immigration User Fee, this final rule amends the regulations to address the change from carrier responsibility to Immigration and Naturalization Service (Service) responsibility for the custody and detention of excludable aliens, and also amends the regulations to conform to statutory deletions and amendments.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, (202) 633–4705.

SUPPLEMENTARY INFORMATION: The Service published a proposed rule on January 22, 1988, at 53 FR 1791, to amend 8 CFR Parts 232, 233, 235, 237, 238, 239, 280, and 299, in order to implement section 206 of Pub. L. 99–591 which places responsibility for physical custody of excludable aliens pursuant to former section 233 of the Immigration and Nationality Act of 1952, as amended (The Act), on the Service. The comment period ended on March 22, 1988. A total of nine comments were received during the comment period and considered before preparing this final rule. The following summary addresses the substantive comments.

1. Numerous commenters requested clarification of the situation when, following a deportation/exclusion order, the carrier's next regularly scheduled flight to the excluded alien's point of embarkation is full or the carrier is a charter operator that may only operate ad hoc flights. Such clarification has been provided to allow the transporting carrier the option of arranging for return transportation on other carriers which service the excluded alien's point of embarkation.

2. Some commenters also requested clarification regarding notice and timing of carrier responsibility for custody and removal of an excluded alien following a deportation/exclusion order. Carriers become liable for detention and transportation expenses immediately upon the issuance of a deportation/exclusion order. It is the carrier's responsibility to track these proceedings as they have already acknowledged by receipt of Form I–259C, Notice to Carrier, executed upon arrival by the examining immigration officer, that an alien passenger may be excludable from the United States, and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in § 237.5. The regulations have been modified to allow the option of having the Service retain custody of the excluded alien for up to seven days following a deportation/exclusion order.

3. Several commenters expressed the concern that the proposed rule did not fully release carriers from custodial and financial responsibility for excludable aliens. Section 206 of Pub. L. 99–591 did not repeal section 237 of the Act, thus, it

does not totally release commercial carriers from custodial and financial responsibility for aliens who arrive in the United States aboard commercial aircraft or commercial vessels without proper documentation. Commercial carriers are still liable for detention and transportation expenses of excluded aliens subsequent to a deportation/exclusion order.

4. Certain commenters requested clarification regarding carrier/Service responsibility for detained aliens in immediate and continuous transit (TWOV passengers). Although the issue of carrier responsibility for TWOV passengers may be a thorny one, the rules and regulations are very clear. Pub. L. 99–591 did not repeal section 238 of the Act; thus, contracts entered into pursuant to section 238, and in this particular instance we are concerned with carrier financial responsibility for detained TWOV passengers, are valid and enforceable. In sum, carriers are responsible for the detention expenses of detained TWOV passengers while in Service custody as well as having financial responsibility for return transportation to TWOV passengers point to embarkation following a deportation/exclusion order.

5. One commenter requested more detailed guidance regarding minimum standards that must be met for alien detention in a non-service facility. Such guidance has been included in a revised § 235.3(f).

6. One commenter took issue with the specific minimum conditions that must be met for aliens detained in a non-service facility. This rule addresses the change from carrier responsibility to Service responsibility for the custody and detention of excludable aliens, and also amends the regulations to conform to statutory deletions and amendments, pursuant to section 206 of Pub. L. 99–591; it does not address details of specific alien detention conditions. The conditions under which aliens are held would be a matter for other proceedings.

In compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Parts 232 and 233

Aliens, Immigration, Security measures, Aircraft, Vessels.

8 CFR Part 235

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses.

8 CFR Parts 237 and 238

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses, Transportation.

8 CFR Part 239

Aliens, Immigration, Security measures, Aircraft.

8 CFR Parts 280 and 299

Aliens, Immigration, Aircraft, Vessels, Accounting, Reporting and recordkeeping requirements.

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

1–2. Part 232 is revised to read as follows:

PART 232—DETENTION FOR EXAMINATION TO DETERMINE MENTAL OR PHYSICAL DEFECTS

§ 232.1 Detention.

Authority: 8 U.S.C. 1103 and 1222.

§ 232.1 Detention.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he/she shall, after consultation with the United States Public Health Service at the port of entry, notify the master or agent of the arriving vessel or aircraft of his/her intention to effect such detention by serving on the master or agent the Form I–259C in accordance with § 235.3(e) of this chapter.

PART 233—[REMOVED AND RESERVED]

3. Part 233 would be removed and reserved.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

4. The authority citation for Part 235 is revised to read as follows and all other authority citations which appear in Part 235 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

5. Section 235.3 is amended by revising paragraph (d), and adding a sentence to the end of paragraph (a) and new pragraphs (e) and (f) is read as follows:

§ 235.3 Detection and deferred inspection.

(a) * * * The Service will not be liable for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissability by a Service officer.

* * * * *

(d) *Service custody.* The Service will assume custody of any alien subject to detention under § 235.3 (b) or (c) of this section, except in the case of an alien who is presented as a Transit Without Visa (TWOV) passenger.

(e) *Notice to carriers.* In the opinion of the examining immigration officer, it is not practical to resolve a question of admissability at the time of arrival of an alien passenger on a vessel or aircraft, the officer shall execute a Form I–259C to notify the agent, master, or commanding officer of the vessel or aircraft, if applicable, that the alien passenger may be excludable from the United States and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in § 237.5 of this chapter.

(f) *Detention in Non-Service facility.* Whenever an alien is taken into Service custody and detailed at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are: (1) 24-Hour Supervision, (2) Conference with Safety and Emergency Codes, (3) Food Service and (4) Availability of Emergency Medical Care.

§ 235.5 [Amended]

6. Section 235.5 paragraph (c) is removed.

PART 237—DEPORTATION OF EXCLUDED ALIENS

7. The authority citation for Part 237 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1255, and 1330; 66 Stat. 173, 197, 201, 214, 230.

§ 237.4 [Amended]

8. Section 237.4 Imposition of penalty, is amended by removing the words "sections 233 and", and inserting the word "section." * * *

9. Section 237.5 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 237.5 Notice to transportation line of alien's exclusion.

* * * * *

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Immigration and Nationality Act and this paragraph. The Service will, at the carriers option, retain custody of the excluded alien for an additional seven days beyond the date of the deportation/exclusion order. If, after the third day of this additional seven day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his/her point of embarkation by the end of the additional seven day period, the Service will make the arrangements and bill the carrier for its costs.

10. Section 237.6 is amended by adding a new paragraph (a)(5) to read as follows:

§ 237.6 Deportation

(a) * * *

(5) Next available flight—is to be the carrier's next regularly scheduled departure to the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regularly scheduled departure to the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carriers which service the excluded aliens point of embarkation.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

11. The authority citation for Part 238 continues to read as follows:

Authority: 8 U.S.C. 1103 and 1228.

12. Section 283.3 is amended by adding a new paragraph (c) to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

* * * * *

(c) Carrier responsibility. Nothing contained within the provisons of section 286 of the Act shall be deemed to waive the carrier's liability for detention, transportation, and other expenses incurred in the bringing of aliens to the United States under the terms of this section.

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

13. The authority citation for Part 239 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, and 1229; 66 Stat. 173, 195, 203.

§ 239.2 [Amended]

14. Section 239.2 Landing requirements, is amended by removing paragraph (b) and by redesignating paragraphs (c), (b), and (e) as (b), (c), and (d).

PART 280—IMPOSITION AND COLLECTION OF FINES

15. The authority citation for Part 280 is revised to read as follows and all other authority citations which appear in Part 280 are removed:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230.

§ 280.6 [Amended]

16. Section 280.6 Bond to obtain clearance; form, is amended by removing the reference to Section "233,".

17. A new § 280.52 is added to read as follows:

§ 280.52 Payment of fines.

(a) *Procedure.* All fines assessed pursuant to section 271(a) of the Act shall be made payable to the Immigration User Fee Account in accordance with the provisions of § 286.6 of this chapter.

(b) *Deposit to the Immigration User Fee Account.* All fines assessed pursuant to section 271(a) of the Act and all penalties paid to the collector of customs pursuant to section 273 of the Act shall be remitted to the Immigration User Fee Account.

PART 299—IMMIGRATION FORMS

18. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR Part 2.

19. Section 299.1 is amended by adding, in proper numerical sequence, new Form I–259C as follows:

§ 299.1 Prescribed forms.

* * * * *

I–259C (6–13–88)—Notice to Carrier.

* * * * *

Dated: September 21, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–5 Filed 1–3–89; 8:45 am]

BILLING CODE 4410–10–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

Display of Office of Management and Budget (OMB Control Numbers for Reporting and Recordkeeping Requirements)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: William Cline, Chief, Administrative Information Branch, Small Business Administration, 1441 L Steet, NW., Washington, DC 20416. Telephone No. 653–8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement. This subpart collects and displays current OMB control numbers and expiration dates. Where the Information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative

Procedure Act (5 USC 551 et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

PART 133—[AMENDED]

Therefore, 13 CFR Part 133 is amended as follows:

1. The authority for Part 133 is revised to read as follows:

Authority: 44 U.S.C. 3512.

2. The table in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

* * * * *

(c) * * *

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0003	SBA 745, SBA 745A	13 CFR 125.9	
3245-0007	SBA 990, SBA 991, SBA 994, SBA 994B, SBA 994C, SBA 994H	13 CFR 115.5	02/28/91
3245-0009	SBA 480		02/28/91
3245-0012	SBA 770	13 CFR 123.9	10/31/90
3245-0013	SBA 74, SBA 74A, 74B, 183	13 CFR 125.5	03/31/89
3245-0015	SBA 1010A-E&I	13 CFR Part 124	09/30/90
3245-0016	SBA 4, SBA 4-I, SBA4 SCHED A	13 CFR 122.309	10/31/90
3245-0017	SBA 5, SBA 739A, SBA 1368 A-C	13 CFR Part 123	10/31/89
3245-0018	SBA 5C, 739	13 CFR 123.1	04/30/90
3245-0019	SBA 1100	13 CFR 101.2-7	08/31/91
3245-0020	SBA 1136, SBA 1136A	13 CFR 111.5	06/30/91
3245-0024	SBA 1167, SBA 1395	13 CFR 125.10	01/31/89
3245-0046	SBA 1174	13 CFR 101.2-7	09/30/89
3245-0062	SBA 415, SBA 415A	13 CFR 107.102	07/31/90
3245-0063	SBA 468	13 CFR 107.1102	08/31/91
3245-0071	SBA 1244	13 CFR 108.503	10/31/91
3245-0073	SBA 1246	13 CFR 108.503	09/30/90
3245-0074	SBA 1253 A&B	13 CFR 108.503	10/31/89
3245-0075	SBA 20	13 CFR 101.2-7	04/30/90
3245-0076	SBA 793	13 CFR 112.113	09/30/91
3245-0077	Reporting and recordkeeping requirements on non-bank lenders	13 CFR 120.5 and 12	10/31/90
3245-0078	SBA 1031	13 CFR 107.1102	04/30/90
3245-0079	SBA 419		10/31/90
3245-0080	SBA 1080	13 CFR 120.4	04/30/90
3245-0081	SBA 25, SBA 26, SBA 27, SBA 28, SBA 33, SBA 34, SBA 444C, SBA 1022, SBA 1022A, SBA 1065.	13 CFR 107.201	04/30/90
3245-0083	SBA 415C	13 CFR 107.1105	09/30/90
3245-0084	SBA 700	13 CFR Part 123	11/30/90
3245-0090	SBA 59	13 CFR 101.2-7	04/30/90
3245-0091	SBA 641	13 CFR 101.2-7	12/31/90
3245-0092	SBA 610	13 CFR 101.2-7c	09/30/91
3245-0095	SBA 1175		07/31/91
3245-0096	SBA 883, SBA 1375	Presidential Proclamation designating Small Business Week.	01/31/90
3245-0101	SBA 355, SBA 1340	13 CFR Part 121	03/31/91
3245-0108	SBA 1062	13 CFR 101.2-7	08/31/91
3245-0109	SBA 857	13 CFR 107.1101	07/31/90
3245-0110	SBA 1366, SBA 1391	13 CFR 123.17	04/30/90
3245-0112	SBA 1301	13 CFR 108.503	07/31/90
3245-0114	SBA 1302	13 CFR 108.503	07/31/90
3245-0116	SBA 860	13 CFR 107.1101	07/31/90
3245-0117	CO 266		07/31/90
3245-0118	SBA 856	13 CFR 107.1101	06/30/89
3245-0121	Governor's request for disaster declaration	13 CFR 123.24	06/30/89
3245-0123	SBA 888	13 CFR 101.2-7	07/31/90
3245-0125	SBA 898	Pub. L. 92-463	11/30/88
3245-0129	SBA 1238A	3245-130	07/31/89
3245-0130	SBA 1238		08/31/89
3245-0131	SBA 172	Agency Participant Handbook	08/31/89
3245-0132	SBA 1149		07/31/89
3245-0133	SBA 2014A	Pub. L. 95-454	11/30/90
3245-0134	SBA 1369	13 CFR 101.2-7	09/30/89
3245-0135	SBA 1202	13 CFR 101.2-7	09/30/89
3245-0136	SBA 987	13 CFR 123.1	08/31/89
3245-0137	SBA contract requirements	OMB Cir. A-110; A.21; A-102; A-122	08/31/89
3245-0140	SBA 122, SBA 1223, SBA 1224	OMB Cir. A-110; A-21; A-102; A-122	08/31/89
3245-0143	Request for eligibility reconsideration	13 CFR Part 124	09/30/91
3245-0144	SBA 1017	13 CFR Part 124	01/31/90
3245-0145	Notice of change of ownership	13 CFR Part 124	01/31/90
3245-0146	Request for approval of joint venture agreement	13 CFR Part 124	01/31/90
3245-0147	Request for fixed program participation term (FPPT) ext	13 CFR Part 124	01/31/90
3245-0148	Request for advance payment and sched of advance payment requirements.	13 CFR Part 124	01/31/90
3245-0147	Request for fixed program participation term (FPPT) ext	13 CFR Part 124	01/31/90
3245-0149	Request for business development expense (BDE)	13 CFR Part 124	01/31/90
3245-0151	Submission of business financial statement	13 CFR Part 124	01/31/90
3245-0157	SBA 1386	Pub. L. 97-219	02/28/91
3245-0158	SBA 1183	SOP 50 50	04/30/90
3245-0159	SBA 712	15 U.S.C. 639	04/30/90
3245-0160	SBA 149	13 CFR 122.15	09/30/90
3245-0164	Liquidation activities	41 CFR Part 5	04/30/90

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0168	Small business institute counseling case report	13 CFR 101.2-7	04/30/90
3245-0169	SBDC quarterly and financial reports	13 CFR 101.2-7	02/28/90
3245-0171	Nominate a small business person or advocate of the year	Pub. L. 94-309	11/30/91
3245-0172	SBA 1405	13 CFR 107.1101	02/28/90
3245-0178	SBA 912	15 U.S.C. 6349(B)	05/31/90
3245-0183	SBA 1419	13 CFR 101.2-7	07/31/90
3245-0185	SBA 1086	13 CFR Part 120	04/30/91
3245-0188	SBA 413	15 U.S.C. 631	10/31/89
3245-0189	Business loan reconsideration req	13 CFR Part 122	09/30/90
3245-0190	SBA 1347	13 CFR Part 122	11/30/90
3245-0191	Reporting and recordkeeping requirements on lender reports	13 CFR Parts 120 and 122	10/31/90
3245-0192	Development company reporting req	13 CFR Part 108	04/30/90
3245-0193	SBA 1429	13 CFR Part 108	04/30/90
3245-0194	SBA 1434	13 CFR 101.2-7	01/31/91
3245-0196	Other borrower reports, records and requests	13 CFR Part 122	10/31/90
3245-0200	SBA 1050	13 CFR Parts 120 and 122	11/30/90
3245-0201	SBA 147, SBA 148, SBA 159, SBA 160, SBA 160A, SBA 529B, SBA 928, SBA 1059, SBA 928.	13 CFR Parts 120 and 122	11/30/90
3245-0202	SBA 1010H	Pub. L. 95-507	01/31/91
3245-0203	SBA 104A		11/30/90
3245-0204	SBA 1449	Pub. L. 95-89	01/31/91
3245-0205	SBA 1450	Pub. L. 96-481	08/31/90
3245-0212	SBA 1088	Pub. L. 98-352	09/30/90
3245-0213	SBA 1454, SBA 1455	13 CFR Part 122	12/31/91
3245-0221	SBA 1496	13 CFR 101.2-7	01/31/90
3245-0225	SBA 1531	Pub. L. 98-577 and 15 U.S.C. 637B	02/28/90
3245-0226	SBA 1538	Pub. L. 95-507	11/30/91
3245-0228	SBA 1540	Pub. L. 95-507	11/30/91
3245-0229	For profit cosponsored training program		08/31/91
3245-0232	SBA 1547	Pub. L. 85-536	07/31/89
3245-0234	Prebusiness workshop eval	13 CFR 129.2	09/30/91
3245-0235	SBA 1551	13 CFR 129.2	09/30/91
3245-0242	Survey of commercialization activities of SBIR awardees	Pub. L. 97-219	02/28/89
3245-0243	SBA 641A	13 CFR 101.2-7C	12/31/90

James Abdnor,

Administrator.

[FR Doc. 89-65 Filed 1-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-163-AD; Amdt. 39-6099]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes Equipped With Wet Center Wing Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes equipped with wet center wing fuel tanks, which requires removal of insulation blankets currently installed in the center accessory compartment (CAC), inspection for any evidence of fuel leaks, and repair, if necessary. This amendment is prompted by a report of a fire in the CAC supported by fuel of unknown origin. This condition, if not corrected, could lead to additional fuel retention by the insulation blankets and potential in-flight or ground fires.

EFFECTIVE DATE: January 19, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: A McDonnell Douglas Model DC-10 airplane recently experienced a fire in the center accessory compartment (CAC) during taxi after landing. Subsequent investigation identified a loose and/or corroded battery ground stud connection as the ignition source for the fire.

The FAA issued AD 88-15-05, Amendment 39-5980 (53 FR 26765; July 15, 1988), which requires inspections for evidence of arcing and/or corrosion at the CAC battery ground stud, replacement of the battery ground cable bracket, and inspections for proper operation of the two CAC drain valves. Subsequent to issuance of AD 88-15-05, further investigation has confirmed that fuel was present to support combustion, and that possible contamination of insulation blankets in the CAC, or flammable liquid within the CAC lower fuselage area, may have provided the fuel source for the fire. Therefore, the FAA has determined that additional regulatory action is necessary to prevent fuel retention by the insulation blankets in the CAC with associated danger of fires.

The FAA has reviewed and approved McDonnell Douglas Model DC-10 Alert Service Bulletin A25-356, dated October 3, 1988, which describes permanent removal of the insulation blankets currently installed in the CAC area, inspection for any evidence of fuel leaks, and repair, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires removal of the insulation blankets and inspection for fuel leaks in the CAC area in accordance with the service bulletin previously mentioned. If any fuel leaks

are found, repairs must be made prior to fueling the center wing tank for flight.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes equipped with wet center wing fuel tanks, certificated in any category. Compliance required within 30 days after effective date of this AD, unless previously accomplished.

To detect fuel leaks and prevent retention of fuel in the insulation blankets, accomplish the following:

A. Remove insulation blankets from the center accessory compartment (CAC) in accordance with the service bulletins listed below:

1. For Model DC-10 series airplanes: McDonnell Douglas Alert Service Bulletin (S/B) A25-356, dated October 3, 1988.

2. For Model KC-10A (Military) airplanes: McDonnell Douglas Service Bulletin 53-149, Revision 1, dated April 6, 1988.

B. Inspect the entire wing front spar area for evidence of existing or previous fuel leaks, in accordance with DC-10 Alert Service Bulletin A25-356, dated October 3, 1988.

C. If any evidence of fuel leaks is found, conduct a leak check in accordance with DC-10 Alert Service Bulletin A25-356, dated October 3, 1988, to determine if a fuel leak does exist. If a leak is found, repair before fueling the center wing tank for flight.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 19, 1989.

Issued in Seattle, Washington, on December 19, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-31 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-43; Amdt. 39-6051]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters, which supersedes AD 77-15-09, AD 77-19-04, and AD 81-10-08. The new AD requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; the recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and the removal of a hub assembly from service in accordance with more stringent rejection criteria. The AD is prompted by reports of fatigue cracks in a main rotor blade retention straps of the newer strap pack design installed on MDHC Model 369 helicopters, which could result in complete failure of a strap pack, separation of a main rotor blade from the main rotor hub, and consequent loss of control of the helicopter.

EFFECTIVE DATE: February 2, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 2, 1989.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797; telephone (602) 891-6484, or may be examined in the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: AD 77-15-09, Amendment 39-2978 (42 FR 37806; July 25, 1977), as amended by AD 77-15-09R1, Amendment 39-3952 (45 FR 70949; October 27, 1980) requires repetitive inspections of main rotor blade retention straps at intervals not to exceed 25 hours' (P/N 369D21210-BSC) or 100 hours' (P/N 369D 21210-501) time in service, depending on design dash numbers, and removal from service of hub assemblies which meet established hub rejection criteria, on MDHC Model 369D helicopters.

AD 77-19-04, Amendment 39-3039 (42 FR 46923; September 19, 1977), as amended by AD 77-19-04R1, Amendment 39-3597 (44 FR 61936; October 29, 1979) requires trimming of

excess teflon strips and repetitive inspections of the retention straps around the lead-lag bolt at intervals not to exceed 25 hours' time in service, and removal from service of hub assemblies with one or more broken laminates, on MDHC Model 369D helicopters.

AD 81-10-08, Amendment 39-4144 (46 FR 33225; June 29, 1981) requires repetitive inspections of the retention straps (P/N 369D21210-501, S/N's 8531 through 9135) for corrosion, cracks or breaks in the laminates at intervals not to exceed 25 hours' time in service, and removal from service of hub assemblies with three or more cracked or broken laminates in the area of the lead-lab legs on MDHC Model 369D helicopters.

After issuing AD 77-15-09, as amended by 77-15-09R1; 77-19-04 as amended by 77-19-04R1; and 81-10-08, the FAA has determined that fatigue cracks have been observed on later serial numbers of the improved strap pack design (P/N 369D21210-501), and that it is necessary to record the locations of observed cracks or fractures on strap pack laminates to insure that unsafe hub assemblies will be removed from service. The AD contains the more stringent hub rejection criteria defined in a recent MDHC Service Information Notice (SIN), and the applicability must be extended to other MDHC Model 369 helicopters, since the same -501 part number main rotor blade retention strap is used on the Model 369E, F, and FF helicopters. The repetitive inspections of main rotor retention strap P/N 369D21210-501 are to be at intervals not to exceed 25 hours' time in service when two laminates have failed, rather than 100 hours' time in service as stated in AD 77-15-09R1.

MDHC has issued revised SIN's DN-154 (Model 369D), EN-44 (Model 369E), and FN-33 (Models 369F and 369FF) which detail the inspection requirements in Part I of the SIN. Part I also includes updated hub rejection criteria based on location/number of laminate cracks/failures, and a new laminate gap failure criterion. During an accident investigation on an MDHC Model 369D helicopter, a previous entry in the log book indicated three cracks in the main rotor blade retention strap pack laminates. The postaccident investigation revealed numerous laminate failures, but it was not possible to determine whether the previously logged cracks were confined to the failed strap pack or located among the four other blades. Therefore, the FAA is superseding AD 77-15-09, as amended by AD 77-15-09R, AD 77-19-04, as amended by AD 77-19-04R1, and Ad 81-10-08 with a new AD with requirements to record locations of observed laminate cracks or fractures or corrosion; to record the number of failed laminates per single strap pack; to extend the applicability to the Model 369E, F, and FF helicopters; to require repetitive inspections, at intervals not to exceed 25 hours' time in service, for all affected strap packs when certain laminate failure criteria are met; and to remove rejected hubs from service on MDHC Model 369D, E, F, and FF helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined preliminarily that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39-AIRWORTHINESS DIRECTIVE

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, with main rotor hub retention straps having P/N's 369D21210-BSC or -501 installed. (Docket No. 88-ASW-43)

Compliance is required as indicated, unless already accomplished.

To prevent failure of main rotor blade retention straps which could result in the loss of a main rotor blade, accomplish the following:

(a) Within the next 100 hours' time in service and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, conduct inspections of the main rotor blade retention strap assemblies (P/N 369D21210-BSC, or -501) in accordance with paragraphs a, b, c, d, e, g, i, j, and 1 of Part I—Inspection Procedures in McDonnell Douglas Helicopter Company Service Information Notice (SIN) DN-154 (369D), EN-44 (369E) or FN-33 (369F and 369FF), dated January 15, 1988.

(b) If, as a result of an inspection in paragraph (a) above, two strap pack laminates are determined to have failed in any one leg or tongue area of any strap assembly (failure being defined in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures), conduct the repetitive inspections of all strap packs required in paragraph (a) above and thereafter at intervals not to exceed 25 hours' time in service.

(c) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 77-15-09R1 at intervals of 25 hours because of two strap pack laminate failures, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 77-15-09R1, and thereafter at intervals not to exceed 25 hours' time in service.

(d) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 77-19-04 (retention straps with P/N 369D21200-BSC) at intervals of 25 hours, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 77-19-04, and thereafter at intervals not to exceed 25 hours' time in service.

(e) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 81-10-08 (retention straps with P/N 369D21210-501, S/N 8531 through 9135) at intervals of 25 hours' time in service, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 81-10-08, and

thereafter at intervals not to exceed 25 hours' time in service.

(f) If, as a result of the inspection required by paragraph (a), (b), (c), (d), or (e) above, a strap pack (P/N 369D21210-BSC or -501) is rejected (using the rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures), remove the hub assembly (P/N 369D21200) from service prior to further flight.

(g) At each aforementioned inspection, record the locations of observed cracks, fractures, or corrosion in each strap laminate in a manner which includes blade color, strap serial number, laminate number (top being number 1), lead leg, lag leg, tongue, and outboard end locations. Record the number of laminate failures per single strap pack, and the acceptability of each strap pack for continued flight, in accordance with the definition of laminate failure and the strap pack rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures.

(h) Alternative means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region,; 3229 E. Spring Street, Long Beach, California.

The required procedure shall be done in accordance with MDHC SIN HN-214, DN-154, EN-44, and FN-33 (as appropriate to the model), dated January 15, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9898; telephone (602) 891-6484. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, or at the office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC.

This amendment supersedes the following:

1. AD 77-15-09, Amendment 39-2978 (42 FR 37806; July 25, 1977) as amended by AD 77-15-09R1, Amendment 39-3952 (45 FR 70848; October 27, 1980).

2. AD 77-19-04, Amendment 39-3039 (42 FR 46923; September 19, 1977), as amended by AD-77-19-04R1, Amendment 39-3597 (44 FR 61936; October 29, 1979).

3. AD 81-10-08, Amendment 39-4144 (46 FR 33225; June 29, 1981).

This amendment becomes effective February 2, 1989.

Issued in Fort Worth, Texas, on October 11, 1988.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-30 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-49; Amdt. 39-6097]

Airworthiness Directive; Sikorsky Aircraft Model S-58 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), which requires repetitive checks, inspections, and replacement, as necessary, of main rotor blades on Sikorsky Model S-58 series helicopters. This amendment is needed to provide for optional alternate methods of compliance and the issuance of special flight permits, which may result in reduced maintenance and the elimination of unnecessary operational costs.

EFFECTIVE DATE: February 2, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Rotorcraft Standards Staff, Forth Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 191 (25 FR 8026), AD 60-17-03, [as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39-1552 (37 FR 23711), Amendment 39-2212 (40 FR 22249), and Amendment 39-2743 (41 FR 44998)] which currently requires inspections, repetitive checks, and replacement, as necessary, of main rotor blades on Sikorsky Model S-58 series helicopters. After issuing AD 60-17-03, as amended, the FAA has determined that the AD requires a revision to include provisions for the issuance of special flight permits and alternate means of compliance, which correspond to the new paragraphs (g) and (f) respectively. In addition, a note is added to existing paragraph (e) which will allow a pilot to conduct checks of the blade pressure system.

Since the amendment provides a clarification and alternate means of compliance, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days from publication.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is only clarifying in nature; provides for the optional use of alternative methods of compliance; and, imposes no additional regulatory or economic burden on anyone. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

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

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

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

§ 39.13 [Amended]

2. By further amending Amendment 191 (25 FR 8026), AD 60-17-03 [as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39-1552 (37 FR 23711), Amendment 39-2212 (40 FR 22249), and Amendment 39-2743 (41 FR 44998)], by adding a note after paragraph (e), and by adding new paragraphs (f) and (g) as follows:

Sikorsky Aircraft: Applies to all Model S-58 series helicopters. (Docket No 88-ASW-49.)

Compliance is required as indicated, unless already accomplished.

* * * * *

(e)* * *

Note—The check for black or red color indication on the pressure indicator for the main rotor blades, as specified in Part IV (Items 1 and 2) of the accomplishment instructions of Sikorsky Service Bulletin No. 58B15–4, may be accomplished by a properly trained pilot. Results of the requirements of checks must be recorded in accordance with the requirements of FAR § 43.9.

(f) Upon request an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Rotorcraft Standards Staff, Aircraft Certification Service, ASW–110, FAA, Fort Worth, Texas 76193–0110.

(g) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

This amendment becomes effective February 2, 1989.

This amendment amends Amendment 191 (25 FR 8026), AD 60–17–03, as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39–1552 (37 FR 23711), Amendment 39–2212 (40 FR 22249), and Amendment 39–2743 (41 FR 44998).

Issued in Fort Worth, Texas, on December 15, 1988.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–32 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25764; Amdt. No. 1390]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on December 23, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

. . . Effective February 9, 1989

Huntsville, AL—Huntsville Airport North, VOR/DME-B, Amdt. 5
Huntsville, AL—Huntsville Intl.-Carl T. Jones Field, NDB RWY 18R, Amdt. 13
Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt. 20
Mobile, AL—Bates Field, VOR or TACAN RWY 9, Amdt. 24, CANCELLED
Springdale, AR—Springdale Muni, VOR RWY 18, Amdt. 11
Springdale, AR—Springdale Muni, VOR/DME RWY 18, Amdt. 1
Springdale, AR—Springdale Muni, ILS RWY 18, Amdt. 1
Lihue, HI—Lihue, VOR/DME or TACAN RWY 21, Amdt. 3
Lihue, HI—Lihue, VOR/DME or TACAN RWY 35, Amdt. 6
Mount Vernon, IL—Mount Vernon/Outland, VOR RWY 5, Amdt. 13
Mount Vernon, IL—Mount Vernon/Outland, VOR RWY 23, Amdt. 13
Mount Vernon, IL—Mount Vernon/Outland, ILS RWY 23, Amdt. 8
Omaha, NE—Eppley Airfield, ILS RWY 17, Amdt. 3
Lebanon, NH—Lebanon Muni, ILS RWY 18, Orig
Toledo, OH—Toledo Express, NDB RWY 7, Amdt. 21
Toledo, OH—Toledo Express, ILS RWY 7, Amdt. 22
Toledo, OH—Toledo Express, RADAR-1, Amdt. 15
Lake City, SC—Lake City Muni CJ Evans Field, NDB-A, Orig
Pelion, SC—Corporate, VOR-A, Amdt. 2
Corpus Christi, TX—Corpus Christi Intl, NDB RWY 13, Amdt. 23

. . . Effective January 12, 1989

Kansas City, MO—Kansas City Downtown, LOC RWY 3, Orig., CANCELLED
Kansas City, MO—Kansas City Downtown, ILS RWY 3, Orig
Portland, ME—Portland Intl Jetport, ILS RWY 29, Amdt. 3
Coatesville, PA—Chester County G. O. Carlson, ILS RWY 29, Amdt. 5

. . . Effective December 21, 1988

Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 15
Oklahoma City, OK—Wiley Post, VOR-A, Amdt. 1
Oklahoma City, OK—Wiley Post, VOR RWY 17L, Amdt. 10
Oklahoma City, OK—Wiley Post, VOR RWY 35R, Amdt. 1
Oklahoma City, OK—Wiley Post, ILS RWY 17L, Amdt. 8
Oklahoma City, OK—Wiley Post, RADAR-1, Amdt. 2

. . . Effective December 16, 1988

Olean, NY—Olean Muni, LOC RWY 22, Amdt. 4
Olean, NY—Olean Muni, NDB RWY 22, Amdt. 11
Olean, NY—Olean Muni, RNAV RWY 22, Amdt. 4

. . . Effective December 15, 1988

Cordova, AK—Cordova-Mile 13, ILS/DME RWY 27, Amdt.8
Marianna, FL—Marianna Muni, NDB-C, Amdt. 2
Jefferson City, MO—Jefferson City Meml, ILS RWY 30, Amdt. 1
Nashville, TN—Nashville International, LDA-DME RWY 2R, Amdt. 1
El Paso, TX—El Paso Intl, LOC/DME RWY 4, Amdt. 1

The FAA published an Amendment in Docket No. 25751, Amdt. No. 1389 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 242 Page 50513; dated Friday, December 16, 1988) under § 97.29 effective 12 January 1989, which is hereby amended as follows:

Denver, Co—Stapleton Intl, ILS RWY 36 Amdt. 3 is hereby rescinded, amendment 2 remains in effect.

[FR Doc. 89-33 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by SmithKline Animal Health Products. The NADA provides for the use of a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of SmithKline Animal Health Products' NADA 100-127. The NADA provides for using a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. This document removes the firm's drug labeler code from 21 CFR 558.630(b)(3), which is a required action after approval is withdrawn.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(3) by removing "000007."

Dated: December 28, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-76 Filed 1-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 234

[Docket No. R-88-1427; FR-2542]

Disclosure of Annual Rate Changes of Adjustable Rate Mortgages (ARMs) and Carryovers

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

ACTION: Final rule.

SUMMARY: This rule will shorten the period for advance notice that a holder of an adjustable rate mortgage (ARM) must allow when it makes effective any annual adjustment to a mortgagor's monthly payment on the mortgage. The rule also eliminates the portions of 24 CFR 203.49(e) and 234.79(e) that discuss carryovers in ARM programs. The purpose of the change in the notice period is to conform HUD's practice to existing industry practice. The purpose of eliminating the discussion of carryovers is to eliminate confusion in HUD's rules caused by reference to a feature in the ARM program that has never been adopted in practice since the program was implemented in 1984.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Falkenstein, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6672.

SUPPLEMENTARY INFORMATION: This final rule revises 24 CFR 203.49(g) by changing HUD's disclosure requirement from "at least 30 days" to "at least 25 days" before any annual adjustment to a mortgagor's monthly payment on an adjustable rate mortgage becomes effective. HUD's disclosure change will conform with the existing practice in national banks, as authorized by the Comptroller of the Currency, as well as with a pending requirement of the Board of Governors of the Federal Reserve System.

The Department has determined that both changes covered by this rule should be adopted without the delay occasioned by requiring prior notice and comment. When the interim rule (49 FR 23580) now comprising §§ 203.49 and 234.79 was published on June 6, 1984, HUD received 12 comments, several of which focused on the potential for confusion over carryovers. At the time, the Department decided not to revise the rule in that regard unless, after monitoring the program, it found that the question of carryovers was in fact raising problems for lenders or borrowers. It now seems unlikely that HUD/FHA ARM programs will involve carryovers and offsets in the foreseeable future. Moreover, there have been occasional inquiries from lenders (and from borrowers during periods of declining interest rates) about the use of carryovers in FHA ARMs. The Department has therefore decided to remove the reference to carryovers from §§ 203.49 and 234.79. This decision does not call for further public comment since the issue has been addressed previously in interim rule, and since removal of the reference at this time simply mirrors HUD's policy over the four-year life of the program.

With respect to the change from 30 to 25 days' notice for annual adjustments, HUD observes that the Federal Reserve Board considered imposing a 30-day notice requirement in its November 24, 1986 proposal to amend Regulation Z (51 FR 422451). However, as the preamble to the Board's final rule explained:

> * * * [s]everal commenters addressed the proposed requirement for advance notice of interest rate and payment adjustments. The primary criticism was that the advance notice was required at least 30 days before the effective date of an interest rate adjustment and not before a payment at the new level is due, as is currently required by the OCC. The commenters stated that this proposed requirement would cause problems for lenders offering short-term ARMs that closely track changes in the index values. Some commenters recommended reducing the number of days before an adjustment that notice is required and clarifying that notice should be given before a payment at a new level is due. 51 FR at 48666.

Accordingly, the Board adopted a 25-day requirement. The class of persons affected by HUD's timing change in the present rule is included in the class affected by the Board's decision, and the response of interested persons in the Regulation Z Docket is a matter of public record. It appears that no benefit would inure from an invitation by HUD for further comment. Moreover, the matter should be resolved quickly; HUD's change is intended to coordinate with action by the Board and other Federal agencies in simplifying and unifying both annual and pre-application disclosure requirements for ARMs. Compliance with the Regulation Z changes were required as of October 1, 1988, and optional before that date.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have significant economic impact on a substantial number of small entities, because the change in the notice period is not considered to be a serious burden upon any borrower, and because the carryover provisions affected by the rule have never been, in fact, implemented.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule pertains only to the regulation of lenders insured by the Federal Housing Administration, and presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has

determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule has only incidental effect on the procedural details of operation of a HUD insurance program, and no significant relationship to family-related issues is evident.

This rule was listed as item 984 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41995) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Relocation Act of 1980 (Pub. L. 46–511) and have been assigned OMB control number 2502–0322.

List of Subjects

24 CFR Part 203

Home improvements, Loan progams: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the Department amends 24 CFR Parts 203 and 234 as follows:

1. The authority citation for 24 CFR 203 continues to read as follows:

Authority: Sec. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d). In addition, Subpart C also is issued under Sec. 230, National Housing Act (12 U.S.C. 1715u).

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

2. Sections 203.49(e)(1), (f)(1), and (g) are revised to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(e) * * *

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

* * * * *

(f) * * *

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

* * * * *

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

* * * * *

3. The authority citation for 24 CFR 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act, (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Sections 234.79 (e)(1), (f)(1), and (g) are revised to read as follows:

§ 234.79 Eligibility of adjustable rate mortgages.

* * * * *

(e) * * *

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index charges in excess by one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

* * * * *

(f) * * *

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the morgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

* * * * *

Date: October 27, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–71 Filed 1–3–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 177

San Carlos Irrigation Project, Arizona

September 30, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register**, Volume 52, Number 237, December 10, 1987, a proposed rule to amend the pertinent sections of the regulations governing the charges and costs assessed the power customers for electric power, energy and associated services provided by the San Carlos Irrigation Project (SCIP), Arizona.

This action increases Rate Schedules No. 1 and No. 2 of 25 CFR 177. The new rates reflect the increased operating costs associated with labor, equipment and supplies, as well as costs of project rehabilitation, repayment of the federal investment in the project and payment of operation and maintenance expenses.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Project Engineer or Jim Ong, Jr., Power Manager, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, Telephone: (602) 723–5439.

SUPPLEMENTARY INFORMATION: This action increases the electric power assessment rates for electric power service given under Rate Schedule No. 1—Residential Rate and Rate Schedule No. 2—General Rate at Sections 177.51 and 177.52, respectively, of the Code of Federal Regulations, Title 25—Indians.

The Bureau of Indian Affairs, Phoenix Area Office, has received three (3) written comments in response to the proposed rule. The first letter, in the order of receipt, was from Mr. Don L. Weesner, General Manager for the San Carlos Irrigation and Drainage District (District). The initial area of concern to the District was the possible inability of the SCIP to compete with Arizona Public Service in serving large loads such as the federal facility at Florence, Arizona. The District felt that the proposed general rate schedule that would be applicable to the facility would reduce

the price advantage of electric power service provided by SCIP.

The Bureau realizes that the proposed general rate schedules will decrease the price advantage that SCIP currently provides, but the new rates will still provide a competitive advantage over the rates offered by the neighboring electric utility companies within the service area. Without the proposed increase, SCIP would not be able to generate the revenues needed to upgrade the system required to service its current as well as future industrial and governmental loads.

The District's second concern relates to the impact the proposed rates would have upon customers who operate private irrigation pumps. In order to minimize the possible adverse economic impact upon this class of customers, the District has recommended establishment of a separate rate schedule specifically for private irrigation pumping. The recommendation merits further consideration: however, SCIP is not in a position to establish a separate rate schedule for private irrigation pumping at the present time. The proposed rate schedules were developed from a rate study which considered the proportionate overall economic contribution of all SCIP customers within the schedules No. 1 and No. 2.

The second written comment received by the Bureau of Indian Affairs was from Mr. Thomas R. White, Governor, Gila River Indian Community. His first concern related to the justification for the rate schedules as proposed. As explained in the proposed rules published in the **Federal Register** on December 10, 1987, the last assessment rate increase for the San Carlos Irrigation Project—Power Division was five years ago. Since that time, normal costs for labor, materials and supplies needed to deliver safe, reliable, and efficient power and energy to all of its customers has increased substantially. The revenues generated from the assessment rate increases will enable us to continue the rehabilitation and upgrading program that is currently in progress. For instance, the Lone Butte Substation recently completed and energized on the Gila River Reservation. This substation provides a power and energy delivery point to the Gila River Indian Reservation.

Mr. White recommended that SCIP provide a detailed plan of improvements and rehabilitation to the system so the power customers will be assured of a systematic approach to the rehabilitation program. A rehabilitation and betterment report is available in the Project office.

Further, Mr. White expressed concern related to the assessment rate increase in the midst of H.R. 2060, a bill to direct the Secretary of the Interior to divest of certain utility systems without a plan of improvements. In 1984, the Bureau of Indian Affairs, Phoenix Area Office, prepared for the project Engineer a draft Rehabilitation and Betterment Report for the San Carlos Irrigation Project Power System. The Report (Plan) was presented to both the District and Gila River Indian Community for their review and comment. The Plan provided a construction schedule and cost estimates for the rehabilitation and betterment of the entire power system. Until relieved of its responsibility by enactment of the proposed legislation and actual divestiture of the power system by the United States, SCIP has a continuing obligation to operate, maintain and replace the facilities of the power system.

The third letter received by the Bureau of Indian Affairs was from Mr. Steve Jones, Executive Director of the Gila River Indian Housing Authority. The concern expressed in his letter was the financial hardship the assessment rate increase may have upon the low-income families. The "Electric Rate Study" prepared by the San Carlos Irrigation Project in January 1984 in support of the assessment rate increases recognized the probable impacts upon the low-income families within the whole service area. Exhibit B, page 2 of that Study reads, "The Project's residential customers that have a low KwH usage per month, are characterized by a low fixed income; therefore, it is determined that no increase in the minimum bill will be recommended at this time." Rate Schedule No. 1—Residential, provides the same minimum bill of $10.74 per month which includes the first 50 KwH of energy as is currently in effect. Increases for low and/or fixed income families will occur after consumption of energy in excess of 50 KwH.

Finally, one statement in the Federal Register notice of the proposed rate schedules must be changed as a result of advice received from the Solicitor's Office of the Department of the Interior. In discussing where power revenues will be spent in the future, the Federal Register notice stated that: "The additional revenues will allow the Project to meet its statutory repayment requirements and also enable the Project to apply funds towards the operation and maintenance of the irrigation system."

In a recent opinion, the Phoenix Field Solicitor held that there is no statutory authority which would allow the Project to use power revenues to cover irrigation system operation, maintenance and rehabilitation (OM&R) costs. The Field Solicitor held that under the Act of March 7, 1928 (45 Stat. 210–211), as amended (49 Stat. 1822–1823) power revenues obtained from the sale of project—generated power may be applied to irrigation system OM&R costs only after the total construction debt has been repaid. The Field Solicitor's opinion also stated there is no authority in the Act of August 7, 1946 (60 Stat. 895–896), to use power revenues obtained from the sale of purchased power to cover irrigation system OM&R costs.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. In monetary terms, the economic effects of the proposed amendment will be below $100 million and do not meet the other tests for a major rule under E.O. 12291. The Department of the Interior 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 expected effect on the approximately 1,500 individual and commercial electric power meters will be small and insignificant; and, in monetary terms, the proposed action involves approximately $750,000 of additional revenue per year for the Project. The anticipated impacts on competition, employment, investment and the general economic environment are minimal and insignificant. Furthermore, the Department has determined that this document does not constitute a major Federal action significantly affecting the human environment which would require preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act. The information collection requirement in Section 177.4 has been approved by the Office of Management and Budget under the Paper Work Reduction Act (44 U.S.C. 3501 et seq.) and assigned clearance number 1076–0021.

The principal authors of this document are Jim Ong, Jr., Power Manager, Bureau of Indian Affairs, San

Carlos Irrigation Project, Coolidge, Arizona 85228, Telephone Number (602) 723–5439 and Mort S. Dreamer, Irrigation and Power Engineer, Bureau of Indian Affairs, Office of Trust and Economic Development, Division of Water and Land Resources, MS–4559–MIB, Washington, DC 20240, Telephone Number (202) 343–5696.

List of Subjects in 25 CFR Part 177

Electric power, Indian-lands, Irrigation.

For the reasons set out in the preamble, Part 177 in Chapter I of Title 25 of the Code of Federal Regulations is amended as follows:

PART 177—[AMENDED]

1. The authority citation for Part 177 continues to read as follows:

Authority: Sec. 5, 43 Stat. 476; 45 Stat. 210, 211; 5 U.S.C. 301.

2. Section 177.51 is amended by revising paragraphs (b) and (c) as follows:

§ 177.51 Rate schedule No. 1—Residential rate.

* * * * *

(b) Monthly rate. (1) $10.74 minimum which includes the first 50 Kilowatt-hours.

(2) 11.7 cents per kilowatt-hour for the next 100 kilowatt-hours.

(3) 7.5 cents per kilowatt-hour for the next 350 kilowatt-hours.

(4) 6.3 cents per kilowatt-hour for all additional kilowatt-hours.

(c) Minimum bill. The minimum bill shall be $10.74 per month except when a higher minimum bill is stipulated in the contract.

* * * * *

3. Section 177.52 is amended by revising paragraphs (b) and (c) to read as follows:

§ 177.52 Rate schedule No. 2—General rate.

* * * * *

(b) Monthly rate. (1) $13.87 minimum which includes the first 50 kilowatt-hours.

(2) 16.8 cents per kilowatt-hour for the next 350 kilowatt-hours.

(3) 9.9 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.6 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $843.07.

(6) Additional kilowatt-hours at 6.17 cents per kilowatt-hour, less a credit of 0.9 cents per kilowatt-hour for each kilowatt/hour above 200 times the billing demand (50 kw minimum).

(c) Minimum bill. The minimum bill shall be $3.06 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then, the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billings shall be less than $13.87.

* * * * *

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–18 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 27–88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Civil Division, is amending 28 CFR Part 16 to exempt four systems of records from certain provisions of the Privacy Act, 5 U.S.C. 552a. Specifically, the Division is exempting the Civil Division Case File System/JUSTICE/CIV–001, and the Freedom of Information/Privacy Acts File System, JUSTICE/CIV–005, from subsections (c) (3) and (4), and (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g). These exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information. In addition, the Division is exempting the Consumer Inquiry/Investigatory System, JUSTICE/CIV–006, from subsections (c) (3) and (4), (d), (e)(1) and (e)(5), and the Congressional and Citizen Correspondence File, JUSTICE/CIV–007, from subsection (d). These exemptions are needed to protect the integrity of civil investigatory and criminal law enforcement materials.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark 202–272–6474.

SUPPLEMENTARY INFORMATION: A proposed rule with an invitation to comment was published in the **Federal Register** on January 29, 1988. The public was given 30 days in which to comment. The Office of Management and Budget (OMB) questioned the exemption of the Civil Division Case File System under section (j)(2) of the Privacy Act. The Department has advised OMB that the Consumer Litigation Branch of the Civil Division has responsibility for the prosecution of criminal statutes, such as the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), as well as civil statutes. Accordingly, this system of records is appropriately exempted pursuant to subsection (j)(2). Without the exemption, the criminal law enforcement records in this system could not be legally protected from disclosure.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy and Sunshine Acts.

Authority: The authority for this rule is 5 U.S.C. 552a. Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, the Department is amending 28 CFR Part 16 by adding § 16.89 as set forth below.

Date: December 16, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows.

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483 unless otherwise noted.

2. 28 CFR is amended by adding § 16.89 to read as follows:

§ 16.89 Exemption of Civil Division Systems—limited access.

(a) The following systems of records are exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H):

(1) Civil Division Case File System, JUSTICE/CIV–001.

(2) Freedom of Information/Privacy Acts File System, JUSTICE/CIV–005.

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Only that information which relates to the investigation, prosecution, or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4), (e)(4) (G) and (H), and (g).* These provisions are inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d).* To the extent that information contained in these systems has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; hamper sensitive civil or criminal investigations; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2).* To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others to whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3).* To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8).* To serve notice would give persons sufficient warning to evade law enforcement efforts.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1) and (e)(5); in addition, this system is also exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1).

Consumer Inquiry/Investigatory System, JUSTICE/CIV–006.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Only that information compiled for criminal or civil law enforcement purposes is exempted for the reasons set forth from the following subsections:

(1) *Subsections (c)(3).* This system occasionally contains investigatory material based on complaints of actual or alleged criminal or civil violations. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him/her would inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d).* Disclosure of information relating to the investigation of complaints of alleged violation of criminal or civil law could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(e) The following system of records is exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) from subsection (d):

Congressional and Citizen Correspondence File, JUSTICE/CIV–007.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C 552a (j)(2) and (k)(2).

(f) Only that portion of the Congressional and Citizen Correspondence File maintained by the Communications Office which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsection:

(1) *Subsection (d).* Disclosure of investigatory information would jeopardize the integrity of the investigative process, disclose the identity of individuals who furnished information to the government under an

express or implied promise that their identities would be held in confidence, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

[FR Doc. 89-16 Filed 1-3-89; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska State Plan; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends Subpart R of 29 CFR Part 1952 to reflect a change in the level of Federal enforcement in the State of Alaska. Federal enforcement authority is now being exercised over private sector employers working within the boundaries of Denali (Mount McKinley) National Park.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, U.S. Dept. of Labor, 200 Constitution Ave., NW., Room N3649, Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: .

Background

On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) announcing initial approval of the Alaska State plan and the adoption of Subpart R to Part 1952 containing the decision. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending Subpart R of Part 1952.

By letter dated September 29, 1986, from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State requested the Federal Occupational Safety and Health Administration (OSHA) to resume jurisdiction and enforcement authority over private sector employers working within the boundaries of Denali (Mount McKinley) National Park.

This action was taken as a result of an inspection the State conducted of a private sector employer at the Park. Because of the employer's questioning of the State's jurisdiction, the Alaska Attorney General reviewed the case and issued an opinion that section 11(a) of the Alaska Statehood Act, by providing for exclusive Federal jurisdiction within Denali National Park, specifically precludes the State from enforcing civil or criminal laws and regulations within the boundaries of the Park. Therefore, private sector employers working within the boundaries of Denali (Mount KcKinley) National Park are under Federal OSHA jurisdiction.

Regulatory Assessment

Amendment of Part 1952 is not a "major" action as defined by Executive Order No. 12291 (46 FR 13193, February 19, 1981) as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. Amendment of Part 1952 will not constitute a "major rule" primarily because no additional requirements will be imposed on employers, since Alaska's occupational safety and health standards are substantially similar to Federal OSHA's.

For the same reason it is certified that pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601) amendment of Part 1952 will not have a significant economic impact on a substantial number of small entities.

Public Participation

The purpose of the present rule is to amend 29 CFR 1952.242 to reflect the change to the level of Federal enforcement described above. The Assistant Secretary has determined that good cause exists for publication of the amendment as a final rule with an immediate effective date because the change is procedural in nature and is the result of a legal interpretation of an existing State statute. Accordingly, public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 20th day of December, 1988.

John A. Pendergrass,
Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, 29 CFR Part 1952 is amended as follows:

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

2. Paragraph (b) of § 1952.243 is revised to read as follows:

§ 1952.243 Final approval determination.

* * * * *

(b) The plan which has received final approval covers all activities of employers and all places of employment in Alaska except: The issue of private sector maritime employment, operations of private sector employers within the Metlakatla Indian Community on the Annette Islands, operations of private sector employers within Denali (Mount McKinley) National Park, and worksites located on the navigable waters, including artificial islands.

* * * * *

3. Paragraph (b) of § 1952.244 is revised to read as follows:

§ 1952.244 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National

Park, and with respect to Federal government employers and employees.

* * * * *

[FR Doc. 89–20 Filed 1–3–89; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Crow Tribe Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

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

ACTION: Final rule.

SUMMARY: In 1982, the Crow Tribe (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan entitled "Crow Tribe of Indians Abandoned Mine Lands Reclamation Plan" (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt and requested public comments on the adequacy of the proposed Plan on May 18, 1982 in the **Federal Register**, (FR) 47 FR 21274–21276. The public comment period remained open since 1982, and no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation programs without prior approval of Tribal surface mining regulatory programs. On October 25, 1988 OSMRE published notice of proposed rule and closing of comment period, 53 FR 42976–42977, for consideration of adequacy of the Crow Tribe's Abandoned Mine Land Reclamation (AMLR) Plan. After consideration of the comments received and minor revisions the Tribe made to the Plan, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Crow Tribe AMLR Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Crow Tribe AMLR Plan.

This final rule is being made effective January 4, 1989, in order to expedite the granting of abandoned mine land reclamation funds to the Crow Tribe so that it can implement its AMLR Program and undertake Tribal reclamation projects to protect the public health and safety.

EFFECTIVE DATE: January 4, 1989.

ADDRESSES: Copies of the full text of the Crow Tribe AMLR Plan are available for review during regular business hours at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed AMLR Plan
III. Assistant Secretary's Findings
IV. Public Comment
V. Assistant Secretary's Decision
VI. Procedural Matters

I. Background

Title IV of SMCRA, establishes an Abandoned Mine Land Reclamation (AMLR) program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Part 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by Section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Crow, Hopi, and Navajo Tribes to obtain Abandoned Mine Land Reclamation programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR 42729 and provide the applicable criteria by which to judge the adequacy of AMLR Plan provisions. Emergency reclamation activities are set forth in Section 410 of SMCRA. The Crow Tribe has not requested emergency response authority.

II. Proposed AMLR Plan

In 1982 the Crow Tribe submitted to OSMRE its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 CFR Chapter 7, Subchapter R) as published in the **Federal Register** on June 30, 1982, 47 FR 8574–28604. OSMRE requested public comment on the adequacy of the Tribe's Plan, 47 FR 21274–21276 (May 18, 1982), and left the comment period open pending authorizing legislation.

On July 11, 1987 legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation program without first having to obtain approval of a Tribal surface mining regulatory program. In response to the newly enacted legislation, OSMRE reopened its review of the Crow Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe suggestions for revising and updating the Plan to meet the requirements of SMCRA. The Tribe made a number of revisions to the Plan and on September 9, 1988, resubmitted a revised and updated Abandoned Mine Land Reclamation Plan. On the October 25, 1988 **Federal Register**, 53 FR 42976–42977, OSMRE announced the proposed rule and gave notice for closing the comment period. At the end of the comment period, November 25, 1988, some comments were received but no requests were received for a hearing or meetings. In response to minor internal comments from OSMRE the Crow Tribe revised its Plan in accordance with OSMRE's suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Crow Tribe. The Administrative Record is

available for public review at the OSMRE Casper Field Office in Wyoming, whose address is listed above.

The proposed AMLR Plan would provide authority for the Crow Tribe to conduct a reclamation program on Crow (Indian) lands as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation actions outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

III. Assistant Secretary's Findings

The Assistant Secretary finds that the Crow Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100–71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;
2. Views of other Federal agencies having an interest in the Plan were solicited and considered;
3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the proposed Plan;
4. The Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;
5. The Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;
6. The Crow Tribe has not requested authority to assume emergency response authority as set forth in Section 410 of SMCRA.
7. The Crow Tribe AMLR Plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13.

IV. Public Comment

The following comments on the Crow Tribe's Plan were received by OSMRE and considered by the Assistant Secretary in making the determination that the Crow Tribe AMLR Plan will be approved:

1. A comment was received questioning the definition of Crow Tribal lands and inquired to what extent the jurisdiction of the Crow Tribe AMLR Plan affect fee and allotted owners within the reservation boundaries.

OSMRE's responds that the proposed AMLR Plan would provide authority to the Crow Tribe to conduct reclamation activities on Crow lands as defined in the Crow Code at Section 701(a)(4). This AMLR Plan cannot, however, confer to the Tribe jurisdictional rights over lands beyond those encompassed in the definition of Indian Lands as found at Section 701(9) of SMCRA and as interpreted by its regulations.

According to the SMCRA definition, Indian lands may be located either within or outside the exterior boundaries of any Federal Indian reservation. With regard to lands located within the reservation boundaries, the SMCRA definition expressly provides that "* * * all land, including mineral interests, within the exterior boundaries of any Federal Indian reservation * * *" are Indian lands. Therefore, within the reservation boundaries, all lands, including mineral interests whether they represent individual Indian allotments or lands owned in fee, are Indian lands.

With regard to lands located outside the reservation boundaries, the SMCRA definition does not provide clear guidance as to whether individual Indian allotments and Tribal fee lands are to be considered Indian lands. This issue has been and still is a source of continuing litigation. In an effort to clarify some of the controversy surrounding the jurisdictional status under SMCRA of individual Indian allotments and Tribal fee lands, OSMRE is in the process of promulgating a final Indian lands rule which should provide further guidance on this issue.

Although there may be certain jurisdictional limitation to the Tribe's authority to undertake certain reclamation activities outside the reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake the reclamation program without violating the jurisdictional rights of other parties.

2. Another comment questioned if the Crow Tribe AMLR Plan defined the nature of experience necessary for staff members who will be administering the program.

OSMRE's and the Crow Tribe response is that experienced management personnel currently exist within the Crow Office of Reclamation (COR) of the Crow Tribe's Abandoned Mine Lands (AML) Program. It is the intention of OSMRE to provide AML funds to be used to provide adequate training to the COR staff members associated with the AML administrative and construction activities. In addition, the AMLR Plan requires that an independent Certified Public Accountant (CPA) participate and oversee all financial management activities to assure that accountability is maintained within the Crow Tribe AML Program.

3. A third comment raised a concern relative to what type of review and audit strategy would be implemented to assure that a competent program is administered.

OSMRE's response is that the Crow Tribe's AML activities will be reviewed periodically by OSMRE's oversight. The oversight activities within the Crow Tribe's financial management area will be complimented by a monthly status report prepared by the independent CPA responsible for reviewing the financial management system. In addition, the Crow Tribe's AML Program will fall within the purview of the Office of Management and Budget (OMB) Circular A–128, *Audits of State and Local Governments*. The Circular requires that annual audits be performed by an independent auditor in accordance with generally accepted auditing standards.

OSMRE presented to the Tribe comments of an editorial nature and for consistency purposes requested minor modifications to the Plan. The Tribe subsequently made all the minor revisions suggested and resubmitted the affected pages of the Plan. The Assistant Secretary has determined that these revisions are insignificant in nature and accordingly require no further public comment.

V. Assistant Secretary's Decision

The Assistant Secretary for Land and Minerals Management, based on the above findings and review and consideration of public comments, is approving the Crow Tribe AMLR Plan under the provisions of 30 CFR 884.14, as submitted in 1982 and revised in September 1988. A new § 756.17 of Part 756 is being added to 30 CFR Chapter VII, Subchapter E—Indian Lands Program—to implement this decision. This approval, however, does not encompass the emergency response authority set forth in section 410 of SMCRA.

VI. Procedural Matters

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

OSMRE examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the OMB granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or

disapproval of State reclamation plans or amendments. Therefore, the action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of Interior determined that this document will not have a significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance With the National Environmental Policy Act

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction Act of 1980

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

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) The Crow Tribe is staffed and prepared to administer the abandoned mine land reclamation program, and (2) OSMRE wishes to expedite grant assistance to the Tribe to initiate reclamation work.

List of Subjects in 30 CFR Part 756

Indian lands, Abandoned Mine Land Reclamation Program.

James E. Carson,

Deputy Assistant Secretary—Land and Minerals Management.

Date: December 21, 1988.

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The Authority citation for Part 756 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. A new § 756.17 is added to read as follows:

§ 756.17 Approval of the Crow Tribe's Abandoned Mine Land Reclamation Plan.

The Crow Tribe's Abandoned Mine Land Reclamation Plan as submitted in 1982, and resubmitted in September, 1988 is approved. Copies of the approved Plan are available at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918.

[FR Doc. 89–79 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 913

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSMRE is announcing his approval, with certain reservations, of the proposed definition of "valid existing rights" (VER) submitted by the State of Illinois as an amendment to its regulatory program (hereinafter referred to as the Illinois program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Among other changes, the amendment replaces the "good faith all permits" test and judicially determined "takings" test contained in the previous definition with an administratively determined "takings" test. The amendment is intended to expedite the VER determination process and to lessen litigation.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program.
II. Submission and Review of Amendment.
III. Director's Findings.
IV. Disposition of Comments.
V. Director's Decision.
VI. Procedural Requirements.

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15, 913.16 and 913.17.

II. Submission and Review of Amendment

By letter dated March 28, 1986 (Administrative Record No. IL–1028), Illinois proposed extensive revisions to virtually all the regulations contained within its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the **Federal Register** on May 9, 1986 (51 FR 23858).

By letter dated July 22, 1986 (Administrative Record No. IL–1038), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation (II)* (Civil Action No. 79–1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II*. Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission and reopened the public comment period by notice published in the **Federal Register** on June 26, 1987 (52 FR 24035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing, none was held.

With minor exceptions, OSMRE approved these amendments on October 25, 1988 (53 FR 43112). However, in the **Federal Register** decision notice published on that date, the Director temporarily deferred a decision on the proposed definition of VER in 62 IAC Part 1701 until further public comment could be sought on the additional information resulting from a meeting of Illinois, OSMRE and Interior officials on October 17, 1988. At that meeting the State advanced further arguments for approval of the definition (Administrative Record No. IL–1056). OSMRE simultaneously published a notice reopening the comment period on this definition until November 9, 1988 (53 FR 42973, October 25, 1988).

III. Director's Findings

Background on Definition

Illinois proposed to revise the definition of valid existing rights in 62 IAC 1701. Appendix A (also known as

62 IAC 1701.5) to resemble the language in the corresponding Federal definition at 30 CFR 761.5, as promulgated on September 14, 1983. However, on March 22, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. The court also remanded paragraph (c) to the extent that it would expand VER under the "needed for an adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the **Federal Register** notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, and reviewed again on April 5, 1984, 49 FR 13494, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Project* v. *Watt*, C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel*, C.A. 87–2366, hereinafter referred to as *ISP v. Hodel*). The Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court remanded the issue on June 22, 1988.

Finding 1: Takings Test

Illinois and the National Coal Association originally challenged the March 13, 1979, Federal definition of VER on the grounds that it violated the Congressional intent that VER encompass property rights recognized as valid under State case law. In *In re: Permanent Surface Mining Regulation Litigation I* (Civil Action No. 79–1144, February 26, 1980), the U.S. District Court for the District of Columbia found ample support for this contention and the Secretary conceded the point. The court further noted that the Secretary's action rendered moot Illinois' objection that the Federal rules directed the regulatory authority to determine the existence of VER without referrence to applicable State court decisions on property rights. Therefore, by implications, SMCRA requires that VER be determined (and defined) in accordance with State case law.

In the case of Illinois, the Secretary has previously accepted the State's argument that its use of a takings analysis in determining VER is appropriate and necessary under Section 15, Article 1 of the Illinois Constitution as construed by the Illinois courts (Finding 30.2; 47 FR 23866, June 1, 1982, with further discussion at 49 FR 13499, April 5, 1984). Federal case law and the regulatory development of the Federal VER definition on this point have not changed.

For the reasons set forth in this preamble, the Director continues to find that inclusion of a takings test within the Illinois definition of VER is consistent with section 522(e) of SMCRA as interpreted by the U.S. District Court.

When the U.S. District Court in *In re: Permanent II* remanded those portions of the 1983 Federal VER definition authorizing use of the takings test on March 22, 1985, it did so on procedural rather than substantive grounds. Consequently, while the U.S. Court of Appeals for the Seventh Circuit, in *ISP v. Hodel*, remanded OSMRE's approval of the Illinois definition to the extent that the approval was based on the remanded 1983 Federal definition, it did not preclude or prohibit OSMRE from approving the takings test as part of the Illinois definition. Indeed, the court noted in its opinion that "perhaps the Secretary could have approved Illinois' proposal under the 1979 regulation, but he did not" (Mem. op. at 5). The court further specified that any substantive decision would have to be based on those portions of the 1979 Federal definition which regained currency following the remand of the 1983 definition which, for the purpose of this finding, means the good faith all permits test. See 45 FR 51548 (August 4, 1980).

As discussed at 43 FR 14992, March 13, 1979, the legislative history of SMCRA clearly indicates that one intent of Congress in providing the VER exemption from the prohibitions and limitations of section 522(e) of SMCRA was to avoid a regulatory taking of property for which compensation would have to be paid under the Fifth and Fourteenth Amendments to the U.S. Constitution. In 1979, OSMRE's preamble to the definition of VER stated that:

> The legislative history of the Act indicates that Congress wanted to avoid any taking in the implementation of section 522(e) (Congressional Record, April 20, 1977, H–3827). There Congressman Udall opposed an amendment to delete the VER clause from the Act. He stated that if VER were deleted, the Act would not preserve valid legal rights which could not be done without "paying compensation under the Fifth Amendment to the Constitution." Thus, OSM has endeavored to determine the point at which payment would be required because a taking had occurred, then to define "valid existing rights" in those terms, i.e., those rights which cannot be affected without paying compensation. * * * OSM has concluded that VER could be defined in a variety of ways and still avoid an unconstitutional taking. OSM recognizes, however, that in deciding the validity of this definition, the courts will focus on particular fact situations, including how much harm would be caused by the mining operation and whether the property owner still has some reasonable remaining use of the land. (44 FR 14992, March 13, 1979.)

Furthermore, OSMRE explained the 1979 definition of VER as more open-ended than adherence to a rigid "good faith all permits" test:

> OSM believes, however, that VER is a site-specific concept which can be fairly applied only by taking into account the particular circumstances of each permit applicant. OSM considered not defining VER, which would leave questions concerning VER to be answered by the States, the Secretary and the courts at later times. Without a definition, however, many interpretations of VER would be made and no doubt challenged by both operators and citizens; and once valid existing rights determinations are challenged, the permitting process would be delayed. OSM has therefore concluded that VER should be defined in order to achieve a measure of consistency in interpreting this important exemption. Under the final definition, VER must be applied on a case-by-case basis, except that there should be no question about the presence of VER where an applicant had all permits for the area as of August 3, 1977. (*Id.* at 14993.)

OSMRE summarized the 1979 definition by stating:

> In summary, OSM's final definition of VER is designed to avoid a taking which must be compensated and to be consistent with the guidance of the legislative history on this issue. (*Id.* at 14994.)

In determining whether a state regulation is no less effective than the Secretary's rule, the Secretary must first determine what is sought to be achieved by the Secretary's rule.

If the Secretary's rule has but one purpose, then the comparison is relatively straightforward. In such circumstances it involves determining whether the State rule is likely to be as successful as the Federal rule in

accomplishing the singular purpose intended.

When more than one purpose is served by the Secretary's rule and the pertinent provision of the statute, and where the purposes may seemingly conflict, the comparison between the Secretary's rule and the State rule involves balancing the overall effect of the two rules. In such circumstances, one rule may be more effective than the other in achieving one of the purposes, but less effective in achieving the other purpose. On an overall basis, however, one rule may be no less effective than the other in achieving all of the purposes of SMCRA regardless of whether an equivalence exists in achieving each individual purpose.

Section 522(e) of SMCRA is a section with more than one purpose. Although one intent of that section is to protect the areas enumerated in paragraphs (e)(1) through (e)(5) from the adverse effects of surface coal mining operations, a second central theme of that section is to recognize and to preserve valid property rights. A third theme is to avoid takings of property that would require compensation under the Fifth Amendment to the U.S. Constitution. These latter two purposes were expressly acknowledged by the U.S. Court of Appeals for the DC Circuit in a recent opinion concerning the validity of a portion of the Secretary's VER definition not involved in this proceeding. The court emphasized that the mining prohibitions of section 522(e) are not to be applied in a manner that interferes with property rights and stated that:

> Congress, however, limited the application of the surface mining proscriptions to avoid the infringement of existing property rights. (*National Wildlife Federation (NWF) v. Hodel*, 839 F.2d 694, 749 (D.C. Cir. 1988).)

After stating that "[n]either the statutory language nor the legislative history elaborate on the meaning of the phrase 'valid existing rights,' " the Court of Appeals concluded that the legislative history "does suggest that *Congress did not intend to infringe on valid property rights or effect takings through section 522(e).*" (*NWF v. Hodel*, 839 F.2d at 750, emphasis added).

In the same opinion, the Court of Appeals characterized an earlier statement by the U.S. Supreme Court as rejecting the "too-restrictive interpretation of VER" embodied in the all permits test within the Secretary's 1979 VER definition. The Court of Appeals stated:

> In *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 101 S. Ct. 2352, 69 L.Ed.2d 1 (1981), the [Supreme] Court found that the contention that VER applies only to mining operations for which all permits were issued by the date of enactment was compelled neither by the statute nor its legislative history. (*Id.* at 296 n. 37, 101 S.Ct. at 2370–71 n. 37. *NWF v. Hodel*, 839 F.2d at 750 n. 86.)

The Director has analyzed the proposed VER standard in light of the purposes of section 522(e) of SMCRA and the VER exception described above. He recognizes that in certain situations the Federal rule and the State rule may not be equivalent. For instance, in a situation involving a non-severed privately held estate (e.g., an inholding in a section 522(e)(1) area or within a section 522(e)(5) buffer zone), VER would likely be denied under the proposed Illinois VER definition even if an operator had applied for all necessary permits by August 3, 1977. Such a denial would likely occur because reasonable remaining use of the surface would continue to be available where mining would not be authorized. In this situation, the takings test would be more environmentally protective than the "good faith all permits" test.

In other circumstances, such as those involving severed mineral estates, the proposed Illinois definition could be more certain than the good faith all permits test to avoid a compensable taking.

Considering all of the purposes to be served by section 522(e), the Director finds that use of a takings test, as proposed by Illinois, is no less effective in meeting the requirements of SMCRA than is the "good faith all permits" test.

Finding 2: Needed for and Adjacent Test

The 1979 Federal definition of VER included a needed for and adjacent test allowing a person to claim VER if, as of August 3, 1977, he or she possessed a legally binding conveyance, lease, deed, contract or other document authorizing the applicant to conduct surface coal mining operations, and he or she could demonstrate that the coal is both needed for and adjacent to an ongoing surface coal mining operation for which all approvals and permits were obtained prior to August 3, 1977. The 1983 definition deleted the first of these requirements (ownership of rights as of August 3, 1977), although as explained in the preamble to that rulemaking (48 FR 41316, September 14, 1983), OSMRE did not intend to do so.

The preamble notwithstanding, on March 22, 1985, the U.S. District Court, in *In re: Permanent II*, remanded the revised needed for and adjacent test as promulgated on September 14, 1983, because it expanded the test to include lands for which the applicant had not obtained the requisite property rights as of August 3, 1977, and the Secretary had not provided adequate public notice and opportunity for comment on this expansion. Accordingly, by notice published in the November 20, 1986, **Federal Register** OSMRE suspended the 1983 needed for and adjacent test and reinstated its 1979 predecessor.

The current Illinois proposal, for which the State has provided adequate public notice and opportunity to comment, mirrors the language of the 1983 Federal needed for and adjacent test. The Director, with the reservation discussed below, finds that the Illinois proposal can be approved. In copying the language of the 1983 Federal rule, Illinois also reproduced the inadvertent error discussed in the first paragraph of this finding, i.e., using the needed for and adjacent test, the definition grants VER to applicants who obtained the requisite property rights after August 3, 1977. As explained in the preamble to the 1983 Federal rule (48 FR 41316, September 14, 1983) persons possess VER in such cases only if the prohibition of surface mining would constitute a taking, which is a different test. Therefore, the Director finds that the Illinois needed for and adjacent test is, in this respect, less effective than the corresponding Federal rule and less stringent than SMCRA in protecting the areas listed in section 522(e) from surface mining.

Finding 3: Remainder of Definition

The remainder of the definition of VER proposed by Illinois is substantively identical to those portions of the September 14, 1983, Federal definition of VER not remanded in *In re: Permanent II*. Therefore, the Director finds that, except for the expanded needed for and adjacent test discussed in the previous finding, the revised Illinois VER definition is no less effective than the corresponding Federal definition in 30 CFR 761.5.

IV. Disposition of Comments

As required under 30 CFR 732.17(h)(4) and (11), the Director solicited the views of the State Historic Preservation Officer and all Federal agencies with an actual or potential interest in the proposed amendment. None elected to comment on the proposed VER definition.

Also, as described in the section of this notice entitled "Submission and Review of Amendment," OSMRE thrice solicited public comment on the proposed amendment. Comments received from the public in response to the May 9, 1986, and June 26, 1987,

solicitations are duplicative of those received in response to the most recent solicitation (October 25, 1988).

Therefore, this notice will address only the comments received in response to the last notice.

A summary of the comments received and the Director's disposition of them appears below:

1. *Comment:* Old Ben Coal Company states that OSMRE cannot lawfully review the efficacy of or approve the Illinois definition until a new Federal definition is promulgated.

Response: The Director does not agree. The Federal definition has not been remanded in its entirety, and the November 20, 1986, suspension notice reinstated the 1979 version of the Federal definition as modified by an August 4, 1980, suspension notice (46 FR 51548) to substitute for those provisions of the 1983 definition remanded by the court. Even in the absence of a Federal rule, OSMRE would be able to review and approve or disapprove the proposed State VER definition, using SMCRA alone as a standard.

2. *Comment:* The Illinois South Project, Inc. (ISP) states that the U.S. Court of Appeals for the Seventh Circuit clearly held in *ISP v. Hodel* that the 1979 definition is the only Federal rule in force, and that it must therefore be the standard of review.

Response: Although the Director has, as noted in the response to the previous comment, reinstated portions of the modified 1979 definition, he does not fully agree with the commenter's argument since the unsuspended portions of the 1983 definition remain in effect. Furthermore, in *ISP v. Hodel*, the court stated that "the 1979 regulation regained currency when the 1983 regulation died, but its prospective significance is cloudy" (Mem. op. at 5), thus indicating some uncertainty as to the utility and status of the 1979 definition. In any case, this argument is immaterial since the Director has used the modified 1979 definition as a standard of comparison and has found that the revised Illinois definition is no less effective than the 1979 Federal definition, except as noted in Finding 2.

3. *Comment:* ISP states that OSMRE itself has previously found the takings test to be less protective of the environment than the modified all permits test.

Response: The document upon which ISP bases this statement is still in draft form and may be revised. The statement itself refers to the aggregate of section 522(e) areas in all the coal-producing States and does not specifically address mitigation factors in Illinois, such as the paucity of coal in section 522(e)(1) areas in Illinois.

In any case, the comment is again immaterial, since, as stated in 30 CFR 730.5, the standard of review is whether the State definition is no less effective than the Federal rule in meeting the requirements of SMCRA. As discussed in the findings, Congress included the VER exception in section 522 of SMCRA not to protect the environment, but rather to avoid creating a situation where property rights would be infringed upon or taken to the extent that compensation would be required under the Constitution. See *NWF v. Hodel*, 839 F.2d at 749–750. The courts have, in one instance where its application has been challenged, found that the all permits test as applied by OSMRE would constitute a taking and thus the applicant had VER (*Sunday Creek Coal Co. v. Hodel*, No. C–2–88–0316 (E.D. Ohio), June 2, 1988).

The takings test may seem at first glance less protective of the environment, but if, as may reasonably be anticipated, VER applicants denied the right to mine under the modified all permits test successfully challenge these determinations in the courts as unconstitutional takings, the good faith all permits test ultimately would not be more environmentally protective than the takings test. In other words, eleven years after passage of SMCRA, there would exist no or little difference between the two tests when applied in Illinois by the regulatory authority or the courts.

For these reasons, the takings test is no less effective than the modified all permits test in meeting the requirements of SMCRA.

4. *Comment:* ISP argues that, under the 1979 Federal definition, any mining operation starting after August 3, 1977, would be ineligible for VER unless it met the needed for and adjacent test, and that the Illinois definition errs in allowing VER for other operations beginning after that date.

Response: The Director does not agree that the Illinois definition is in error. As stated in his response to the preceding comment, the proper standard of review is not whether the definition is more or less protective of the environment, but rather whether it is no less effective than the Federal rule in avoiding both takings and the disturbance of protected areas. The needed for and adjacent test for existing mines was only one element of the analysis required under the 1979 VER rule. The preamble to the 1979 rule made clear that, where a VER applicant lacked all necessary permits, a case-by-case analysis must be made in such a way as to avoid a taking. If the applicant had all necessary permits, then that person definitely had VER. ISP misreads the 1979 definition and preamble. If a person had VER on the date of enactment under the case-by-case analysis, that entitlement to VER did not depend on the starting date of the mining operation. Furthermore, the courts, in *In re: Permanent II*, have affirmed the concept of continually created VER. The Director also notes that, contrary to the ISP comment, a mining operation must have been in existence on August 3, 1977, to claim VER under the 1979 Federal needed for an adjacent test.

5. *Comment:* ISP states that Illinois has advanced in compelling arguments on support of its contention that the State definition is no less effective than the Federal rule.

Response: For the reasons cited in the findings and the responses to previous comments, the Director believes the State definition is no less effective than the Federal definition, except as noted in Finding 2. Whether the State has advanced the proper arguments is immaterial.

6. *Comment:* ISP took issue with OSMRE's reopening of the comment period and asserted that the State advanced no new arguments at the October 17, 1988, meeting between Illinois, OSMRE, and Department of the Interior officials.

Response: OSMRE decided to reopen the comment period in the interest of fairness and as appropriate pursuant to the Department's policy on State contacts prior to a decision on the State program. See 44 FR 54444, September 19, 1979. Moreover, at the October 17 meeting, Illinois argued that approved of its VER definition would be consistent with the 1988 decision of the Seventh Circuit.

Clearly ISP would have objected if it did not have the opportunity to respond to the State's contentions.

7. *Comment:* ISP and the National Wildlife Federation (NWF) argue that it is inappropriate and, in some State, illegal for State agency personnel to make deteminations of property rights and constitutional law which should be reserved for the courts.

Response: The Director does not agree with the comment as it applies to Illinois. Because the Illinois proposal has undergone State legal review, the Director has no reason to believe that it would grant agency personnel authority in excess of that provided under State law. Furthermore, it would be equally inappropriate and irresponsible for agency personnel to ignore prior case law when making VER determinations.

Thus, under the Illinois rule, State personnel are not precluded from taking administrative actions; however, persons adversely affected by VER decisions may appeal to the courts. In approving this definition, the Director expects that Illinois will exercise its authority in a responsible manner to avoid surface mining in protected areas, as intended by section 522(e) of SMCRA. The Director recognizes that Illinois has chosen to define VER in a manner the commenters find inappropriate on the national level for various policy, implementation and State-specific reasons. However, the Illinois choice must be reviewed under the "no less effective than" standard, with proper emphasis accorded to Illinois law circumstances.

8. *Comment:* NWF incorporates by reference its brief in Round III of *In re: Permanent II* stating that a full reiteration of its arguments opposing the takings tests is unnecessary. It then summarizes these arguments in opposing the Illinois amendment.

Response: The Director notes that the Secretary has previously responded to the NWF brief filed in the *In re: Permanent II* litigation and, to the extent necessary, incorporates by reference his earlier response to it and the preamble to the 1983 definition (48 FR 41316, September 14, 1983). Set forth below are his responses to NWF's specific comments on the proposed amendment.

9. *Comment:* NWF argues that the takings test is inconsistent with the intent of Congress in that it creates in incentive for the regulatory authority to routinely find that a taking would occur and thus avoid litigation and compensatory awards.

Response: The Director acknowledges that allowing use of the takings test could result in its misapplication as described by the commenter. However, the Director must assume that Illinois will properly apply its VER definition. He does not agree that the theoretical possibility posed by NWF constitutes a basis for disapproval of the amendment. The Illinois definition is no less effective than the Federal definition.

Illinois has historically administered its program in a responsible manner and the Director has no reason to believe that it will act otherwise upon approval of this amendment. As part of his oversight duties, the Director will monitor the State's implementation of this definition, respond to specific citizen complaints and determine whether the regulatory authority's decisions are arbitrary, capricious or an abuse of discretion. See 52 FR 26728, July 14, 1988. Moreover, persons adversely affected by an Illinois VER decision may appeal that decision if the person thinks the decision was made improperly.

As to compensatory awards, Judge Flannery in 1980 declined to address the constitutionality of the Secretary's definition. (*In re: Permanent I*, slip op. at 19–20, February 26, 1980). However, any definition of VER that would result in an unconstitutional taking would be improper. Applying a definition without taking into account the particular circumstances of each permit applicant on a site-specific basis would also be improper. See 44 FR 14993, supra.

10. *Comment:* NWF states that OSMRE cannot consider the takings test to be no less effective than the good faith all permits test because the takings test broadens the scope of the exemption from the limitations and prohibitions of section 522(e) of SMCRA and has been found by the U.S. District Court for the District of Columbia to be a significant departure from the definitions proposed in 1982.

Response: For the reasons stated in Finding 1 and in his response to Comment No. 3, and because the court ruled solely on procedural grounds, the Director does not find this argument to be valid.

11. *Comment:* NWF states that consideration of the takings test would require a new environmental impact statement (EIS) and regulatory impact analysis (RIA) for the Federal VER definition.

Response: Section 702(d) of SMCRA exempts actions related to State program approval from those provisions of the National Environmental Policy Act which would require preparation of an environmental assessment or impact statement. Similarly, for those actions relating to State program approval, the Office of Management and Budget, on July 12, 1984, granted OSMRE an exemption from those portions of Executive Order 12291 which would require preparation of a regulatory impact analysis. States are free to adopt provisions other than those embodied in the Federal regulations as long as those provisions are no less effective than the Federal rules and no less stringent than SMCRA. Since, in this case, the Federal rule itself remains unchanged, OSMRE is not required to complete a new EIS or RIA prior to approving such State provisions.

12. *Comment:* The Illinois Department of Mines and Minerals (IDMM) argues that the reinstatement of the 1979 good faith all permits and needed for and adjacent tests in the November 20, 1986, **Federal Register** is itself an improper promulgation and that the only extant portions of the Federal VER definition—and thus the only portions which may be used when evaluating proposed State program amendments—are those not remanded in *In re: Permanent II*.

Response: These arguments are untimely and therefore irrelevant since the suspension and reinstatement notice has been published, the time allowed for appeal has expired, and the reinstatement has taken effect. Furthermore, in *ISP v. Hodel*, the U.S. Court of Appeals for the Seventh Circuit declared that, with respect to matters concerning the remanded portions of the 1983 Federal definition, "the Secretary would have to use the 1979 rule as the basis of any current substantive decision." Therefore, these arguments no longer retain currency.

13. *Comment:* IDMM argues that its revised needed for and adjacent test more accurately defines when coal in an area adjacent to an ongoing surface coal mining operation in existence on August 3, 1977, is needed for the continued operation of the mine, and that it therefore more fully implements section 522(e) of SMCRA.

Response: As discussed in Finding 2, the Director has determined that the expanded "needed for and adjacent" test included in the Illinois definition is no less effective than the corresponding provisions of the 1979 Federal regulation as reinstated on November 20, 1986, except to the extent that this test would apply to property rights acquired after August 3, 1977. The Director believes that acquisition of such rights after August 3, 1977, does not qualify as an automatic presumption of valid existing rights nor does the 1979 rule so allow. If the coal was indeed critical to the economic viability of the existing operation, the operator would have acquired the right to mine it prior to initiating the existing operation. Thus, under section 522(e) of SMCRA, mining of such adjacent areas would be permitted only if its prohibition would constitute an unconstitutional taking of property rights, which is a different test. Illinois' comments indicate that it intends to limit the applicability of the needed for and adjacent test in the manner prescribed by the 1979 Federal rule; however, the definition as actually proposed contains no such restriction and its language admits of no such interpretation.

Illinois also states that its needed for and adjacent test is clearly no less effective than the good faith all permits test in meeting the requirements of SMCRA. The Director believes that this is an improper comparison since the State test should be compared to the corresponding Federal test, in this case

the needed for and adjacent test. However, for the reasons discussed in the preceding paragraph, he finds that even if this comparison were made, the Illinois statement is in error.

14. *Comment:* IDMM states that, since the 1983 Federal definition was remanded on procedural rather than substantive grounds, OSMRE has the authority and obligation to approve a substantively identical State definition if, as in the case of Illinois, the State has complied with all State requirements concerning notice and comment for rulemaking actions.

Response: Although this argument was not specifically addressed in *ISP v. Hodel*, the Director believes it has no currency in the instant proceeding since the U.S. Court of Appeals for the Seventh Circuit ruled that the Secretary's approval of the Illinois proposal under the defective 1983 regulation could not stand even though it had been properly promulgated by the State. The court ordered the Illinois regulation remanded for further proceedings under whatever Federal regulation is in force at the time of the decision (*ISP v. Hodel*, Mem. op. at 6). Therefore, although the Director is, for the most part, approving the Illinois proposal, he is doing so on the grounds ordered by the court, not on the original rationale submitted by the State.

15. *Comment:* IDMM states that the only possible way to fully carry out the Congressional intent to avoid all takings is to equate VER with a taking. IDMM further argues that no mechanical formula will ever perfectly define all circumstances in which the prohibition of mining would constitute a taking, and that the good faith all permits test functions "as a crude sieve to generate a facile VER decision," is "under exclusive," and is "impermissibly vague." IDMM also states that approval of the Illinois amendment using the modified 1979 Federal definition would be consistent with the Seventh Circuit decision in *ISP v. Hodel, supra.*

Response: The Director does not agree that the only way to carry out the Congressional intent to avoid all takings is the way chosen by Illinois. He also does not agree that no mechanical test could be devised that would be consistent with Congressional intent. In light of the Director's findings, it is unnecessary to respond to IDMM's criticisms of the good faith all permits test. The Director does agree that approval of the proposed Illinois VER definition is consistent with the Seventh Circuit decision, and for the reasons stated earlier, he is approving the Illinois proposal to include a takings test within its definition of VER.

V. Director's Decision

Based on the above findings, the Director is approving the revised definition of "valid existing rights" in 62 IAC Part 1701, as submitted by Illinois on March 28, 1986, and revised on May 22, 1987, with the exception of the provision discussed in Finding 2. As explained in that finding, the Director is disapproving the revised "needed for and adjacent" test to the extent that it would grant valid existing rights claims for lands for which the applicant obtained the requisite property rights after August 3, 1988. He is also requiring that Illinois amend this definition to limit its applicability in accordance with this finding. As provided by 30 CFR 732.17 (a) and (g), any provisions that are not approved by the Director may not be implemented as part of the Illinois program.

The Federal rules at 30 CFR Part 913 are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards without undue delay.

VI. Procedural Requirements

Compliance with the National Environmental Policy Act

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

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

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

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 913

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

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management

Date: December 28, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. A new paragraph (j) is added to § 913.15 to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment submitted to OSMRE by Illinois on March 28, 1986, as modified and resubmitted on May 22, 1987, is approved effective January 4, 1989 with the exceptions identified herein and in § 913.17 of this part: Revision of the definition of "valid existing rights" in Part 1701 of Chapter I of Title 62 of the Illinois Administrative Code, except to the extent that the revised definition would allow claims of valid existing rights, under the "needed for and adjacent" test, for lands for which the applicant obtained the requisite property rights after August 3, 1977.

3. A new paragraph (d) is added to § 913.16 to read as follows:

§ 913.16 Required regulatory program amendments.

* * * * *

(d) By June 30, 1989, Illinois shall submit a proposed amendment to the definition of "valid existing rights" in 62 IAC 1701.Appendix A or otherwise propose to amend its program to limit claims for valid existing rights under the "needed for and adjacent" test to those lands for which the applicant had obtained the requisite property rights as of August 3, 1977.

4. A new paragraph (c) is added to § 913.17 to read as follows:

§ 913.17 State regulatory program provisions and amendments disapproved.

(c) The proposed revisions to the definition of "valid existing rights" in 62 IAC 1701.Appendix A, also known as 62

IAC 1701.5, as submitted by Illinois on May 22, 1987, are disapproved to the extent that they expand the "needed for and adjacent" test to allow claims of valid existing rights for lands for which the applicant obtained the requisite property rights after August 3, 1977.

[FR Doc. 89-80 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

43 CFR Public Land Order 6695

[AK-932-09-4214-10; A-030682]

Partial Revocation of Public Land Order No. 1345, as amended, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 140 acres of public land withdrawn for military purposes. The land is no longer needed for the purpose for which it was withdrawn. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to PLO No. 5187.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1345, as amended, is hereby revoked insofar as it affects the following described land:

Seward Meridian, Alaska

T. 15 N., R. 4 W.,
Sec. 1, lot 8;
Sec. 12, NE¼NE¼NE¼,NE¼NW¼NE¼NE¼,S½NW¼NE¼NE¼, S½NE¼NE¼, SE¼SE¼NW¼NE¼, E½E½SW¼NE¼, SE¼NE¼, N½NE¼SE¼,N½SW¼NE¼SE¼, SE¼SW¼NE¼SE¼, SE¼NE¼SE¼, E½NE¼NW¼SE¼, and N½NE¼SE¼SE¼.

The area described contains 140 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 17, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2437-2438; 43 U.S.C. 1635.

3. As provided by Section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO No. 5187, and any other withdrawal of record.

J. Steven Griles,

Assistant Secretary of the Interior.

December 21, 1988.

[FR Doc. 89-15 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6696

[CO-930-09-4214-10; C-48465]

Withdrawal of Public Lands and Reserved Minerals for Protection of Scenic and Recreational Values in the Ruby Canyon of the Colorado River; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 7,658 acres of public lands from surface entry and mining and 244 acres of public minerals from mining for a period of 5 years. This will protect the recreational and scenic values of this segment of the Colorado River pending final decision on a Wild and Scenic River Regulation. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws for protection of scenic and recreational values:

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 6, lots 6 and 8;
Sec. 7, lots 1, 2, and 6 thru 9;
Sec. 8, lot 3, and S½NE¼SW¼;
Sec. 9, lot 4;
Sec. 17, lot 4, S½NE¼, and SE¼NW¼;
Sec. 18, lot 1, N½NE¼ and NE¼NW¼.

Sixth Principal Meridian

T. 10 S., R. 103 W.,
Sec. 5, S½SW¼ and W½SW¼SE¼;
Sec. 6, SE¼SW¼ and S½SE¼;
Sec. 7, lots 1 thru 4, 7, 8, SE¼NE¼, W½NW¼, W½SE¼, and E½E½SE¼;
Sec. 8, lots 2, 3, 6, 7, and W½W½E½;
Sec. 15, lots 2 thru 9, S½N½NW¼, and E½SW¼SW¼;
Sec. 16, lots 1 thru 4, 6 thru 8, W½NW¼NE¼, SE¼NE¼NE¼, NW¼NE¼, N½NW¼, and N½SW¼SW¼;
Sec. 17, lots 2, 3, 5 thru 7, W½NW¼NE¼, S½NE¼, N½SW¼SW¼, and SE¼SE¼;
Sec. 18, lots 2, 8 thru 11, W½E½, E½E½NE¼, E½NE¼SE¼, and NE¼SE¼SE¼;
Sec. 19, lots 1, 3, 4, NW½SW¼NE¼, SE¼NW¼, NW¼SW¼, and N½NE¼SW¼;
Sec. 22, lots 5 thru 8, NE¼NW¼, E½SE¼NW¼, and E½NE¼SW¼;
Sec. 27, lot 1.
T. 10 S., 104 W.,
Sec. 12, E½E½E½;
Sec. 13, E½E½E½;
Sec. 23, lots 1 thru 4, E½SW¼NE¼, and E½W½SE¼;
Sec. 24, lots 1 thru 9, NW¼NE¼, N½NW¼, E½SW¼, and N½SE¼;
Sec. 25, lots 1 thru 4, E½W½, and SW¼SW¼;
Sec. 26, lots 1 thru 7, E½NW¼NE¼, SW¼NE¼, and S½NW¼;
Sec. 27, lots 1 thru 9, S½NE¼, and SE¼NW¼;
Sec. 28, lots 1 thru 3, S½SE¼NE¼, and W½SE¼;
Sec. 32, lots 1 thru 7, NE¼SW¼, SE¼NW¼SW¼, and N½SE¼;
Sec. 33, lots 1 thru 12, NW¼NE¼, and E½SE¼NW¼;
Sec. 34, N½N½NE¼, N½NE¼NW¼, W½NW¼, and NW¼SW¼;
Sec. 35, N½NW¼NE¼ and N½N½NW¼.
T. 11 S., R. 104 W.,
Sec. 3, lots 3 and 4;
Sec. 4, lots 1 thru 4, S½NW¼, and SW¼;
Sec. 5, lot 1, SE¼NE¼, E½SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 7, lots 1 thru 4;
Sec. 8, E½NE¼, N½NW¼, SW¼NW¼, and S½;
Sec. 9, NW¼NW¼, W½SW¼NW¼, and W½W½SW¼.

The areas described aggregate approximately 7,657.73 acres of public lands in Mesa County.

2. Subject to valid existing rights, the reserved mineral interests in the following identified privately owned lands are hereby withdrawn from the

United States mining laws (30 U.S.C. Ch. 2) but not the mineral leasing laws:

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 7, lots 3, 4 and 5;
Sec. 8, lots 2, 4, 5 and 6;

Sixth Principal Meridian

T. 11 S., R. 104 W.,
Sec. 5, E½SW¼NE¼.

The areas described aggregate approximately 244.04 acres of reserved public domain minerals in Mesa County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

December 21, 1988.

[FR Doc. 89–14 Filed 1–3–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 1, 10, 12, 15, 26, 30, 31, 35, 151, 157, 175, 185, 186, and 187

[CGD 81–059]
RIN 2115–AA64

Licensing of Maritime Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of maritime personnel and the manning of vessels. This rule modifies the regulations contained in Parts 10, 12, 15, 30, 31, 35, 151, and 185 of Title 46 Code of Federal Regulations (CFR) and Part 155 of Title 33 CFR concerning the licensing of individuals, the registration of staff officers, and the manning of vessels. This final rule combines and modifies the regulations contained in rulemaking dockets CGD 81–059 and CGD 81–059b published as Interim Final Rules on October 16, 1987 (52 FR 38614 and 52 FR 38658, respectively). New limited tonnage licenses are added for Great Lakes and inland service. Provision is made for master and mate licenses with a river route. The renewal requirements are modified to allow license renewal by mariners who are not actively employed under the authority of their licenses. The license renewal requirement for a valid cardiopulmonary resuscitation course certificate has been withdrawn. The authority for masters and mates to act as tankerman, which appears throughout 46 CFR and in 33 CFR Part 155, is modified to reflect the broader use of the terms master and mate. The list of examination subjects for engineering licenses has been completely revised to more clearly indicate the material covered in each examination. Minor modifications to the topics for deck licenses have also been made.

EFFECTIVE DATE: These changes to the regulations are effective February 3, 1989.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environment Protection, (G–MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in October of 1981 (46 FR 53624) which outlined the basic philosophy and concepts for this project. The Coast Guard received approximately 75 written comments to the docket on that ANPRM. A Notice of Proposed Rulemaking (NPRM) was published on August 8, 1983 (48 FR 35920). Over 10,000 copies of this notice were mailed out to the public and 19 public meetings were held around the country. This notice elicited over 700 written comments and thousands of telephone inquiries. A Supplemental Notice of Proposed Rulemaking (SNPRM) was published on October 24, 1985 (50 FR 43316), after which the Coast Guard held six public hearings. On October 16, 1987, an Interim Final Rule (IFR) was published (52 FR 38614). Ten thousand reprints of this IFR were distributed to interested parties. While the majority of the regulations became effective December 1, 1987, the IFR provided for an additional 90 day comment period. Since 1981, a total of over 1490 written comments have been received and docketed on this project. Comments received in response to the IFR, and changes reflected in the final rule, are discussed later in this preamble. The Coast Guard also published an Interim Final Rule on October 16, 1987 (52 FR 38658) which reformatted and reorganized the regulatory requirements for pilots' licenses to make them consistent with the remainder of the licensing regulations (CGD 81–059b). Four comments were received and have been addressed in the preamble. No changes have been made to that rulemaking. The comments received in response to the Interim Final Rule on the licensing and manning regulations for mobile offshore drilling units (CGD 81–059a, 52 FR 38660), also published on October 16, 1987, are still being evaluated, and a final rule will be published at a later date.

Drafting Information

The principal drafters of this Final Rule are: LCDR Gerald D. Jenkins, Office of Marine Safety, Security and Environment Protection, and CDR Gerald A. Gallion, Office of Chief Counsel.

Background

This final rule implements the provisions of Pub. L. 96–378 and the Port and Tanker Safety Act of 1978. Pub. L. 96–378 discussed the establishment of career patterns, service and qualifying requirements, and the substitution of training time and courses of instruction for sea service. The Port and Tanker Safety Act of 1978 required improved pilotage standards, standards relating to qualification for licenses by the use of simulators, minimum health and physical fitness criteria, and periodic retraining and special training for upgrading positions.

The structure and basic qualifications for licenses have been designed to conform to the provisions of the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978. While the United States has not yet ratified this Convention, the United States delegation was an active participant in the drafting of the Convention and has participated in ensuing interpretations of the Convention. The Convention has been ratified by a sufficient number of maritime nations, and entered into force internationally in April, 1984. Having the structure and basic qualifications of licenses issued by the Coast Guard in general conformance with the Convention will facilitate their acceptance by the countries that have ratified the STCW.

Public Law 98–89 of August 20, 1983, revised and consolidated certain laws relating to vessels and merchant seamen contained in Title 46, United States Code. These changes also necessitated some amendments to the licensing and manning regulations.

For some time the Coast Guard had planned to revise the licensing and manning regulations due to their complexity. This final rule maintains the high U.S. mariner licensing standards while simplifying the license structure and making the regulations easier to use.

Discussion of Comments

The comments received were generally supportive of the regulations published in the Interim Final Rule. Specific areas which received substantive comments or are modified based on Coast Guard experience under the interim rules are discussed in the same format presented in the preamble to the Supplemental Notice and the Interim Final Rule. This final rule was prepared after considering all comments received.

Specific Comment Areas

1. *Professional requirements for license renewal:* There were 97 comments objecting to the service, training or examination requirements for the renewal of a license. The regulations provide four options whereby a mariner can demonstrate continuing proficiency. The flexibility provided by these options will allow nearly all mariners to renew their licenses. This portion of the regulations is virtually unchanged from the 1985 Supplemental Notice of Proposed Rulemaking.

The requirements for renewal contained in this rulemaking are in keeping with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Although the United States is not signatory to the Convention, it has been ratified by sufficient maritime nations and came into force on April 28, 1984.

Consequently, in order for U.S. licenses to be accepted by nations signatory to STCW and for U.S. vessels to operate in foreign ports without impediment, it is necessary that our regulations substantially comply with the provisions of the Convention. Regulations II/5 and III/5 of the Annex to STCW set the "mandatory minimum requirements to ensure the continued proficiency and up-dating of knowledge" for deck and engineering officers. These provisions in STCW and the renewal requirements in the final rule are essentially the same.

The Final Rule does provide a means by which a mariner can continue to renew a license without satisfying these professional requirements (paragraph 2).

2. *Two-tier license renewal structure:* To satisfy the intent of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) regulations II/5 and III/5, which require administrations to "ensure continued proficiency" of merchant marine officers, the revision to Part 10 placed some additional requirements on applicants for license renewal. Mariners not currently sailing or employed in a related industry have expressed concern about their ability to meet the new requirements listed in 46 CFR 10.209(c). To allay such concerns, and to maintain a large pool of licensed mariners for national security reasons, a two-tier license renewal system is being implemented with the final rule. Under the two-tier structure, applicants that cannot meet, or elect not to meet, the professional requirements of § 10.209(c) may renew their licenses by following the procedure detailed in 46 CFR 10.209(g). Any license renewed under paragraph (g) is endorsed to prohibit service under the authority of the license until all of the renewal requiremetns of § 10.209 are met.

3. *Cardiopulmonary resuscitation training:* There were 39 comments objecting to the requirement for possession of a valid cardiopulmonary resuscitation (CPR) course certificate in order to renew a license. Certification in CPR has been a requirement for original license issuance for a number of years. Until publication in the Interim Final Rule, the requirement for CPR training has been well supported by comments on this rulemaking, with several recommending adoption as a renewal requirement. Since the Interim Rule was published, several comments challenged the wisdom of abandoning the safe navigation of the vessel in order to administer CPR. It is not expected that a licensed mariner will abandon the safe navigation of a vessel in order to administer CPR or other forms of first aid. However, circumstances are likely in which the vessel could be safely moored, or more than one qualified mariner would be onboard and available to provide assistance.

In view of the comments received, the requirements for a valid CPR card for license renewal is withdrawn. However, the requirement for a valid CPR card for an original license will be retained. The Coast Guard considers an awareness of CPR procedures to be a significant portion of overall first aid proficiency.

4. *Great Lakes routes for deck licenses for vessels of 200 gross tons and less:* Three comments suggested the need for an operator of uninspected passenger vessels and master of vessels of not more than 100 gross tons with a Great Lakes route. The Coast Guard agrees, and has made provision in this final rule for the issuance of original licenses as master of vessels of not more than 100 gross tons and operator of uninspected passenger vessels with Great Lakes and inland routes. Both licenses require one year of qualifying service. At the suggestion of the Toledo Regional Examination Center, three months of the qualifying service must have been on the Great Lakes. The Great Lakes service is being required to ensure that individuals obtaining these limited tonnage licenses have the necessary experience to safely operate in that environment. Applicants will take the inland route license examination for the equivalent grade of license. Individuals converting small passenger vessel licenses with "waters other than ocean or coastwise" routes will normally receive inland routes. However, if the license holder can demonstrate any prior Great Lakes service, the license will convert to a Great Lakes and inland route.

The Coast Guard has decided to extend the three month Great Lakes service requirement to licenses as master or mate of vessels of not more than 200 gross tons with a Great Lakes and inland route. This is appropriate because of the similarities in the amount of required qualifying service and the nature of the service authorized by the license. If the Great Lakes service requirement cannot be satisfied, the license will be limited to the inland waters of the United States (excluding the Great Lakes).

The Coast Guard believes that this Great Lakes experience is unnecessary for higher tonnage licenses, because of the greater service and examination requirements.

5. *Addition of licenses for master/mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons:* The Coast Guard regional examination centers (RECs) located in the Pacific Northwest have recommended that provision be made for 500 gross ton master and mate licenses with an inland route. Large numbers of the 500 gross ton licenses for lakes, bays, and sounds (the comparable license under the old licensing system) have been issued at those RECs. Because of the demand for this size tonnage license, this final rule makes provision for master and mate licenses of not more than 500 gross tons with a Great Lakes and inland route.

6. *Master and mate of rivers:* Seventeen comments urged that a license limited to a rivers route be offered which would not require a demonstration of the chart navigation skills necessary for an inland route

license. Consequently, the final rule makes provision for master and mate licenses limited to rivers. The periods of required service are the same as required for a Great Lakes and inland license. License applicants will only be required to demonstrate proficiency in navigational instruments and chart skills which are necessary in river service.

7. *Uninspected fishing industry licenses:* The Final Rule makes provision for master and mate licenses of uninspected fishing industry vessels with a near coastal route. Several Coast Guard licensing officers and fishing vessel operators have urged that a fishing vessel license be offered which does not require proficiency in celestial navigation. The qualification requirements for a near coastal route are the same as for an ocean route, except that celestial navigation proficiency is not required.

The tonnage qualification guidelines have been revised to closely correspond with those for licenses authorizing service on inspected vessels of similar size. The system for tonnage computation promulgated in the Interim Final Rule was unreasonably lenient, permitting the qualification for 1,000 gross ton licenses using service on extremely small vessels, a result which the Coast Guard did not intend.

8. *Age limit reduction for limited master's licenses:* Numerous comments urged that the minimum age for a limited master's license be reduced to 18. Historically, the operation of such vessels is summer employment for students. Due to the restricted nature of the service authorized under the limited master's licenses issued to individuals for employment at formal camps, yacht clubs, etc., and the characteristic age of individuals normally employed in that service, the minimum age for these licenses has been lowered from 19 to 18 years.

9. *Exemption of certain limited licenses from first aid and CPR requirements:* Several comments dealt with the experience and training requirements for a license as limited master or limited operator of uninspected passenger vessels issued to individuals for employment at formal camps, yachts clubs, etc. The comments stated that the cumulative requirements of boating experience, first aid course completion, CPR course completion, and boating safety course completion were excessive to the needs of marine safety. The comments also contended that the cumulative requirements discouraged the students, who are normally the source of such seasonal employees, from seeking employment in jobs requiring these licenses. The Coast Guard concurs with these comments. Therefore, applicants for original licenses as limited master or limited operator of uninspected passenger vessels issued to individuals for employment at formal camps, yacht clubs, etc. will not be required to complete first aid and CPR courses, unless required by the Officer in Charge, Marine Inspection (OCMI). The operating areas authorized such license holders do not involve extended voyages or locations far removed from shoreside assistance. Generally, the craft will be in proximity to marinas, yacht clubs or formal camps, where assistance will be readily available if necessary. The OCMI will require this training where the geographic area over which service is authorized precludes obtaining first aid services within a reasonable time.

10. *Conversion of operator uninspected towing vessels licenses with an upon oceans not more than 200 miles offshore route:* The license as operator of uninspected towing vessels upon oceans not more than 200 miles offshore, issued under the regulations in effect prior to December 1, 1987, was not restricted to domestic service. That license authorizes service world wide within 200 miles of any coastline. However, the operator's license does not comply with the requirements of the STCW. To resolve this disparity and avoid the rescinding of any license authority presently granted, a restricted master's license will be issued to these individuals. At the time of renewal, or sooner where a need is demonstrated, that license will be converted to a license as *MASTER OF NEAR COASTAL MOTOR VESSELS OF LESS THAN 200 GROSS TONS (RESTRICTED TO UNINSPECTED TOWING VESSELS); ALSO OPERATOR OF UNINSPECTED TOWING VESSELS GREAT LAKES AND INLAND.* This practice will preserve the currently held license authority when converting the license. The uninspected towing vessel restriction can only be removed by acquiring the qualifying experience and successfully completing an examination for a master's license, e.g., master of not more than 200 or master of not more than 500 gross tons.

11. *Masters and mates serving as tankerman:* Comments identified an undesirable result of the Interim Final Rule in designating as master or mate many individuals previously designated as "operator." Title 46 CFR Part 12 (Certification of Seamen), Subchapter D (Tank Vessels), Subchapter O (Certain Bulk Dangerous Cargoes), and 33 CFR Subchapter O (Pollution), state that an individual holding a valid license as master, mate, pilot or engineer is allowed to serve as a tankerman. Since individuals holding the new license as master or mate of vessels of not more than 200 gross tons have not been required to demonstrate a knowledge of the pollution prevention regulations to the necessary level, and have not obtained the experience in bulk liquid transfer procedures required of a tankerman, this inadvertent increase in authority granted to lower level license holders has the potential for a serious degradation of marine safety.

Consequently, the regulations concerning the authority to serve as tankerman found in 46 CFR Subchapters B, D and O, and 33 CFR Subchapter O are amended in this Final Rule to indicate that only individuals having a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot or engineer may serve as tankerman, in conformity with the intent of this rulemaking. For clearer presentation, these conforming amendments are placed at the end of this rulemaking.

Individuals with a license as master or mate of vessels not more than 200 gross tons may qualify for and receive a merchant mariner's document endorsed as tankerman by complying with the provisions of 46 CFR 12.20.

12. *Tankerman on towing vessels:* While clarifying the absence of authority for licensed masters and mates of not more than 200 gross tons to serve as tankermen, a correction is being made to § 31.15–5 of Title 46 CFR which purports to require a licensed officer or tankerman in the regular complement of a towboat crew towing an unmanned tank barge. This in effect establishes manning requirements for an uninspected vessel without legislative authority. This requirement is being withdrawn, as it has been determined not to be properly founded in the underlying statute.

13. *Service on the Inside Passage between Puget Sound and Cape Spencer, Alaska:* Section 10.430 has been modified to authorize the use of Great Lakes and inland or inland licenses on the sheltered waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska. While these waters are outside the Boundary Line used to determine inland waters for licensing purposes, the Coast Guard has for a number of years classified these waters as lakes, bays and sounds for certain inspection, licensing and manning purposes. Service on these protected waters is creditable as inland service.

14. *Grandfather provision for service toward unlimited deck licenses:* Several comments indicated that the increase in minimum gross tonnage for an unlimited deck license was adversely affecting the career plans for individuals who had been working on vessels between 1,000 and 1,600 gross tons. Prior to December 1, 1987, this service would have been creditable towards an unlimited deck license, while the current regulations require service on vessels over 1,600 gross tons. Therefore, to reduce the impact of the Part 10 revision on mariners who have already obtained sea service toward an original license or upgrade, for applications received prior to July 1, 1989, service on vessels over 1,000 gross tons may be substituted for the required service of over 1,600 gross tons to obtain any gross tonnage endorsement on an unlimited master or mate license. For applications received after July 1, 1989 all service will be evaluated at face value.

15. *Physical examinations:* The preamble of the Interim Final Rule requested comments on the appropriateness of varying the frequency of physical examinations for mariners, depending on their age (preamble item #43). Eight comments were received: One commentor supported the proposal, and seven expressed opposition to a practice they viewed as illegal and discriminatory. The Coast Guard has not revised the physical examination frequency in this Final Rule. The Coast Guard will, however, continue to review the present physical requirements to determine their applicability today's maritime environment.

16. *Conversion of lakes, bays and sounds deck licenses:* The table of corresponding licenses published in the Interim Final Rule indicates that an individual with a deck license for lakes, bays, and sounds will receive a license for an inland route when converting to the new license structure. Comments pointed out that this will cause some individuals to lose the authority to continue their current employment. In keeping with the Coast Guard's stated policy of not removing any authority which a person had prior to the revision of the licensing regulations, the following guidelines will apply to conversion of master or mate lakes, bays and sounds licenses held by those individuals who have been serving upon other than inland waters. Individuals who are:

a. Currently licensed as master or mate lakes, bays and sounds;

b. Authorized service on waters which require the application of the COLREGS; and,

c. Able to show proof of employment under the authority of their license on waters which are not authorized for a master or mate inland;

may receive, at the time of conversion, a license as master or mate of inland steam and motor vessels with an additional endorsement as master or mate of steam and motor vessels upon the specific waters where authority is necessary to continue their employment.

17. *Deck service for engineering licenses:* The Interim Final Rule made provision for crediting some engineering experience towards limited deck licenses. Comments received indicated the reverse should also be allowed, since individuals assigned on deck of small vessels with limited crew size spend a significant number of hours performing work normally assigned to engineers on larger vessels. In recognition of this fact, provision has been made for crediting experience on deck toward a portion of the qualifying service for limited engineering licenses.

18. *Engineering examinations subject table:* For greater clarity, the Subjects for Engineering License table has been revised to use language which, through previous regulatory use, is familiar to the industry.

19. *Fire fighting training:* Comments suggested that the fire fighting training requirements should be tailored to the license title and the class of vessel upon which they will be utilized. The Coast Guard feels this is not practical because of the wide variety of fire fighting systems utilized by similar sized vessels in the same industries and the broad service authority granted by most licenses. The International Maritime Organization (IMO) Resolution A.437(XI), Training of Crews in Fire-Fighting, is being used by the Coast Guard as the guideline for course acceptance review. Only a small portion of the material covered by that resolution would not be applicable to vessels of all types.

20. *Required training for certain increases in the scope of a license:* Under the Interim Final Rule the requirement for certain deck license applicants to obtain a radar observer certificate, firefighting training, and able seaman qualification found in § 10.401(g) is not applicable to those who obtained their licenses prior to the implementation of the Interim Final Rule, unless the individual applied for a raise in grade. The same is true where firefighting training is required for other licenses. As an example, an individual currently holding a master, oceans, 500 gross ton license who applies for an unlimited third mate's license, and subsequently progresses to master, oceans, any gross tons would never be required to obtain this training, since no raise in grade is involved.

The Coast Guard believes that such a policy would adversely impact on marine safety, by permitting large increases in the scope of license authority without obtaining this training. Consequently, in keeping with the intent of this rulemaking, an applicant for a master's or mate's license, whether original, raise in grade, or increase in scope to a higher tonnage category, will, under this Final Rule, be required to obtain this training, if required for that license and not already completed. Likewise, an applicant for a license as an engineer or operator of uninspected towing vessels, oceans (domestic service), whether an original, raise in grade, or increase in scope (other than an increase in horsepower limitation for engineers) must meet the requirement in § 10.205(g) if he or she has not already done so.

21. *International Tonnage Convention:* The effects that the implementation of the International Convention on Tonnage Measurement of Ships, 1969, will have on licensing and manning regulations continues to be of concern to many individuals and organizations. Comments suggested that these regulations state that the domestic tonnage system will be used "forever" for licensing and manning purposes. However the final rule, like the Interim Final Rule, does not address the system of tonnage measurement, but rather presumes that the domestic tonnage system existing at the time of implementation of the regulations will be used. Public Law 99-509 (Oct. 8, 1986, 100 Stat. 1919.), Title V, section 5103(g) requires the Secretary of Transportation to submit to Congress before July 19, 1990, a study regarding the impact of applying the Convention tonnages to U.S. laws, the extent to which tonnage thresholds would have to be raised, and "a recommendation of the levels to which the tonnage thresholds in laws of the United States * * * should be raised if a complete conversion to the International Convention measurement system * * * is made." Until such time as the report is submitted to Congress, and any changes to U.S. laws resulting from that study are enacted, the Coast Guard cannot address the issue of future application of the present tonnage measurement system.

As stated in the preamble to the Interim Final Rule, the Coast Guard will make every attempt to allow merchant mariners to continue service on those vessels on which they are presently

employed. The exact mechanism which will be used to accomplish this cannot be determined until regulations are developed pursuant to legislation implementing the International Convention on Tonnage Measurement of Ships, 1969.

22. *Definitions:* One comment objected to the exclusion of deck maintenance persons from the definition of "deck crew." The Coast Guard has consistently held that individuals signed on as maintenance persons and carried in excess of the complement required by a vessel's Certificate of Inspection do not come within the purview of the term "deck crew." No compelling reason has been presented to change this position.

To avoid confusion in interpreting and applying certain sections of Part 15, an explanation of the terms "self-propelled," "propelled by machinery," and "mechanically propelled" has been added to § 15.301 of the Final Rule. Although these terms, which are synonymous for purposes of Part 15, generally conform with the language of the underlying statutes, it is believed that confusion would result if the explanation was not included in the Final Rule. It should be noted that these terms also include vessels fitted with both sails and mechanical propulsion.

A related issue concerns the applicability of § 15.701, Officers' Competency Certificates Convention, 1936, to sail vessels. Although portions of §§ 15.805 and 15.810 reiterate the requirements of the Officers' Competency Certificates Convention, 1936, these sections should not be construed as limiting § 15.701 to self-propelled vessels only. Section 15.701 applies to self-propelled vessels and to sail vessels, unless otherwise excepted by § 15.701(a).

23. *Employment within restrictions of license or document:* One comment noted that § 15.401 would require all individuals serving on vessels subject to any requirement of Part 15 to hold a valid license, certificate of registry, or merchant mariner's document. This was not the intent of the section. Therefore, it has been revised to make it clear that the requirements of this section apply only to positions in which an individual is required by law or regulation to hold such a license, certificate of registry, or merchant mariner's document.

24. *Familiarity with vessel characteristics:* While agreeing with the intent of the requirement for individuals to become familiar with the characteristics of the vessels on which they are engaged, one comment expressed concern with the possible interpretations of this requirement; for example, an able seaman being required to be familiar with the technical aspects of a vessel's machinery space automation systems. The Interim Final Rule required individuals to become familiar with the relevant characteristics of the vessel. Inclusion of the word "relevant" qualifies this requirement to the characteristics of the vessel which are related to duties the individual will perform or be expected to perform. Therefore, this provision has not been changed in the Final Rule.

25. *Certificate of Inspection manning levels:* One comment objected to individual OCMIs determining minimum required crew complements due to the possibility that disparate complements may be required aboard similar vessels of a class. Disparities are often due to reasons such as the owner not pursuing reduced engineroom manning based on automation, nonfunctioning systems or equipment on some vessels in a class, differing operating routes or procedures, etc. The OCMI is the Coast Guard official most familiar with the particulars of each vessel he or she certificates; for this reason, the OCMIs' authority to determine specific manning levels for inspected vessels has been retained. Another comment suggested additions to the list of factors to be considered by the OCMI when determining minimum complements for inspected vessels. Although the factors listed in § 15.501(b) were not intended to be all-inclusive, the suggested additions are worthy of inclusion and the section has been revised accordingly.

26. *Voyage:* One comment suggested defining "voyage" as the period of time necessary to transit from the last port of departure to the next port of arrival. The suggested definition is contrary to the Coast Guard's longstanding interpretation that stops at intermediate ports while enroute to the final port do not break the continuity of the "voyage." For this reason, the suggested change has not been adopted.

27. *Watches:* One comment took exception to the statement in § 15.705 that the establishment of adequate watches is the responsibility of the vessel's master. Circumstances dictate the types of watches required for safe operation of a vessel. Those circumstances include the materiel condition of the vessel, type of propulsion, weather, navigational hazards, number of other vessels in the area, etc. Since many of these factors are variables that change literally from minute to minute, only an individual physically present and "in charge" of the vessel has all the necessary information to make a decision on the proper deployment of shipboard personnel. Therefore, the master is responsible for making these determinations, and the statement has been retained. Another comment construed § 15.705 of the Interim Final Rule as requiring vessels' chief engineers to stand watches. That section does not specify this. In most situations, adequate licensed engineers are carried or circumstances are such that the chief engineer is not required to stand watches. For this reason, the wording of § 15.705 in the final rule has not been changed.

28. *Watches on uninspected towing vessels:* One comment objected to the Coast Guard's interpretation that permits licensed individuals serving as operators of uninspected towing vessels that are not subject to the provisions of the Officers' Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage. The Coast Guard evaluated the issue and concluded that Congress contemplated the two watch system for these vessels. For this reason, no change is being made to the final rule. Another comment advocates extension of the two watch system to masters and mates of seagoing uninspected towing vessels that are subject to the provisions of the Officers' Competency Certificates Convention, 1936. The Coast Guard has consistently maintained that the three watch system of 46 U.S.C. 8104(d) applies to these individuals except when the vessel is engaged on a voyage of less than 600 miles. The final rule reflects this.

29. *Working hours:* One comment urged inclusion of a prohibition against unnecessary work on Sundays and certain holidays when a vessel is at sea. Section 15.710 is a reiteration of portions of 46 U.S.C. 8104 which address this prohibition to vessels in safe harbors. Inasmuch as the statute does not include vessels at sea in this prohibition, the suggestion has not been adopted in the Final Rule.

30. *Sailing short:* One comment suggested that the sailing short requirement include provisions for situations in which a seaman is authorized vacation and a replacement cannot be obtained. This situation does not fall within the statutory requirements of 46 U.S.C. 8101(e). Thus, the sailing short requirement, a reiteration of the statute, has not been revised to authorize departure of the vessel on its voyage in this situation.

31. *Responsibility for proper manning:* One comment noted that not all vessels are commanded by individuals licensed as master, yet the proper manning of vessels in accordance with the applicable laws, regulations, and

international conventions is the responsibility of the individual in command of the vessel. The Coast Guard concurs and § 15.801 has been revised accordingly.

32. *Master:* Inasmuch as 46 U.S.C. 2101 contains definitions of both "passenger vessel" and "small passenger vessel," § 15.805 has been revised in the Final Rule to clarify the Coast Guard's intent of requiring a master on every passenger and small passenger vessel.

33. *Minimum number of mates:* One comment suggested specifying, in regulation, the minimum number of mates required on inspected, inland vessels. The OCMI who certificates the vessel is the Coast Guard official most familiar with the vessel and its operations, and is, therefore, in the best position to determine the minimum number of mates required for safe vessel operations. Although, § 15.801 requires OCMIs to determine specific manning levels (including mates, first class pilots, etc.), § 15.810 has been revised to clarify the OCMIs' authority for determining the minimum number of mates to be required on inspected vessels, including inland vessels. Another comment concerned the application of the requirement for a mate on vessels of less than 100 gross tons which do not make "voyages" in the traditional sense of the term. The comment was directed to vessels making short transits between two locations, such as a vessel engaged in ferry operations. No change has been made to the Final Rule because in these situations an OCMI can endorse the vessel's Certificate of Inspection to require that alternate crews be provided. This obviates the need for continuously carrying a licensed mate as a second watchstander for operations exceeding 12 hours in any 24 hour period.

34. *Radar observer:* One comment recommended that all commercial vessels, and vessels which carry more than six passengers, be required to be fitted with radar, and that the licensed deck individuals on these vessels be required to possess radar observer qualifications. Vessel equipment requirements are outside the scope of this rulemaking. A regulatory project currently under development (CGD 85–080a) will address the issue of radar observer qualifications for licensed deck individuals on small passenger vessels.

35. *Lookouts:* Three comments recommended modification or deletion of the requirement of § 15.850 that the duties of lookout be performed by a member of the navigational watch. The comments suggested that the requirement could be construed as not allowing other vessel crewmembers to stand a lookout watch in the event that a regular watchstander is not available due to illness or some other reason. The requirement has been retained. The rule does not preclude other qualified individuals from being assigned lookout duties. During such periods, these individuals become part of the navigational watch and are subject to requirements such as the three watch requirements of § 15.705.

36. *Equivalents:* Additional revisions have been made to the Final Rule to clarify certain sections of Subpart H of Part 15, Equivalents. These revisions are the result of comments received and requests for clarification from Coast Guard district and field offices. The revisions are:

(a) The structure of the text of § 15.901 has been revised for consistency with the other sections in Subpart H. Other revisions to § 15.901 are noted below.

(b) Sections 15.901, 15.905, and 15.910 have been revised to clarify the intent that certain of the authorities allowed by these sections apply only to individuals who hold licenses for service on inspected, self-propelled vessels. Without these revisions, these sections could be construed as authorizing individuals licensed for service on uninspected vessels such as fishing industry vessels to serve in licensed capacities on certain inspected vessels, certain passenger carrying vessels, and uninspected towing vessels. This was not the intent of these sections, therefore, the revisions clarify the types of licenses necessary for these authorizations.

(c) Individuals holding licenses as first class pilot are authorized by §§ 15.901, 15.905, and 15.910 of the final rule to serve as master on vessels of not more than 100 gross tons, operator of uninspected passenger vessels, and operator of uninspected towing vessels, respectively, within any restrictions on the individual's license. Section 15.901(a) of the Interim Final Rule authorized pilots to serve as master on vessels of not more than 100 gross tons, therefore, authorization to also serve as operator of uninspected passenger vessels is also considered appropriate. One comment recommended continuance of the authority for pilots to serve as operators of uninspected towing vessels. This authorization is consistent with past Coast Guard policy and with the stated intention of this project to minimize penalties to current license holders whenever possible. It should be noted, however, that service beyond the restrictions on an individual's license, including geographic or route restrictions, is not authorized. It should also be noted that a license as first class pilot does not, by itself, authorize service on uninspected towing vessels which are subject to the Officers' Competency Certificates Convention, 1936. Similarly, licenses as operator or second-class operator of uninspected towing vessels or other licenses which authorize such service do not, by themselves, authorize service on uninspected towing vessels which are subject to the convention.

(d) In addition to other revisions described in this document, § 15.905 of the Final Rule incorporates two additional changes. The first relates to the authority of mates to serve as operators of uninspected passenger vessels. Part 10 of the final rule requires six months service for an individual to qualify for a license as mate of Great Lakes, inland or river vessels of not more than 200 gross tons. To qualify for a license as operator of uninspected passenger vessels, an individual is required to have 12 months service. Two comments objected to the authorization for these mates, with their reduced service requirements, to serve as operator on Great Lakes or inland vessels. The Coast Guard concurs and has, therefore, eliminated the authorization for mates of Great Lakes or inland vessels of not more than 200 gross tons to serve as operators of uninspected passenger vessels. The other change relates to gross tonnage limitations on the licenses of individuals authorized by this section to serve as operator of uninspected passenger vessels, i.e. uninspected vessels of less than 100 gross tons carrying not more than six passengers. Operator of uninspected passenger vessel licenses are not issued with tonnage limitations, therefore, individuals authorized service on these vessels by § 15.905 should not be limited by the gross tonnage limitations of their licenses. Section § 15.905 has been revised accordingly. It should be noted that the operator requirements apply to self-propelled uninspected passenger vessels, therefore, a license authorizing service on self-propelled vessels satisfies the section even though the uninspected passenger vessel might also be equipped with sails.

(e) Section 15.910(b) has been amended to clarify its intent that an operator of uninspected towing vessels be on board when the vessel is being operated by an individual whose license authorizes service as second-class operator only (as opposed to a license which authorizes service as both operator and second-class operator of uninspected towing vessels).

(f) Section 15.915 has been revised to provide consistency with the revision to § 10.501 made by this Final Rule and to incorporate the specific service authorities allowed for designated duty engineers.

37. *Tug and barge limitation on pilot's licenses:* One commenter disagreed with the tug and barge combination limitation on a first class pilot's license or endorsement which is permitted under § 10.711(d). The commenter stated that the pilot license should not be trade/vessel restrictive since a pilot who gains the experience and passes the examination, including the chart sketch, has proven his/her professional competence. The Officer in Charge, Marine Inspection (OCMI) has always had the authority to impose appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters (46 CFR 10.701(c)). Therefore, § 10.711(d) does not give the OCMI any new or additional authority; he already has it. The discussion in the regulation itself (§ 10.711(d)) regarding a tug and barge combination limitation is intended as clarification and guidance. We agree with the commenter to a certain extent, in that, in the majority of cases we would not expect the limitation to be imposed. However, there are circumstances that, due to the nature of the waters and the overall experience of the applicant, self-propelled vessel experience would be necessary to obtain a first class pilot's license or endorsement that is not restricted to tug and barge combinations.

38. *Authority to "serve as" pilot on tank barges:* One commenter stated that in the § 15.812(e) provision permitting an operator to "serve as" pilot for tank barges, the Coast Guard leaves it up to the operator to determine the geographic limits of the route. This problem stems from the fact that the "serve as" pilot is not issued a pilot license or endorsement that describes the specific waters, including geographic limitations, upon which he is authorized to serve as pilot. The individual master, mate, or operator must self-certify that he or she has become qualified by acquiring the required round trips over the route upon which he or she intends to serve as pilot. Without receiving an endorsement, the individual does not have any documentation to indicate that the Coast Guard concurs in his or her interpretation of the geographic area upon which he or she is qualified to serve. The Coast Guard is in the process of developing a Navigation and Vessel Inspection Circular (NVIC), or other suitable document, which would identify the geographic limits of routes for the "serve as" pilot. Additionally, the commenter stated that the Coast Guard does not make an effort to verify that the required number of round trips has been made. As to verification of the round trips, the Coast Guard intends that this requirement would be self-enforcing due to the consequences of serving as a pilot without a valid license, endorsement or authorization. The same commenter asked how the "serve as" pilot can demonstrate his local knowledge and familiarity with the route if he or she does not have to do a chart sketch. In the case of the "serve as" pilot, the required round trips provide the local knowledge. The commenter also asked why we would permit individuals to "serve as" pilot when they have the opportunity to be licensed pilots. The Coast Guard does not approach licensing requirements based on "the opportunity to be licensed," but rather, on reasonable safety standards and requirements. In the case of the "serve as" pilot, our analysis indicates that safety would not be sacrificed by permitting individuals to serve as pilot, without taking the first class pilot examination, provided they satisfy the other requirements identified in the regulations.

39. *Recency for pilotage:* One commenter stated that recency of service over the specified waters should be required for an individual to serve as a pilot. Section 15.812(d) states that a licensed master or mate qualifying under § 15.812(c)(2) may serve as pilot. In order to qualify under that section, an individual must comply with the recency of knowledge provisions of 46 CFR 10.713 (see § 15.812(c)(2)(ii)). Therefore, recency of service is required before an individual may serve as pilot under the authority of his master or mate's license. One round trip over the route within the past 60 months is required.

40. *Authority to require pilots on Great Lakes vessels:* One comment stated that there is no legal authority to issue a blanket requirement for pilots onboard Great Lakes vessels operating under enrollment.

The Coast Guard originally required a pilot on vessels operating on the Great Lakes under the authority of the old 46 U.S.C. 404 which was amended by Pub. L. 96-378 to replace the word "pilot" with "deck officer." The Coast Guard is authorized under 46 U.S.C. 8101 to determine the complement of licensed individuals, including pilots, considered necessary for a vessel's safe operation. The Coast Guard continues to require pilots on inspected mechanically propelled vessels and tank barges inspected under 46 U.S.C. Chapter 37 operating on the Great Lakes under this authority.

41. *Signaling (flashing light) proficiency:* Aside from the preamble discussion of the signaling requirement for licenses, the only mention of this requirement in the Interim Final Rule is its inclusion in the table of subjects for deck licenses, § 10.910. A strict interpretation of this table would preclude an individual who has successfully completed all the examination requirements, except the signaling requirement, from obtaining a license as third mate, second mate, chief mate, or master. This is an unintended reversal of a longstanding Coast Guard policy to issue the license where flashing light proficiency is deficient, but to limit the tonnage on which service is authorized. The Coast Guard will continue this policy. Therefore, § 10.401 of the final rule has been revised to permit the issuance of a license limited to vessels of not more than 1600 gross tons to those applicants who successfully complete all parts of the examination, except the signaling requirement.

42. *Service Requirements for Endorsement as First Class Pilot:* As indicated in the Interim Final Rule (52 FR 38658), the Coast Guard intended to incorporate the substance of its final rule (50 FR 26106) concerning the professional requirements for pilot licenses by reformatting and reorganizing it to be consistent with the rules for licensing of maritime personnel, published simultaneously (52 FR 38614). Comments from Coast Guard licensing officials pointed out the unintended elimination in the Interim Final Rule of specific service requirements for an endorsement as first class pilot on an individual's license. Section 10.703 has been revised in the final rule to restore these long standing specific service requirements. In addition, § 10.701 is revised in the final rule to make it clear that endorsements as first class pilot for service on vessels of 1600 gross tons or less will not be issued. Such endorsements are unnecessary, as § 15.812 authorizes appropriately licensed individuals to serve as pilots on vessels of not more than 1600 gross tons.

43. *Route Familiarization Requirements:* An individual questioned whether experience as an observer would satisfy the round trip requirements for route familiarization contained in § 10.705(b). Observer experience has been acceptable since 1965, and probably before that. The pre-

June 1985 pilot regulations included the sentence "Experience as an observer, properly certified by the master and/or pilot of the vessel is also acceptable in such cases". That sentence was replaced in the present regulations with the phrase "or in an equivalent capacity". We considered the "equivalent capacity" phrase to be broader and to include the observer, as it was not our intent to eliminate observer experience. Therefore, we are adding the sentence "Evidence of having completed a minimum number of round trips while servicing as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable" to the regulations in order to make it clearer that observer experience is acceptable.

Regulatory Evaluation

The regulatory evaluations published with the Interim Final Rules on October 16, 1987 (52 FR 38614 and 52 FR 38658) are still valid. The revisions included in this final rule do not alter the assumptions or cost estimates previously published.

The agency certifies that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules apply to licenses for individuals only. The residual effects on training schools may be a minor modification in some course structures to reflect exam topics for licenses, course title changes to reflect new license titles, and, possibly, some combining of courses to account for the deletion of most trade restricted licenses.

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

These final rules contain no new information collection requirements. The information collection requirements that they do contain have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are listed in § 10.107.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 155

Oil pollution, Vessels.

46 CFR Parts 10 and 12

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 30

Administrative practice and procedure, Barges, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 35

Barges, Marine safety, Navigation (water), Reporting requirements, Tank vessels.

46 CFR Part 151

Barges, Flammable materials, Hazardous materials transportation, Marine safety, Tank vessels.

46 CFR Part 185

Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the interim rules amending 46 CFR Parts 1, 10, 15, 26, 35, 157, 175, 185, 186, and 187 which were published at 52 FR 38614 and 38658 on October 16, 1987, are adopted as final rules with the following changes. In addition, 46 CFR Parts 12, 30, 31, and 151 and 33 CFR Part 155 are amended as set forth below.

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 is revised to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. The table of contents for Part 10 is amended by revising the section headings for §§ 10.201, 10.202, 10.219, 10.410 and 10.420, adding § 10.421, redesignating § 10.428 as 10.427 and § 10.429 as 10.428, adding a new § 10.429, removing § 10.440, adding §§ 10.446 and 10.448, redesignating § 10.455 as 10.456 and § 10.456 as 10.457, adding new §§ 10.455 and 10.459, removing § 10.460, redesignating § 10.504 as 10.505, adding new § 10.504, and removing § 10.905. The added and revised headings read as follows:

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

Sec.

* * * * *

Subpart B—General Requirements for all Licenses and Certificates of Registry

10.201 Eligibility for licenses and certificates of registry, general.

10.202 Issuance of licenses and certificates of registry.

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10.219 Issuance of duplicate license or certificate of registry.

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Subpart D—Professional Requirements for Deck Officers' Licenses

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10.410 Requirements for deck licenses for vessels of not more than 1600 gross tons.

* * * * *

10.420 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.

10.421 Service requirements for mate of near coastal steam or motor vessels of not more than 500 gross tons.

* * * * *

10.429 Service requirements for limited master of near coastal steam or motor vessels of not more than 100 gross tons.

* * * * *

10.446 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

10.448 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

* * * * *

10.455 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

* * * * *

10.459 Service requirements for master or mate of rivers.

* * * * *

10.504 Application of deck service for limited engineer licenses.

* * * * *

3. Section 10.103 is amended by revising the definitions of "*Inland waters*" and "*Oceans*", and by adding the definition of "*Rivers*" in alphabetical order:

§ 10.103 Definitions of terms used in this part.

* * * * *

"*Inland Waters*" means the navigable waters of the United States shoreward

of the Boundary Lines as described in 46 CFR Part 7, excluding the Great Lakes. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are considered as inland.

* * * * *

"*Oceans*" means the waters seaward of the Boundary Lines as described in 46 CFR Part 7. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are not considered oceans.

* * * * *

"*Rivers*" means any river, canal, or other similar body of water designated by the Officer in Charge, Marine Inspection.

* * * * *

4. Section 10.107 is amended by revising paragraphs (b) (1) and (2) and removing (b)(3) through (b)(5) to read as follows:

§ 10.107 Paperwork approval.

* * * * *

(b) * * *

(1) OMB 2115–0514—46 CFR 10.201, 10.202, 10.205, 10.207, 10.209.

(2) OMB 2115–0111—46 CFR 10.302, 10.303, 10.304, 10.480.

5. Section 10.201 is amended by revising the section heading and paragraphs (a), (b), (c), (f)(1) and (f)(2) to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) The applicant must establish to the satisfaction of the Officer in Charge, Marine Inspection, that he or she possesses all of the qualifications necessary, e.g., age, experience, character references and recommendations, physical examination, citizenship, and training, and pass a professional examination, as appropriate, before a license or certificate of registry is issued.

(b) No person is eligible for a license or certificate of registry who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any state or territory of the United States, within three years prior to the date of filing the application (this period may be extended up to ten years after conviction, if the gravity of the facts or circumstances of the case warrant) or who, unless he or she furnishes satisfactory evidence of cure, has ever been the user of or addicted to the use of a dangerous drug.

(c) Except as provided in § 10.464(i) of the part, an applicant for a license must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

* * * * *

(f) * * *

(1) A license as master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 gross tons, third mate, third assistant engineer, mate of vessels of 200–1600 gross tons, assistant engineer of fishing industry vessels, second-class operator of uninspected towing vessels, radio officer, assistant engineer (limited-oceans), or designated duty engineer of vessels of not more than 4000 horsepower, may be granted to an applicant who has reached the age of 19 years.

(2) A license as limited master of near coastal vessels of not more than 100 gross tons, limited master of Great Lakes and inland vessels of not more than 100 gross tons, mate of Great Lakes and inland vessels of 25–200 gross tons, mate of near coastal vessels of 25–200 gross tons, operator of uninspected passenger vessels, or designated duty engineer of vessels of not more than 1000 horsepower, may be granted to an applicant who has reached the age of 18 years.

* * * * *

6. Section 10.202 is amended by revising the section heading and paragraphs (b), (d), (g), and (h) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

* * * * *

(b) Any person who is found qualified under the requirements set forth in this Part is issued an appropriate license valid for a term of five years from date of issue. A certificate of registry does not expire.

* * * * *

(d) Every person who receives an original license or certificate of registry shall take an oath before a designated Coast Guard official that he or she will faithfully and honestly, according to his or her best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. Such an oath remains binding for all subsequent licenses or certificates of registry issued to that person unless specifically renounced in writing.

* * * * *

(g) If an Officer in Charge, Marine Inspection, refuses to grant an applicant the license or certificate of registry for which applied, the OCMI will furnish the applicant, if requested, a written statement setting forth the cause of denial.

(h) The Officer in Charge, Marine Inspection, may modify the service and examination requirements in this Part to satisfy the unique qualification requirements of an applicant. The Officer in Charge, Marine Inspection, may also lower the age requirement for operator of uninspected passenger vessels license applicants. The authority granted by a license will be restricted on its face to reflect any modifications made under the authority of this paragraph. Such restrictions shall not be removed without the approval of the OCMI issuing the license.

§ 10.203 [Amended]

7. The table in § 10.203, is amended by removing "N/A" in the third column (citizenship requirement), and, in its place, inserting "Yes".

8. Section 10.205 is amended by revising paragraphs (c)(1)(ii), (d)(2) introductory text, (d)(4), (f)(1), and (f)(2), by adding paragraph (f)(4), by revising the introductory text of paragraph (h), and paragraphs (h)(1)(iii), (h)(2)(ii), and (h)(2)(iii), by adding paragraph (h)(2)(iv), and by revising paragraph (i)(1) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(c) * * *

(1) * * *

(ii) Certificate of naturalization (original must be presented; photocopies are unlawful).

* * * * *

(d) * * *

(2) For an original license as master, mate, pilot, or operator, the applicant must have vision correctable to at least 20/40 in each eye and uncorrected vision of at least 20/200 in each eye. The color sense must be determined to be satisfactory when tested by any of the following methods, without the use of color sensing lenses:

* * * * *

(4) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician or physician's assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the OCMI, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government

vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck licenses or 20/50 for engineer licenses.

* * * * *

(f) *Character check and references.* (1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as engineer where service was obtained on vessels not carrying a licensed engineer and for a license as operator of uninspected towing vessels, the recommendations may be from recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a license for which no commercial experience may be required, such as: Master or mate 25–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(2) Each applicant's fingerprints are taken during the application process. The fingerprints are checked against the records of law enforcement and other government agencies. The application of any person may be rejected when information has been brought to the attention of the OCMI which indicates that the applicant's habits of life and character are such as to warrant the belief that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. In the event an application is rejected, the applicant is notified in writing of the reason(s) for rejection and advised that the appeal procedures in § 10.204 of this part apply. No examination is given pending decision on appeal.

* * * * *

(4) In the event a license or certificate of registry has already been issued when information about the applicant's habits of life and character is brought to the attention of the OCMI, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry issued, or if such information indicates that the application for the license or certificate of registry was false or incomplete, the OCMI may notify the holder in writing that the license or certificate of registry is considered null and void, direct the holder to return it to the OCMI, and advise the holder that, upon return of the license or certificate of registry, the appeal procedures of § 10.204 of this part apply.

* * * * *

(h) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original license or certificate of registry, except as provided in §§ 10.429, 10.456, and 10.466 of this part, must present to the OCMI:

(1) * * *

(iii) A course the OCMI determines meets or exceeds the standards of the American Red Cross courses; and,

(2) * * *

(ii) The American Heart Association;

(iii) A Coast Guard approved CPR training course; or,

(iv) A course the OCMI determines meets or exceeds the standards of the American Red Cross or American Heart Association courses.

(i) *Professional examination.* (1) When an applicant's experience and training are found to be satisfactory and the applicant is eligible in all other respects, the OCMI examines the applicant, in writing; except that, if the license is to be limited to uninspected fishing industry vessels, the applicant may request an oral-assisted examination. The alternative of an oral-assisted examination is also available to applicants for deck or engineer licenses limited to 500 gross tons. If there is demonstrated difficulty in reading and understanding the questions, the oral-assisted examination shall be offered. Any license based on oral-assisted examination is limited to the specific route and type of vessel upon which the majority of experience was obtained. The instructions for administration of examinations and the lists of subjects for all licenses are contained in Subpart I of this Part. A record indicating the subjects covered is placed in the applicant's license file.

* * * * *

9. Section 10.207 is amended by revising the last sentence of paragraph (c)(5) to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(c) * * *

(5) * * * An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translations into English) in the forms prescribed by paragraph (c)(2) of this section.

* * * * *

10. Section 10.209 is amended by revising the first sentence of paragraph (a), by removing paragraph (c)(2) and redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(2) through (c)(4), respectively, by revising the new paragraph (c)(4), by revising paragraphs (e)(3)(i)(B), (e)(3)(i)(C), and (f), and by adding paragraph (g) to read as follows:

§ 10.209 Requirements for renewal of license.

(a) *General.* Except as provided in paragraph (g) of this section, applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. * * *

* * * * *

(c)(4) An applicant for renewal of a radio officer's license shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license is returned to the applicant.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(B) The license to be renewed, or a photocopy of the license, including the back and all attachments, if it is unexpired;

(C) A certification from a licensed physician or physician's assistant in accordance with paragraph (d) of this section;

* * * * *

(f) *Reissue of expired license.* Whenever an applicant applies for reissuance of a license more than 12 months after expiration, the applicant must complete an approved course or pass the complete examination for that license to demonstrate continued professional knowledge. The examination may be oral-assisted if the license being renewed was awarded on such an oral exam. In the case of an expired radio officer's license, the license may be reissued upon presentation of a valid first- or second-

class radiotelegraph operator license issued by the Federal Communications Commission.

(g) *Inactive license renewal.* (1) Applicants for renewal of licenses who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew their licenses, with the following restrictive endorsement placed on the back of the license: "License renewed for continuity purposes only; service under the authority of this license is prohibited." Holders of licenses with this "continuity endorsement" may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a license with the continuity endorsement must include:

(i) The license to be renewed, or a photocopy of the license, including the back and all attachments, if it is unexpired; and,

(ii) A signed statement from the applicant attesting to an awareness of the restrictions to be placed on the renewed license, and of the requirements for rescinding the continuity endorsement.

11. Section 10.211 is amended by revising paragraph (c) to read as follows:

§ 10.211 Creditable service and equivalents for licensing purposes.

* * * * *

(c) Service on mobile offshore drilling units is creditable for raise of grade of license. Evidence of one year's service as mate or equivalent while holding a license as third mate, or as engineering officer of the watch or equivalent while holding a license as third assistant engineer, is acceptable for a raise of grade to second mate or second assistant engineer, respectively; however, any subsequent raises of grade of unlimited, nonrestricted licenses must include a minimum of six months of service on conventional vessels.

* * * * *

12. Section 10.217 is amended by revising paragraph (a)(1) to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are administered at periodic intervals. If the applicant fails three or more sections of the examination, a complete reexamination must be taken, but may be taken during any of the scheduled exam periods. On the subsequent exam, if the applicant again fails three or more sections, at least three months must lapse before another complete examination is attempted. If an applicant fails one or two sections of an examination, he or she may be retested twice on these sections during the next three months. If the applicant does not successfully complete these sections within the three month period, a complete reexamination must be taken, after a lapse of at least three months from the date of the last retest. The three month retest period may be extended by the OCMI if the examinee presents discharges documenting sea time which prevented the taking of a retest during the three month period. The retest period may not be extended beyond seven months from the initial examination.

* * * * *

13. Section 10.219 is revised to read as follows:

§ 10.219 Issuance of duplicate license or certificate of registry.

Whenever a person to whom a license or certificate of registry has been issued loses the license or certificate, that person shall report the loss to any OCMI. A duplicate license or certificate may be issued by an OCMI listed in the note following § 1.05(b) of this Part after receiving an application with an affidavit describing the circumstances of the loss from the applicant and verification of the license or certificate record from the Regional Examination Center where it was issued or from the Commandant. The duplicate will be prepared in the same format and wording as the license or certificate being replaced. A duplicate license is issued for the unexpired term of the lost license. Duplicate licenses and certificates of registry bear the following statement: "This license (or certificate) replaces License (or Certificate) Number ____ issued at ____ on the above date."

14. Section 10.304 is amended by revising paragraph (a) to read as follows:

§ 10.304 Substitution of training for required service.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer licenses and for qualified ratings of unlicensed personnel. The list of all currently approved courses of instruction including the equivalent service and applicable licenses and ratings is maintained by Commandant (G–MVP). Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department for deck or engineer licenses, respectively, and for qualified ratings.

* * * * *

15. Section 10.401 is amended by revising paragraph (d) and the introductory text of paragraph (g), and by adding a new paragraph (h) to read as follows:

§ 10.401 Ocean and near coastal licenses.

* * * * *

(d) A licensee having a master or mate near coastal license obtained with ocean service may have the license endorsed for ocean service by completing the appropriate examination deficiencies, provided that the additional service requirements of paragraph (e) of this section do not apply.

* * * * *

(g) In order to obtain a master or mate license with a tonnage limit above 200 gross tons, or a license for 200 gross tons or less with an ocean route, whether an original, raise in grade, or increase in the scope of license authority to a higher tonnage category, the applicant must successfully complete the following training and examination requirements:

* * * * *

(h) Each applicant for a deck license which authorizes service on vessels above 1600 gross tons on ocean or near coastal waters, whether original or raise of grade, must pass a practical signaling examination (flashing light). A license applicant who fails in practical signaling, but passes every other part of the examination, may be issued a license with a 1600 gross ton limitation. The tonnage limitation can be removed upon successful completion of the signaling examination.

16. Section 10.402 is amended by revising paragraphs (a), (b), and (c)(3), and by adding paragraph (d) to read as follows:

§ 10.402 Tonnage requirements for ocean or near coastal licenses for vessels of over 1600 gross tons.

(a) To qualify for an ocean or near coastal license for vessels of any gross tons, all the required experience must be obtained on vessels of over 200 gross tons. At least one-half of the required experience must be obtained on vessels of over 1600 gross tons.

(b) If the applicant for an original or raise of grade of a license as master or mate does not have the service on vessels over 1600 gross tons required by paragraph (a) of this section, or is qualifying for third mate under the provisions of paragraph § 10.407(c) of this subpart, a tonnage limitation is

placed on the license based on the applicant's qualifying experience. * * *

(c) * * *

(3) When the applicant has 12 months of service as able seaman on vessels over 1600 gross tons while holding a license as third mate, all tonnage limitations on the third mate's license are removed.

(d) Individuals holding licenses as master or mate of vessels of not more than 1600 gross tons, not more than 500 gross tons, or not more than 25–200 gross tons are prohibited from using the provisions of paragraph (c) of this section to increase the tonnages of their licenses.

17. Section 10.403 is amended by removing Figures 10.403–1 and 10.403–2 and replacing them with Figure 10.403 as follows:

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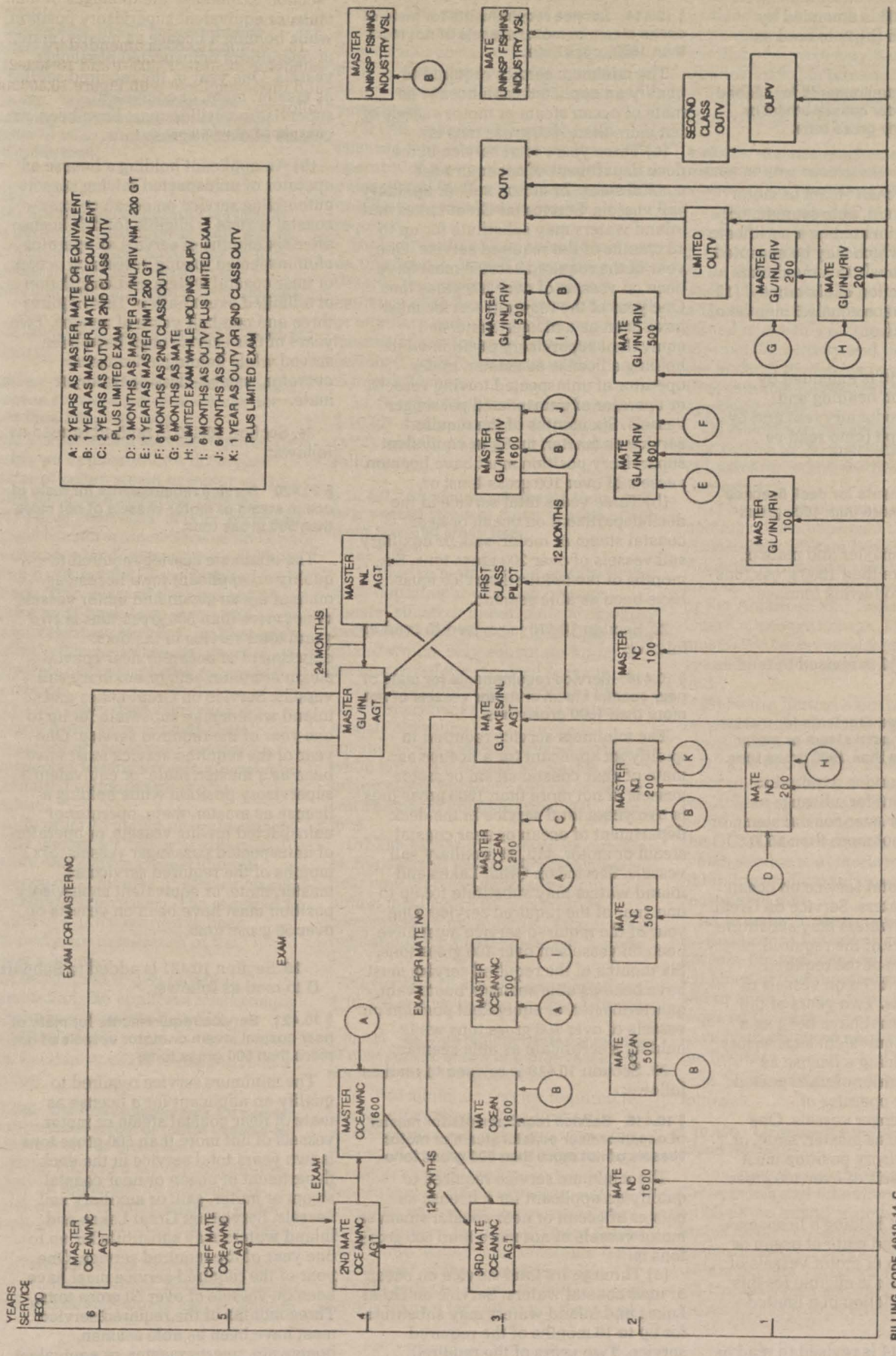
FIGURE 10.403 DECK LICENSE STRUCTURE



18. Section 10.406 is amended by revising paragraph (b)(2) to read as follows:

§ 10.406 Service requirements for second mate of ocean or near coastal steam or motor vessels of any gross tons.

* * * * *

(b) * * *

(2) Service on ocean steam or motor vessels as boatswain, able seaman, or quartermaster while holding a certificate as able seaman, which may be accepted on a two-for-one basis to a maximum allowable substitution of six months (12 months of experience equals 6 months of creditable service); or,

* * * * *

19. Section 10.410 is amended by revising the section heading and paragraph (a) introductory text and by removing paragraph (c) to read as follows:

§ 10.410 Requirements for deck licenses for vessels of not more than 1600 gross tons.

(a) Licenses as master and mate of vessels of not more than 1600 gross tons are issued in the following tonnage categories:

* * * * *

20. Section 10.412 is revised to read as follows:

§ 10.412 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 1600 gross tons is:

(a) Four years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to two years of the required service. Two years of the required service must have been on vessels of over 100 gross tons. Two years of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. One year of the service as master, mate, or equivalent supervisory position must have been on vessels of over 100 gross tons; or,

(b) An applicant holding a license as chief mate or second mate of ocean or near coastal steam or motor vessels of over 1600 gross tons is eligible for this license upon completion of a limited examination.

21. Section 10.414 is revised to read as follows:

§ 10.414 Service requirements for mate of ocean steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as mate of ocean steam or motor vessels of not more than 1600 gross tons is:

(a) Three years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. One year of the required service must have been on vessels of over 100 gross tons. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. Six months of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 100 gross tons; or,

(b) Three years total service in the deck department on ocean or near coastal steam or motor, sail, or auxiliary sail vessels of over 200 gross tons. Six months of the required service must have been as able seaman.

22. Section 10.416 is revised to read as follows:

§ 10.416 Service requirements for mate of near coastal steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as mate of near coastal steam or motor vessels of not more than 1600 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been on vessels of over 100 gross tons. Six months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 100 gross tons while holding a certificate as able seaman.

23. Section 10.418 is revised to read as follows:

§ 10.418 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 500 gross tons is:

(a) Three years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. Two years of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, or operator of uninspected passenger vessels. One year of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 50 gross tons.

(b) An applicant holding a license as operator of uninspected towing vessels authorizing service on ocean or near coastal waters is eligible for this license after six months of service as operator of uninspected towing vessels on ocean or near coastal waters and completion of a limited examination. This requires three and one-half years of service. Two years of this service must have been served while holding a license as operator, second-class operator, or mate.

24. Section 10.420 is revised to read as follows:

§ 10.420 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of ocean steam and motor vessels of not more than 500 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. Six months of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 50 gross tons.

25. Section 10.421 is added to Subpart D to read as follows:

§ 10.421 Service requirements for mate of near coastal steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of near coastal steam or motor vessels of not more than 500 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been on vessels of over 50 gross tons. Three months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 50 gross tons

while holding a certificate as able seaman.

26. Section 10.422 is amended by revising paragraph (b)(4) to read as follows:

§ 10.422 Tonnage limitations and qualifying requirements for licenses as master or mate of vessels of not more than 200 gross tons.

* * * * *

(b) * * *

(4) Six months additional service in the deck department on vessels within the highest tonnage increment on the license. In this case, the tonnage limitation may be raised one increment.

* * * * *

27. Section 10.424 is revised to read as follows:

§ 10.424 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of ocean steam or motor vessels of not more than 200 gross tons is:

(1) Three years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. Two years of the required service must have been as master, mate, or equivalent supervisory position while holding a license as master, as mate, or as operator of uninspected passenger vessels; or,

(2) Two years total service as a licensed operator or second-class operator of ocean or near coastal uninspected towing vessels. Completion of a limited examination is also required.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

(c) In addition to any required examination, the applicant must comply with the requirements listed in § 10.401(g) of this subpart.

28. Section 10.426 is revised to read as follows:

§ 10.426 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of near coastal steam or motor vessels of not more than 200 gross tons is:

(1) Two years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, as mate, or as operator of uninspected passenger vessels; or,

(2) One year of total service as a licensed operator or second-class operator of ocean or near coastal uninspected towing vessels. Completion of a limited examination is also required.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

29. Section 10.428 is redesignated as § 10.427 and paragraphs (a)(1), and (a)(2), and (b) are revised to read as follows:

§ 10.427 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.

(a) * * *

(1) Twelve months total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to six months of the required service; or,

(2) Three months of service in the deck department of steam or motor vessels operating on ocean, near coastal, Great Lakes or inland waters while holding a license as master of inland steam or motor, sail or auxiliary sail vessels of not more than 200 gross tons.

(b) The holder of a license as operator of uninspected passenger vessels with a near coastal route endorsement may obtain this license by successfully completing an examination on rules and regulations for small passenger vessels.

* * * * *

30. Section 10.429 is redesignated as § 10.428 and revised to read as follows:

§ 10.428 Service requirements for master of near coastal steam or motor vessels of not more than 100 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of near coastal steam or motor vessels of not more than 100 gross tons is two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to one year of the required service.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the license.

31. New § 10.429 is added to Subpart D to read as follows:

§ 10.429 Service requirements for limited master of near coastal steam or motor vessels of not more than 100 gross tons.

(a) Limited masters' licenses for near coastal vessels of not more than 100 gross tons may be issued to applicants to be employed by organizations such as yacht clubs, marinas, formal camps and educational institutions. A license issued under this section is limited to the specific activity and the locality of the yacht club, marina or camp. In order to obtain this restricted license, an applicant must:

(1) Have four months of service on any waters in the operation of the type of vessel for which the license is requested;

(2) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or a safe boating course conducted by the U.S. Power Squadron or the American Red Cross, or a Coast Guard approved course. This course must have been completed within five years before the date of application; and,

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

(b) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of four months of service on sail or auxiliary sail vessels. The required four months of service may have been obtained prior to issuance of the license.

32. Section 10.430 is revised to read as follows:

§ 10.430 Licenses for the Great Lakes and inland waters.

Any license issued for service on the Great Lakes and inland waters is valid on all of the inland waters of the United States as defined in this part. Any license issued for service on inland waters is valid for the inland waters of the United States, excluding the Great Lakes. Licenses with either a Great

Lakes and inland or an inland route are valid for service on the sheltered waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska. As these licenses authorize service on waters seaward of the International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line as defined in 33 CFR Part 80, the applicant must complete an examination on the COLREGS or the license must be endorsed with an exclusion from such waters.

§ 10.440 [Removed]

33. Section 10.440 is removed.

34. Section 10.442 is revised to read as follows:

§ 10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) Three years total service on vessels. Eighteen months of the required service must have been on vessels of over 100 gross tons. One year of the required service must have been as a master, mate, or equivalent supervisory position on vessels of over 100 gross tons while holding a license as master, as mate, or as operator of uninspected towing vessels; or,

(b) Six months of service as operator on vessels of over 100 gross tons while holding a license as operator of uninspected towing vessels.

35. Section 10.444 is revised to read as follows:

§ 10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) Two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels. One year of the required service must have been on vessels of over 100 gross tons. Six months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 100 gross tons while holding a certificate as able seaman; or,

(b) One year total service as master of steam or motor, sail, or auxiliary sail vessels, or operator of uninspected passenger vessels, of over 50 gross tons while holding a license as master steam or motor, sail, or auxiliary sail vessels of not more than 200 gross tons or operator of uninspected passenger vessels; or,

(c) Six months total service as second-class operator of uninspected towing vessels on vessels of over 100 gross tons.

36. New section 10.446 is added to Subpart D to read as follows:

§ 10.446 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons is:

(a) Three years total service on vessels. One year of the required service must have been as a master, mate, or equivalent supervisory position on vessels of over 50 gross tons while holding a license as master, as mate, or as operator of uninspected passenger vessels.

(b) An applicant holding a license as operator of ocean, near coastal, or Great Lakes and inland uninspected towing vessels is eligible for this license after six months of service as operator of uninspected towing vessels and completion of a limited examination. This requires three and one-half years of service. Two years of this service must have been served while holding a license as operator or second-class operator of uninspected towing vessels, or mate.

37. New section 10.448 is added to Subpart D to read as follows:

§ 10.448 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons is two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels. One year of the required service must have been on vessels of over 50 gross tons. Three months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 50 gross tons while holding a certificate as able seaman.

38. Section 10.452 is revised to read as follows:

§ 10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons is one year of service on vessels. Six months of the required service must have been as master, mate, or equivalent supervisory position while holding a license as master, mate, operator or second-class operator of uninspected towing vessels, or operator of uninspected passenger vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must have six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the master's license.

39. Section 10.454 is amended by revising paragraphs (a) and (d) to read as follows:

§ 10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons is six months of service in the deck department of steam or motor, sail, or auxiliary sail vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

* * * * *

(d) The holder of a license as operator of inland uninspected passenger vessels may obtain this license by successfully completing an examination on rules and regulations for small passenger vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

* * * * *

40. Section 10.455 is redesignated as § 10.456, paragraph (b) is revised, and a new paragraph (d) is added to read as follows:

§ 10.456 Service requirements for limited master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

* * * * *

(b) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law

Administrators, a public education course conducted by the U.S. Power Squadron or the American Red Cross, or a Coast Guard approved course. This course must have been completed within five years before the date of application; and,

* * * * *

(d) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

41. New § 10.455 is added to Subpart D to read as follows:

§ 10.455 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons is one year of total service in the deck department of steam or motor, sail, or auxiliary sail vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the license.

§ 10.456 [Redesignated as § 10.457]

42. Section 10.456 is redesignated as 10.457.

43. Section 10.459 is added to Subpart D to read as follows:

§ 10.459 Service requirements for master or mate of rivers.

(a) An applicant for a license as master of river steam or motor vessels of any gross tons must meet the same service requirements as master of inland steam or motor vessels of any gross tons.

(b) An applicant for a license as master or mate of river steam or motor vessels, with a limitation of 25–1600 gross tons, must meet the same service requirements as those required by this Subpart for the corresponding tonnage Great Lakes and inland steam or motor license. Service on the Great Lakes is not, however, required.

§ 10.460 [Removed]

44. Section 10.460 (including Figure 10.460) is removed.

45. Section 10.462 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 10.462 Licenses for master or mate of uninspected fishing industry vessels.

* * * * *

(b) Licenses as master or mate of uninspected fishing industry vessels are issued for either ocean or near coastal routes, depending on the examination completed. To qualify for an uninspected fishing industry vessel license, the applicant must satisfy the training and examination requirements of § 10.401(g) of this subpart.

(c) An applicant for a license as master of uninspected fishing industry vessels must have four years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to two years of the required service. One year of the required service must have been as licensed master, as unlicensed master, or as licensed mate or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels.

(1) To qualify for a license of not more than 500 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of over 50 gross tons.

(2) To qualify for a license of not more than 1600 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of over 100 gross tons.

(3) To qualify for a license of over 1600 gross tons, but not more than 5000 gross tons, the vessel tonnage upon which the four years of required service was obtained will be used to compute the tonnage. The license is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated. A license as master of uninspected fishing industry vessels authorizing service on vessels over 1600 gross tons also requires one year as master, mate or equivalent on vessels over 100 gross tons.

(4) The tonnage limitation on this license may be raised using one of the following methods, but cannot exceed 5000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(i) Three months service as master on a vessel results in a limitation in that capacity equal to the tonnage of that vessel rounded up to the next multiple of 1000 gross tons;

(ii) Six months service as master on a vessel results in a limitation in that capacity equal to 150% of the tonnage of that vessel;

(iii) Six months service as master on vessels over 1600 gross tons results in raising the limitation to 5000 gross tons;

(iv) Six months service as mate on vessels over 1600 gross tons results in raising the limitation for master to the tonnage on which at least 50 percent of the service was obtained;

(v) Two years service as a deckhand on a vessel while holding a license as master results in a limitation on the master's license equal to 150% of the tonnage of that vessel up to 5000 gross tons; or,

(vi) One year of service as deckhand on a vessel while holding a license as master results in a limitation on the master's license equal to the tonnage of that vessel.

(d) An applicant for a license as mate of uninspected fishing industry vessels must have three years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to 18 months of the required service.

(1) To qualify for a license of not more than 500 gross tons, at least one year of the required service must have been on vessels of over 50 gross tons.

(2) To qualify for a license of not more than 1600 gross tons, at least one year of the required service must have been on vessels of over 100 gross tons.

(3) To qualify for a license of over 1600 gross tons, but not more than 5000 gross tons, the vessel tonnage upon which the three years of required service was obtained will be used to compute the tonnage. The license is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(4) The tonnage limitation on this license may be raised using one of the following methods, but cannot exceed 5000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(i) Three months service as mate on a vessel results in a limitation in that capacity equal to the tonnage of that vessel rounded up to the next multiple of 1000 gross tons;

(ii) Six months service as mate on a vessel results in a limitation in that capacity equal to 150% of the tonnage of that vessel;

(iii) Six months service as mate on vessels over 1600 gross tons results in raising the limitation to 5000 gross tons;

(iv) One year of service as deckhand on vessels over 1600 gross tons while holding a license as mate, results in raising the limitation on the mate's license to 5000 gross tons;

(v) Two years service as a deckhand on a vessel while holding a license as mate results in a limitation on the mate's license equal to 150% of the tonnage of that vessel up to 5000 gross tons; or,

(vi) One year of service as deckhand on a vessel while holding a license as mate results in a limitation on the mate's license equal to the tonnage of that vessel.

* * * * *

46. Section 10.464 is amended by revising the introductory text in paragraph (e) to read as follows:

§ 10.464 Licenses for operator of uninspected towing vessels.

* * * * *

(e) In order to obtain an operator or second-class operator license for ocean (domestic trade) waters, whether an original, raise in grade, or increase in scope, the applicant must complete the following training and examination requirements:

* * * * *

47. Section 10.466 is amended by revising paragraph (a), by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, by redesignating paragraphs (c) and (d) as paragraphs (e) and (c), respectively, by adding a new paragraph (d), and by adding a new paragraph (g)(4) to read as follows:

§ 10.466 Licenses for operator of uninspected passenger vessels.

(a) This section applies to all applicants for the license to operate an uninspected vessel of less than 100 gross tons, equipped with propulsion machinery of any type, carrying six or less passengers.

* * * * *

(d) For a license as operator of an uninspected passenger vessel with a Great Lakes and inland waters endorsement, an applicant must have 12 months service on Great Lakes or inland waters, including at least three months service operating vessels on Great Lakes waters.

(g) * * *

(4) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

48. Section 10.480 is amended by revising paragraph (k) to read as follows:

§ 10.480 Radar observer.

* * * * *

(k) An applicant seeking to raise the grade of a license or increase its scope, where that increased grade or scope requires a radar observer certificate, may use an expired radar observer certificate to fulfill that requirement.

49. Section 10.501 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 10.501 Grade and type of engineer licenses issued.

* * * * *

(b) Engineer licenses issued in the grades of chief engineer (limited) and assistant engineer (limited) of steam and/or motor vessels allow the holder to serve within any horsepower limitations on vessels of any gross tons on inland waters and of not more than 1600 gross tons in ocean, near coastal or Great Lakes service in the following manner:

* * * * *

50. Section 10.502 is amended by revising the introductory text in paragraph (b), and by adding paragraph (c) to read as follows:

§ 10.502 Additional requirements for engineer licenses.

* * * * *

(b) If a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor), the following alternative methods, while holding a license in that grade, are acceptable:

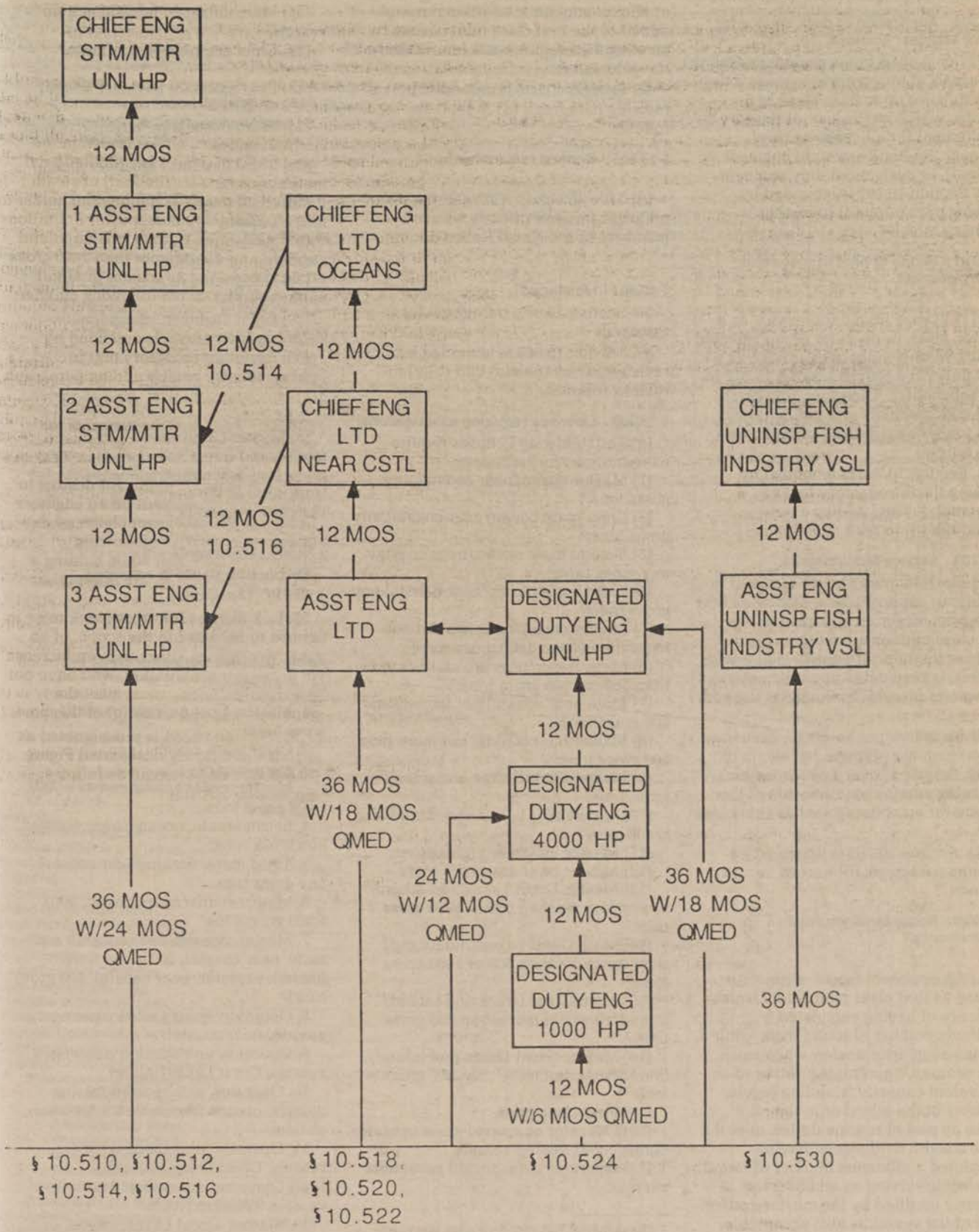
* * *

(c) Applicants for an original, raise in grade, or increase in the scope, of an engineer license, other than an increase in horsepower limitation, who have not previously done so must meet the requirements of § 10.205(g) of this part.

51. Section 10.504 is redesignated as § 10.505 and newly designated Figure 10.505 is revised to read as follows:

BILLING CODE 4910-14-M

FIGURE 10.505 ENGINEER LICENSE STRUCTURE



BILLING CODE 4910-14-C

52. New section 10.504 is added to Subpart E to read as follows:

§ 10.504 Application of deck service for limited engineer licenses.

Service gained in the deck department on vessels of appropriate tonnage may substitute for up to 25 percent or 6 months, whichever is less, of the service requirement for a license as chief engineer (limited), assistant engineer (limited), or designated duty engineer.

53. Section 10.701 is amended by revising paragraph (d) to read as follows:

§ 10.701 Scope of pilot licenses and endorsements.

* * * * *

(d) A license issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this subchapter. Therefore, first class pilot endorsements will not be issued with tonnage limitations of 1600 gross tons or less.

54. Section 10.703 is amended by revising the introductory text of paragraph (a) and adding a new paragraph (d) to read as follows:

§ 10.703 Service requirements.

(a) The minimum service required to qualify an applicant for a license as first class pilot, or for an endorsement as first class pilot on a license as master, mate, or operator of uninspected towing vessels, is predicated upon the nature of the waters for which pilotage is desired.

* * * * *

(d) An individual holding a license as master or mate of inspected steam or motor vessels of over 1,600 gross tons meets the service requirements of this section for an endorsement as first class pilot.

54a. Section 10.705 is amended by revising paragraph (b) to read as follows:

§ 10.705 Route familiarization requirements.

* * * * *

(b) An applicant for an original license as first class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilot house as part of routine duties, over the route sought. Evidence of having completed a minimum number of round trips while serving as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable. The range of round trips for an initial license is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first class pilot license by meeting the requirements for obtaining an endorsement.

55. Section 10.805 is amended by revising paragraph (d) to read as follows:

§ 10.805 General requirements.

* * * * *

(d) Title 46 U.S.C. 8302 addresses uniforms for staff officers who are members of the Naval Reserve.

* * * * *

§ 10.901 [Amended]

56. Section 10.901, paragraph (c) is removed.

57. Section 10.903 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 10.903 Licenses requiring examinations.

(a) The following licenses require examinations for issuance:

(1) Master ocean/near coastal any gross tons;[1]

(2) Chief mate ocean/near coastal any gross tons;[1]

(3) Second mate ocean/near coastal any gross tons;[1]

(4) Third mate ocean/near coastal any gross tons;[1]

(5) Master ocean/near coastal not more than 500 or 1600 gross tons;[1]

(6) Mate ocean/near coastal not more than 500 or 1600 gross tons;[1]

(7) Mate near coastal not more than 200 gross tons;

(8) Master near coastal not more than 100 gross tons;

(9) Master Great Lakes and inland any gross tons;

(10) Mate Great Lakes and inland any gross tons;

(11) Master inland any gross tons;

(12) Master river any gross tons;

(13) Master Great Lakes and inland/river not more than 500 or 1600 gross tons;[1]

(14) Mate Great Lakes and inland/river not more than 500 or 1600 gross tons;[1]

(15) Mate Great Lakes and inland/inland/river not more than 200 gross tons;[1]

(16) Master Great Lakes and inland/inland/river not more than 100 gross tons;[1]

(17) First class pilot;

(18) Operator or second-class operator uninspected towing vessels;

(19) Operator uninspected passenger vessels;

(20) Master uninspected fishing industry vessels;

(21) Mate uninspected fishing industry vessels;

(22) Chief engineer steam/motor vessels;

(23) First assistant engineer steam/motor vessels;

(24) Second assistant engineer steam/motor vessels;

(25) Third assistant engineer steam/motor vessels;

(26) Chief engineer (limited) steam/motor vessels;

(27) Assistant engineer (limited) steam/motor vessels;

(28) Designated duty engineer steam/motor vessels;

(29) Chief engineer uninspected fishing industry vessels;

(30) Assistant engineer uninspected fishing industry vessels.

* * * * *

(b) * * *

(2) Master Great Lakes and inland, inland, and rivers not more than 200 gross tons when raising license grade from mate of the same route not more than 200 gross tons.

* * * * *

§ 10.905 [Removed]

58. Section 10.905 is removed.

§ 10.910 [Amended]

59. In § 10.910, table 10.910–1 is revised to read as follows:

Table 10.910–1 Codes for Deck Licenses

Deck Licenses:

1. Master, Oceans/near coastal, any gross tons.
2. Chief mate, oceans/near coastal, any gross tons.
3. Master, oceans/near coastal, 500/1,600 gross tons.
4. Second mate, oceans/near coastal, any gross tons.
5. Third mate, oceans/near coastal, any gross tons.
6. Mate, oceans/near coastal, 500/1,600 gross tons.
7. Master, oceans/near coastal, and mate, near coastal, 200 gross tons (includes master, near coastal, 100 gross tons).
8. Operator, uninspected passenger vessels, near coastal.
9. Operator, uninspected passenger vessels, Great Lakes/inland.
10. Operator, uninspected towing vessels, oceans (domestic trade)/near coastal.
11. Operator, uninspected towing vessels, Great Lakes/inland.
12. Operator, uninspected towing vessels, Western rivers.
13. Master, Great Lakes/inland, or master, inland, any gross tons.

[1] Examination will vary depending upon route desired.

14. Mate, Great Lakes/inland, any gross tons.

15. Master, Great Lakes/inland, 500/1,600 gross tons.

16. Mate, Great Lakes/inland, 500/1,600 gross tons.

17. Master or mate, Great Lakes/inland, 200 gross tons (includes master, Great Lakes/inland, 100 gross tons).

18. Master, rivers, any gross tons.

19. Master, rivers, 500/1,600 gross tons.

20. Mate, rivers, 500/1,600 gross tons.

21. Master or mate, rivers, 200 gross tons (includes master, rivers, 100 gross tons).

22. Master, uninspected fishing industry vessels, oceans/near coastal.

23. Mate, uninspected fishing industry vessels, oceans/near coastal.

24. First class pilot.

60. In § 10.910, table 10.910–2 is revised to read as follows:

TABLE 10.910–2—LICENSE CODES

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Navigation and position determination:																								
Ocean Track Plotting:																								
Middle Latitude Sailing	1	1		1	1																			
Mercator Sailing	X	X		1	1																			
Great Circle Sailing	1	1		1																				
Parallel Sailing	1	1		1	1																			
ETA	X	X	1	X	X																			
Piloting:																								
Distance Off		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Bearing Problems		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Fix or Running Fix		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Chart Navigation		X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	2	2	2	2	X	X	X
Dead Reckoning		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Celestial Observations:																								
Special Cases (hi/lo Alt., Backsight)	1																							
Latitude by Polaris	1	1	1	1																				
Latitude by Meridian Transit	1																							
Lat. by Meridian Transit (Sun Only)	X	X	1	X	X	1	1			1												1	1	
Fix or Running Fix (Any Body)	X	X	1	X																		1		
Fix or Running Fix (Sun Only)					X	1	1			1													1	
Star Identification	1	1	1	1																				
Star Selection	1	X	1	X																			1	
Times of Celestial Phenomena:																								
Time of Meridian Transit	1																							
Time of Meridian Transit (Sun Only)	X	X	1	X	X	1	1			1												1	1	
Second Estimate Meridian Transit	1																							
Zone Time Sun Rise/Set/Twilight	X	X	1	1	1	1	1			1													1	1
Zone Time Moon Rise/Set	X	X		1																				
Speed by RPM	X	X		X									3											
Fuel Conservation	X	X											3											
Electronic Navigation	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Instruments and Accessories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Aids To Navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Charts, Navigation Publications, and Notices to Mariners	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Naut. Astronomy & Nav. Definitions	X	X		X	X																			
Chart Sketch																								4
Seamanship:																								
Marlinspike Seamanship				X	X	X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X
Purchases, Blocks and Tackle				X	X	X	X			X	X	X		X		X	X	X	X	X	X	X	X	X
Small Boat Handling Under Oars or Sail				X	X								X	X										
Watchkeeping:																								
COLREGS	X	X	X	X	X	X	X	X	5	X	5		5	5	5	5	5					X	X	5
Inland Navigational Rules	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Basic Principles, Watchkeeping	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X			
Navigation Safety Regs. (33 CFR 164)	X	X		X	X								X	X			X					6	6	6
Radar Equipment:																								
Radar Observer Certificate	X	X	X	X	X	X	1			1			X	X			X					X	X	X
Compass-Magnetic and Gyro:																								
Principles of Gyro Compass	X	X	X	X	X	X							X	X	X	X						X	X	
Principles of Magnetic Compass	X	X	X	X	X	X						X	X	X	X	X	X	X	X	X	X	X	X	X
Magnetic Compass Adjustment	X	X											X	X										
Gyro Compass Error/Correction	X	X	X	X	X	X	7				X	X	X	X	X	X	7					X	X	X
Magnetic Compass Error/Correction	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Determination of Compass Error:																								
Azimuth (Any Body)	X	X		1																				
Azimuth (Sun Only)			1		X	1	1			1			3									1	1	
Amplitude (Any Body)	X																							
Amplitude (Sun Only)		X	1	X	X	1	1			1			3									1	1	
Deviation Table Construction	X	X	1	X	X								3											
Terrestrial Observation		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Gyro Controlled Systems	X	X	X	X		X																		
Operation & Care of Main Gyro Systems	X	X	X	X		X																		
Meteorology and Oceanography:																								
Characteristics of Weather Systems		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ocean Current Systems		X	X	X	X																	X	X	
Weather Charts and Reports		X	X	X	X		X			X												X		

TABLE 10.910-2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Tides and Tidal Currents:																								
Extensive Tidal Effects	X	X	X																					
Terms and Definitions		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Publications		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Calculations		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Ship Maneuvering and Handling:																								
Approaching Pilot Vessel or Station	X	X	X			X																		X
Shiphandling in Rivers, Estuaries	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Maneuvering in Shallow Water	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Interaction with Bank/Passing Ship	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Berthing and Unberthing	X	X	X			X	X	X	X	X			X	X	X		X	X	X		X	X		X
Anchoring and Mooring		X	X	X	X	X	X	X	X	X			X	X	X	X	X					X	X	X
Dragging, Clearing Fouled Anchors		X	X	X	X	X	X						X	X	X	X	X					X		
Drydocking, with & without Prior Damage		X	X																					
Heavy Weather Operations		X	X				X	X	X								X					X	X	
Maneuvering for Launching of Lifeboats and Liferafts in Heavy Weather		X	X				X			X			X		X							X	X	
Receiving Survivors From Lfbts/Lfrfts		X	X				X			X	X													
General: Turn Circle, Pivot Point, Advance and Transfer				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Determine Maneuvering Characteristics of Major Vessel Types		X		X	X																			
Wake Reduction		X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Ice Operations/Ice Navigation	X	X	X			X				X	X	X	X	3	X	3								
Towing Operations		X	X	X	X	X	X			X	X	X		X		X	X	X	X	X	X			
Ship Stability, Construction, and Damage Control:																								
Principles of Ship Construction		X	X	X	X		X						X	3	X	3	X	X	X					
Trim and Stability	X	X	X	X	X	X	X			X	X	X	X	3	X	3	X	X	X		X	X	X	
Damage Trim and Stability	X	X	X			X	7																	
Stability, Trim, and Stress Calculation	X	X	X	X			7																	
Vessel Structural Members		X	X	X	X	X	7							X	X	3	7							
IMO Ship Stability Recommendations	X	X																						
Damage Control	X	X	X			X		7								7								
Change in Draft Due to Density	X	X																						
Ship Power Plants:																								
Marine Power Plant Operating Principles		X	X				7						X		X		7	X	X					
Ships' Auxiliary Machinery		X	X									X			X			X	X					
Marine Engineering Terms		X	X				7						X		X		7	X	X					
Small Engine Operations and Maintenance							X	X	X								X			X				
Cargo Handling and Stowage:																								
Cargo Stowage and Security, Including Cargo Gear		X	X	X	X	X	7						X	X	X	X	7	X	X	X				
Loading and Discharging Operations		X	X	X	X	X							X	X	X	X		X	X	X				
International Regulations for Cargoes, Especially IMDG	X	X	X																					
Dangerous/Hazardous Cargo Regulations	X	X	X	X	X	X							X	X	X	X		X	X	X				
Tank Vessel Safety		X	X	X	X	X							X	X	X	X		X	X	X				
Cargo Piping and Pumping Systems		X	X	X	X	X							X	X	X	X		X	X	X				
Cargo Oil Terms and Definitions		X	X	X	X	X							X	X	X	X		X	X	X				
Ballasting, Tank Clean., & Gas Free Ops		X	X	X	X	X						X	X	X	X		X	X	X					
Load on Top Procedures		X	X	X	X	X						X	X	X	X		X	X	X					
Barge Regulations (Operations)										X	X	X												
Fire Prevention and Firefighting Appliances:		X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Organization of Fire Drills		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Classes and Chemistry of Fire		X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Firefighting Systems		X	X	X	X	X	7			X	X	X	X	X	X	X	7	X	X	X	7	X	X	
Firefighting Equip. and Regulations							X															X		
Firefighting Equip. & Regs. for T-Boats																	X							
Basic Firefighting and Prevention		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Procedures:																								
Ship Beaching Precautions		X	X										X		X									
Actions Prior To/After Grounding		X	X										X		X			X	X					
Refloating a Grounded Ship		X	X										X		X			X	X					
Collision		X	X				X	X		X	X	X	X		X			X	X			X		
Temporary Repairs		X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Passenger/Crew Safety in Emergency		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Fire or Explosion		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Abandon Ship Procedures		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Steering		X	X	X									X		X			X	X				X	X
Rescuing Surv. From Ship/Airc. in Dist		X	X	X	X	X	X	X		X			X	X	X	X	X	X	X	X				
Man Overboard Procedures		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Towing	X	X	X				X			X														
Medical Care:																								
Knowledge and use of:																								
Int'l. Medical Guide for Ships		X	X																					
Ship Med. Chest and Med. Aid at Sea		X	X																					
Medical Sec., Inter. Code of Signals		X	X	X	X																			
1st Aid Guide: Accidents with Dangerous Goods		X	X																					
First Aid		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Maritime Law:																								
International Maritime Law:																								
Int'l. Convention on Load Lines	X	X	X																					
SOLAS	X	X	X				7																	
MARPOL 73/78	X	X	X	X	X	X																		

TABLE 10.910–2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
International Health Regulations	X	X	X																					
Other International Instruments for Ship/Pass./Crew/Cargo Safety	X	X	X																					
National Maritime Law:																								
Load Lines	X	X	X			X	X			X	X		3	3	3	3	7							
Cert. and Documentation of Vessels	X	X	X				X	X	X	X	X	X	X		X		X	X	X		X	X		
Rules & Regs. for Inspected Vessels	X	X	X	X	X	X	7						X	X	X	X	7	X	X	X	7			
Rules & Regs. for Inspected T-Boats							X										X				X			
Rules and Regs for Uninsp. Vessels							X	X	X	X	X	X					X				X	X	X	
Pollution Prevention Regulations	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pilotage	X	X	X																					X
Licensing & Certification of Seamen	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Shipment and Discharge, Manning	X		X				X			X			X		X			X	X					
Title 46 U.S. Code	X	X	X										X		X			X	X					
Captain of the Port Regulations, Vessel Traffic Service Procedures for the Route Desired																								X
Shipboard Management and Training:																								
Personnel Management	X	X	X										X		X			X	X					
Shipboard Organization	X	X	X										X		X			X	X					
Required Crew Training	X	X	X										X		X			X	X					
Ship Sanitation	X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Vessel Alteration/Repair—Hot Work	X	X	X				X						X		X			X	X					
Safety	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Ship's Business:																								
Charters	X	X	X																					
Liens, Salvage	X	X	X																					
Insurance	X	X	X																					
Entry, Clearance	X	X	X																					
Certificates and Documents Required	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Communications:																								
Flashing Light	X	X		X	X																			
Radiotelephone Communications		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Radiotelegraphy Emerg. Dist. Signals		X		X	X																			
Signals: Storm/Wreck/Dist./Special		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	
International Code of Signals		X	X	X	X																			
Lifesaving:																								
Survival at Sea		X	X	X	X	X	X			X												X	X	
Lifesaving Appliance Regulations		X	X	X	X	X	7						X	X	X		7	X	X	X	7			
Lifesaving Appliance Regs. for T-Boats							X										X				X			
Lifesaving Appliance Operation		X	X	X	X	X	7	X	X	X	X		X	X	X	X	7	X	X	X	7	X	X	
Lifesaving Appliance Ops. for T-Boats							X										X				X			
Search and Rescue:																								
Search and Rescue Procedures	X	X	X																					
AMVER	X	X	X																					
SAIL/AUXILIARY SAIL VESSELS ADDENDUM (8):																								
Any other subject considered necessary to establish the applicant's proficiency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

1—For ocean routes only.
2—River chart navigation only.
3—Topic covered only on Great Lakes specific module(s) taken for "Great Lakes and inland" routes.
4—Including recommended courses, distances, prominent aids to navigation, depths of waters in channels and over hazardous shoals, other important features of the route, such as character of the bottom. The OCMI may accept chart sketching of only a portion or portions of the route for long or extended routes.
5—Take COLREGS if license not limited to non-COLREG waters.
6—For licenses over 1600 gross tons.
7—For licenses over 100 gross tons.
8—Sail vessel safety precautions, rules of the road, operations, heavy weather procedures, navigation, maneuvering, and sailing terminology. Applicants for sail/auxiliary sail endorsements to master, mate or operator of uninspected passenger vessels licenses are also tested in the subjects contained in this addendum.

§ 10.950 [Amended]

61. In § 10.950, table 10.950 is revised to read as follows:

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unin. ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
General Subjects:																
Prints and Tables	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Pipes, Fittings, Valves	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Hydraulics	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Bilge Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Sanitary/Sewerage Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Freshwater Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P-T	P	P	P
Lubricants	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Lubrication Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Automation Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unin. Ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Propellers/Shafting Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Machine Shop	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Distilling Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Pumps	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Compressors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Administration	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P	P	P
Governors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P
Cooling Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Bearings	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Instruments	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Ship Construction and Repair	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
Steering Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Deck Machinery	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Ventilation Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P
Thermodynamics	T	T	T	T	T	T	T	T								
Watch Duties	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Refrigeration and Air Conditioning:																
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
Air Conditioning Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Refrigeration Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Electricity:																
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
General Maintenance	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Generators	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Motors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Motor Controllers	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Propulsion Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P-T	P-T	P	P
Distribution Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Electronic Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P
Batteries	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Communications	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P	P
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Steam Generators:																
Steam	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T		P	P	P	
Main Boilers	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Auxiliary Boilers		P-T		P-T		P-T		P-T		P-T		P-T	P	P		P
Feedwater Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P-T		P	P	P-T	
Condensate Sustems	P-T	P-T	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Recovery Systems	P-T	P-T	P-T	P	P-T	P	P-T	P	P-T		P-T		P	P	P-T	
Fuel	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P
Fuel Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P
Boiler Water	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T	P	P	P	P-T	
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P	P	P-T	
Automation Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P	P	P-T	
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P
Steam Engines:																
Main Turbine	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Auxiliary Turbine	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Reciprocating Machines	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Governor Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Control Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Automation Systems	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Lubrication Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Drive Systems	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Safety	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Casualty Control	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Motor:																
Main Engines		P-T		P-T		P-T		P-T		P-T		P-T	P-T	P-T		P-T
Auxiliary Engines	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T
Starting Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Lubrication Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fuel	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fuel Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Combustion Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Intake Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Exhaust Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Cooling Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Supercharging Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Drive Systems	P	P-T	P	P-T	P	P-T	P	P-T		P-T		P-T	P-T	P-T		P-T
Control Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unin. ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
Automation Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Governors	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Turbines	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Safety:																
Fire	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fire Prevention	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fire Fighting	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Flooding	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Dewatering	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Stability and Trim	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Damage Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Emergency Equipment and Lifesaving Appliances.	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
General Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
First Aid	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Dangerous Materials	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Pollution	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Inspections and Surveys	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
U.S. Rules and Regulations	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
International Rules and Regulations	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P

P=Practical Knowledge.
T=Theoretical Knowledge.

PART 12—CERTIFICATION OF SEAMEN

62. The authority citation for Part 12 continues to read as follows:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

63. Section 12.20–1 is amended by revising paragraph (c) to read as follows:

§ 12.20–1 General requirements.

* * * * *

(c) A currently valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot of inspected, mechanically propelled vessels, or engineer authorizes the holder to serve as tankerman upon inspected vessels of the United States required to have a certificated tankerman without having a separate certificate as tankerman.

* * * * *

PART 15—MANNING REQUIREMENTS

64. The authority citation for Part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

65. In the table of contents for Part 15, the heading of § 15.901 is revised to read as follows:

§ 15.901 Inspected vessels of less than 100 gross tons.

66. Section 15.301(a) is amended by adding the definition of "self-propelled" in alphabetical order to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

"Self-Propelled" has the same meaning as the terms "propelled by machinery" and "mechanically propelled." This term would also include vessels fitted with both sails and mechanical propulsion.

* * * * *

67. Section 15.401 is revised to read as follows:

§ 15.401 Employment and service within restrictions of license or document.

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, or merchant mariner's document, unless the individual holds a valid license, certificate of registry, or merchant mariner's document, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the license, certificate of registry, or merchant mariner's document.

68. Section 15.501 is amended by revising paragraph (b) to read as follows:

§ 15.501 Certificate of Inspection.

* * * * *

(b) The manning requirements for a particular vessel are determined by the OCMI after consideration of the applicable laws, the regulations in this part, and all other factors involved, such as: Emergency situations, size and type of vessel, installed equipment, proposed routes of operation including frequency of port calls, cargo carried, type of service in which employed, degree of automation, use of labor saving devices, and the organizational structure of the vessel.

69. Section 15.801 is revised to read as follows:

§ 15.801 General.

The OCMI will determine the specific manning levels for vessels required to have certificates of inspection by Part B of Subtitle II of Title 46 U.S. Code. The masters or individuals in command of all vessels, whether required to be inspected under 46 U.S.C. 3301 or not, are responsible for properly manning vessels in accordance with the applicable laws, regulations, and international conventions.

70. Section 15.805 is amended by adding a new paragraph (a)(4) to read as follows:

§ 15.805 Master.

(a) * * *

(4) Every inspected small passenger vessel.

* * * * *

71. Section 15.810 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively, by adding a new paragraph (a), and by revising the introductory text of newly designated paragraph (b) and

revising paragraph (d) to read as follows:

§ 15.810 Mates.

(a) The OCMI determines the minimum number of licensed mates required for the safe operation of inspected vessels.

(b) The minimum number of licensed mates required to be carried on every inspected, self-propelled, seagoing and Great Lakes vessel, and every inspected, seagoing, passenger vessel must not be less than the following, except when reductions are authorized under paragraph (e) of this section:

* * * * *

(d) The OCMI may increase the minimum number of mates indicated in paragraph (b) of this section where he or she determines that the vessel's characteristics, route, or other operating conditions create special circumstances warranting an increase.

* * * * *

72. Section 15.901 is revised to read as follows:

§ 15.901 Inspected vessels of less than 100 gross tons.

(a) An individual holding a license as mate or pilot of inspected, self-propelled vessels of over 200 gross tons is authorized to serve as master on inspected vessels of less than 100 gross tons within any restrictions on the individual's license.

(b) An individual holding a license authorizing service as master or mate of inspected, self-propelled vessels is authorized to serve as master or mate, respectively, of non-self-propelled vessels other than sail vessels, within any restrictions on the individual's license.

(c) An individual holding a license authorizing service as master or mate of inspected, sail vessels is authorized to serve as master or mate, respectively, of other non-self-propelled vessels, within any restrictions on the individual's license.

(d) An individual holding a license authorizing service as master or mate of inspected, auxiliary sail vessels, is authorized to serve as master or mate, respectively, of self-propelled and non-self-propelled vessels, within any restrictions on the individual's license.

73. Section 15.905 is revised to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license as master or pilot of inspected, self-propelled vessels is authorized to serve as operator of uninspected passenger vessels within any restrictions, other than gross tonnage limitations, on the individual's license.

(b) An individual holding a license as mate of inspected, self-propelled vessels, other than Great Lakes, inland, or river vessels of not more than 200 gross tons, is authorized to serve as operator of uninspected passenger vessels, within any restrictions, other than gross tonnage limitations, on the individual's license.

74. Section 15.910 is amended by revising paragraphs (a) and (b) to read as follows:

§ 15.910 Uninspected towing vessels.

(a) An individual of 21 years or more of age holding a license as master of inspected, self-propelled vessels, or a license as mate or pilot of inspected, self-propelled vessels of more than 200 gross tons, is authorized to serve as operator of uninspected towing vessels within any restrictions on the indivdual's license. A licensed mate or pilot authorized by this section to serve as operator of uninspected towing vessels may only be in command of the vessel on domestic routes.

(b) Whenever an uninspected towing vessel is under the direction and control of a person holding a license for service only as second-class operator of uninspected towing vessels, a person holding a license authorizing service as operator of uninspected towing vessels must be on board as a member of the crew.

* * * * *

75. Section 15.915 is revised to read as follows:

§ 15.915 Engineer licenses.

The following licenses authorize the holder to serve as noted, within any restrictions on the license:

(a) A designated duty engineer license authorizes service as chief or assistant engineer on vessels of not more than 500 gross tons in the following manner:

(1) A designated duty engineer limited to vessels of not more than 1000 horsepower or 4000 horsepower may serve only on near coastal, Great Lakes, or inland waters;

(2) A designated duty engineer with no horsepower limitations may serve on any waters.

(b) A chief engineer (limited-oceans) license authorizes service as chief or assistant engineer on vessels of any gross tons on inland waters and of not more than 1600 gross tons on ocean, near coastal, or Great Lakes waters.

(c) A chief engineer (limited-near coastal) license authorizes service as chief or assistant engineer on vessels of any gross tons on inland waters and of not more than 1600 gross tons on near coastal or Great Lakes waters.

(d) An assistant engineer (limited-oceans) license authorizes service on vessels of any gross tons on inland waters and of not more than 1600 gross tons on ocean, near coastal, or Great Lakes waters.

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

76. The authority citation for Part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 1804; 49 CFR 1.45, 1.46; § 30.01–2 also issued under the authority of 46 U.S.C. 3507.

77. Section 30.10–71 is revised to read as follows:

§ 30.10–71 Tankerman—TB/ALL.

The term "tankerman" means any person holding a certificate issued by the Coast Guard attesting to his or her competency in the handling of flammable or combustible liquid cargo in bulk or is any person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot of inspected, mechanically propelled vessels, or engineer.

PART 31—INSPECTION AND CERTIFICATION

78. The authority citation for Part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

79. Section 31.15–1 is amended by revising paragraph (b) to read as follows:

§ 31.15–1 Licensed officers and crews—TB/ALL.

* * * * *

(b) In all cases where a certificate of inspection does not require at least two licensed individuals authorized to serve as tankerman by § 30.10–71 of this Subchapter, the Officer in Charge, Marine Inspection, shall enter in the certificate of inspection issued to any manned tank vessel subject to the regulations in this Subchapter the number of the crew required to be certificated as tankermen. If the total complement of a tank vessel is either one or two persons, only one such person need be a certificated tankermen. If the total complement exceeds two, only two such persons need be certificated tankermen.

80. Section 31.15–5 is revised to read as follows:

§ 31.15–5 Tank barges—B/ALL.

Tank barges subject to the provisions of this subchapter need not be manned unless, in the judgment of the Officer in Charge, Marine Inspection, such manning is necessary for the protection of life and property and for the safe operation of the vessel.

81. The authority citation for Part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 35—OPERATIONS

82. Section 35.35–1 is amended by revising paragraph (b) to read as follows:

§ 35.35–1 Men on duty—TB/ALL.

* * * * *

(b) In the case of unmanned barges, the owners, masters or persons in charage of such barges shall insure that a person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or a certificated tankerman is on duty to perform transfer operations, which licensed person or certificated tankerman shall be considered as the person in charge of the unmanned tank barge.

* * * * *

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

83. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 46 CFR 1.46.

84. Section 151.03–53 is revised to read as follows:

§ 151.03–53 Tankerman.

A tankerman is a person holding a certificate issued by the Coast Guard attesting to his or her competency in handling flammable or combustible liquid cargo in bulk or any person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer.

85. Section 151.45–4 is amended by revising paragraph (a)(1) to read as follows:

§ 151.45–4 Cargo handling.

(a) * * *

(1) When the product to be transferred has flammable or combustible characteristics as defined in this chapter, the shipper and the owners, charterer, agent, masters, or persons in charge of such barges shall insure that a person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or a certificated tankerman is on duty to perform transfer operations. This person is considered as the person in charge of the unmanned tank barge. In addition, the Officer in Charge, Marine Inspection, shall be furnished satisfactory, documentary evidence that this person is trained in, and capable of performing competently, the necessary operation which relates to the transfer of the specific cargo.

* * * * *

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 185—OPERATIONS

86. The authority citation for Part 185 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46.

87. Section 185.25–20 is amended by revising paragraph (b) to read as follows:

§ 185.25–20 Test of emergency position indicating radio beacon (EPIRB).

* * * * *

(b) The EPIRB's battery is replaced after the EPIRB is used and before the date required by FCC regulations in 47 CFR Part 80.

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

SUBCHAPTER O—POLLUTION

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

Subpart C—Oil Transfer Personnel, Procedures, Equipment, and Records

88. The authority citation for Part 155 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b); E.O. 11735; 49 CFR 1.46(m), unless otherwise noted.

89. Section 155.710 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 155.710 Qualifications of person in charge.

(a) * * *

(1) For oil transfer operations on self-propelled tank vessels, that individual holds a valid license as master or mate on inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, except that the person in charge of tank cleaning operations may be a tankerman certificated for the grade of cargo last carried; or,

(2) For tank barges, the individual holds a valid license as master or mate on inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or is a tankerman certificated for the grade of cargo carried; or,

* * * * *

Date: December 16, 1988.

Clyde T. Lusk, Jr.,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 89–3 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[Gen. Docket 87–505; DA 88–1850]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The following corrections are made in the Federal Communications Commission's (FCC's) preamble and appendix to its rules relating to the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The rules were published in the Federal Register on November 23, 1988 [53 FR 47535].

FOR FURTHER INFORMATION CONTACT: Jim Ferris at (202) 634–1830.

SUPPLEMENTARY INFORMATION: The FCC promulgated rules and regulations which replaced its existing Restoration Priority procedures with a new NSEP TSP System having broader scope and applicability. The revisions thereby updated Part 64 of FCC rules governing priority treatment of provisioning and restoration of common carrier-provided telecommunications services during

emergencies. Conforming amendments were made to certain delegated authorities contained in Part 0 of FCC rules.

* * * * *

The following corrections are made in Gen. Docket 87-505; FCC 88-341, containing the amended FCC rules which replaced the Restoration Priority System with a new NSEP TSP System which modernizes the means by which the nation is assured that essential communications services provided by common carriers receive priority provisioning and restoration. The amended rules were published in the Federal Register on November 23, 1988 [53 FR 47535].

1. Page 53 FR 47535:

1st and 3rd columns: change the effective date from December 23, to December 27, 1988.

2. Page 53 FR 47536:

1st column, 26th line, change "System" to "Service" so that the line reads: Telecommunications Service Priority

3. Page 53 FR 47537:

1st column, 26th line, delete the end of quote in the first word services," so that the line reads: services, or "NSEP services," means

3rd column, 10th line, change "and" to "or" so that the line reads: (a) Interstate or foreign

3rd column, 25th and 26th lines, delete the phrase "and components of services" so that the 25th and 26th lines read: restoration of services that the selected vendor is able to

3rd column, 40th line, change "a" to "that" so that the line reads: owned by that service vendor. Such control

4. Page 53 FR 47539:

1st column, 50th line, add the word "requests" so that the line reads: (b) Comply with NSEP service requests by:

1st column, 65th line, delete the phrase "switched (e.g., cellular)" so that the remaining line reads: (2) Restore NSEP

2nd column, 2nd line, delete the designation "E" so that the line reads: priority level assignment (i.e., "1", "2",

3rd column, 9th line from end, add "or restoring" so that the line reads: provisioning or restoring NSEP services.

5. Page 53 FR 47541

2nd column, 43rd line, change first full sentence of para. 12.c.(2) to read: This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government posture before, during, and after crises situations.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-52 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-254; RM-6219]

Radio Broadcasting Services; La Monte, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots Channel 246A to La Monte, Missouri, as that community's first FM broadcast service, in response to a petition filed by Johnson County Broadcasters, Inc. Petitioner filed supporting comments. The coordinates for Channel 246A at La Monte are 38-45-36 and 93-20-30 which includes a site restriction 7.4 kilometers east of the community. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will open on February 14, 1989, and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-254, adopted November 18, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments under Missouri is amended by adding La Monte, Channel 246A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-54 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-78; RM-6185]

Radio Broadcasting Services; Leland, North Carolina

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Leland Broadcasting Group, allots Channel 231A to Leland, North Carolina, as the community's first local FM service. Channel 231A can be allotted to Leland in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) southwest to avoid a short-spacing to unoccupied and unapplied for Channel 229A at Wrightsville Beach, North Carolina, and to Station WZBK, Channel 232A, Wallace, North Carolina. The coordinates for this allotment are North Latitude 34-11-09 and West Longitude 78-05-13. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will open on February 14, 1989; and close on March 16, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-78, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by adding the following entry, Leland, Channel 231A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-55 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-44; RM-6083]

Television Broadcasting Services; Goldfield, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission, at the request of Sarkes Tarzian, Inc., licensee of Station KTVN, Channel 2, Reno, Nevada, substitutes Channel 7- for Channel 2- at Goldfield, Nevada. The substitution of channels eliminates a short-spacing between the Goldfield allotment and petitioner's application seeking to relocate its transmitter from Red Peak to McClellan Peak. Channel 7- can be allotted to Goldfield in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 37-42-24 and West Longitude 117-14-06. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 13, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-44, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Goldfield, Nevada, is amended by removing Channel 2- and adding Channel 7-.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-57 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the Exclusive Economic Zone (EEZ) for Spanish mackerel from the Atlantic migratory group. The Secretary has determined that the commercial allocation for Spanish mackerel from the Atlantic migratory group was reached on December 29, 1988. This closure is necessary to protect the Atlantic Spanish mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 29, 1988, until 12:00 p.m. (midnight), local time, March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations, at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Atlantic migratory group of Spanish mackerel for the current fishing year (April 1, 1988, through March 31, 1989). Those regulations set the commercial allocation at 3.04 million pounds (53 FR 25611, July 8, 1988).

Under § 642.22(a), the Secretary is required to close any segment of the Spanish mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial allocation for the Atlantic migratory group of Spanish mackerel was reached on December 29, 1988. Hence, the commercial fishery for Spanish mackerel from the Atlantic migratory group is closed effective 12:01 a.m., December 29, 1988, through March 31, 1989, the end of the fishing year. The closure applies in the EEZ from the Virginia/North Carolina border southward to a line extending directly east from the Dade/Monroe County, Florida, boundary (2°20.4' N. latitude).

The Secretary previously determined that the recreational allocation for Spanish mackerel from the Atlantic migratory group had been reached. The bag limits for this group were reduced to zero on October 3, 1988 (53 FR 39097, October 5, 1988). With closure of the commercial fishery, through March 31, 1989, Spanish mackerel from the Atlantic migratory group may not be possessed in the EEZ, regardless of where taken; such Spanish mackerel caught in the EEZ must be returned immediately to the sea. Through March 31, 1989, Spanish mackerel from the Atlantic migratory group taken in the EEZ may not be purchased, bartered, traded or sold. The latter prohibition does not apply to trade, in Atlantic group Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 642

Fisheries, fishing.

Dated: December 29, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30260 Filed 12-29-88; 3:48 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1124-88]

Judicial Recommendations Against Deportation; Controlled Substance Violations

AGENCY: Immigration and Naturalizations Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule will require additional data to be provided by an alien seeking a judicial recommendation against deportation in order to help identify him/her to the Immigration and Naturalization Service ("Service"). This change is necessary to ensure that the Service will be given sufficient information necessary to identify the alien who is the subject of a motion for a judicial recommendation against deportation. This change will permit the Service sufficient time to obtain any file relating to the alien and to prepare a response, if desired, to the alien's motion for a judicial recommendation against deportation.

DATE: Comments must be received by no later than February 3, 1989.

ADDRESS: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Immigration and Naturalization Service, 425 I Street NW., Room 7240, Washington, DC 20536, Telephone: (202) 633-3098.

SUPPLEMENTARY INFORMATION: This proposed rule will place the burden on the alien or his criminal defense counsel to provide the district director receiving notice of the motion with a copy of any order granting a judicial recommendation against deportation, certified as a true copy by the clerk of the court granting said motion. In deportation, exclusion, or rescission proceedings, the burden will be upon the alien to present to an immigration judge a certified copy of the judicial recommendation against deportation when such recommendation will be the basis of denying any charges brought by the Service in proceedings against the alien. This change is necessary to ensure that the granting of a judicial recommendation against deportation is known to the Service and/or the immigration judge to avoid conducting unnecessary hearings. Clearly, the alien is in a better position than the Service to identify if the motion was granted by the sentencing court in his/her particular case, considering the countless number of such motions made by criminal alien defendants in any given year. This proposed rule will cause judicial recommendations that are granted subsequent to this rule becoming final to be negated if the data required by this rule is not substantially provided.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 241

Administrative practice and procedure, Aliens, Deportation.

Accordingly, Chapter I Part 241, of Title 8 of the Code of Federal Regulations is amended as follows:

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION; CONTROLLED SUBSTANCE VIOLATIONS

1.The authority citation for Part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357.

2. Section 241.1 is revised to read as follows:

§ 24.1 Notice; recommendation.

(a) For the purpose of clause 2 of section 241(b) of the Act, notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located shall be regarded as notice to the Service. The notice shall be transmitted by personal service to the district director by the defendant or by counsel for the defense, at least 15 days prior to the court hearing on whether a recommendation against deportation shall be made. When less than 15 days' notice is received an objection shall be interposed to the recommendation against deportation on the ground that due notice was not received. Failure to furnish due notice for any reason, including the foregoing, negates any judicial recommendation against deportation which may have been granted.

(b) The notice to the district director will include the true and complete name of the defendant and the aliases by which he or she has been known or has himself or herself used. Notice will also include the country of which defendant is a citizen, his or her date and place of birth, alien registration number(s), if any, and the date, place and manner by which he or she last entered the United States. If the information required on the notice is unavailable and cannot be reasonably discovered, a declaration under the penalty of perjury shall be attached to the notice stating the particular information that is unavailable, the reason it is unavailable and what steps have been taken to obtain the required information. The notice shall be accompanied by either a copy of defendant's alien registration, if any, or a declaration under the penalty of perjury that no such registration exists. The forms listed in 8 CFR 264.1(b) shall constitute evidence of registration. If the notice fails to include substantially the information required above, then the notice shall be regarded as invalid and whatever Service proceedings are warranted shall be instituted irrespective of the recommendation against deportation.

(c) The district director, or an official acting for him or her, in presenting representations to the court, shall advise the court the effect a favorable recommendation would have upon the

alien's present and prospective deportability.

(d) It shall be the duty of the defendant or defense counsel, to forward by personal service, a copy of the recommendation certified by the clerk of the court granting said recommendation to the district director receiving the notice. This shall be regarded as notice to the Attorney General. In any deportation, exclusion, or rescission proceeding, it shall be the duty of the respondent or applicant to present to the immigration judge a certified copy of any judicial recommendation against deportation when such recommendation will be the basis of denying any charges brought by the Service in the proceedings against the respondent or applicant.

Dated: September 30, 1988.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 89-39 Filed 1-3-89; 8:45 am]

BILLING CODE 4410-10-M

Federal Home Loan Bank Board

12 CFR Part 563

[No. 88-1393]

Date: December 22, 1988

Equity-Risk Investments

AGENCY: Fedeal Home Loan Bank Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing amendments to 12 CFR 563.9-8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidiaries, certain land loans and non-residential construction loans ("equity-risk investments"). The Board anticipates publishing an additional notice of proposed rulemaking to address broader equity investment issues within the next few months.

The proposal would amend the equity-risk investment regulation in two specific areas. First, the Board is proposing to extend its equity-risk investment regulation for 120 days, until August 14, 1989. This reuglation is currently scheduled to sunset on April 16, 1989. *See* 12 CFR 563.9-8(h). The Board believes that the additional 120 days will allow it to evaluate more carefully the empirical evidence resulting from the Board's recent proposal to amend its regulatory capital requirements and the report on equity-risk investment due to the Congress on February 10, 1989, pursuant to the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, 661, § 1203 (1987), before deciding the best course to take with respect to the future of the equity-risk investment rule.

Second, it would eliminate the exclusion from the definition of "equity security" in 12 CFR 563.9-8(b)(2) for stock issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased by insured institutions on or after December 14, 1988 or some other appropriate date. Stock issued by these instrumentalities, as well as by other, similar, United States government-sponsored corporations would be expressly authorized for purposes of the equity-risk investment rule, however, pursuant to 12 CFR 563.9-8(d)(1).

DATE: Comments must be received on or before February 3, 1989.

ADDRESSES: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney (202) 377-6897; Deborah Dakin, Regulatory Counsel (202) 377-6445; Karen Solomon, Associate General Counsel (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robert Fishman, Senior Policy Analyst (202) 331-4592; John Robinson, Director, Policy Analysis (202) 331-4587, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On February 27, 1987, the Board significantly modified the equity-risk investment rule. Board Res. No. 87-215 (Feb. 27, 1987), 52 FR 8188 (March 16, 1987). As part of that amendment, the Board placed a sunset date on the then-amended rule of April 16, 1989. *See* 52 FR at 8206. The Board explained the reason for the sunset provision as follows:

> The Board has determined that the direct investment rule will expire on April 16, 1989 unless further action is taken by the Board. The Board continues to believe that it is important to reexamine the issues addressed by this rulemaking in order to determine whether this approach has been effective in controlling risk and whether further regulatory action is required.

Id. at 8205.

In CEBA, Congress directed the Board to provide notice to the banking committees not less than 90 days before final approval is given by the Board to any regulation that repeals or modifies any regulation that limits direct investment activities. CEBA 1203(c)(1), 101 Stat. at 662. That notice is to be given in the form of a report describing the proposed regulation and the reasons for the proposed regulation, including the effect of the regualtory change on the FSLIC. *Id.* Today's action is intended to satisfy that requirement.

Since its inception, the equity-risk investment regulation has been an important component of the Board's regulatory oversight of the safe and sound operation of all insured institutions. The Board believes that the regulation has served a useful function in controlling risks. As the sunset date of April 16, 1989, approaches, one alternative available to the Board would be to remove the sunset date without further changes to the rule. For the following reasons, however, the Board is considering whether it should at this time simply defer the sunset date of the current equity-risk investment rule for 120 days in order to allow the Board and its staff additional time to consider the empirical data that will flow from two related Board actions.

First, on December 15, 1988, the Board approved a proposal that would substantially amend the Board's minimum regulatory capital regulation, 12 CFR 563.13 ("capital proposal").[1] A major issue covered in the capital proposal was a discussion of the amount of capital an insured institution must maintain against its assets, including equity-risk investments. Specifically, the Board proposed that each asset be assigned to a risk category based on the degree of credit risk associated with the obligor or nature of the obligation.[2] The Board proposed that all equity-risk investments be placed in a 300 percent risk category (in comparison with a 100 percent risk category for commercial loans). It also discussed the possibility of establishing more than one risk category for equity-risk investments.

[1] Board Res. No. 88-1342 (Dec. 15, 1988), 53 FR 51800 (Dec. 23, 1988).

[2] This proposal uses the risk-weighting approach that was adopted by the international banking regulators in the Basle Agreement and has since been proposed by the federal banking regulators.

As an alternative to this risk-weighting treatment of equity-risk investments, the Board is also considering applying the so-called exclusion method to such investments. Under this alternative, equity-risk investments would not be considered under any risk category. Instead, an institution would exclude the amount of such investments from the calculation of its asset base for risk-weighting. It then would be required to add that amount directly to its capital requirement. This method would, therefore, require the institution to hold capital for its equity-risk investments on a dollar for dollar basis.

As part of the capital proposal, the Board requested comments, with supporting empirical data, on the following issues:

(1) Whether equity-risk investments should be considered in a credit-risk-weighting system at all; (2) whether and at what levels additional credit-risk categories should be assigned for various types of equity-risk investments; (3) how various types of equity-risk investments should be assigned to risk categories * * *.

The Board believes that it is important to correlate its action on the required capital and equity-risk regulations with respect to the viability of the current capital thresholds located at 12 CFR 563.9–8(c) and other related issues, including the relative riskiness of various equity-risk investments. The additional time provided by delaying the sunset of the equity-risk sunset provision would give the Board the benefit of studying the empirical evidence received in response to the proposed minimum capital regulation, as well as in-house studies performed in response to that portion of the capital proposal.

Second, in addition to work performed by Board staff in furtherance of a final capital regulation, the Board must also compile a report discussing several aspects of equity-risk investments as mandated by section 1203 of the CEBA. That report, to be submitted to the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs on or before February 10, 1989, will contain, among other things: (1) Analyses of the effect of direct investment activities on different sized insured institutions, state- and federally-chartered insured institutions, and insured institutions in each of the Supervisory Examinations Rating Classifications; (2) findings concerning the degree to which losses to the FSLIC were the result of direct investment activities; and (3) a comparison of the effects of direct investment activities made both prior to and on or after April 16, 1987.

Clearly, the information contained in this report will provide the Board and its staff additional data needed to make reasoned decisions as to both the viability of many subsections of the current equity-risk regulation and the necessity of limiting or modifying the current regulation. To that end, the Board believes that a short extension of the current equity-risk investment rule sunset date, from April 16, 1989 to August 14, 1989, would provide the Board the necessary time to study the empirical evidence available as a result of the aforementioned activities without a lapse in the Board's oversight in this critical area.

Fannie Mae/Freddie Mac Stock

In the definitional portion of the original equity-risk investment regulation (then referred to as the "direct investment rule"), the Board expressly exempted from the "equity security" definition, among other things, "stock issued by a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, [or] the Federal National Mortgage Association * * *" Board Res. No. 85–79–A (Jan. 31, 1985), 50 FR 6912, 6928 (Feb. 19, 1985) (codified at 12 CFR 563.9–8(b)(2)(i)). The Board is now, through this proposal, seeking comment on the inclusion of preferred stock issued by Freddie Mac and common stock issued by Fannie Mae as equity-risk investments.

On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit the sale of Freddie Mac preferred stock to the general public as of January 1, 1989. Before this time, Freddie Mac preferred stock was—and will continue to be until January 1, 1989—held primarily by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. The Freddie Mac Board of Directors approved a plan implementing the July 13, 1988 vote on August 30, 1988: in exchange for each share of the then-existing class of preferred stock and a cash payment of $7.00 per old share, Freddie Mac offered current holders four shares of a new class of senior participating preferred stock without transfer restrictions.

Freddie Mac's Board of Directors also acted on July 13, 1988, to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989. As a result of the four-for-one stock exchange approved on August 30, 1988, that limit was increased fourfold to 2.4 million shares of the new preferred stock.

Given the fact that the stock may now be publicly traded—with all of the concomitant risks and volatility associated with a publicly traded issue—and the fourfold rise in the amount of such stock any holder could own, the Board is now considering whether Freddie Mac preferred stock is subject to the same risks attending investment in equity securities generally.[3] Therefore, the Board proposes to remove the exclusion in the equity-risk definition of "equity security" for Freddie Mac preferred stock.[4]

Moreover, upon reevaluation, the Board also proposes for comment the removal of the exclusion in the equity-risk definition of "equity security" for Fannie Mae common stock. The Board notes that Fannie Mae stock is also publicly traded on the New York Stock Exchange. In light of a reevaluation of the original decision to exclude the stock from the "equity security" definition and recent stock market fluctuations generally, however, the Board believes that there is no current justification for the exclusion of Fannie Mae common stock, given the fact that the stock is subject to the same risks as other equity securities.

The Board recognizes that a number of thrift institutions may have invested in Fannie Mae and Freddie Mac stock in reliance on the existing provision exempting that stock from the equity-risk investment thresholds. Therefore, today's proposal also amends the definition of "equity security" to provide that Freddie Mac preferred stock and Fannie Mae common stock held by insured institutions prior to December 14, 1988 would continue to be exempt from the "equity security" definition contained in 12 CFR 563.9–8(b)(2).[5] Selection of this date was deemed proper by the Board in order to eliminate any incentive for institutions to increase their holdings in those stocks in anticipation of any final rule. Nevertheless, the Board solicits comment regarding an appropriate grandfathering date.

Despite the fact that the Board today proposes to remove the provision excluding Fannie Mae and Freddie Mac

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[3] This treatment would be consistent with the Board's treatment of stock issued by the Student Loan Marketing Association ("Sallie Mae"). *See* 49 FR 48743, 48753 (Dec. 14, 1984).

[4] All 100,000 shares of Freddie Mac common stock are held by Federal Home Loan Banks, entities that are not subject to the equity-risk investment rule.

[5] Shares of the "when-issued" class of Freddie Mac preferred stock held by an institution prior to December 10, 1988, would be considered "held" on that date for purposes of this proposal, even though those shares will not be issued until January 2, 1989.

stock from the equity-risk definition of "equity security,' the Board believes firmly that such investments should be expressly authorized investments for equity-risk purposes, pursuant to 12 CFR 563.9–8(d)(1).[6]

At this time, the Board is proposing for comment the issue of whether the Board should, in addition, expressly authorize for equity-risk purposes investments in equity securities issued by all United States government-sponsored corporations.

One additional investment included in the proposed category of United States government-sponsored corporation equity securities would be the Class A common stock recently issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac"). The Board seeks comments on whether the Board should include Farmer Mac common stock specifically or stock issued by any United States government-sponsored corporation generally as authorized equity-risk investments.

The Board anticipates that it will publish for public notice and comment an additional notice of proposed rulemaking addressing broader concerns in the area of equity-risk investment than are within the scope of today's limited proposal.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The proposed rule treats all institutions identically regardless of their size for the reasons discussed in the **SUPPLEMENTARY INFORMATION** set forth above.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board proposes to amend Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 State. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. In § 563.9–8 the introductory texts of paragraphs (b), (b)(2) and (d)(1) are republished and paragraphs (b)(2)(i) and (d)(1)(iv) are revised and new paragraph (b)(2)(vi) is added to read as follows:

§ 563.9–8 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(b) *Definitions.* When used in this section:

* * * * *

(2) "Equity security" means any stock, certificate of interest of participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; or in general, any interest or instrument commonly known as an equity security; or loans having profit-sharing features which would be reclassified as equity instruments under generally accepted accounting principles (or the Corporation's accounting regulations if applicable); or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or any security carrying any warrant or right to subscribe to or purchase such a security; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing; *but does not mean* (1) stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Dvelopment Act of 1968; * * *; (vi) stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association held by an institution prior to December 14, 1988.

* * * * *

(d) *Equity-security investments*—(1) *Permissible investments.* The equity securities in which an institution may invest shall be limited to: * * * (iv) equity securities issued by any United States government-sponsored corporations, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation; * * *.

§ 563.9–8 [Amended]

3. Paragraph (h) of § 563.9–8 is amended by removing the date "April 16, 1989" and inserting in lieu thereof the date "August 14, 1989."

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–11 Filed 1–3–89; 8:45 am]

BILLING CODE 6720–01–M

[6] By expressly listing such investments in subparagraph (d)(1), the Board would be signifying that an insured institution could invest in Fannie Mae and Freddie Mac stock up to otherwise authorized thresholds, without having to acquire the approval of the institutions's Principal Supervisory Agent.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[Gen. Docket No. 88–550; FCC 88–388]

Government Next Generation Weather Radars in the 2900–3000 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action is proposing a new United States footnote to permit Government Next Generation Weather Radars (NEXRAD) to operate in the 2900–3000 MHz band on a co-primary

basis. The 2900–3000 MHz band is presently allocated to Government and non-Government Maritime Radionavigation on a primary basis and radiolocation on a secondary basis. The majority of NEXRADs will operate in the 2700–2900 MHz band, which is already allocated to the meteorological aids service. However, due to frequency congestion in certain cases, it will be necessary for NEXRAD to operate in the 2900–3000 MHz band. The new footnote will permit operation in the higher band under certain circumstances.

DATES: Comments are due February 3, 1989. Reply comments are due February 21, 1989.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Room 7105, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in General Docket No. 88–550, FCC 88–388, adopted November 29, 1988, and released December 14, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this *Notice* the Commission is considering whether to amend Part 2 of the Rules to permit Government Next Generation Weather Radar (NEXRAD) to utilize the 2900–3000 MHz band. The National Telecommunications and Information Administration (NTIA) has requested that NEXRAD, operating in the meteorological aids service, be allowed to share the 2900–3000 MHz band on a co-primary basis with the maritime radionavigation service. NEXRAD is a pulsed Doppler weather radar system designed to collect data and help predict weather conditions, and will replace aging existing weather radars with state of the art equipment. NEXRAD will principally operate in the 2700–2900 MHz band. However, in certain geographical areas operation in the 2700–2900 MHz band will not be technically feasible. In these instances, access to spectrum in the 2900–3000 MHz band will be required.

2. Adopting the new footnote is dependent upon the compatibility of NEXRAD with existing operations in the 2900–3000 MHz band. The U.S. Coast Guard operates maritime radionavigation stations in this band as part of our national maritime safety system. In addition, the 2900–3100 MHz band is used as the primary ship radionavigation band worldwide. Furthermore, many ships operate transponders to interrogate radiobeacons in this band. However, NTIA has stated that NEXRAD will rarely require assignments in this band. NTIA also indicated that the likelihood of interference between NEXRAD and existing systems will be minimized through proper site selection due to NEXRAD's unique technical characteristics. The Coast Guard concurs to the action proposed herein, given the assurance that coast and ship radionavigation stations will continue to be afforded protection against interference by the proper coordination of NEXRAD systems requiring assignment in the 2900–3000 MHz band. We believe that any potential interference issues can be resolved through the routine frequency coordination process of the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee.

3. We certify that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this proceeding because it will not have a significant economic impact on a substantial number of small entities.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

5. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1206 of the Commission's Rules, 47 CFR 1.1206 for rules governing permissible *ex parte* contacts.

Ordering Clause

6. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 393(f), 303(g), 303(r) and 332.

List of Subjects in 47 CFR Parts 2 and 80

Radio.

Proposed Rule Changes

Parts 2 and 80 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote US309 in column 4 for the 2900–3100 MHz band and by adding the text of footnote US309 to the list of footnotes at the end of the table as follows:

§2.106 Table of frequency allocations.

Government allocation (MHz)	Non-Government allocation (MHz)
(4)	(5)
* * *	* *
2900–3100	2900–3100
Maritime Radionavigation	Maritime Radionavigation
772 774 775	772 774 775
Meteorological Aids	Radiolocation
US309	US44 US309
Radiolocation	
US44	
* * *	* *

United States (US) Footnotes

* * * * *

US309—The band 2900–3000 MHz is also allocated on a primary basis to the Meteorological Aids Service. Operations in this service are limited to Government Next Generation Weather Radar (NEXRAD) systems where accomodation in the 2700–2900 MHz band is not technically practical and are subject to coordination with existing authorized stations.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation in Part 80 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In Section 80.375 paragraph (d)(2)(ii) is revised to read as follows:

§ 80.375 Radiodetermination frequencies.

* * * * *

(d) Radiodetermination frequency bands above 2400 MHz.

(2)* * *

(ii) The use of the 2900–3100 MHz, 5470–5650 MHz and 9300–9500 MHz bands for radiolocation must not cause harmful interference to the

radionavigation, Government radiolocation services. Additionally, the use of the 2900–3000 MHz band for radiolocation must not cause harmful interference to the Government meteorological aids service.

* * * * *

Federal Communiciations Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–129 Filed 1–3–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–51, RM–6076, RM–6265]

Radio Broadcasting Services; Evans, Martinez and Warrenton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Further Notice and Memorandum Opinion and Order.

SUMMARY: By this document the Commission denies the request of Evans Broadcasters to allot Channel 299A to Evans, Georgia, as its first local FM service. The Commission is unable to determine that Evans is a community for allotment purposes. The Commission is also issuing a Further Notice to provide an opportunity to file competing expressions of interest in the use of Channel 299C2 at Martinez, GA. Columbia County Broadcasters, in its counterproposal to the Evans allotment seeks the substitution of Channel 299C2 for Channel 232A at Martinez, GA, and the modification of its license for Station WMTZ to specify operation on the higher powered channel. We will not accept counterproposals to the use of Channel 299C2 at Martinez since the Commission's Rules do not permit the filing of counterproposals to counterproposals. Channel 299C2 can be allotted to Martinez with a site restriction of 25.3 kilometers (15.7 miles) northwest to avoid a short-spacing to Station WKQB, Channel 298C, St. George, SC, and to the proposed allotment of Channel 296A at Waynesboro, GA (MM Doxket 88–223). The coordinates for this allotment are North Latitude 33–40–30 and West Longitude 82–16–14.

DATES: Comments must be filed on or before February 21, 1989, and reply comments on or before March 8, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100–17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to Columbia)

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making and Memorandum Opinion and Order, MM Docket No. 88–51, adopted November 18, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission,

Steve Kaminer,

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

[FR Doc. 89–58 Filed 1–3–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–160; RM–6202]

Radio Broadcasting Services; Bayard, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of Charles Ellis, dismisses his request to allot Channel 280C to Bayard, Nebraska, as the community's first local FM service. No other party expressed an interest in the use of the channel at Bayard. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–160, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–56 Filed 1–3–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–37; FCC 88–236]

Broadcast of Telephone Conversations

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; termination.

SUMMARY: This action retains the Commission's existing rules, contained in 47 CFR 73.1206, which require broadcast licensees to notify parties to a telephone conversation of the licensee's intention to broadcast the conversation prior to either broadcasting it live or recording it for subsequent broadcast.

EFFECTIVE DATE: January 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bob Ratcliffe, Video Services Division, Mass Media Bureau, at (202) 632–6993.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 85–37, FCC 88–236, adopted July 11, 1988, and released September 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 "M" Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800,

2100 "M" Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this *Report and Order*, the Commission rejects its earlier proposals (50 FR 7931, February 26, 1985) to substantially relax or eliminate the requirements of Section 73.1206 of its rules. Those rules oblige a broadcaster to provide prior notice to all parties of the broadcaster's intent to simultaneously transmit or to record for later broadcast a telephone conversation. The Commission ultimately concluded that its concern for protecting individuals' expectation of privacy in telephone communications outweighed broadcasters' interest in enhancing the spontaneity and unrehearsed nature of telephone conversations that they use on the air. The Commission observed that the burden of the existing notice requirement on broadcasters was not substantial and that the rule neither prevented broadcasters from recording or broadcasting telephone conversations nor precluded them from telephonically gathering information important to their broadcast functions.

2. The Commission also concluded that the one-party consent standard for recording telephone conversations contained in the Ominibus Crime Control and Safe Streets Act of 1968, which the Commission had suggested in the *Notice* in this proceeding might "adequately protect telephone conversations from being recorded and used for broadcast purposes without prior consent" (3 FCC Rcd 5461), did not preclude retention of the Commission's existing all-party, prior consent requirements.

3. This action also denies a Request for Declaratory Ruling filed by Tuscon Wireless, Inc., and Southwestern Wireless, Inc., that directly related to the matters considered in this rulemaking proceeding.

4. The Commission certifies that this action will not have a significant economic impact on a substantial number of small entities.

5. This action has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

6. Accordingly, it is ordered that, the "Request for Declaratory Ruling" filed by Tuscon Wireless, Inc., and Southwestern Wireless, Inc., on October 23, 1987, is denied.

7. It is further ordered that, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcast services.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 151.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-8 Filed 1-3-89; 8:45am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-164]

Veterinary Biological Products; Genetically Engineered Live Viral Vectored Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document announces that the Animal and Plant Health Inspection Service has received a request for authorization to conduct a limited field trial of a genetically engineered vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein, and that a copy of the sponsor's preliminary safety data and field trial protocol is available from the person designated in this notice. This document also specifies some of the data pertaining to safety and ecological concerns the agency shall consider in determining whether to allow the field testing of the rabies vaccine.

ADDRESS: A copy of the sponsor's preliminary safety data and field trial protocol is available for public inspection at the United States Department of Agriculture, Room 1141 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, and may be obtained from the contact person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Miller, Senior Staff Veterinarian, Veterinary Biologics; Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8674.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1986, the United States Department of Agriculture (USDA) published its "Final Policy Statement for Research and Regulation of Biotechnology Processes and Products" as part of the Office of Science and Technology Policy (OSTP) "Coordinated Framework for the Regulation of Biotechnology." As part of the policy statement, USDA discussed the regulation of veterinary biological products produced through biotechnological processes under the Virus-Serum-Toxin Act, as amended, (21 U.S.C. 151-159). USDA stated that veterinary biological products produced through such processes will be treated similarly to products prepared by conventional techniques and reviewed under its regulations in 9 CFR 101-118.

USDA stated that for purposes of licensing, biologics derived by recombinant DNA techniques or developed from hybridomas may be classified into three broad categories.

The first category includes inactivated recombinant DNA-derived vaccines, bacterins, baterin-toxoids, virus subunits, or bacterial subunits. Monoclonal antibody (hybridoma) products used prophylactically, therapeutically, or as components of diagnostic kits also are included in this category.

The second category includes those products containing live microorganisms that have been modified by the addition or deletion of one or more genes.

The third category of genetically-engineered veterinary biologics includes products using live vectors to carry recombinant-derived foreign genes that code for immunizing antigens and/or other immune stimulants. USDA stated in its policy statement that with respect to products in the third category, characteristics of safety and transmission must be examined before questions and concerns dealing with safety to humans, animals, and release into the environment can be answered and before such products can be considered for licensing. The Animal and Plant Health Inspection Service (APHIS) has determined that the best approach when considering category three products for licensing and release is to analyze each product individually to assure that all questions regarding safety, transmission, and other considerations are properly addressed prior to granting any approval or license.

APHIS, after reviewing its regulations in 9 CFR 101-118 for veterinary biological products, has determined that the requirements of such regulations are sufficient to enable the agency to obtain the types of environmental, safety, purity, potency, and efficacy data needed to properly evaluate category three products, prior to making a decision on the field testing and licensure of such products.

APHIS has received a request under 9 CFR 103.3 for authorization to conduct a limited field trial of a category three product, a live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The field trial protocol calls for orally immunizing raccoons in the wild via a bait containing the vaccine.

A copy of the sponsor's preliminary safety data and field trial protocol is available and may be obtained by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT".**

In deciding whether authorization will be granted to conduct the limited field trial, APHIS' review of data shall include but will not be limited to the following areas:

I. Human Safety

A. Probability of human exposure.

B. Possible outcomes of human exposure.

C. Pathogenicity of parent virus in man.

D. Effect of gene manipulation on pathogenicity in man.

E. Risk associated with widespread use of the vaccine.

II. Ecological Concerns

A. Extent of release into the environment.

B. Persistence of the vector in the environment.

C. Extent of exposure to nontarget species.

D. Behavior of parent virus and vector in nontarget species.

E. Potential of vector to infect nonvertebrate organisms.

F. Physical and chemical factors which can affect survival, reporduction, and dispersal.

III. Characterization of the Vaccine Virus

A. Characteristics of parent virus.
1. Identification, sources, and strains.
2. Reproduction and capacity for genetic transfer.
B. Source, description, and function of foreign genetic material.
C. Method of accomplishing genetic modification.
D. Genetic stability, expression, and potential for recombination of the vaccine virus.
E. Advantages and disavantages of the modified virus compared to conventional products.
F. Comparison of the modified organisms to parental properties.
G. Route of administration.

IV. Animal Safety

A. Fate of the vaccine in target and nontarget species.
B. Potential of shed and/or spread from vaccinate to contact target and nontarget animals.
C. Reversion to virulence resulting from back passage in animals.
D. Effect of overdose in target and potential nontarget species.
E. Relative safety when compared to conventional vaccines.
F. The extent of the host range and the degree of mobility of the vector.
G. Safety in pregnant animals and to offspring nursing vaccinated animals.

If approval is granted for the sponsor to conduct a limited field trial, APHIS shall publish a notice of availability of an environmental assessment in the **Federal Register** 30 days prior to the commencement of the field testing.

Done at Washington, DC, this 29th day of December 1988.

James Glosser,

Administrator, Animal and Plant Health Inspection Service.

December 29, 1988.

[FR Doc. 89-40 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Science and Education Competitive Research Grants Office Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Cooperative State Research Service announces the following meeting:

Name: Science and Education Competitive Research Grants Office Advisory Committee.

Date: March 7, 1989.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 107-A, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact person for agenda and more information: Dr. William D. Carlson, Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 324-A Administration Building, Washington, DC 20250, Telephone 202-475-5720.

Done at Washington, DC, this 22nd day of December 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89-93 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-22-M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Detroit (MI), Keokuk (IA), and Michigan (MI) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Detroit Grain Inspection Service, Inc. (Detroit), John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk), and Michigan Grain Inspection Services, Inc. (Michigan).

DATE: Comments must be postmarked on or before February 21, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FIGS/USDA] telemail.

Telex users may respond as follows:
TO: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the November 1, 1988, **Federal Register** (53 FR 44052). Applications were to be postmarked by December 1, 1988. Detroit, Keokuk, and Michigan were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-43 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Enid (OK) and Erie (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency

designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie).

DATE: Applications must be postmarked on or before February 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Enid, located at 2205 N. 10th Street, Enid, OK 73701; and Erie, located at 301 North Street, Bellevue, OH 44811; were each designated under the Act as an official agency on July 1, 1986, to provide official inspection functions.

Each official agency's designation terminates on June 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Enid, in the State of Oklahoma, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: Adair, Atoka, Blaine, Bryan, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garfield, Garvin, Grady, Grant, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, and Washington Counties.

The geographic area presently assigned to Erie, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Ohio: Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State line south to State Route 154;

Bounded on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: Those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Exceptions to Erie's assigned geographic area are the following export port locations inside Erie's are which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested parties, including Enid and Erie, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning July 1, 1989, and ending June 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–44 Filed 1–3–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Peoria, IL, Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Peoria, Illinois, geographic area.

DATE: Comments must be postmarked on or before February 21, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Lewis Lebakken

TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of the Peoria Grain Inspection Service, Inc., would not be renewed on November 1, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the October 21, 1988, **Federal Register** (53 FR 41392). Applications were to be postmarked by November 21, 1988. There were eleven applicants for designation in the available geographic area. Each applied for the entire geographic area, with several also

applying for subdivisions thereof in the alternative. The eleven applicants were: 1. Gary R. Weirman dba Bloomington Grain Inspection Department, Bloomington, Illinois (entire area, or any geographic subdivision of the area); 2. Donald R. Onken, James H. Onken, and Fred O. Reeves, Mason City, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection, Inc.; 3. Joseph L. Winkler, Peoria, Illinois, proposing to do business as Central Illinois Grain Inspection Service; 4. Michael Fegan and Gary Weirman, Bloomington, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc. (entire area, or any geographic subdivision of the area); 5. Virgil W. Turner, Jr., Bartonville, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc.; 6. Mark A. Beaupre, St. Anne, Illinois, proposing to do business as Illinois Valley Inspection; 7. Kankakee Grain Inspection, Inc., Bourbonnais, Illinois (entire area, or Hennepin, Henry, and Lacon, Illinois); 8. Keokuk Grain Inspection Service, Keokuk, Iowa; 9. Steven M. Bennett, Ronald W. Curtis, Scott D. Deatherage, and Larry S. Kitchen, Villa Ridge, Missouri, proposing to do business as Mopart Grain Inspection Service; 10. Anthony L. Marquardt and Nancy L. Marquardt, dba Quincy Grain Inspection & Weighing Service, Quincy, Illinois (entire area, or Havana, Illinois, only); and 11. Southern Illinois Grain Inspection Service, Inc., O'Fallon, Illinois. All applicants plan to establish at least one specified service point within the available geographic area to provide official service.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Persons or firms located in the Peoria, Illinois, geographic area requiring official inspection service should contact the Eastern Iowa Grain Inspection and Weighing Service, Inc., at (319) 322–7149 to obtain service, on an interim basis, until such time as an applicant is designated to perform official services.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–45 Filed 1–3–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Mt. Ashland Ski Development Plan; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District, Rogue River National Forest, Jackson County, Oregon. Notice of Intent to prepare an EIS was published in the **Federal Register** (Vol. 52, No. 38, 2/26/87). The draft EIS was released for public comment in May 1987. The public comment period was extended and ended on July 6, 1987. The Final EIS was not prepared within the time specified in the Notice of Intent. Public comments on the draft EIS showed a need for additional site specific information and analysis. The public comments also indicated a need for further review of the proposal for cross-country skiing. The final EIS is now scheduled to be completed in the spring, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Smelcer, District Ranger, Ashland Ranger District, Ashland, Oregon 97520; phone (503) 482–3333.

Date: December 20, 1988.

Ron Ketchum,

Deputy Forest Supervisor.

[FR Doc. 89–88 Filed 1–3–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 416]

Resolution and Order Approving the Application of the Regional Industrial Development Corp. of Southwestern Pennsylvania for Subzone Status at the Verosol Plant in Allegheny County, PA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, filed with the Foreign-Trade Zones Board (the Board) on February 22, 1988, requesting special-purpose subzone status for the window shade fabric processing facility (non-manufacturing) of Verosol USA, Inc., in Kennedy Township, Allegheny County, Pennsylvaina, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the estabishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of

Foreign-Trade Zone 33, has made application (filed February 22, 1988, FTZ Docket 11–88, 53 FR 7222), in due and proper form to the Board for authority to establish a special-purpose subzone at the window shade fabric processing (non-manufacturing) plant of Verosol USA, Inc., located in Kennedy Township, Allegheny County, Pennsylvania (Pittsburgh area);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Wheareas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed February 22, 1988, the Board hereby authorizes the establishment of a subzone at the Verosol plant, designated on the records of the Board as Foreign-Trade Subzone No. 33B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–81 Filed 1–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 412]

Resolution and Order Approving the Application of the City of Weslaco, TX, for a General-Purpose Zone and Three Subzones in Waslaco, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Weslaco, Texas, filed with the Foreign-Trade Zones Board (the Board) on October 21, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Weslaco, Texas, adjacent to the Progreso Customs port of entry, and requesting special-purpose subzone status for three food product processing facilities of McManus Produce Company, Gulf DeBruyn Produce Company, and Sundor Brands, Inc., located in Weslaco, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to the condition that Sundor be required to elect privileged foreign status (19 CFR 146.41) on all foreign merchandise admitted to the Sundor subzone, including citrus juice products, approves the application subject to the foregoing restriction.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the general-purpose zone or within the McManus of Gulf DeBruyn subzones, and before the commencement of any new manufacturing within the Sundor subzone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Weslaco, Texas (the Grantee) has made application (filed October 21, 1987, FTZ Docket 25–87, 52 FR 42328) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone, and subzones at three food processing plants, in Weslaco, Texas, adjacent to the Progreso Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzones, designated on the records of the Board as Zone No. 156 and Subzone Nos. 156A (McManus site), 156B (Gulf DeBruyn site), and 156C (Sundor site), at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act, the Board's regulations, the resolution accompanying this action, and the following express conditions and limitations:

Operation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzones. The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Donna Tuttle,

Acting Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-82 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-017]

Bricks From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bricks from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 22 firms, and 5.07 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Randall Edwards or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 38314) the final results of its last administrative review of the countervailing duty order on bricks from Mexico (49 FR 19564, May 8, 1984). On May 27, 1987, the Government of Mexico requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on June 19, 1987 (52 FR 23330). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized System ("HS") item numbers with our product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by this review are shipments of bricks from Mexico, including unglazed solid bricks and unglazed hollow bricks. Such merchandise is currently classifiable under items 532.1120 and 532.1140 of the TSUSA and item 6904.10.00-0 of the HS.

The review covers the period January 1, 1986 through December 31, 1986 and 18 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given at preferential rates only on merchandise destined for export. We found that the annual interest rates that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 39.60 to 70.00 percent. The annual interest rates for dollar-denominated FOMEX financing outstanding during the period of review ranged from 5.50 to 7.40 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between November 1985 and November 1986. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.). We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1985 and 1986 CPP rates. In this way, we calculated a benchmark of 86.39 percent for pre-export peso loans obtained in 1985, and 135.27 percent for pre-export peso loans obtained in 1986.

To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Register Bulletin*, which was 10.47 percent in 1986.

Five of the 29 known exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie both types of FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from FOMEX during the period of review to be 4.59 percent *ad valorem* for all firms except

those with zero or *de minimis* aggregate benefits.

In May 1988, the Banco de Mexico changed the interest rates on FOMEX peso loans to 66.00 percent and on FOMEX dollars loans to 7.70 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating the assesssment rates. For peso loans we used as our benchmark the sum of the May 1988 CPP rate and the average 1981–1984 spread between the CPP and the I.E. effective rates. For dollar loans we used as our benchmark the May 1988 weighted-average effective interest rate from the *Federal Reserve Bulletin.* On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 0.58 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(2) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions with different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts benefits to those enterprises located outside of Zone IIIA. Three firms made payments on variable-rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them with the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each company's total sales to all markets. One of these firms had *de minimis* aggregate benefits. For the remaining firms that made interest payments on FONEI loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States of this merchandise during the period of review, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.03 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(3) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Five firms had long-term variable-rate FOGAIN loans on which interest payments were due during the period of review. Because the interest rate on all FOGAIN loans is subject to change and changed during the period of review, we treated each loan as a series of short-term loans and used as our benchmarks the least beneficial FOGAIN interest rates in effect for each loan payment.

We allocated the benefits from each loan over each company's total sales to all markets. We then weight-averaged the resulting benefits by each company's proportion of exports of this merchandise to the United States during the period of review, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.45 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of bricks did not use them during the review period:

(A) State tax incentives;
(B) National Industrial Development Fund ("FOMIN");
(C) NDP preferential discounts;
(D) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");
(E) Bancomext loans;
(F) Delay of payment on loans;
(G) Delay of payments to PEMEX of fuel charges;
(H) PROFIDE loans;
(I) Export credit insurance;
(J) Tax Rebate Certificate ("CEDI");
(K) Accelerated depreciation;
(L) Article 15 loans;
(M) Preferential state investment incentives;
(N) Import duty reductions and exemptions; and
(O) CEPROFI fiscal incentives

Firms Not Receiving Benefits

We preliminarily determine that the following 22 firms received zero or *de minimis* benefits during the period of review:

(1) Blanca Salvidar Gonzalez;
(2) Bloques Ladrillos y Materiales de Piedras Negras;
(3) Elias Martinez Ledezma;
(4) Gregorio Moreno;
(5) Jesus Galvan Mesa;
(6) Joaquin Guerra R.;
(7) Ladrillera Arcoiris;
(8) Ladrillera Azteca;
(9) Ladrillera Cantu;
(10) Ladrillera Guadalupana;
(11) Ladrillera La Joya;
(12) Ladrillera Monterrey;
(13) Ladrillera Reynosa;
(14) Ladrillera Rio Bravo;
(15) Ladrillera San Juan;
(16) Ladrillera San Marcos;
(17) Ladrillera Santa Fe;
(18) Ladrillera Reynosa;
(19) Luis de Hoyos Villareal
(20) Materiales Salinas;
(21) Productos de Barro La Zacatosa; and
(22) Ricardo Francisco Garza Vela.

For purposes of cash deposits of estimated countervailing duties, two additional firms, Barros Mecanizados and Jorge Vasquez Narro, received *de minimis* benefits. Because these firms are not part of the country-wide weighted-average deposit rate, the "all other" deposit rate is slightly different from the sum of individual program rates listed in this notice.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1986 through December 31, 1986 to be zero or *de minimis* for 22 firms, and 5.07 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 22 firms listed above and to assess countervailing duties of 5.07 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption before August 24, 1986, the

date of Mexico's accession to the General Agreement on Tariffs and Trade (GATT).

The merchandise covered by this review is afforded duty-free status under the Generalized System of Preferences. Section 303 of the Tariff Act prohibits the imposition of countervailing duties on duty-free products absent an injury test when the United States has an "international obligation" to provide such a test. Mexico's accession to the GATT imposes such an international obligation on the United States with respect to duty-free merchandise entered into the United States after the date of Mexico's accession.

We are currently pursuing means by which an injury determination could be made concerning imports of Mexican bricks entered on or after August 24, 1986, the date of Mexico's accession to the GATT.

We do not intend to instruct the Customs Service to liquidate shipments of bricks entered, or withdrawn from warehouse, for consumption on or after August 24, 1986, until we resolve this issue.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of zero from the 22 firms listed above, as well as Barros Mecanizados and Jorge Vasquez Narro, and to collect 1.08 percent of the f.o.b. invoice price on all shipments of this merchandise from all other firms, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: December 24, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc. 89-83 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final rule of countervailing duty administrative review.

SUMMARY: On October 31, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We have now completed that review and determine the net subsidy to be 1.27 percent *ad volorem* during the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad volorem* for the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43913) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032, July 16, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated and under item numbers 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90 of the Harmonized Tariff Schedule.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 1.27 percent *ad volorem* for the period January 1, 1984 to December 31, 1984, and 0.93 percent *ad volorem* for the period January 1, 1985 to December 31, 1985.

The Department will instruct the Customs Service to assess countervailing duties of 1.27 percent of the f.o.b. invoice price on all shipments exported on or after January 1, 1984 and on or before December 31, 1984, and 0.93 percent of the f.o.b. invoice price on all shipments exported on or after January 1, 1985 and on or before December 31, 1985.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: December 28, 1988.

[FR Doc. 89-84 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

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

SUMMARY: On October 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We have now completed that review and determine the net subsidy to be 14.93 percent *ad valorem* for the

period January 1, 1986 through December 31, 1986.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3337.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43460) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber, currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under items 5504.10.00–2 and 5504.90.00–2 of the Harmonized Tariff Schedule.

The review covers the period January 1, 1986 through December 31, 1986 and three programs: (1) Loans/Grants for Plant Creation; (2) Elderly Employment Compensation Program; and (3) Grant for Manpower Reduction and a Conditional Loan.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 14.93 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: December 27, 1988.

[FR Doc. 89–85 Filed 1–3–89; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Flat-Rolled Manganese Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain flat-rolled manganese steel.

DATE: Comments must be submitted on or before January 17, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain flat-rolled steel, 11–14, percent manganese, fully austenitized, ranging from ⅛ to 3 inches in thickness, 48 to 120 inches in width, 96 to 360 inches in length, which is used in applications where heavy impact and friction are involved.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than January 17, 1989. Comments should focus on the economic factors involved in granting or denying this request.

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

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–86 Filed 1–3–89; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Application: Indianapolis, IN

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 an MBDC for approximately a 3-year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period July 1, 1989 thru June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05–10–89008–01.

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following critieria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted 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 February 10, 1989. Applications must be postmarked on or before February 10, 1989. Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. 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)

Date: December 28, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 89-27 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

Indian Business Development Center Application: MN

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications for an Indian Business Development Center (IBDC) under its American Indian Program (AIP) to operate an IBDC for a 3-year period, subject to satisfactory performance, Agency priorities and availability of funds. The cost of performance for the first 12 months is estimated at $165,000 for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of Minnesota geographic service area. The award number of this IBDC will be 05-10-89007-01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organization, state and local governments, American Indian tribes and educational institutions.

The IBDC is designed to provide management and technical assistance to the minority business community and, in particular, to American Indian clients for the establishment and operation of businesses. In order to establish this, MBDA supports IBDC firms that can coordinate broker public and private resources on behalf of American Indian and other minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the minority business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC will operate for a 3-year period with periodic review culminating in year-to-date quantitative and qualitative 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 IBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is February 10, 1989. Applications must be postmarked on or before February 10, 1989.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: December 28, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 89-28 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Application: Milwaukee, WI

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 an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period July 1, 1989 thru June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Milwaukee geographic service area. The award number of this MBDC will be 05-10-89009-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following critieria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted 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 February 10, 1989. Applications must be postmarked on or before February 10, 1989. Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. 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)

David Vega,

Regional Director, Chicago Regional Office.

Date: December 28, 1988.

[FR Doc. 89-29 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to:

Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910

or, send comments to the Fishery Management Council(s) which reviews the application(s), as specified below:

Douglas G. Mashall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Miguel A. Rolon, Acting Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW. First Avenue, Portland, OR 97201, 503/221-6352

Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for

fishing in 1989 have been received from the Governments shown below.

Dated: December 28, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and fishery	Regional fishery management councils
ABS—Atlantic Billfish and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska Groundfish.	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snail (Bering Sea)	North Pacific.
WOC—Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahimahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) supporting U.S. vessels (Joint Venture).

Denmark (DA)

The Government of Denmark, on behalf of the Home Government of the Faroe Islands, submitted applications for three (3) cargo/transport vessels to operate in the Northwest Atlantic Ocean Fishery (NWA).

Iceland (IC)

The Government of Iceland submitted joint venture requests for the following species: Gulf of Alaska (GOA)—8,000 mt of Pacific cod; Bering Sea and Aleutian Islands (BSA)—Pacific cod—22,000 mt; pollock—1,800 mt; Yellowfin sole—1,800 mt; and Atka mackerel—1,700 mt. Associated Vessel Services, Inc. has been designated as the American partner.

Japan (JA)

The Government of Japan updated requests for four (4) vessels and submitted an application for one (1) cargo/transport vessel.

Netherlands (NL)

This notice corrects an error found at 53 FR 48680, where the *Cornelis Vrolijk FZN* was incorrectly reported as having applied for a 1989 permit for the NWA fishery. The *Cornelis Vrolijk FZD SCH 171*, which did apply but was omitted from the above-referenced notice is listed below.

Government of the Union of Soviet Socialist Republics (UR)

The Government of the Union of Soviet Socialist Republics submitted applications for four (4) additional vessels for the (BSA) joint venture previously referenced at 53 FR 48680. Seventeen (17) new support vessel applications for the BSA, GOA and the Pacific Coast Groundfish fisheries have been received. Two (2) vessel applications are requested for 18,000 mt of directed fishing for Atlantic mackerel and 6,000 mt of JV mackerel in the NWA fishery. A.V.E. Corporation has been designated as the American partner.

The U.S.S.R. also submitted an application to substitute the *Gazgan* for the *Efin Gorbenko* in the NWA fishery.

Spain (SP)

This notice corrects an item included at 53 FR 48680, where it was erroneously reported that the Government of Spain submitted applications to receive 20,000 mt of joint venture groundfish species from U.S. fishermen in the BSA and GOA fisheries. The Government of Spain does not support such applications for its flag vessels to participate in the Alaskan fisheries.

Vessel (vessel type)	Application/permit No.	Fishery-activity (* = Joint venture)
Halgafelli (Cargo/transport vessel)	DA-89-0010	NWA-3
Nordlandia (Cargo/transport vessel)	DA-89-0006	NWA-3
Vestlandia (Cargo/transport vessel)	DA-89-0008	NWA-3
Andri (Factory ship)	IC-89-0005	GOA-2* BSA-2*
Hatsue Maru No. 68 (Longline fishing vessel)	JA-89-0562	GOA-1* BSA-1
Koei Maru No. 20 (Small stern trawler)	JA-89-1576	GAO-1* BSA-1*
Tenyo Maru (Large stern trawler)	JA-89-0352	WOC-1* GOA-1* BSA-1*
Tenyo Maru No. 5 (Large stern trawler)	JA-89-0334	WOC-1* GOA-1* BSA-1*
Washington Maru (Cargo/transport vessel)	JA-89-0227	SNA-3 GOA-3 BSA-3
Cornelis Vrolijk FZD SCH 171 (Large stern trawler)	NL-89-0041	NWA-1
Aleksandr Kosarev (Large stern trawler)	UR-89-0834	NWA-1*
Amurski Bereg (Cargo/transport vessel)	UR-89-0750	WOC-3 GOA-3 BSA-3
Bereg Nadesdy (Cargo/transport vessel)	UR-89-0754	WOC-3 GOA-3 BSA-3
Cavanj (Cargo/transport vessel)	UD-89-0833	WOC-3 GOA-3 BSA-3
Chukotskyi Bereg (Cargo/transport vessel)	UR-89-0749	WOC-3 GOA-3 BSA-3
Delegat (Tanker fuel/water	UR-89-0762	WOC-3 GOA-3 BSA-3
Dubrava (Cargo/transport vessel)	UD-89-0832	WOC-3 GOA-3 BSA-3
German Matern (Cargo/transport vessel)	UR-89-0805	WOC-3 GOA-3 BSA-3
Kamchatsky Berg (Cargo/transport vessel)	UR-89-0755	WOC-3 GOA-3 BSA-3
Khibiny (Large stern trawler)	UR-89-0324	NWA-1*

Vessel (vessel type)	Application/permit No.	Fishery-activity (* = Joint venture)
Kurilsh (Cargo/transport vessel)	UR-89-0808	WOC-3 GOA-3 BSA-3
Lukomorye (Tanker fuel/water)	UR-89-0763	WOC-3 BSA-3
Ostrov Karaginskiy (Cargo/transport vessel)	UR-89-0255	WOC-3 GOA-3 BSA-3
Ostrov Shmidta (Cargo/transport vessel)	UR-89-0256	WOC-3 GOA-3 BSA-3
Ostrov Shokalskogo (Cargo/transport vessel)	UR-89-0257	WOC-3 GOA-3 DSA-3
Ozyornye Klyuchi (Large stern trawler)	UR-89-0223	BSA-2*
Penjinskiy Zaliv (Cargo/transport vessel)	UR-89-0831	WOC-3 GOA-3 BSA-3
Solnechnyi Bereg (Cargo/transport vessel)	UR-89-0485	WOC-3 GOA-3 BSA-3
Sovetskiye Profsoyuzy (Large stern trawler)	UR-89-0705	BSA-1*
Truskavets (Large stern trawler)	UR-89-0559	BSA-2*
Ulbansky Zaliv (Cargo/transport vessel)	UR-89-0806	WOC-3 GOA-3 BSA-3
Vasilii Polechuk (Cargo/transport vessel)	UR-89-0804	WOC-3 GOA-3 BSA-3
Sovgavanj (Large stern trawler)	UR-89-0234	BSA-1*

[FR Doc. 89-37 Filed 1-3-89; 8:45 am]
BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two workgroup meetings. The Council's newly-appointed Sablefish Management Committee will meet for the first time on January 4, 1989, in Anchorage, AK, at the North Pacific Council's office, 605 W. Fourth Avenue, third floor, Anchorage, AK. The committee will identify areas of concern and options that might accompany individual fishing quota (IFQ) and license limitation systems. The resulting detailed list of concerns and options, along with projected implementation schedules will be reviewed by the Council at its January 16–20, 1989, public meeting where a decision for further analysis will be made.

The North Pacific Council's Plan Amendment Advisory Group is scheduled to convene January 5 at 9 a.m., at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Building 4, Room 2079, Seattle, WA. The group will review proposals submitted to amend the Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plans. The Council will review the group's recommendations at its January 16–20, 1989, public meeting, and select the proposals they wish to have further analyzed for consideration in April.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30266 Filed 12-30-88; 3:22 pm]
BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A public meeting of the Alaska Board of Fisheries Crab Subcommittee and the North Pacific Fishery Management Council's Crab Management Committee has been scheduled for January 7, 1989, at 1 p.m., at the Alaska Department of Fish and Game Headquarters conference room in Juneau, AK. The meeting has been scheduled to answer technical questions on the proposed Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab and its accompanying analysis. The Board intends to use the meeting to develop recommendations on the proposed plan.

For further information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30267 Filed 12-30-88; 3:22 pm]
BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

December 23, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

Department of Agriculture

SN 6-25,266 (4,785,009)
Cockroach Repellants
SN 7-247,474
Vertical Wall Mount Insect Trap
SN 7-247,546
Attractants For Dacus Latifrons, The Malaysian Fruit Fly

SN 7-248,744
Improvements in In-Vivo Stimulation, Collection, and Modification of Peritoneal Macrophage

Department of Commerce

SN 6-364,944 (4,471,444)
Rotating Tool Wear Monitoring Apparatus

Department of Health and Human Services

SN 7-195,000
Oligomeric Adhesives
SN 7-197,096
Flexible Holder for a Cystoscope or the like
SN 7-221,982
Peptides with Laminin Activity
SN 7-234,641
Detection of non-A, non-B Hepatitis
SN 7-242,672
Method for Early Detection of HIV Infection
SN 7-261,304
A Two-Gigaflop Computer for Macromolecular Simulations
SN 7-268,157
Vaccine Against Human Parainfluenza Virus Type 3
SN 7-278,601
DNA Clone Encoding a Chimeric Toxin Composed of IL6 and a Portion of Pseudomonas Exotoxin
SN E-127-88
Adhesion to Mycoplasma Pneumoniae and Mycoplasma Hominus to Sulfatide
SN E-217-88
Antimicrobial Peptides and Processes for Making the Same
SN E-221-88
Liquid Chromatographic Chiral Stationary Phase and Method for the Resolution of Racemic Compounds Using the Same
SN E-289-88
Evaluative Means for Detecting Inflammatory Reactivity
SN E-384-86
5-Substituted-2',3'-Dideoxycytidine Compounds with Anti-HTLV-III Activity
SN E-114-88
Tissue Transplantation System
SN E-250-88
Human Neutrophilic Granulocyte End-Stage Maturation Factor and its Preparation and Use
SN 7-198,489
Derivatives of Cyclic Amp as Treatment of Cancer
SN 7-198,537
Process for Synthesizing Macrocylic Chelates
SN 7-210,005
Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection
SN 7-261,627
Use of Resiniferatoxin and Analogues Thereof to Cause Sensory Afferent C-Fiber and Thermoregulatory Desensitization
SN 7-264,041
Quick Color Test to Detect Lead Release From Glazed Ceramic and Enameled Metal Ware
SN 7-267,564
Laminin A Chain Deduced Amino Acid Sequence, Expression Vectors and Active Synthetic Peptides
SN E-241-88
A Method to Measure Contact Stress

Department of the Army

SN 7-243,538
Method of Making an Acceleration Hardened Resonator
SN 7-260,550
Tetrahedral Junction Waveguide Switch
SN 7-263,298
Acoustic Charge Transport Processor
SN 7268,826
Periodic Permanent Magnet Structure
SN 7-268,829
Method of Making a Crystal Oscillator Desensitized to Acceleration Fields

Department of the Interior

SN 7-002,595 (4,768,049)
Stereoscopic Camera Slide Bar
SN 7-229,408
Process for Acid Leaching of Manganese Oxide Ores Aided by Hydrogen Peroxide
SN 7-231,017
Geological Gyrocompass
SN 7-234,768
Ground-Based Transmission Line Conductor Motion Sensor

Environmental Protection Agency

SN 6,930,689 (4,786,485)
Lignosulfonate-Modified Calcium Hydroxide for SO2 Control During Furnace Injection

Library of Congress

SN 5-536,125 (3,969,549)
Method of Deacidifying Paper

[FR Doc. 89-22 Filed 1-3-89; 8:45 am]
BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pan-Data Systems, Inc., having a place of business in Rockville, MD, an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-255,712, entitled "Human B Lymphotropic Virus". Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-92 Filed 1-3-89; 8:45 am]
BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Approval of Survey of Consumers Who Own or Operate All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for approval of a collection of information in the form of a telephone survey of 1,000 consumers who own or operate all-terrain vehicles (hereinafter ATVs). ATVs are three- and four-wheeled motorized vehicles intended for off-road use.

The survey will seek current information about the various kinds of ATVs now in use, characteristics of operators, and frequency and patterns of ATV use.

The Commission will use the information obtained from this survey in conjunction with current information about injuries associated with ATVs to determine what factors contribute to injuries from accidents associated with ATVs.

Additional Information About the Proposed Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: ATV Consumer Exposure Survey.

Type of Request: New collection.

Frequency of Collection: One time.

General Description of Respondents: Consumers who own or use ATVs.

Estimated Number of Respondents: 1,000.

Number of Responses per Respondent: 1

Estimated Average Number of Hours per Response: 0.33.

Estimated Number of Hours for All Respondents: 333.

Comments: Comments about this request for approval of a collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 28, 1988

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 89–41 Filed 1–3–89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 29, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Annual Survey of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected or Delinquent Children Needed to Implement Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, As Amended

Abstract: An annual survey is conducted to collect data on (1) the average daily attendance of children in State-operated or supported schools for neglected or delinquent children and (2) the October caseload of children in local institutions. These data are used in the statutory formula for computing entitlements.

Additional Information: The Neglected or Delinquent Program is requesting an expedited review in order to announce Chapter 1 allocations in March 1989, the date normally expected by Congress. Data must be available in the Department no later than February 15, 1989. The program would like to forward the forms to the SEA's by January 13, 1989.

Frequency: Annually

Affected Public: State or local goverments

Reporting Burden:

Responses: 52

Recordkeeping:

Recordkeepers: 0

Burden Hours: 2,000

Burden Hours: 0

BILLING CODE 4000-01-M

DRAFT

U.S. Department of Education
Office of Elementary and
Secondary Education

Form Approved
OMB No. 1810-0060
Approval Expires:

Annual Survey of Children in Institutions for
Neglected or Delinquent Children, Adult Correctional Institutions,
and Community Day Programs for Neglected or Delinquent Children
Needed to Implement Chapter 1 of Title I of the
Elementary and Secondary Education Act of 1965, As Amended

Notice: This report is required by Sections 1005, 1241, and 1242 of the Elementary and Secondary Education Act of 1965, As Amended (ESEA). The completion of this report is voluntary, but failure to submit the report will result in the inability of the Department of Education to carry out legislative requirements and the loss of funds to State and local educational agencies to provide compensatory education services for children in institutions and community day programs for neglected or delinquent children.

SECTION A - FORMULA DATA

State Educational Agency _____
(Name)

	Total
Part I - Number of Neglected or Delinquent Children Ages 5-17 in Local Institutions (October 1988 caseload data) ..... (Attach separate list showing a total for each county. See attached reporting format.)	_____
Part II - Average Daily Attendance of Neglected or Delinquent Children under 21 years of age in State Operated or Supported Schools (Fiscal Year 1988) ..... (Attach separate list showing a total for each State agency. See attached reporting format.)	_____

SECTION B - CERTIFICATION BY STATE EDUCATIONAL AGENCY

I certify that the State educational agency has determined that the data provided in Parts I and II meet the eligibility requirements of Chapter 1 of Title I, ESEA. The information provided in this report is, to the best of my knowledge, complete and accurate.

Signature | Date Signed

Type Name and Title

ED 4376,

REPORTING FORMAT
THE ATTACHED INSTRUCTIONS
SHOULD BE READ BEFORE
COMPLETING THIS REPORT.

DRAFT

FORM ED 4376
OMB No. 1810-0060
Approval Expires:

Annual Survey of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected or Delinquent Children Needed to Implement Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, As Amended

PART I - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN AGES 5-17, INCLUSIVE, IN LOCAL INSTITUTIONS

State Code	County Code	Name of County	Total Eligible Caseload Count for October 1988

PART II - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN UNDER 21 YEARS OF AGE IN AVERAGE DAILY ATTENDANCE IN STATE OPERATED OR SUPPORTED SCHOOLS

Name of State Agency	FY 1988 Average Daily Attendance

DRAFT

INSTRUCTIONS FOR FORM ED 4376
ANNUAL SURVEY OF CHILDREN IN INSTITUTIONS FOR
NEGLECTED OR DELINQUENT CHILDREN, ADULT CORRECTIONAL INSTITUTIONS,
AND COMMUNITY DAY PROGRAMS FOR NEGLECTED OR DELINQUENT CHILDREN
NEEDED TO IMPLEMENT CHAPTER 1 OF TITLE I OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED

PURPOSE: The purpose of this annual survey is to provide the Department data required by the statute to be used in the computation of grants to local educational agencies (LEAs) and State agencies directly responsible for providing free public education for children in institutions or community day programs for neglected or delinquent children.

REQUIREMENTS: This report is required annually of all State educational agencies. No sampling or estimating is to be used in preparing this report. Since the data will generate Federal funds, they are subject to audit and must be supportable from documented records.

REPORTING BURDEN: The reporting burden will vary among respondents depending on the number of institutions for neglected or delinquent children in each State.

Public reporting burden for this collection of information is estimated to average 38.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0060*, Washington, D.C. 20503.

INSTRUCTIONS

SECTION A - FORMULA DATA

PART I - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN IN LOCAL INSTITUTIONS

1. State and County Codes

Identify the State code and county code. This information is required for data processing purposes. A list showing these data is attached.

2. October Caseload Data

Enter the total number of children, ages 5-17, inclusive, who resided in local institutions for neglected or delinquent children as defined in 34 CFR 200.6 for at least 30 consecutive days, at least one of which was in October (34 CFR 200.23(a)).

Please furnish a total for each county only. It is not necessary to furnish data for each individual institution or to separate the children according to the neglected or delinquent categories.

DRAFT -2-

PART II - AVERAGE DAILY ATTENDANCE OF NEGLECTED OR DELINQUENT CHILDREN OR CHILDREN IN ADULT CORRECTIONAL INSTITUTIONS IN STATE OPERATED OR SUPPORTED SCHOOLS

1. State Agency (34 CFR 203.6(c))

Furnish the name of the State agency eligible to receive a Chapter 1 grant. "State agency" means an agency of State government which is directly responsible for free public education of children in institutions for neglected or delinquent children, adult correctional institutions, or community day programs for neglected or delinquent children. (This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency.) (See definition of "State agency" in 34 CFR 203.6.)

2. Average Daily Attendance (34 CFR 203.21(b))

Report the average daily attendance data for the most recently completed school year in the schools operated or supported by each State agency for children in institutions for neglected or delinquent children, adult correctional institutions, or community day programs as defined in 34 CFR 203.6.

Provide a total for each State agency only. It is not necessary to furnish data for each institution or community day program or to separate the data by category of children.

To be eligible to be counted in average daily attendance, a child must be:

(1) under 21 years of age;
(2) one for whom a State agency is providing a free public education; and
(3) enrolled in a regular program of instruction for which daily attendance records are kept, at least ten (10) hours per week.

"A regular program of instruction" means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects, such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction (34 CFR 203.6).

Determining daily attendance (34 CFR 203.21(b)(2)):

(1) a child is counted as being in a full day of attendance for each day the child attends the regular program of instruction for three (3) or more hours; and

(2) a child is counted as being in one-half (1/2) day of attendance for each day the child attends the regular program of instruction for at least one (1) hour, but less than three (3) hours.

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Computing average daily attendance (34 CFR 203(b)(1)):

Average daily attendance is computed for each institution by: (1) calculating, from daily attendance records, the total number of days of attendance in the regular program of instruction during the most recently completed school year, and (2) dividing the total by 180. The divisor of 180 days must be used regardless of the number of days the school was in session.

NOTE: Neglected or delinquent children under 34 CFR Part 203, who are eligible for programs for handicapped children under 34 CFR Part 302, may be counted for grant determinations under both programs and may be served under both programs. (Authority: 20 U.S.C. 2801(b))

SECTION B - CERTIFICATION BY STATE EDUCATIONAL AGENCY

Please complete the certification page of the report. This report must be signed by the appropriate official in the State educational agency to certify that the information reported is complete and accurate.

SUBMITTAL PROCEDURE

Send an original and one copy of the certification page along with the detailed data required in accordance with the above instructions to:

Mrs. Mary Jean LeTendre, Director
Compensatory Education Programs
U.S. Department of Education
400 Maryland Avenue, SW. (Room 2043)
Washington, D.C. 20202-6132
Attention: Mrs. Carolyn Horner

[FR Doc. 89-101 Filed 1-3-89; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-480-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89-480-000]

December 28, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP89-455-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act for EnTrade Corporation (EnTrade), all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for EnTrade, a marketer. United explains that service commenced October 18, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1236. United further explains that the peak day quantity would be 103,000 MMBtu, the average daily quantity would be 103,000 MMBtu, and the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for EnTrade's account at various points on its system and would redeliver natural gas for EnTrade's account at various points in the states of Alabama, Mississippi, Louisiana, Florida, and Texas.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP89-436-000]

December 28, 1988.

Take notice that on December 16, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-436-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install and operate two sales meter stations in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale to consumers in the Prescott Valley area in Yavapai County, Arizona, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it presently sells and delivers natural gas to SUG for distribution and resale to consumers situated in various communities and areas in Arizona. It is further stated that SUG has requested natural gas service at locations on El Paso's Maricopa County Line in Yavapai County, Arizona. It is stated that the requested quantities will be utilized to serve an existing residential area presently utilizing propane.

It is explained that in order for El Paso to accommodate SUG's request for natural gas service, El Paso proposes to install two sales meter stations on its Maricopa Line. El Paso states that SUG will install other minor related facilities, as needed, for ultimate distribution of the requested quantities in the Prescott Valley area. It is explained that SUG has projected that the estimated annual and maximum peak day delivery requirements of the Prescott Valley area during the third full year of service is 63,945 Mcf per year and 968 Mcf per day, respectively.

El Paso states that the additional quantities of natural gas will be sold by El Paso to SUG for resale in the Prescott Valley area in order to accommodate projected Priority 1 requirements. It is stated that the anticipated Priority 1 load growth, which has precipitated SUG's request for natural gas service will not alter SUG's entitlements under El Paso's Permanent Allocation Plan. It is also stated that the subject sale of natural gas is consistent with the high-priority load growth provisions set forth in Section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP89-473-000]

December 28, 1988.

Take notice that on December 22, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-473-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Bishop Pipeline Corporation (Bishop), with the ultimate consumers of the gas identified as Snacktime Foods, E.R. Carpenter Co. and Rockwell International, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 15,000 MMBtu equivalent of natural gas on a peak day for Bishop's account, 2,000 MMBtu equivalent on an average day and 5,475,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Bishop's account at various existing receipt points on Texas Gas' system in Louisiana, Texas, Tennessee, Arkansas, Kentucky, Illinois and Ohio, and that Texas Gas would deliver equivalent volumes for Bishop's account at existing interconnections between Texas Gas and Terre Haute Gas Corporation in Indiana and between Texas Gas and Western Kentucky Gas Company in Kentucky. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced November 14, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1283.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Co.

[Docket No. CP89-478-000]

December 29, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-478-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Sonat Marketing Company, (Sonat) a marketer of natural gas, under United's blanket transportation certificate authorization which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas at various existing points in Panola County, Texas, and deliver the gas for the account of Sonat in Mobile County, Alabama, and Escambia County, Florida. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 8,240 MMBtu of gas per peak day and approximately 8,240 MMBtu of gas and 3,007,000 MMBtu of gas on an average day and annually, respectively. United indicates that the transportation service commenced under the 120 day automatic authorization of § 284.223(a) of the Commission's Regulations on November 1, 1988, pursuant to a transportation agreement dated October 17, 1988. United notified the Commission of the commencement of the transportation service in Docket No. ST89–1217–000 on December 9, 1988.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Co. of America,

[Docket No. CP89–466–000]

December 29, 1988.

Take notice that on December 21, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–466–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Texaco Producing Inc. (Texaco), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 30,000 MMBtu of natural gas per day for Texaco from receipt points located in Vermilion and West Cameron Areas, Offshore Louisiana, to a delivery point located in Vermilion Parish, Louisiana. Natural anticipates transporting, on an average day 8,000 MMBtu and an annual volume of 2,920,000 MMBtu.

Natural states that the transportation of natural gas for Texaco commenced November 1, 1988, as reported in Docket No. ST89–1406–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corp.

[Docket No. CP89–304–001]

December 29, 1988.

Take notice that on November 29, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–304–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Williams Gas Marketing (Williams), under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 37,000 MMBtu of natural gas per day for Williams, a marketer of natural gas, from existing wells located in La Plata County, Colorado and Rio Arriba and San Juan Counties, New Mexico, to the Ignacio Plant delivery point in La Plata County, Colorado, and the existing interconnections with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico. Northwest anticipates transporting 3,000 MMBtu of natural gas on an average day and an annual volume of 1,100,000 MMBtu.

Northwest states that the transportation of natural gas for Williams commenced October 14, 1988, as reported in Docket No. ST89–678–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86–578–000.

On December 19, 1988, Northwest filed in Docket No. CP89–304–001 a request pursunt to § 157.205 of the Commission's Regulations to revise the requested maximum daily transportation volume from 37,000 MMBtu to 38,500 MMBtu, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Co.

[Docket No. CP89–469–000]

December 29, 1988.

Take notice that on December 21, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–469–000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Cornerstone Production Corporation (Cornerstone), a marketer, under Tennessee's blanket transportation certificate authorization which was issued by Commission order on June 18, 1987, in Docket No. CP87–115–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states it will receive the gas at various existing points on its system located offshore Louisiana and in the states of Texas, Louisiana, Massachusetts, Mississippi, West Virginia and New Jersey, and deliver the gas for the account of Cornerstone in the states of Pennsylvania, West Virginia, Mississippi, New Hampshire, New York, Kentucky, New Jersey, Massachusetts, Tennessee, Louisiana and Alabama. Gas delivered to these points will be transported under Tennessee's Rate Schedule IT.

Tennessee proposes to transport up to 50,000 dekatherms of gas (dt) on a peak day, approximately 50,000 dt of gas per average day and approximately 18,250,000 dt of gas annually. Tennessee states that the transportation service commenced under the 120 day automatic authorization of § 284.223(a) of the Commission's Regulations on November 19, 1988, pursuant to a transportation agreement dated November 18, 1988, as amended. Tennessee notified the Commission of the commencement of the transportation service on December 15, 1988, in Docket No. ST89–1296–000.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–63 Filed 1–3–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88-44-000, CP85-58-017, RP88-202-000, RP88-185-000, RP88-184-000, CP88-434-000, CP88-333-000, CP88-332-000, CP88-203-000, CP87-553-000, CI87-290-000, TA88-1-33-000, TA88-3-33-000, TA85-1-33-004, and 009, TQ89-1-33-000 and TM89-1-33-000]

El Paso Natural Gas Informal Settlement Conference

Issued: December 28, 1988.

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on January 11, 1989 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426.

The parties and the Commission Staff are invited to attend the informal settlement conference. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information contact Cynthia A. Govan (202) 357-5330 or Hollis J. Alpert (202) 357-5354.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-59 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2842-015]

City of Idaho Falls, Idaho; Notice Extending Deadline

December 27, 1988.

By order issued October 7, 1988,[1] the Commission denied the appeal of the licensee, City of Idaho Falls, Idaho, challenging the order, issued June 24, 1988,[2] by the Director, Division of Project Compliance and Administration, which denied licensee's request to eliminate a requirement for seasonal installation of buoy lines at Project No. 2842. The Commission's order also directed the licensee to file, by November 7, 1988, (after consultation with the Sheriff of Bonneville County, Idaho) either a request to change the location of the buoy lines, with appropriately revised Exhibit R drawings and supporting evidence, or a letter stating that no change in the buoy-line locations is needed. By notice issued November 15, 1988, licensee's request, filed November 1, 1988, to extend the November 7 deadline 45 days to December 22, 1988, was granted.

On December 20, 1988, licensee filed a request for a 30-day extension, to January 23, 1989, of the previously-extended deadline for filing the required information. Licensee contends that it has filed a request for rehearing of the Commission's order, and therefore, the buoy line requirement may be removed. Because the requested extension will not delay the installation of the buoy lines, as required by the Commission's order, licensee's extension request will be granted and notice is hereby given, *nunc pro tunc*, that licensee must file the required information by January 23, 1989.

However, disposition of licensee's rehearing request is not a condition precedent to the filing of the required information. Thus, any further extension requests based on the pendency of licensee's rehearing request will not be viewed favorably, and licensee is hereby admonished to act in good faith to meet the new deadline for filing the required information.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-60 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-93-005 and RP88-40-005]

Questar Pipeline Co.; Extension of Time

December 27, 1988.

On December 16, 1988, Questar Pipeline Company (Questar) filed a motion for an extension of time to file a certificate application as required by the Commission's letter order issued December 1, 1988, in the above-docketed proceeding. In its motion, Questar states that because of the intervening holidays and the unavailability of company personnel, additional time is required for the preparation and filing of a comprehensive certificate application.

Upon consideration, notice is hereby given that an extension of time for the filing of a certificate application is granted to and including January 9, 1989.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-61 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-91-000, and RP88-221-000]

Texas Eastern Transmission Co.; Informal Settlement Conference; Errata

Issued: December 23, 1988.

December 28, 1988.

In first paragraph of notice published in the **Federal Register** on January 3, 1989, change "January 25, 1988" to "January 25, 1989."

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-62 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180799; FRL-3500-8]

Receipt of Application for an Emergency Exemption from Nebraska To Use 2-[[[[(4,6-Dimethoxy-2-Pyrimidinyl) Amino Carbonylaminosulfonyl-N,N-Dimethyl-3-Pyridinecarboxamide and 3-[4,6-BIS-(Difluoromethoxy)-Pyrimidin-2-YL]-1-(2-Methoxy Carbonyl-Phenylsulfonyl) Urea; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Nebraska Department of Agriculture (hereafter referred to as "Applicant") to use the postemergent herbicides Accent 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl) amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine carboxamide, and beacon 3-[4,6-Bis-(difluoromethoxy)-pyrimidin-2-YL]-(2-methoxy carbonyl-phenylsulfonyl) urea to treat 500,000 acres of field corn to control shattercane. Accent will be applied on approximately 35,000 acres, and Beacon will be applied on 465,000 acres. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant these exemptions.

DATE: Comments should be received on or before January 19, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180799" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information."

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* The above-referenced proceedings have not been consolidated for purposes of hearing or decision, however, settlement discussions may address issues in each of these proceedings.

[1] 45 FERC ¶ 61,042 (1988).

[2] 43 FERC ¶ 62,366 (1988).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Accent, 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl) amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine carboxamide, and beacon 3-[4,6-Bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxy carbonyl-phenylsulfonyl) urea.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Accent and Beacon are not currently registered in the United States.

The Applicant states that although preemergent herbicides provide early season weed control, they do not provide season-long weed control. Thiocarbamate herbicides are commonly used in corn for shattercane control. However, the Applicant states that continued use of these herbicides results in a build up of micro-organisms in the soil that break down these herbicides.

Crop rotation is a commonly used practice. However, the applicant states that current government farm programs force farmers in irrigated corn areas to maintain base acres. This restricts the amount of crop rotation that can be used for weed control in irrigated areas. Also corn provides good economic return under irrigated situations thus resulting in continuous corn production in these fields.

Cultivation can only control the weeds between rows, leaving the heaviest concentration of shattercane in the row. The Applicant states that it is normal practice to cultivate the corn once and to furrow it once for irrigation, however, this also leaves the shattercane within the row.

The Applicant proposes to make a single application of approximately 465,000 acres with the product Beacon, and 35,000 acres of Accent. Beacon will be applied at a rate of .57 ounces of active ingredient per acre. Accent will be applied at a rate of .5 ounces of active ingredient per acre. The Applicant estimates that 425,000 acres would be irrigated corn, and 75,000 acres would be dryland corn.

According to the Applicant, an emergency situation exists because there are presently no registered postemergent herbicides available that will control the infestation of shattercane in an efficacious and cost effective manner.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: December 19, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–4 Filed 1–3–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–031.

Title: South Europe/U.S.A. Freight Conference.

Parties:

Achille Lauro
Compania Trasatlantica Espanola, S.A.
Costa Line
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jogolinija
Jugooceanija
Lykes Lines
A.P. Moller-Maersk Line
Nedlloyd Lines
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would permit the Conference to enter into loyalty contracts in accordance with the antitrust laws of the United States. Also, the modification prohibits any member from entering into a loyalty contract, individually or jointly with another member, in the agreement trade. It would also prohibit members from taking independent action with resepct to loyalty contracts.

Agreement No.: 202–010979–010.

Title: Caribbean Shipowners Association.

Parties:

Tropical Shipping & Construction Co., Ltd.
Sea-Land Services, Inc.
Trailer Marine Transport Corporation
Puerto Rico Maritime Shipping Authority
The Shipping Corporation of Trainidad and Tobago
Tecmarine Lines
Bernuth Line, Ltd.
Interline Connection, Inc.
Sea-Barge Group, Inc.

Synopsis: The proposed modification would allow members to caucus and agree upon matters covered by the Agreement without having a formal Conference meeting. Adherence to any agreement under these circumstances is voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 29, 1988.

[FR Doc. 89-35 Filed 1-3-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003695-004.

Title: Port Everglades Authority Terminal Agreement.

Parties:

Port Everglades Authority (PEA)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The agreement extends the term of the basic terminal lease agreement between PEA and Sea-Land. The agreement permits the parties to continue in effect the wharfage rates, tonnage levels and crane rental rates under the agreement.

Agreement No.: 224-200017-003.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation
Delaware River Stevedoring, Inc.

Synopsis: The agreement extends the terms of the basic operating agreement (as provided in Article 2.4(b)) for the Packer Avenue Container Terminal from December 31, 1988 through March 3, 1989.

Agreement Nos.: 224-200139-001, 224-200139-002 and 224-200139-003.

Title: The Port Authority of New York and New Jersey.

Parties:

The Port Authority of New York and New Jersey.
Sea Terminals, Inc.

Synopsis: Amendment No. 1 provides for the City of New York to be listed as an additional insured. Amendment No. 2 provides for the occasional use of a container crane while Amendment No. 3 provides for a six month extension of the basic agreements term.

Agreement No.: 224-011033-001.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle
Nippon Yusen Kaisha, Ltd.

Synopsis: The agreement (1) reflects the deletion of Showa Line, Ltd. as a join lessee under the agreement, effective July 31, 1988, (2) enlarges the premises by addition of 4 acres of blacktopped land with improvements thereon, (3) redefines the premises to include the rental charge for the additional area, (4) provides Lessee the right to utilize the premises for serving other than Lessee's owned vessels without prior consent of the Port, and (5) deletes certain paragraphs no longer applicable to the basic Lease and Agreement.

Agreement No.: 224-200205

Title: City of New York Terminal Agreement.

Parties:

City of New York (the City)
Continental Terminals, Inc. (CTI)

Synopsis: The agreement provides for CTI's ten (10) year lease of the City's 23rd Street Pier, including the pier, pier shed and headhouse, Buildings Nos. 6 and 7 and adjoining uplands and lands-under-water located in the former Moore McCormack Marine Terminal, Brooklyn, New York. The lease permits CTI to use the premises for stevedoring and public warehousing. The lease requires the payment of annual rent plus wharfage and dockage fees.

Agreement No.: 224-200204

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Shipping Corporation of Trinidad and Tobago

Synopsis: The agreement provides for a consolidated rate for container handling services at Containerport Savannah, Georgia.

Agreement No.: 224-200207

Title: Tampa Port Authority Terminal Agreement

Parties:

Tampa Port Authority (TPA)
Harborside Refrigerated Services, Inc. (HRS)

Synopsis: The agreement provides for TPA to grant HRS wharfage incentive rates between January 1, 1989 and December 31, 1989, on movements of fresh fruit through a cold storage facility leased from TPA.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 29, 1988.

[FR Doc. 89-36 Filed 1-3-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-27]

Ariel Maritime Groups, Inc., et al. v. New York Shipping Association, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ariel Maritime Group, Inc., et al. (see Attachment A, hereinafter "Complainants") against the New York Shipping Association, Inc., et al. (see Attachment B, hereinafter "Respondents") was served December 29, 1988. Complainants allege that Respondents have violated certain sections of the Shipping Act, 1916, 46 U.S.C. app. section 801 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. section 843 et seq., and the Shipping Act of 1984, 46 U.S.C. app. section 1701 et seq., through implementation of the "Rules on Containers" at various East Coast and/or Gulf Coast ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 29, 1989, and the final decision of the Commission shall be issued by April 30, 1990.

Joseph C. Polking,

Secretary.

Attachment A—Names and Addresses of Complainants

Ariel Maritime (USA) Inc. dba Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Interlink Lines, Buccanner Line, Union Exportadora Lines, Canbel Line,

Cedar Star Line, Liberty Lines, 323 West 39th Street, 7th Floor, New York, NY 10018
Dieterle & Victory International Transport Co. Inc., Five World Trade Center, Suite 9267, New York, NY 10048
NATO Container Lines, 156 William Street, New York, NY 10038
Militzer & Muench, USA, Inc. dba Militzer & Muench Intermodal Lines, 40 Rector Street, Suite, 1830, New York, NY 10006
Panalpina, Inc. dba, Pantainer Express Lines, The Harborside Financial Center, Plaza Two, 34 Exchange Place, Jersey City, NJ 07302
Pan American Container Corp., 747 Third Avenue, New York, NY 10017
Unsworth Transport International, Inc. d/b/a UTI Lines, 1831 Pennsylvania Avenue, Linden, NJ 07836
Radix Group International, Inc. dba Union Star Line, 156 William Street, New York, NY 10038

Attachment B—Names and Addresses of Respondents

New York Shipping Association, 25 Broadway, New York, NY 10004
Council of North Atlantic Shipping Associations, 2 Girard Plaza, Philadelphia, PA 19102
West Gulf Maritime Association, 406 Cotton Exchange Building, Houston, Texas 77002
Mobile Steamship Association, Inc., P.O. Box 1077, Mobile, Alabama 36601
Southeast Florida Employers Port Association, Inc., P.O. Box 1693, Miami, FL 33101
ABC Containerline N.V., 38 East 29th Street, New York, NY 10016
ACL Motorships Inc., 900 Sylvan Avenue, Englewood Cliffs, NJ 06732
American Transport Line, 1820 Chapel Avenue, W. Cherry Hill, NJ 08002; P.O. Box 195161, Charlotte, NC 28219
Armada Shipping Inc., Armada House, 14227 Fern Drive, Houston, TX 77079
Associated Container Transportation/ PACE Lines, One World Trade Center, Suite 8101, New York, NY 10048
Atlantic Container Line, 50 Cragwood Road, South Plainfield, NJ 07080
Atlantik Express Line, c/o Norton Lilly Int., Inc., 200 Plaza Drive, Secaucus, NJ 07096
Bank Line Ltd., 99 Wood Avenue South, P.O. Box 4026, Iselin, NJ 08830
Barber Steamship Lines (N.A.) Inc. (Scan Carriers), 17 Batterv Place, 9th Floor, New York, NY 10004
Compagnie Generale Maritine, CGM/ French Line, Two World Trade Center, Suite 2164, New York, NY 10048
Columbus Line, Inc., Harborside Financial Center, Plaza 2, Jersey City, NJ 07302
Dart Containerline, c/o Seapac Services Inc., Five World Trade Center, New York, NY 10048
Deppe Line, c/o Ecam Container Services, 1900 North Loop West, Suite 550, Houston, TX 77018
Evergreen Int'l, (U.S.A.) Corp., One Evertrust Plaza, Jersey City, NJ 07032
Farell Lines, Inc., 1 White Hall Street, New York, NY 10004
Gulf Container Line (GCL), 5415 Oats Road, Houston, TX 77013
Hapag-Lloyd (America) Inc., One Edgewater Plaza, Staten Island, NY 10305
Incotrans, c/o Gulf Container Line, 5415 Oats Road, Houston, TX 77013
Interpool, Ltd., 630 Third Avenue, New York, NY 10017
Italian Line, c/o Containership Agency Inc., 96 Morton Street, New York, NY 10014
Lykes Bros. Steamship Co., Inc., 17 Battery Place North, New York, N.Y. 10004–1092; P.O. Box 8744, Houston, TX 77287–744
Mediterranean Shipping Co., c/o Containership Agency Inc., 96 Morton Street, New York, NY 10014
Nedlloyd Lines, Inc., Five World Trade Center, New York, NY 10048; 2 General Square Plaza, Jersey City, NJ 07306
Norton Lilly Intl. Inc., 200 Plaza Drive, Secaucus, NJ 07094
National Shipping Company of Saudi Arabia, c/o United States Navigation, Inc., 1 Edgewater Plaza, Staten Island, NY 10305
Ocean Star Container Line, c/o Intercon Shipping, Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07302
OOCL (U.S.A.) Inc., Two World Trade Center, 33rd Floor, New York, NY 10048
Pad Line Inc., c/o Southern Steam, Inc., 6 Commerce Drive, Cranford, N.J. 07016, Attn. Roy Keil
Pakistan National Shipping Corp., c/o East Coast Overseas Corp., 21 West Street, New York, NY 10006
POC Containers (TFL Ltd.) dba TFL Trans Freight Lines, 65 Willow Brook Blvd., Wayne, NJ 07470
Polish Ocean Lines, 39 Broadway, 14th Floor, New York, NY 10006
SAF Bank, Inc. (SAF Bank Line), c/o Gulf and Atlantic Maritime Services, Inc., P.O. Box 4026, 99 Wood Avenue, So. Iselin, NJ 08830
Safmarine, Inc., c/o Gulf and Atlantic Maritime Services, Inc., P.O. Box 4026, 99 Wood Avenue, So. Iselin, NJ 08830
Scott Line/Shipping Corporation of Trinidad and Tobago, Inc., c/o Intercon Shipping Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07032
Sea-land Service, Inc., One World Trade Center, Suite 2711, New York, NY 10048. Corporate HQ: 10 Parsonage Rd., Edison, NJ 08837
Spanish Line, c/o Transatlantica Agency Inc., 99 Hudson Street, New York, NY 10013
Tecomar Line, c/o Care Shipping, Inc., 515 North Belt East, Suite 300, Houston, TX 77060
Trans Freight Lines, 90 West Street, New York, NY 10006
Topgallant Group Inc., 510 Thornal Street, Edison, NJ 08837
Transamerica (ICS) Inc., 711 Westchester Avenue, White Plains, NY 10604
United Arab Shipping Co., c/o Kerr Steamship Co., Two World Trade Center, New York, NY 10048
United States Lines, Inc., 660 Madison Avenue, New York, NY 10021
Zim Container Service, One World Trade Center, Suite 2969, New York, NY 10048

[FR Doc. 89–21 Filed 1–3–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Commercial Security Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 23, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commercial Security Bancshares, Inc.*, Stockton, Missouri; to become a bank holding company by acquiring 93 percent of the voting shares of Sac River Valley Bank, Stockton, Missouri. Bank also engages in the sale of credit-related life insurance only.

Board of Governors of the Federal Reserve System, December 28, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-7 Filed 1-3-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

SmithKline Animal Health Products; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by SmithKline Animal Health Products. The NADA provides for the use of a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380, is the sponsor of NADA 100-127 which was originally approved August 18, 1976 (41 FR 34943). The NADA provides for using a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine to make Type C medicated swine feeds. The feeds contain 100 grams per ton each of both drugs and are used in accordance with 21 CFR 558.630(f)(2)(ii).

In a letter dated April 6, 1988, the sponsor requested the withdrawal of approval of the NADA and waived opportunity for hearing because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 100-127 and all supplements thereto is hereby withdrawn, effective January 17, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the drug labeler code No. "000007" from 21 CFR 558.630(b)(3).

Dated: December 28, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-77 Filed 1-3-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0193]

FDA's First Draft Proposed Standard for the Infant Apnea Monitor; Availability; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," to request public comment. FDA is also announcing that it is holding a public meeting to discuss the draft standard in conjunction with the Seventh Annual Conference on Apnea of Infancy to be held on January 26 to 28, 1989, Rancho Mirage, CA.

DATES: Comments on the "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988" by March 6, 1989. The public meeting will be held on January 25, 1989, from 3 p.m. to 5 p.m., at Embassy Suites, 74-700 Highway 111, Palm Desert, CA 92260.

ADDRESSES: Submit written requests for single copies of the "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988" to the Operations Staff (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist in processing your requests.

Submit written comments on the draft standard to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft standard and any received comments are available for public examination in the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: James McCue, Jr., Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 1982 (47 FR 39816), FDA published a final rule under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), classifying the generic type of device, the breathing (ventilatory) frequency monitor (21 CFR 868.2375), into class II (performance standards). This device is intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate is outside predetermined limits. The generic device encompasses breathing frequency monitors intended for use in a hospital or in the home and intended for use on adults or infants (neonates—children of less than 2 years of age).

In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish for the breathing frequency monitor a performance standard under section 514 of the act (21 U.S.C. 360d). FDA did not receive any requests for a change in the classification of the device.

In a notice published in the **Federal Register** of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(c) of the act and 21 CFR Part 861. In the notice of February 26, 1986, FDA invited any interested persons, including Federal agencies, to submit, on or before April 28, 1986, an existing standard as a proposed performance standard for the device, or to submit an offer to develop such a proposed standard. In that notice, FDA limited its proceeding to those breathing frequency monitors commonly called neonatal apnea monitors, which are intended for use on infants to detect cessation of breathing. If the infant ceases breathing (apnea) while the device is being used, the device should provide an audible or visible alarm.

In the **Federal Register** of July 1, 1986 (51 FR 23832), FDA announced that, in accordance with the provisions of section 514(e)(3) of the act and 21 CFR 861.32, FDA may, upon application (which may be made before the

acceptance of the offer), agree to contribute to the accepted offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard that would be developed without such contribution. Support would be provided through the means of a Cooperative Agreement Award to nonfederal institutions and individuals and through an interagency agreement to Federal institutions. Cooperative Agreement Awards would be subject to the cost principles set forth in the Federal Acquisition Regulations System. Cooperative agreements are authorized under Pub. L. 95–224 and interagency agreements, under the Economy Act of 1932 as amended (31 U.S.C. 1535; formerly 31 U.S.C. 686). Subsequently, FDA allocated approximately $250,000 to contribute to the offeror's cost for the first year of effort in developing a proposed standard.

In the **Federal Register** of April 22, 1988 (53 FR 13296), FDA advised that a Notice of Grant Award (cooperative agreement) had been issued to the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. Items to be delivered to FDA by ECRI by the end of the first year were: (1) A draft performance standard document addressing certain specified issues; (2) a final report that includes a description of the work performed under the cooperative agreement, additional rationale for its necessity, and feasibility for each of the requirements of the standard, including an assessment of the degree of risk of illness or injury designed to be eliminated or reduced by the proposed standard, and a list of references used in the development of the standard; (3) hard copies of the references mentioned above; and (4) a mailing list for distribution of the draft proposed standard to interested persons.

The cooperative agreement with ECRI was completed on August 31, 1988, with delivery of the items listed above. Because certain requirements for the infant apnea monitor were unable to be addressed in the draft document delivered to the agency, FDA is now proceeding to develop a proposed standard for the infant apnea monitor, using the information developed during the cooperative agreement with ECRI (21 U.S.C. 360d(f)).

II. First Draft Proposed Standard for the Infant Apnea Monitor—October 1988

FDA is now making available for comment its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988." FDA's first draft standard is somewhat different from the document delivered to the agency by ECRI. FDA has revised the draft to reflect the format used in FDA regulations. Further, FDA has expanded a number of the specific requirements recommended by ECRI, and is suggesting the addition of other requirements.

Footnotes are provided throughout the draft document to indicate FDA's current thoughts on specific requirements. Test methods for many of the performance requirements are under development, and an outline of the agency's current approach is provided for comment. The first draft standard contains both general and specific requirements, and includes an appendix which provides the rationale for including each performance requirement in the standard. FDA welcomes comments on all areas of the document, but particularly requests comments on specific requirements, such as effectiveness, apnea duration, test methods, etc.

Accordingly, under 21 CFR 861.30, FDA is providing interested persons an opportunity to participate in the development of the standard by accepting comments, and where appropriate, holding public meetings on issues relating to development of the standard. Therefore, FDA is announcing that it will hold an open public meeting to discuss the draft standard on January 25, 1989, from 3 p.m. to 5 p.m., at the Embassy Suites (address above). FDA's public meeting will be held in conjunction with the Seventh Annual Conference on Apnea of Infancy, January 26 to 28, 1989, Rancho Mirage, CA 92270.

Data and information submitted voluntarily to FDA during the public meeting to discuss the draft standard will become part of the administrative record and will be available to the public under 21 CFR 20.111. After comments, data, and information submitted at the open public meeting are reviewed, FDA will prepare and make available another draft proposed standard. FDA plans to prepare and make available for comment at least one, if not two, revised draft standards for the device before publishing in the **Federal Register** a proposed mandatory standard under 21 U.S.C. 360d(g) and 21 CFR 10.40.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–30262 Filed 12–30–88; 9:23 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0438]

Drug Export; Oxaprozin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wyeth-Ayerst Laboratories has filed an application requesting approval for the export of the human drug Oxaprozin to Japan and Portugal.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the

application. To meet this requirement, the agency is providing notice that Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–1245, has filed an application requesting approval for the export of the drug Oxaprozin, to Japan and Portugal. This drug is to be used as an antiinflammatory agent. The application was received and filed in the Center for Drug Evaluation and Research on December 12, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this documents. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 17, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 21, 1988.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–78 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Preferences, Funding Priorities and Special Consideration for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces the final Funding Preferences, Funding Priorities and Special Consideration for Cooperative Agreements for Area Health Education Center Programs.

Section 781 (a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing, and operating new area health education center programs.

Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in section 57.3804 of the program regulations;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the proposed area health education centers.

Proposed funding preferences, funding priorities and a special consideration were published in the **Federal Register** of October 7, 1988 (FR 39526), for public comment. No comments were received during the 30-day comment period. Therefore, the funding preferences, funding priorities and special consideration as proposed are retained as follows:

In making awards for Fiscal Year 1989, the following funding preferences, funding priorities and special consideration will be used:

Final Funding Preferences

A funding preference will be given to:

(1) Competing continuation applications;

(2) New applications for planning and developing projects under section 781(a)(1);

(3) New applications for Special Initiatives under section 781(a)(2); and

(4) Supplements to existing awards.

Final Funding Priorities

A funding priority will be given to:

(1) Applications proposing centers in which substantial training exprience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or State designated clinic/center serving an underserved population.

(2) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(3) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer developed guidelines and standards.

Final Special Consideration

Special consideration will be given to those applications proposing centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics.

The program is listed at 13.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–66 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priority for Grants for Departments of Family Medicine

The Health Resources and Services Administration announces the Final Funding Priority for Fiscal Year 1989 for Grants for Establishment of Departments of Family Medicine.

Section 780 of the Public Health Service Act authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII of the PHS Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the project requirements in § 57.1704;

2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

3. The qualifications of the proposed staff and faculty of the unit; and

4. The potential of the project to continue on a self-sustaining basis.

Section 780, as amended by Pub. L. 100–607 requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Special Consideration

A special consideration will be given to applicants that demonstrate the potential to continue the project on a self-sustaining basis. This special consideration was implemented as a funding preference in Fiscal Year 1988 and the Department is extending it in Fiscal Year 1989.

A proposed funding priority was published in the **Federal Register** of October 7, 1988 (FR 39528) for public comment for Grants for Departments of Family Medicine. No comments were received during the 30-day comment period. Therefore, the funding priority as proposed will be retained as follows:

A funding priority will be given to applications which show a representation of underrepresented minority faculty in a family medicine administrative unit which is at least twice the National average 2.8 percent in U.S. medical schools and can document extent of net increase of underrepresented minority faculty in the unit (i.e., Black, Hispanic, and American Indian/Alaska Native), over average of the past three years.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–67 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priority for Grants for Programs for Physician Assistants

The Health Resource and Services Administration announces the final funding priority for Fiscal Year 1989 for Grants for Programs for Physician Assistants.

Section 788(d), (formerly section 783 (a)), authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act. Pub. L. 100–607, redesignated section 783 to 788(d) of the PHS Act.

To receive support, programs must meet the requirements of sections 701(8) and 788(d) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts, H and I.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;

2. The potential effectiveness of the project in carrying out the purposes of section 788(d) of the PHS Act and 42 CFR, Subparts H–I.

3. The capability of the applicant to carry out the proposed project;

4. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

5. The soundness of the fiscal plan for assuring effective use of grant funds;

6. The potential of the project to continue of a self-sustaining basis after the period of grant support; and

7. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Proposed funding priorities were published in the **Federal Register** of October 7, 1988 (FR 39530) for public comment for Grants for Programs for Physician Assistants. No comments were received during the 30-day comment period. Therefore, the funding priorities as proposed will be retained as follows:

In determining the order of funding of approved applications, a funding priority will be given to:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in the training program.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer developed guidelines and standards.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372. Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–68 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1916]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 2, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: 203 (K) Maximum Mortgage Worksheet.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This form is used by the HUD Review Appraiser or the Direct Endorsement Lender to determine the maximum insurance mortgage amount on a property.

Form Number: HUD–92700.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden: Maximum mortgage worksheet: Number of respondents 2,500, times frequency of response 1, times hours per response 0.5, equals burden hours 1,250.

Total Estimated Burden Hours: 1,250.

Status: New.

Contact: Kenneth L. Crandall, HUD, (202) 755–6720; John Allison, OMBS, (202) 395–6880.

Date: December 2, 1988.

[FR Doc. 89–73 Filed 1–3–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–88–1915]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Title I Lender Approval Forms and Associated Recordkeeping

Office: Housing

Description of the Need for the Information and its Proposed Use: HUD programs under Title I of the National Housing Act ensure eligible lenders against losses which they may sustain as a result of property improvement and manufactured housing loans. These forms are used to verify lender information in connection with reviewing or monitoring their approval status.

Form Number: HUD–92001–L, 92001–LC, 92001–LD, 92001–LB, and 92001–LK, 92001–LV

Respondents: State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: On Occasion and Annually

Reporting Burden:

	No. of respond-ents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92001-L	300		1		1.00		300
HUD-92001-LC	300		1		1.00		300
HUD-92001-LD	300		1		1.00		300
HUD-92001-LB	300		1		1.00		300
HUD-92001-LK	1,400		1		.50		700
HUD-92001-LV	7,000		1		1.00		7,000
Recordkeeping	7,000		1		.25		1,750

Total Estimated Burden Hours: 10,650
Status: Revision
Contact: Sandra L. Allison, HUD, (202) 755-6924; John Allison, OMB, (202) 395-6880.

Date: December 28, 1988.

[FR Doc. 89-74 Filed 1-3-89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Larry E. Johnson, Phoenix, AZ, PRT-733798.

The applicant requests a permit to purchase one male and two female Diana monkeys (*Cercopithecus diana*) from Monkey Jungle, Miami, Florida, and export the monkeys in foreign commerce to the Guadalajara Zoo, Mexico, for purposes of public display and captive propagation.

Applicant: International Animal Exchange, Inc., Ferndale, MI, PRT-730327.

The applicant requests a permit to purchase one pair of captive-hatched Andean condors (*Vultur gryphus*) from the San Antonio Zoo, San Antonio, Texas, and one female captive-hatched Andean condor from the Buffalo Zoo, Buffalo, New York, and export the birds in foreign commerce to the Nagasaki Biopark, Japan, for purposes of public display and captive propagation.

Applicant: Panaewa Rainforest Zoo, Hilo, HI, PRT-733616.

The applicant requests a permit to take (capture, radio tag and release) fledgeling Hawaiian hawks (*Buteo solitarius*) for surveys of dispersal, eventual courtship and pair bonding to gain data to improve captive-breeding techniques.

Applicant: New York Zoological Society, Bronx, NY, PRT-732522.

The applicant requests a permit to import two pair (2.2) of captive-born Blythe's tragopans (*Tragopan blythii*) from Glenn Howe, Ontario, Canada for the purpose of captive propagation.

Applicant: American Museum of Natural History, New York, New York, PRT-733576.

The applicant requests a permit to import two Bahamian parrot chicks (*Amazona leucocephala*) that were found dead in their nests on Abaco Island, Bahamas, for use in the scientific study of parrot systematics.

Applicant: Alameda Park Zoo, Alamogordo, NM, PRT-733585.

The applicant requests a permit to purchase in interstate commerce one captive-born male ocelot (*Felis pardalis*) from the Woodland Park Zoological Gardens, Seattle, Washington, for educational and breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: December 22, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-9 Filed 1-3-89; 8:45 am]
BILLING CODE 4310-AN-M

Notice of Receipt of Application for Permit

The public is invited to comment on the following application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant's Name: U.S. Fish & Wildlife Service, Alaska Office of Fish & Wildlife Research, 1011 E. Tudor Road, Anchorage, Alaska 99503, File no. PRT-690038.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar bear (*Ursus maritimus*); unlimited.

Summary of Activity to be Authorized: The applicant proposes to import, export, and reexport body parts, including blood samples, tissue samples, teeth and bone samples between the United States, Canada and the Soviet Union for ongoing polar bear research efforts.

Source of Marine Mammals for Display: Samples to be exported will be collected from animals live-captured in Alaska under the Service's current take permit, PRT-690038. Samples will be imported from Canada and the Soviet Union and reexported to same.

Period of Activity: through 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038-7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: December 23, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-10 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-55-M

New York State Department of Environmental Conservation, Division of Fish and Wildlife; Notice of Intent To Prepare a Draft Environmental Impact Statement on the Northern Montezuma Wetland Project, and Notice of Scoping Meeting

CO-LEAD AGENCIES: U.S. Fish and Wildlife Service, Interior N.Y.S. Department of Environmental Conservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation, as co-lead agencies, are gathering information in order to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQR) for a Proposal to protect and manage the natural resource values of the Northern Montezuma Wetlands complex located in Wayne, Seneca and Cayuga counties of western New York.

The project area includes approximately 25,000 acres of wetland and associated uplands lying contiguous with the Montezuma National Wildlife Refuge, and the State-owned Howlands Island, Cayuga Lake and Crusoe Lake Wildlife Management Areas. The purpose and goals of the project are to protect wetland habitats of this major migratory bird staging area, protect and enhance bald eagle nesting habitat, restore depleted agricultural mucklands to their original wetland state, make these lands accessible for compatible recreational and educational uses, and maximize the production of waterfowl and other wetland wildlife on these lands through management.

Notice is also given that a public scoping meeting will be held at the time and place given below to (1) provide a brief description of the proposal for informational purposes, (2) identify alternatives, environmental impacts and issues that should be addressed in the Draft Environmental Impact Statement, (3) identify other environmental review, consultation, coordination, clearance, or permit requirements associated with the proposal, (4) describe the role of the Environmental Impact Statement in the planning and decision-making process, and (5) establish projected time frames for preparing the Draft Environmental Impact Statement.

These Notices are provided as required by the National Environmental Policy Act and implementing regulations (40 CFR Parts 1500-1508) and the New York State Environmental Quality Review Act and implementing regulations (6 NYCRR Part 617).

DATES AND ADDRESSES: The Scoping Meeting will be held on February 22, 1989 at the Montezuma National Wildlife Refuge Visitor Center, Rts. 5 & 20, Seneca Falls, New York, from 12:00 p.m.-10:00 p.m.

Formal presentations will be held at 12:00, 2:00, 4:00 and 7:00 p.m. Prior to this date persons, agencies and organizations who desire to present materials during the scoping meeting are requested to give written notification to one of the contact persons below.

Written comments regarding the above subject may also be submitted to one of the contact persons below prior to the scoping meeting or 30 days after. Such written comments will be considered along with any oral statements made at the scoping meeting.

Contact Persons: Donald Slingerland, NYSDEC, Wildlife Resources Center, Delmar, NY 12054, 518-439-0725, or Walter Quist, USFWS, 1 Gateway Center, Suite 700, Newton Corner, MA 02153, 617-965-5100 ext. 410.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement will present a number of alternative actions which could be implemented to accomplish the goals of the project. The Proposed Action for the U.S. Fish and Wildlife Service and the State of New York is to acquire real property, real property interests and cooperative agreements through landowner negotiations and to implement management plans on the area in support of objectives established for The North American Waterfowl Management Plan's Lower Great Lakes/St. Lawrence Basin Joint Venture. All viable alternatives are open for consideration and no final decision will be made until such time as the public has had additional opportunity to comment on the proposal through the SEQR/NEPA process. The Draft Environmental Impact Statement will include a No Action alternative, the Proposed Action, and primary alternatives which are reasonable courses of action, and secondary alternatives which will include actions considered but determined not to be reasonable in accomplishing goals and objectives, including actions that may be taken by others outside of state and federal governments.

A Draft Environmental Impact Statement will be prepared after comments have been received at the scoping meeting and as a result of this notice. Availability of the Draft Environmental Impact Statement for public review will be announced in the **Federal Register**, Environmental News Bulletin, area newspapers, and direct mailings.

Federal Author: Walter Quist, U.S. Fish and Wildlife Service, 1 Gateway Center, Newton Corner, MA 02158.

Date: December 27, 1988.

James F. Gillett,

Deputy Regional Director.

[FR Doc. 89-26 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA-010-09-4312-13; CA 23982]

Realty Action; Exchange of Public and Private Lands in El Dorado, NV, Placer, San Diego, Tuolumne, Yuba, and Mono Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Realty Action; Exchange of Public and Private Lands (CA 23982).

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note.—Not all of the lands identified below will be involved in the exchange: Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

Selected Public Land

El Dorado County, California

T. 11 N., R. 10 E., M.D.M.
Sec. 12, lots 12, 13, 14, 20, 21, 22, 23, 27, 28, 30, 31, 32, 33.
T. 12 N., R. 10 E., M.D.M.,
Sec. 1, lots 1, 2, SW¼NE¼;
Sec. 2, all public land in the E½, all public land in the W½NW¼;
Sec. 3, lot 1;
Sec. 15, all public land;
Sec. 17, lots 11, 19-26 inclusive, E½SW¼ NW¼;
Sec. 21, N½NE¼, SE¼NE¼;
Sec. 22, lots 7, 8.
T. 12 N., R. 11 E., M.D.M.,
Sec. 30, SE¼NW¼.
T. 13 N., R. 10 E., M.D.M.,
Sec. 32, lots 1, 2, NE¼NE¼;

Sec. 34, lots 4, 5, 6, and all public land in the N½, all public land in the N½SW¼.

Nevada County, California

T. 15 N., R. 9 E., M.D.M.,
Sec. 28, NW¼SE¼, SW¼SW¼.
T. 16 N., R. 9 E., M.D.M.,
Sec. 17, lots 29, 30, 31;
Sec. 20, all public land in the N½NW¼;
Sec. 22, SW¼SW¼.
T. 16 N., R. 10 E., M.D.M.,
Sec. 13, lots 3 and 4.
T. 17 N., R. 8 E., M.D.M.,
Sec. 12, lot 2, SE¼NE¼, E½NW¼.
T. 17 N., R. 9 E., M.D.M.,
Sec. 3, lots 3, 11, 12, E½E½SW¼NW¼, SE¼NW¼;
Sec. 4, lot 15, SE¼NE¼;
Sec. 5, lot 8, 9;
Sec. 6, lot 20;
Sec. 7, lots 17–27 inclusive;
Sec. 8, lots 6, 7, 9, 10, 11, 12, 13, SW¼SW¼;
Sec. 9, E½SE¼;
Sec. 10, lots 10, 11, 12, 13, SW¼, N½SE¼, N½S½SE¼;
Sec. 18, NE¼NE¼.
T. 17 N., R. 10 E., M.D.M.,
Sec. 20, SE¼SE¼;
Sec. 21, SW¼NE¼NE¼, S½NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼;
Sec. 28, lots 5, 6, 7.
T. 18 N., R. 9 E., M.D.M.,
Sec. 32, W½NE¼, SE¼NE¼, NW¼SE¼;
Sec. 34, all public land in the S½.

Placer County, California

T. 14 N., R. 10 E., M.D.M.,
Sec. 14, lot 3, NW¼SW¼;
Sec. 15, S½;
Sec. 22, all public land.
T. 15 N., R. 10 E., M.D.M.,
Sec. 14, lots 1, 2, 3, N½NE¼;
Sec. 23, S½S½NE¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 26, lots 1, 2, 6, 9, 11, W½NW¼S W¼,SW¼SW¼, S½SE¼SW¼ (including portion of MS 1926, lot 90), and MS 2339;
Sec. 27, all public land (excluding lots 1, 2, 19, 20, 29, 30);
Sec. 28, lots 18, 23;
Sec. 31, all public land in the SE¼;
Sec. 32, all public land in the S½;
Sec. 33, lots 53, 67, 70, 71, 72, 73, 74, 76, 77;
Sec. 34, all public land;
Sec. 35, W½NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.
T. 16 N., R. 11 E., M.D.M.,
Sec. 32, NW¼NE¼.

San Diego County, California

T. 10 S., R. 3 W., S.B.M.,
Sec. 33, NW¼NW¼.

Tuolumne County, California

T. 2 N., R. 14 E., M.D.M.,
Sec. 9, NW¼SE¼NE¼, SW¼NE¼, W½SE¼, S½NE¼SE¼.

Yuba County, California

T. 17 N., R. 7 E., M.D.M.,
Sec. 2, lot 2, SW¼NE¼, NW¼SE¼.
T. 18 N., R. 7 E., M.D.M.,
Sec. 28, lots 1, 2.
T. 19 N., R. 6 E., M.D.M.,
Sec. 13, lots 1, 2, 3, 4, 5, 6, 7, NW¼NW¼;
Sec. 25, SW¼SW¼;
Sec. 35, NW¼NE¼.

Aggregating approximately 6,700.00 acres, more or less.

In exchange for some of the above parcels, the United States will acquire the following described private lands from the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105:

Offered Private Land

Mono County, California

T. 3 N., R. 25 E., M.D.M.,
Sec. 14, SW¼SW¼, SW¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 22, E½E½;
Sec. 23, W½NE¼, SE¼NE¼, W½W½, E½SW¼, N½SE¼, SE¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 29, NW¼NW¼.

Aggregating 1000.00 acres, more or less

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire the non-Federal lands which have high public values for wildlife habitat and recreation. These lands are an important fawning area for mule deer and nesting area for waterfowl. The area receives heavy use for recreation because of its spectacular scenic vistas. The public interest will be well served by completing the exchange.

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 for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945)

(2) Authorized pipelines, power lines, roads, highways, telephone lines, mineral leases and any other authorized land uses will be identified as prior existing rights.

(3) All necessary clearances for archaeology, rare plants and animals shall be granted prior to conveyance of title.

(4) Grazing operators that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

(5) The right to itself, its permittees or licensees, to enter upon, occupy and use, any part or all of that portion of Lot 1 and the W½NW¼, Sec. 13, T. 19 N., R. 6 E., M.D.M., lying within 20 feet of the centerline of the transmission line right-of-way of the Pacific Gas & Electric Company (Power Project No. 1408) for the purposes set forth in and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818).

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing.

DATE: On or before February 21, 1989, interested parties may submit comments to the District Manager at the following address. Any comments submitted need to specify which parcel is being commented on.

ADDRESS: Comments should be sent to the District Manager in care of the Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985–4474, or at the address listed above.

Date: December 23, 1988.

Nancy J. Cotner,

Associate District Manager, Bakersfield.

[FR Doc. 89–91 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda of Plenary Session Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia 22091 (telephone 703–620–9000), from 8:00 a.m. to 5:00 p.m. on February 23, 1989, and from 8:00 a.m. to 5:00 p.m. on February 24, 1989.

The agenda for the meetings will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program;

• Discussion of the results of the Scientific Committee Fisheries Task Force;

• Report on the "Toxicity of Oil and Chemical Dispersants" study being performed by the Atlantic OCS Region and the Gulf of Mexico OCS Region; and

• A report from the National Academy of Sciences.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, Reston, Virginia 22091; telephone (703) 648-7729.

Date: December 22, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-24 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Draft Colorado River Management Plan and Environmental Assessment; Grand Canyon National Park, AZ; Extension of Public Review Period

SUMMARY: The Notice of Availability of the Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, was announced in the Federal Register, Vol. 53, No. 228, Monday, November 28, 1988. The public review period for the Plan and Assessment has now been extended to January 20, 1989.

ADDRESSES: Comments on the Plan and Assessment or requests for copies should be addressed to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Date: December 16, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 89-69 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

[INT-DES-88-60]

American River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 317,150 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the preparation of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978-5130.

Copies of the DEIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, 18th & C Streets, NW., Room 7455, Washington, DC 20240

Bureau of Reclamation, Mid-Pacific Region Project Offices:

Folsom Office, 7794 Folsom Dam Road, Folsom, CA 95630

Fresno Office, 1130 "O" Street, Fresno, CA 93721

Shasta Dam Office, Shasta Dam, CA 96003

Tracy Office, Kelso Road, Tracy, CA 95378

Trinity River Basin Field Office, Weaverville, CA 96093

Willows Office, 1140 Westwood, Willows, CA 95988

Libraries:

Bureau of Reclamation, Reclamation Library, Room W-1526, 2800 Cottage Way, Sacramento, CA 95825; Telephone: (916) 978-5130

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225

Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978-5488; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver, CO), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The water proposed for contracting originates from existing storage facilities in the American River Division and would be used to meet agricultural and municipal and industrial (M&I) needs in the American River Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amount of water available for beneficial use, considering conjunctive use of surface water and groundwater for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the American River Water Contracting DEIS, Reclamation is preparing similar EIS's for the Sacramento River and Delta Export Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assessing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA environmental reviews, of much narrower scope, will be conducted prior to execution of contracts with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I needs within constructed CVP units; giving priority to agricultural and M&I needs in areas of origin; providing water for agriculture and M&I needs in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; groundwater; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

Tuesday, Jan. 31.....	Blue Gum Restaurant, Highway 99W, Willows, CA 95988.
Thursday, Feb. 2.....	Holiday Inn/ Holidome, Sierra Room, 5321 Date Avenue, Sacramento, CA 95841.
Monday, Feb. 6.....	Center Plaza Holiday Inn, Conference Center, 2233 Ventura, Fresno, CA 93721.
Wednesday, Feb. 8....	Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd., Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceedings should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–47 Filed 1–3–89; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES-88-61]

Delta Export Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 879,800 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the prepration of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP–750), 2800 Cottagge Way, Sacramento, CA 95825; Telephone (916) 978–5130.

Copies of the DEIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, 18th & C Streets, NW., Room 7455, Washington, DC 20240

Bureau of Reclamation, Mid-Pacific Region Project Offices:

- Folsom Office, 7794 Folsom Dam Road, Folsom, CA 95630
- Fresno Office, 1130 "O" Street, Fresno, CA 93721
- Shasta Dam Office, Shasta Dam, CA 96003
- Tracy Office, Kelso Road, Tracy, CA 95378
- Trinity River Basin Field Office, Weaverville, CA 96093
- Willows Office, 1140 Westwood, Willows, CA 95988

Libraries:

Bureau of Reclamation, Reclamation Library, Room W–1526, 2800 Cottage Way, Sacramento, CA 95825; Telephone: (916) 978–5130

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225

Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978–5488; or Dr. Wayne O. Deason (Manger, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: The water proposed for contracting originates from existing storage facilities in the northern CVP area (Shasta, Trinity, and American River Divisions) and would be used to meet agricultural, municipal and industrial (M&I), and refuge water needs in the Delta Export Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amout of water available for beneficial use, considering conjunctive use of surface water and groundwater for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the Delta Export Water Contracting DEIS, Reclamation is preparing similar EIS's for the Sacramento and American River Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assesing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA evironmental reviews, of much narrower scope, will be conducted prior to execution of contracts with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I need within constructed CVP units; giving priority to agricultural and M&I need in areas of origin; providing water for agriculture and M&I need in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; groundwater; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

Tuesday, Jan. 31.....	Blue Gum Restaurant, Highway 99W, Williows, CA 95988.

Thursday, Feb. 2.....	Holiday Inn/ Holidome, Sierra Room, 5321 Date Avenue, Sacramento, CA 95841.
Monday, Feb. 6.....	Center Plaza Holiday Inn, Conference Center, 2233 Ventura, Fresno, CA 93721.
Wednesday, Feb. 8....	Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd, Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceeding should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

Date: December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–48 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–09–M

[INT–DES–88–59]

Sacramento River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 350,900 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the prepration of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP–750), 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978–5130.

Copies of the DEIS are available for public inspection and review at the following locations:

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- Willows Office, 1140 Westwood, Willows, CA 95988

Libraries:

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Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978–5488; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION:

The water proposed for contracting originates from existing storage facilities in the northern CVP area (Shasta and Trinity River Divisions) and would be used to meet agricultural, municipal and industrial (M&I), and refuge water needs in the Sacramento River Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amount of water available for beneficial use, considering conjunctive use of surface water and ground water for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the Sacramento River Water Contracting DEIS, Reclamation is preparing similar EIS's for the American River and Delta Export Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assessing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA evironmental reviews, of much narrower scope, will be conducted prior to execution of contractrs with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I need within constructed CVP units; giving priority to agricultural and M&I needs in areas of origin; providing water for agriculture and M&I needs in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; ground water; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

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Wednesday, Feb. 8.... Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd, Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceedings should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

Date: December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–49 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–09–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights 30 CFR Part 774.

OMB Number: 1029–0088.

Abstract: Sections 511(a)(1), 511(b) and 506(d) of Pub. L. 95–87 provide that persons seeking permit revisions, renewals, transfer, sale or assignment of permit rights for coal mining activities, submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for a permit revision, renewal, transfer, assignment, or sale of permit rights.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators.

Annual responses: 3,660.

Annual Bureau hours: 36,480.

Estimated completion time: 11 hours.

Bureau clearance officer: Nancy Ann Baka (202) 343–5981.

Date: December 8, 1988.

Jim Fulton,

Chief, Division of Regulatory Development.

[FR Doc. 89–89 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Housing Development Finance Corporation Limited, of Bombay, India (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to develop a fully functioning private housing finance system in India which will make long-term shelter financing available for low-income families residing in India. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers:

INDIA

Project: 386–HG–002(D)—$35 Million

Attention: (1) Mr. Deepak Satwalekar, General Manager, Housing Development Finance Corporation, Limited (HDFC), c/o Mr. G. C. Kathrani, Senior Vice President, Bank of India, 277 Park Avenue, 36th Floor, New York, NY 10172, Telex No.: 239707 BOI UR, Telefax No.: 212/319–6347, Telephone No.: 212/888–6031

Housing Development Finance Corporation Limited (HDFC), Attention: (2) Mr. Deepak Satwalekar, General Manager, Ramon House 169, Backbay Reclamation, Bombay 400 020, Telex No.: HDFC 6762, Telephone: 220265, 220282, 22098

Interested lenders should telegram their bids to the Borrower's representatives on January 18, 1989, but no later than 4:00 p.m. New York Time. Bids should be open at least 24 hours. Copies of all bids should be simultaneously sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, D.C. 20523, Telephone: 202/647–8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647–4958 (preferred communication)

Mr. David Painter, Assistant Director/Asia, RHUDO/Bangkok, USAID/Bangkok, Box 47, APO San Francisco 96346, (street address: 37 Soi Somprasong 3, Petchburi Road, Bangkok 10400, Thailand, Telephone No.: 66/2/255–3665, Telefax No.: 66/2/255–3730, Telex No.: 87058 RPS TH

For your information the Borrower is currently considering the following terms:

1. *Amount:* U.S. $35 million.
2. *Maturity:* Up to 30 years.
3. *Interest Rate:* Fixed or Floating.
4. *Grace Period on Principal:* Ten years.
5. *Fees:* Payable at closing from proceeds of loan.

Interested lenders are requested to contact the Borrower's representatives promptly to clarify the details of the proposed financing and to place their names on a short list to receive such additional details as to loan terms that may become known prior to the bid opening date.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. would enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The maximum rate of interest shall be a rate which in A.I.D.'s

opinion is similar to current borrowing rates for Housing and Urban Development housing mortgage loans.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, D. C. 20523, Telephone: 202/633–2530

Lee D. Roussel,

Acting Assistant Director for Operations, Office of Housing and Urban Programs, Agency for International Development.

Date: December 30, 1988.

[FR Doc. 89–156 Filed 1–3–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31381]

Consolidated Rail Corp.—Trackage Rights Exemption—Chicago, Missouri and Western Railway Co.

The Chicago, Missouri and Western Railway Company (CM&W) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over two non-contiguous segments of CM&W's rail line between East St. Louis and Sauget, IL. The first segment extends from the connection with Conrail at Missouri Avenue in East St. Louis to the connection with the line of Terminal Railroad Association of East St. Louis (TRRA). The second segment extends from the connection with TRRA at M&O Jct. in East St. Louis to the tracks of Cahokia Marine Terminal at Sauget, a total distance of approximately 2.3 miles. The trackage rights were to have become effective on or after December 12, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29561 Filed 1–3–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 255X)]

CSX Transportation, Inc.; Abandonment Exemption; in Citrus County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 18.35 miles of rail line in Citrus County, FL, subject to standard labor protective conditions, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 7, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 17, 1989, petitions to stay must be filed by January 23, 1989, and petitions for reconsideration must be filed by February 2, 1989. Requests for a public use condition must be filed by January 17, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 255X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Charles M. Rosenberger—J150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

(TDD for hearing impaired (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commisson's decision. To purchase a copy of the full decision, write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: December 22, 1988.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–102 Filed 1–3–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

December 28, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Public Law 96–511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633–4312.

Reinstatement of a Previously Approved Collection for which Approval has Expired

(Expedited OMB review requested, copy of form included in this notice.)

(1) Justice Assistance Data—Survey of Civil and Criminal Justice Activities

(2) CJ–6, CJ–23. Bureau of Justice Assistance.

(3) Periodic, every three years.

(4) State or local governments. This survey will collect data from state and local governments needed to comply with grant allocation procedures mandated by the Congress under the Justice Assistance Improvement Act of 1984 as amended by the Anti-Drug Abuse Act of 1988. These data will be used to administer the grant program and provide descriptive data for policymakers, planners, and practitioners.

(5) 8,000 respondents at .47 hours each.

(6) 3,750 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Certification of Identity

(2) DOJ–361; Facilities and Administrative Services Staff, Justice Management Division.

(3) On occasion.

(4) Individuals or households. The information is requested to ensure that the records of individuals who are the subjects of Department of Justice systems of records are not wrongfully disseminated.

(5) 2,500 annual respondents at .02 hours each.

(6) 50 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410–18–M

OMB No. XXXX-XXXX: Approval Expires XX/XX/XX

Data supplied by	FORM CJ-6 (12-19-88) U.S. DEPARTMENT OF COMMERCE BUREAU OF THE CENSUS
Name	**SURVEY OF EXPENDITURE AND EMPLOYMENT FOR CIVIL AND CRIMINAL JUSTICE ACTIVITIES OF LOCAL GOVERNMENTS**
Title	**In correspondence pertaining to this report, please refer to the identification number above your address**
Official address *(Number and street, city, State, ZIP Code)*	
Telephone: Area code / Number / Extension	*(Please correct any error in name, address, and ZIP Code)*
RETURN THIS COPY TO **Bureau of the Census Attn: Governments Division Washington, DC 20233**	*Important* Please read the definitions on page 2.

FROM THE DIRECTOR
BUREAU OF THE CENSUS

On behalf of the Bureau of Justice Statistics (BJS), Department of Justice, the Bureau of the Census is collecting public expenditure and employment data for the following six civil and criminal justice activities: police protection, judicial, legal services and prosecution, public defense, corrections, and other related justice activities. These data are very similar to data we last collected for the Bureau of Justice Statistics in 1985. The Department of Justice will use the data from this survey to implement and administer the formula grant program of the Justice Assistance Act of 1984, 42 USC 3747, as amended by the Anti-Drug Abuse Act of 1988. The Bureau of Justice Statistics will publish the data in a report entitled **Justice Expenditure and Employment in the United States.**

Please extract the requested data from your financial and payroll records and enter them on the attached questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 3 weeks. The duplicate copy is for your files.

The Justice System Improvement Act of 1979 as amended (42 USC 3732) authorizes this report. Although you are not required legally to respond, we need your participation to make the results of the survey comprehensive, accurate, and timely. If you need further assistance completing the questionnaire, call collect, Richard Meyer on (301) 763-7825.

We estimate that it will take from 15 to 40 minutes to collect this information, with 30 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director , Bureau of Justice Statistics, 633 Indiana Avenue, N.W., Washington, D.C. 20531; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project 1121-0118, Washington, D.C. 20503.

Thank you for your cooperation in this voluntary survey. The Census Bureau appreciates your help.

Enclosures

DEFINITIONS FOR COMPLETING PARTS I AND II, COLUMNS (1) THROUGH (10)

▶Part I — EMPLOYMENT AND PAYROLL

EMPLOYEES — All persons paid by your government for personal services performed, including all paid officials, salaried workers, and other persons in paid leave status. **Exclude** unpaid officials, persons on unpaid leave, pensioners, contractors and their employees, and persons paid entirely by another government for services performed for your government.

Full-time employees, column (1) — Persons employed on a full-time basis during the one pay period which included October 12, 1988. **Include** all full-time temporary or seasonal workers employed during this pay period.

Part-time employees, column (3) — Persons employed on a part-time basis during the one pay period which included October 12, 1988. **Include** here all persons working for your government who are paid by more than one government (e.g., with supplemental check).

PAYROLL, columns (2) and (4) — Gross payroll before deductions, including salaries, wages, fees, or commissions earned during the one pay period which included October 12, 1988 by employees as defined above. If some employees are paid on a basis different from the predominant pay period, please include amounts for them on an adjusted basis.

Part-time hours paid, column (5) — Total hours paid during pay period for all persons working less than the number of hours that represent full-time employment. **Include** an estimate of hours worked during pay period for part-time employees and officials not compensated on a hourly basis.

▶Part II — EXPENDITURE

CURRENT OPERATION, column (6) — Annual expenditure for salaries and wages of your government's officers and employees, including overtime, termination, and retroactive pay; and for the purchase of supplies, materials, and contractual services from individuals and firms in the private sector, e.g., attorney retainers or fees to court-appointed counsel. **Exclude** capital outlay and report in column (7). Also exclude expenditures for debt retirement, securities investment, loan extensions, and within government transactions. **EXCLUDE employer contributions for employee benefits and report in column (10).**

CAPITAL OUTLAY, column (7) — Direct expenditure for contract or force account construction of highways and other fixed improvements, and for the purchase of equipment, land, and existing structures.

INTERGOVERNMENTAL EXPENDITURE — All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services or care and boarding of prisoners in another government's jail). **Exclude** money paid to another government for the purchase of commodities, property or utility services, any taxes imposed and paid as such, and contributions for social insurance.

Payments to other general purpose local governments, column (8) — Payments of your government to other counties, cities, or towns. **Exclude** payments to special purpose governments such as special districts or independent school districts.

Payments to the State government, column (9) — Payments of your government to the State government or any of its departments or agencies.

GOVERNMENT CONTRIBUTIONS FOR EMPLOYEE BENEFITS, column (10) — Any employer contributions, **separable by activity**, to the Federal Social Security program, State and local retirement systems, commercial or mutual life insurance plans, workmen's compensation funds, and premiums paid by your government for health, hospital, disability, and other insurance programs. **Exclude** payments made directly to individuals and contributions made **by employees** to any of the above programs.

SAMPLE

CIVIL AND CRIMINAL JUSTICE ACTIVITIES

(Please review activities below prior to completing questionnaire.)

NOTE — For sheriffs' departments, please prorate, if possible, expenditures (including annual salaries) for Police Protection (patrol, crime investigation, enforcement of the law), Judicial (serving court papers, maintaining order employees by their major functions) Police Protection (deputies engaged in patrol, investigations, radio dispatchers, clerks), Judicial (bailiffs, process servers), and Corrections (jailers, matrons, cooks). If personnel are rotated between police, judicial, and correction duties, distribute them according to the number usually assigned to each function.

Part I EMPLOYMENT AND PAYROLL

Enter employment and payroll data for your government's one pay period which included October 12, 1988.

Do NOT report ANNUAL payroll data.

Count each employee only once — in the activity where that person works the largest part of the time.

STANDARD WEEKLY HOURS

What is the average or standard number of weekly hours of work for the MAJORITY of your government's full-time employees? *Mark (X) one box only*

1 ☐ 40 hours 3 ☐ 35 hours
2 ☐ 37.5 hours 4 ☐ Other — *Specify hours per week* 001 Census Use Only

PAY PERIOD INTERVAL

Mark (X) appropriate box to indicate the pay period interval for which all or most of the employees are paid. Report for both full- and part-time employees.

FULL-TIME EMPLOYEES	PART-TIME EMPLOYEES
1 ☐ Monthly	1 ☐ Monthly
2 ☐ Twice a month	2 ☐ Twice a month
3 ☐ Every 2 weeks	3 ☐ Every 2 weeks
4 ☐ Weekly	4 ☐ Weekly
5 ☐ Other — *Specify* 002	5 ☐ Other — *Specify* 003
Census Use Only	Census Use Only

Part II EXPENDITURE

Mark (X) appropriate box to indicate your government's fiscal year (12-month accounting period) and report data for this period only, even though a more recent one may be available.

☐ July 1987 – June 1988
☐ June 1987 – May 1988
☐ May 1987 – April 1988
☐ April 1987 – March 1988
☐ March 1987 – Feb. 1988
☐ Feb. 1987 – Jan. 1988
☐ Jan. 1987 – Dec. 1987
☐ Dec. 1986 – Nov. 1987
☐ Nov. 1986 – Oct. 1987
☐ Oct. 1986 – Sept. 1987
☐ Sept. 1986 – Aug. 1987
☐ Aug. 1986 – July 1987

SAMPLE

	Number of employees (1)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (2)	Number of employees (3)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (4)	Total part-time employee hours paid (Omit fractions) (5)	CURRENT OPERATION (6)	CAPITAL OUTLAY (7)	INTERGOVERNMENTAL EXPENDITURE (8)	INTERGOVERNMENTAL EXPENDITURE (9)	GOVERNMENT CONTRIBUTIONS FOR EMPLOYEE (10)
						Annual salaries and all current operating expenses. Exclude employer contributions for employee benefits and enter in column (10).	Annual expenditures for construction, equipment, and land	Annual payments to cities, counties, and towns	Annual payments to the State government	FICA, PERS, insurance, workmen's comp., etc. Exclude employer contributions.
1. POLICE PROTECTION — All police activities, including special police force units and both sworn and nonsworn police personnel. Include also coroners and medical examiners. **Exclude** jails holding adults or juveniles beyond arraignment (usually more than 48 hours) and report under "Corrections." Exclude also school crossing guards.	031	032	033	034		036	038	040	041	042
		$		$	hrs	$	$	$	$	$
2. JUDICIAL — All civil and criminal courts and court-related activities. **Include:** Judges and staff (law clerks, court reporters, etc.); Clerk of court and staff; Other current operating expenditure (e.g., jury fees, law library, etc.). **Exclude** probation and parole and report under "Corrections."	043	044	045	046		047	048	052	053	054
		$		$	hrs	$	$	$	$	$
3. LEGAL SERVICES AND PROSECUTION — Prosecuting attorney's offices, legal departments, and all attorneys providing legal services for your government. **Include:** Prosecutor and staff; Legal Advisor and staff; Attorneys on retainer or fees; All other legal expenses. **Include** annual retainers and/or fees paid to private attorneys/law firms in column (5) only. Do not include as employees.	055	056	057	058		059	060	064	065	066
		$		$	hrs	$	$	$	$	$
4. PUBLIC DEFENSE — Public defenders' offices. **Include** fees paid to court-appointed counsel and contributions to private legal aid societies in column (5) only. Do not include court-appointed private attorneys as employees.	067	068	069	070		071	072	076	077	078
		$		$	hrs	$	$	$	$	$
5. CORRECTIONS	079	080	081	082		083	084	088	089	090
a. Total (lines b and c)		$		$	hrs	$	$	$	$	$
b. Jails, prisons, reformatories, detention homes, halfway houses, and the like, holding adults or juveniles beyond arraignment (usually for more than 48 hours). **Exclude** institutions **solely** for dependent or neglected children.	091	092	093	094		095	096	100	101	102
		$		$	hrs	$	$	$	$	$
c. Probation and parole agencies and programs. **Include** probation and parole programs administered by the courts.	103	104	105	106		107	108	112	113	114
		$		$	hrs	$	$	$	$	$
6. OTHER CRIMINAL JUSTICE — Other criminal justice activities (e.g., neighborhood crime councils, crime commissions) not reported above. Please list each activity separately in the spaces provided on page 3.	127	128	129	130		131	132	136	137	138
		$		$	hrs	$	$	$	$	$

FORM CJ-6 (12-19-88)

GO TO PART III →

Part III **INTERGOVERNMENTAL REVENUE RECEIVED DIRECTLY FROM THE FEDERAL GOVERNMENT FOR CIVIL AND CRIMINAL JUSTICE ACTIVITIES**

Enter only revenue received directly from the Federal Government for the above activities during the fiscal year marked in part II. Do NOT enter amounts from the Federal Government **received through** the State or any of its departments or agencies.

SAMPLE

1. General revenue used for criminal justice purposes	162	$
2. Dedicated revenues received directly from the Federal Government specifically for criminal justice purposes:		
a. Reimbursement received from the Federal Government for criminal justice services rendered by your government, e.g., boarding of Federal prisoners		$
b. Other "dedicated" revenues used for criminal justice purposes (e.g., Alcohol Safety Action Program, Witness/Victim Assistance Program) — *Specify* _____		$
c. **TOTAL** ***(add lines a and b)***	163	$

OTHER CRIMINAL JUSTICE ACTIVITIES — *List activities included at question 6, page 2.*

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Remarks

FORM CJ-3 (12-19-88)

OMB No. XXXX-XXXX: Approval Expires XX/XX/XX

U.S. DEPARTMENT OF COMMERCE

Data supplied by	FORM CJ-23 (12-22-88)
Name	**SURVEY OF EXPENDITURE AND EMPLOYMENT FOR CAMPUS POLICE FORCES**
Title	**In correspondence pertaining to this report, please refer to the identification number above your address**
Official address *(Number and street, city, State, ZIP Code)*	SAMPLE
Telephone: Area code / Number / Extension	*(Please correct any error in name, address, and ZIP Code)*
RETURN THIS COPY TO **Bureau of the Census Attn: Governments Division Washington, DC 20233**	***Important*** Please read the definitions on page 2.

FROM THE DIRECTOR
BUREAU OF THE CENSUS

On behalf of the Bureau of Justice Statistics, Department of Justice, the Bureau of the Census is collecting public expenditure and employment data for selected campus police forces. These data are very similar to data we last collected for the Bureau of Justice Statistics in 1985. The Department of Justice will use the data from this survey to implement and administer the formula grant program of the Justice Assistance Act of 1984, 42 USC 3747, as amended by the Anti-Drug Abuse Act of 1988.

The Bureau of Justice Statistics will publish the data in a report entitled **Justice Expenditure and Employment in the United States**.

Please extract the requested data from your financial and payroll records and enter them on the attached questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 3 weeks. The duplicate copy is for your files.

The Justice System Improvement Act of 1979 as amended (42 USC 3732) authorizes this report. Although you are not required legally to respond, we need your participation to make the results of the census comprehensive, accurate, and timely. If you need further assistance completing the questionnaire, call collect, Richard Meyer, on (301) 763-7825.

We estimate that it will take from 10 to 20 minutes to collect this information, with 15 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Bureau of Justice Statistics, 633 Indiana Avenue, N.W., Washington, D.C. 20531; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project 1121-0118, Washington, D.C. 20503.

Thank you for your cooperation in this voluntary survey. The Census Bureau appreciates your help.

Enclosures

SAMPLE

Part I — CAMPUS POLICE FORCE

Does your institution (as described in the address box on the front of the questionnaire) employ directly and/or by contract a campus police force, and if so, are you administratively independent from another agency? Mark (X) the "Yes" box below if both those conditions exist. If not, mark (X) the "No" box and return the questionnaire in the preaddressed envelope. A campus police force is defined as a group of law enforcement officers with statutory powers of arrest.

☐ Yes — *Carefully read all definitions and instructions before completing the appropriate questions below.*

☐ No — *Please return the questionnaire in the preaddressed envelope that was enclosed.*

Important

- *If you contract exclusively for police services and employ no officers employed directly by your unit, fill out only parts III and IV below.*
- *If you employ sworn police officers directly, fill out parts II, III, and IV below.*
- *If you contract for police services from sworn police officers and also employ sworn police officers directly, fill out parts II, III, and IV. However, do not report payroll for employees under an outside contract; instead, report only the annual expenditure for contractual services under either current operations (if the contract is with a private agency) or under intergovernmental expenditure (if payment for police services is made to another government).*

DEFINITIONS FOR COMPLETING PARTS II AND III, COLUMNS (1) THROUGH (10)

▸ Part II — EMPLOYMENT AND PAYROLL

EMPLOYEES — All persons in your campus police force unit (officers and other employees) paid for personal services performed, including all paid officials, salaried workers, and other persons in paid leave status. **Exclude** unpaid officials, persons on unpaid leave, pensioners, contractors and their employees, and persons paid entirely by another government for services performed for your unit.

Full-time employees, column (1) — Persons employed on a full-time basis during the one pay period which included October 12, 1988. **Include** all full-time temporary or seasonal workers employed during this pay period.

Part-time employees, column (3) — Persons employed on a part-time basis during the one pay period which included October 12, 1988.

PAYROLL, columns (2) and (4) — Gross payroll before deductions, including **salaries, wages, fees,** or commissions earned during the one pay period which included October 12, 1988 by employees as defined above. If some employees are paid on a basis different from the predominant pay period, please include amounts for them on an adjusted basis.

Part-time hours paid, column (5) — Total hours paid during pay period for all persons working less than the number of hours that represent full-time employment. **Include** an estimate of hours worked during pay period for part-time employees and officials not compensated on a hourly basis.

▸ Part III — EXPENDITURE

CURRENT OPERATIONS, column (6) — Annual expenditures for **salaries** and wages of your unit's officers and employees, including overtime, termination, and retroactive pay; and for the purchase of **supplies, materials,** and contractual **services** from individuals and firms in the private sector. **Exclude** all capital outlay and report in column (7). Also exclude expenditures for debt retirement, securities investment, loan extensions, and within-government transactions. **EXCLUDE employer contributions for employee benefits and report in column (10).**

CAPITAL OUTLAY, column (7) — Direct expenditure for contract or force account construction of buildings and other fixed improvements, and for the purchase of equipment, land, and existing structures.

INTERGOVERNMENTAL EXPENDITURE — All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services). **Exclude** money paid to another government for the purchase of commodities, property or utility services, any taxes imposed and paid as such, and contributions for social insurance.

Payments to counties, cities, and towns, column (8) — Payments to a county, city, town, or any of their departments or agencies.

Payments to the State government, column (9) — Payments to the State government or any of its departments or agencies. Applies only to universities/colleges operated by a local government.

CONTRIBUTIONS FOR EMPLOYEE BENEFITS, column (10) — Any **employer** contributions, readily separable for your unit, to the Federal Social Security program, State and local retirement systems, commercial or mutual life insurance plans, workmen's compensation funds; and premiums paid for health, hospital, disability, and other insurance programs. **Exclude** payments made directly to individuals and contributions made **by employees** to any of the above programs.

CRIMINAL JUSTICE ACTIVITY

Part II — EMPLOYMENT AND PAYROLL

Enter employment and payroll data for your government's one pay period which included October 12, 1988.

Do NOT report ANNUAL payroll data.

Count each employee only once — in the activity where that person works the largest part of the time.

STANDARD WEEKLY HOURS

What is the average or standard number of weekly hours of work for the MAJORITY of your government's full-time employees? *Mark (X) one box only.*

1 ☐ 40 hours 3 ☐ 35 hours
2 ☐ 37.5 hours 4 ☐ Other — *Specify hours per week* ____ Census Use Only

PAY PERIOD INTERVAL

Mark (X) appropriate box to indicate the pay period interval for which all or most of the employees are paid. Report for both full- and part-time employees.

FULL-TIME EMPLOYEES	PART-TIME EMPLOYEES
1 ☐ Monthly	1 ☐ Monthly
2 ☐ Twice a month	2 ☐ Twice a month
3 ☐ Every 2 weeks	3 ☐ Every 2 weeks
4 ☐ Weekly	4 ☐ Weekly
5 ☐ Other — *Specify* ____	5 ☐ Other — *Specify* ____
Census Use Only ____	Census Use Only ____

Part III — EXPENDITURE

Mark (X) appropriate box to indicate your government's fiscal year (12-month accounting period) and report data for this period only, even though a more recent one may be available.

☐ July 1987—June 1988 ☐ Jan. 1987—Dec. 1987
☐ June 1987—May 1988 ☐ Dec. 1986—Nov. 1987
☐ May 1987—April 1988 ☐ Nov. 1986—Oct. 1987
☐ April 1987—March 1988 ☐ Oct. 1986—Sept. 1987
☐ March 1987—Feb. 1988 ☐ Sept. 1986—Aug. 1987
☐ Feb. 1987—Jan. 1988 ☐ Aug. 1986—July 1987

	Full-time employees		Part-time employees			Current operation	Capital outlay	Intergovernmental expenditure		Government contributions for employee benefits
	Number of employees (1)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (2)	Number of employees (3)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (4)	Total part-time employee hours paid (Omit fractions) (5)	Annual salaries and all current operating expenses. Exclude employer contributions for employee benefits and enter in column (9). (6)	Annual expenditures for construction, equipment, and land (7)	Annual payments to cities, counties, and towns (8)	Annual payments to the State government (9)	FICA, PERS, insurance, workmen's comp., etc. Exclude employee contributions. (10)
1. Sworn campus police officers having general power to arrest (include support personnel who do not have general arrest power.)	031	032 $	033	034 $	hrs	035 $	036 $	040 $	041 $	042 $

Part IV — INTERGOVERNMENTAL REVENUE DIRECT FROM THE FEDERAL GOVERNMENT RECEIVED BY YOUR CAMPUS POLICE FORCE UNIT

Enter only revenue received directly from the Federal Government for the above activity. If your university/college is operated by a local government, exclude any amounts from the Federal Government received through the State or any of its departments or agencies.

1. Nondedicated revenues received directly from the Federal Government and used by your campus police force unit, e.g. Federal General Revenue Sharing/Federal Job Training Partnership Act/etc. (report only that portion used by your campus police force) ..... 182 $

2. Dedicated revenues received directly from the Federal Government specifically for criminal justice purposes (report only that portion used by your campus police force)

a. Office of Justice Assistance (OJA) discretionary grants ..... $

b. Juvenile Justice and Delinquency Prevention (JJDP) discretionary grants ..... $

c. Other "dedicated" revenues used for your campus police force — *Specify* — ____ $

d. TOTAL *(add lines a through c)* ..... 183 $

FORM CJ-23 (12-21-88)

[FR Doc. 89-104 Filed 1-3-89; 8:45 am]

BILLING CODE 4410-18-C

DEPARTMENT OF LABOR

Employment and Training Administration

Waiver of Certain States from Participation in Alien Status Verification System

Section 121(a)(1) of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603), added Sections 1137(d) and (e) to the Social Security Act providing that aliens applying for certain entitlement programs, including unemployment insurance, shall have their immigration status verified through an automated verification system (AVS) developed by the Immigration and Naturalization Service. Section 121(c), IRCA, requries each State to utilize the AVS by October 1, 1988, unless the Secretary has granted a waiver of its participation under provisions of section 121(c)(4)(B), IRCA. The Department of Labor issued the bases on which the Secretary would grant waivers of certain participation in the AVS to all State Employment Security Agencies in Unemployment Insurance Program Letter (UIPL) No. 26–88 (53 FR 14865). The waiver decisions were issued in UIPL No. 59–88 and UIPL No. 59–88, Change 1. UIPL No. 59–88 and UIPL No. 59–88, Change 1 are published below:

Dated: December 27, 1988

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUMC
	DATE September 28, 1988

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 59-88

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Secretary's Determinations on Waiver of State Participation in the Systematic Alien Verification for Entitlement (SAVE) Program Effective October 1, 1988

1. Purpose. To announce the Secretary's waiver determinations on State participation in the SAVE program effective on October 1, 1988.

2. References. Sections 121(c)(4)(B) and 121(c)(4)(C) of the Immigration Reform and Control Act of 1986 (IRCA, Public Law 99-603); Sections 302(a), 303(f), 1137(d), and 1137(e) of the Social Security Act (SSA); Secretary's Report to Congress dated July 11, 1988, entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program"; General Accounting Office (GAO) Report entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987; and Unemployment Insurance Program Letter (UIPL) Nos. 26-88 (53 Fed. Reg. 14865), and 40-88.

3. Background. UIPL No. 26-88 announced the conditions on which the Secretary would make waiver decisions of State participation in the SAVE program. UIPL No. 40-88 offered States the opportunity to submit SAVE program waiver requests accompanied by supporting data and information.

As of July 14, 1988, the Department of Labor received waiver requests from nine States. Those States are: Alaska, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, Montana, Virginia, and West Virginia.

These waiver requests were analyzed on the basis of UI alien initial claims workload and cost data submitted by the States in the waiver request, the automated access options offered by the Immigration and Naturalization

RESCISSIONS	EXPIRATION DATE October 31, 1989

DISTRIBUTION

Service (INS), the requirements contained in UIPL No. 26-88, and the cost-effectiveness criteria for waiver contained in Sections 121(c)(4)(B) and 121(c)(4)(C), IRCA. In addition, contacts were made with INS to ascertain the volume of secondary verification (mail) requests that can be timely processed (14-day turnaround) by the INS District Offices.

4. Secretary's Waiver Determinations. The following determinations have been made relating to State participation in the SAVE program, effective October 1, 1988.

a. No State, regardless of alien UI claims volume, will be totally waived from participation in SAVE (automatic and/or mail verification). In the attached report to Congress entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program," page 13, the Secretary announced that the provisions of Sections 1137(d)(1)(A), (2), (4), (5), and (e) SSA, would not be waived. The provisions of Section 1137(d)(4), SSA, are identical to the requirements of the secondary verification component of SAVE, so at a minimum, all States shall participate in at least this component of SAVE.

b. For the nine States who have submitted waiver requests as of July 14, 1988:

(1) Alaska, Delaware, Kentucky, Montana, Virginia, and West Virginia are granted a waiver from participation in the primary (automated) component of SAVE.

(2) Connecticut, Maryland, and Massachusetts are not granted a waiver from participation in the primary (automated) component of SAVE.

c. Waivers for other States from participation in the primary (automated) component of SAVE may be considered if sufficient documentation is provided at the time supplemental budget requests are submitted for Fiscal Year 1988 SAVE program start-up costs.

d. All States not receiving a waiver are required to implement the primary (automated) component of SAVE effective October 1, 1988.

5. Action Required. Administrators are requested to: (a) distribute this information to appropriate staff; and (b) initiate action to implement SAVE by October 1, 1988, in accordance with the waiver decisions contained in this UIPL.

6. Inquiries. Direct inquiries to the appropriate Regional Office.

7. Attachment. "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program."

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUMC
	DATE December 8, 1988

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 59-88, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Secretary's Determinations on Waiver of State Participation in the Systematic Alien Verification for Entitlement (SAVE) Program Effective October 1, 1988

1. Purpose. To announce the addition of two States to the list of States affected by tne Secretary's waiver determination on State participation in the SAVE program effective October 1, 1988.

2. References. Sections 121(c)(4)(B) and 121(c)(4)(C) of the Immigration Reform and Control Act of 1986 (IRCA, Public Law 99-603); Sections 302(a), 303(f), 1137(d), and 1137(e) of the Social Security Act (SSA); Secretary's Report to Congress dated July 11, 1988, entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program"; General Accounting Office (GAO) Report entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987; and Unemployment Insurance Program Letter (UIPL) Nos. 26-88 (53 Federal Register 14865), 40-88, and 59-88.

3. Background. UIPL No. 26-88 announced the conditions on which the Secretary would make waiver decisions of State participation in the SAVE program. UIPL No. 40-88 offered States the opportunity to submit SAVE program waiver requests accompanied by supporting data and information. UIPL No. 59-88 announced the Secretary's waiver determinations on participation in the SAVE program. Subsequent to the issuance of UIPL No. 59-88, waiver requests were received from Nevada and Wyoming.

All waiver requests were analyzed on the basis of UI alien initial claims workload and cost data submitted by the States in the waiver request, the automated access options offered by the Immigration and Naturalization Service

RESCISSIONS	EXPIRATION DATE October 31, 1989

DISTRIBUTION

(INS), the requirements contained in UIPL No. 26-88, and the cost-effectiveness criteria for waiver contained in Sections 121(c)(4)(B) and 121(c)(4)(C), IRCA. In addition, contacts were made with INS to ascertain the volume of secondary verification (mail) requests that can be timely processed (14-day turnaround) by the INS District Offices.

4. Secretary's Waiver Determinations. In addition to the States listed in UIPL No. 59-88, the States of Nevada and Wyoming are granted a waiver from participation in the primary (automated) component of SAVE effective October 1, 1988, although they are required to participate in the secondary verification procedures under SAVE.

5. Action Required. SESA Administrators are requested to distribute this information to appropriate staff.

6. Inquiries. Direct inquiries to the appropriate Regional Office.

[FR Doc. 89-97 Filed 1-3-89; 8:45 a.m.]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

[Docket No. M-88-229-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage Mine No. 3 (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to deterioration of roof and rib conditions and an accumulation of water, parts of the 4-east, 7-west, mains and main west returns cannot be safely travelled, and restoration of these areas would expose miners and certified persons to unnecessary hazards.

3. As an alternate method, petitioner proposes to establish checkpoints where tests for methane and the quantity of air would be determined weekly by a certified person.

4. In support of this request, petitioner states that—

(a) All monitoring stations and approaches to such stations would be maintained in a safe condition at all times;

(b) The person making the examination and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-98 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-239-C]

Horizon Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Horizon Mining Company, Inc., P.O. Box 891, Hindman, Kentucky 41822 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.S. No. 15-11152) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety because they would:

(a) Limit the equipment operator's visibility;

(b) Create cramped condition causing unnecessary fatigue resulting in reduced alertness and safety; and

(c) Create weak roof support.

3. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-99 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-231-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its Virginia Pocahontas No. 1 Mine (I.D. No. 44-00246) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables, and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use high-voltage cables inby the last open crosscut and within 150 feet of pillar workings with specific conditions and techniques as outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-100 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-105]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Planet Earth Technologies.

DATE AND TIME: January 25, 1989, 9 a.m. to 4:30 p.m., and January 26, 1989, 9 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne R. Hudson, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2740.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Planet Earth Technologies, chaired by Dr. Paul W. Mayhew, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 28 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

January 25, 1989

9 a.m.—Introduction.
9:10 a.m.—Key Questions From the OAST Perspective.
9:20 a.m.—Office of Space Science and Applications, Earth Science and Applications Division Program and Mission Plans—an Update.
10 a.m.—Earth Observing System Technology Requirements.
10:30 a.m.—Global Change Overview.
11 a.m.—Center System Study Updates.
2 p.m.—Technology Working Group Reports.
4 p.m.—Discussion.
4:30 p.m.—Adjourn.

January 26, 1989

9 a.m.—Discussion Continued.
2:30 p.m.—Critical Issues and Actions Summary.
3:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–25 Filed 1–3–89; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322–OL–3]

Atomic Safety and Licensing Appeal Board, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of December 14, 1988, oral argument on the appeals of the intervening Governments (Suffolk County, the State of New York, and the Town of Southampton) from that portion of the Licensing Board's September 23, 1988, decision (LBP–88–24) still before the Appeal Board (pursuant to the Commission's November 9, 1988, order) will be held at 9:30 a.m. on Wednesday, January 25, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Barbara A. Tompkins

Secretary to the Appeal Board.

Dated: December 29, 1988.

[FR Doc. 89–46 Filed 1–3–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–390, 50–391]

Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2); Order

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR–91 and CPPR–92, issued by the Atomic Energy Commission* on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On June 29, 1988, the Tennessee Valley Authority (the applicant) filed a request pursuant to 10 CFR 50.55(b) for an extension of the completion dates. The extension has been requested because construction has been delayed by the following events:

1. Delays resulting from the review and implementation of several key issues/programs, such as the Vertical Slice Program and the Watts Bar Program Plan. These corrective action programs address the outstanding issues and confirm the design and construction of the Watts Bar plant.

2. Delays resulting from the reallocation of certain resources to the restart programs for TVA's Sequoyah and Browns Ferry Nuclear Plants.

The NRC staff has concluded that good cause has been shown for the delays, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated June 29, 1988.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on December 16, 1988. Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated June 29, 1988, and the NRC staff's letter and Safety Evaluation of the request for extension of the construction permits, dated December 27, 1988 is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR–91 is extended from September 1, 1988 to July 1, 1991, and the latest completion date for the Construction Permit No. CPPR–92 is extended from January 1, 1990, to December 31, 1992.

Dated at Rockville, Maryland, this 27th day of December, 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 89–50 Filed 1–3–89; 8:45 am]

BILLING CODE 7590–01

*Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

[Docket No. 50-346]

Toledo Edison Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 128 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the Technical Specifications (TS's) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS's to permit increasing the Reactor Coolant System high pressure trip setpoint to 2355 psig from the present value of 2300 psig, to permit increasing the Power Operated Relief Valve (PORV) trip setpoint to 2435 psig from the present value of 2390 psig, and to permit increasing the reactor power level at or below which the Anticipatory Reactor Trip System (ARTS) may be blocked at 45 percent from the present value of 25 percent.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 3, 1988 (53 FR 15758). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated February 1, 1988 as supplemented February 26, 1988, (2) Amendment No. 128 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated December 28, 1988, (4) Technical Evaluation Report EGG-NTA-8152 dated June 1988 and (5) the Environmental Assessment dated December 8, 1988 (53 FR 52529). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of December 1988.

For the Nuclear Regulatory Commission

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-51 Filed 1-3-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Advance Notice of Further Policy Development on Dissemination of Information

December 28, 1988.

SUMMARY: The Office of Management and Budget (OMB) solicits public comment in the development of policy concerning the dissemination of information by executive branch agencies. The proposed policy, which supplements guidance found in OMB Circular No. A-130 and incorporates OMB Circular No. A-3, covers selected aspects of information dissemination, including electronic dissemination of information.

DATE: Comments from the public should be submitted no later than March 6, 1989.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has statutory responsibilities under the Paperwork Reduction Act, as amended, (44 U.S.C. Chapter 35): to establish government-wide policies that reduce the Federal paperwork burden; to enhance the appropriate application of information technology; to develop and implement uniform and consistent information resources management policies; and to oversee the development of information management principles, standards, and guidelines and to promote their use.

In the 1986 amendments to the Paperwork Reduction Act, Congress inserted the term "dissemination" at several places in the law, noting in the legislative history that dissemination is a key information management area not specified in the original Act but increasingly important in recent years. The report of the Senate Committee on Government Affairs stated:

> Management of the Federal Government's information resources includes all stages of information management and all types of information technology. * * * Such management also includes planning and organizing for the efficient and coordinated collection, and use and dissemination of information, and properly training employees to carry out such tasks. (Senate Committee on Governmental Affairs, Report on Federal Management Reorganization and Cost Control Act of 1986, 99th Congress, Report No. 99-347, July 31, 1986.)

In December 1985, OMB issued OMB Circular No. A-130, Management of Federal Information Resources (50 Federal Register 52730-52751, December 24, 1985), which provided a general policy framework for the management of Federal information resources. The Circular contained a number of policy statements concerning the collection and dissemination of information (see OMB Circular No. A-130, Section 8a, and Appendix IV, Section 3).

OMB further addressed information collection issues with the publication, on August 7, 1987, of a Notice of Policy Guidance on Electronic Collection of Information (52 Federal Register 29454-29457). OMB's summary of comments received is available at the address listed above.

In response to interest on the part of Congress, the agencies, and the public, OMB has determined that there is need for additional guidance regarding the collection and dissemination of information by Federal agencies. The present notice solicits public comment on development of proposed further information dissemination policy. This notice will be revised in the light of comments received and, incorporated into OMB Circular No. A-130.

In addition to requesting comment on the substance of the notice's Policy and Analysis of Policy, OMB solicits views on the following questions:

—Are the policy and accompanying analysis sufficiently comprehensive? Are there other major topics pertaining to information dissemination that should be treated?

—Is the procedural guidance provided sufficient to ensure enforcement of the policies? More broadly, how should OMB ensure enforcement of the policies?

Analysis of Policy

Management and Information Dissemination

Agencies manage the dissemination of information in the same sense that they manage any other legitimate agency function: they carry out policies and procedures to ensure that the function is discharged efficiently and effectively in accordance with applicable laws. An integral part of information dissemination management is ensuring that the agency applies modern information technology to the dissemination function.

As OMB Circular No. A–130, Appendix IV, points out, an agency's obligation to disseminate information must be discharged within a responsible management framework of minimizing costs while maximizing the usefulness of the information. Efficient, effective, and economical dissemination does not translate into diminishing or limiting the flow of information from the agency to the public. To the contrary, good management of information resources should result in more useful information flowing with greater facility to the public, at less cost to the taxpayer.

Incorporation of OMB Circular No. A–3

Section 1108 of Title 44 U.S.C. states in part:

> The head of an executive department, independent agency or establishment of the Government, with the approval of the Director of the Office of Management and Budget, may use from the appropriations available for printing and binding such sums as are necessary for the printing of journals, magazines, periodicals, and similar publications he certifies in writing to be necessary in the transaction of the public business required by law of the department, office, or establishment.

OMB Circular No. A–3, Government Publications, implements this provision by requiring that each agency maintain and implement an OMB approved publications control system, and prepare an annual report on periodicals and nonrecurring publications.

Because government publications are a form of information dissemination, and in order to integrate information policy as much as possible, OMB proposes to revise herewith Circular No. A–3, to incorporate the revised Circular into OMB Circular No. A–130, and to rescind Circular No. A–3. Whereas Circular No. A–3 covered only periodicals and nonrecurring publications, i.e., printed products, the proposed policy covers all information dissemination products—printed as well as electronic, with the sole exclusion of audiovisual products. Audiovisual products continue to be covered by OMB Circular No. A–114, Management of Federal Audiovisual Activities. Hence, the proposed policy applies to products such as periodicals and nonrecurring publications whatever their medium of dissemination, whether micrographics, machine-readable data files, software files, CD–ROMs (compact disks—read-only memory), electronic bulletin boards, or online information services.

The definitions of the terms "periodical" and "nonrecurring publication" have been incorporated from OMB Circular No. A–3, with some modifications.

—Circular No. A–3 defines these terms simply as publications issued by an agency; hence, it may include publications strictly internal to an agency. The definition in the proposed policy clarifies that the terms refer to documents disseminated or routinely made available to the public. OMB introduces this change because the focus of dissemination is on information distributed to the public, and because the concept of internal publication is difficult to define in practice.

—The definition of periodical in Circular A–3 excluded "primarily (90 percent or more) statistical materials." The proposed policy drops this exclusion; such materials would now be considered periodicals. The reason is that there is nothing intrinsic to primarily statistical materials that should cause them to be exempt from routine management controls. Historically, statistical materials were excluded with the intent of guarding against tampering with Federal statistics. OMB agrees that agencies must erect safeguards so that Federal statistics will not be tampered with. However, the safeguards ought not to mean omission of statistical publications, from routine management controls such as inventory and reporting.

Many agencies appear not to know what publications or databases they may be issuing, how decisions are made to disseminate information dissemination products, or how much they cost. The policy first requires management control systems, a requirement carried over from Circular No. A–3, and specifies some minimal functions the control systems are to perform. The purpose of the control systems is to ensure that sound management practices are followed in managing dissemination. If an agency's information dissemination responsibilities, as determined by the agency head within the context of the agency's mission and the OMB policy framework, call for an aggressive information dissemination outreach program, then the control system is a management tool for ensuring that the agency achieves and maintains such a program. Similarly, if the agency's information dissemination responsibilities are quite limited, the control system is a tool for ensuring that the agency continues to use public resources only for those activities necessary for the proper performance of agency functions.

One function of the control system is establishing and maintaining comprehensive inventories of the information dissemination products they disseminate. The rationale for requiring inventories is primarily that agenciescannot manage the dissemination function if they do not know what information products they have to disseminate, and that an inventory is an essential tool for managing the function. A corollary is that agencies can better serve their public information needs with current comprehensive inventories that can be used as finders' aids for locating information disseminated by the agencies.

OMB issues an annual bulletin instructing agencies to report on information dissemination products. Agencies should maintain the information sought in the annual OMB bulletin in their inventories. In addition, agencies should make use of their inventories for other management purposes. For example, agencies may wish to add keywords and abstracts in order to make the inventories more useful as finders' aids for locating information they disseminate. While agencies should be responsive to the public's requests for assistance in locating information, the agencies should bear in mind that private firms also provide government information locator services, and avoid offering information services that essentially duplicate services already available.

The proposed policy next states the general policy for periodicals that is based directly on 44 U.S.C. 1108, and is taken verbatim from OMB Circular No. A–3.

The proposed policy also continues the annual reporting and approval provisions found in OMB Circular No. A–3.

Adequate Notice

Circular No. A–130 states that "agencies shall disseminate significant new, or terminate significant existing, information dissemination products only after providing adequate notice to the

public." (Section 8a) The Circular contained no procedural guidance for, nor any provisions for enforcing, the adequate notice policy. It left to the agencies the determinations as to what was a significant information dissemination product and what constitutes adequate notice. Nearly three years' experience with the Circular indicates that most agencies in fact have not made these determinations, nor have they established procedures for ensuring that adequate notice is given. During that period the public has brought to OMB's attention instances in which some form of advance public notice might reasonably have been expected under the policy, but no notice was given. Therefore, OMB is proposing additional guidance concerning adequate notice.

Significant information dissemination products. OMB's intent in Circular No. A–130 was that agencies would designate certain kinds of information dissemination products as significant, meaning that the decision to initiate, terminate, or substantially modify the content, form, or availability of such products should trigger a form of public notice in advance of actual initiation, termination, or modification. Other products deemed not to be significant require no advance notice.

Examples of nonsignificant products might be those that:

—From the outset, were *never intended to be continuing*; hence, most nonrecurring, one-time publications.
—Are *Generally considered ephemeral* such as brochures, handbills, flyers, pamphlets, and the like;
—Receive *Little expression of public interest* as evidenced by the lack of or decline in subscriptions, sales, or requests for copies.

Examples of significant products might be those that:

—are *required by law*; e.g., a statutorily mandated report to Congress;
—Involved expenditure of *substantial funds* for the dissemination; a dollar threshold might be appropriate here;
—By reason of the *nature of the information*, are matters of continuing public interest; e.g., a key economic indicator;
—By reason of the *timeliness of the information*, command public interest; e.g., monthly crop reports on the day of their release;
—Disseminate in a *new medium*; e.g., disseminating a printed product in electronic medium, or disseminating a machine-readable data file via online access;
—Have already received (or will receive) *substantial expression of public interest*; e.g., those that have (or can expect) regular followings or subscribers;
—May reasonably be viewed as *duplicating and/or competing with existing products* disseminated by other agencies or private sector firms; e.g., a value-added electronic database product.

Form of Notice. Similarly, agencies must determine what form a notice should take in a given case. Several forms of notice suggest themselves.

—*Oral public announcements* at meetings, conferences, and conventions attended by users or potential users of the product;
—*Written public announcements* in periodicals and other publications circulated to users or potential users;
—*Letters* to subscribers or potential subscribers;
—*Notices* with or without request for comment in the *Federal Register* or *Commerce Business Daily*; or
—*Public hearings* convened for the purpose of discussing initiation or termination.

These forms of notice involve different levels of effort and expense on the part of the agency, and agencies should choose a level proportional to the significance of the product and the action being proposed.

Determination of significance and adequate notice are matters of agency judgment. The key point is that agencies must make the judgments and act upon them. When initiating or terminating an information dissemination product, the agency has an obligation to assess and take account of the impact of its action upon the public. Where members of the public consider a proposed new agency product unnecessary and duplicative, the agency should find out, in advance of initiating the product, why they think this and whether the agency should reconsider a decision to initiate. Where members of the public consider an existing agency product important and necessary, the agency should find out, in advance of terminating or curtailing the product, why they think this and whether the agency should reconsider its decision.

Moreover, members of the public should be able to seek reconsideration or redress from agencies when they believe agencies have acted capriciously with respect to initiating or terminating information dissemination products. Agency procedures should include mechanisms for responding to the contingency that agency actions may violate the adequate notice policy, and for how the agency will rectify the violation.

In order to ensure that agencies in fact develop the necessary procedures, the proposed policy requries that agencies report the procedures to OMB.

Electronic Dissemination

The range of available information dissemination media expands as technology continues to develop. Yesterday's monthly index to scientific literature is today's online information service; yesterday's newsletter is today's electronic bulletin board; yesterday's magnetic tape is today's floppy disk or online database and tomorrow's CD–ROM. Part of managing the information dissemination function, therefore, is the responsibility to scrutinize regularly the media of dissemination in order to determine whether the medium in use continues to be the most appropriate.

The decision to disseminate information electronically in many respects is identical to the decision to disseminate information in any other medium. Agencies must ask themselves the questions:

—Is dissemination of this information dissemination product required by law?
—Is dissemination of this information dissemination product necessary for the proper performance of agency functions?

At the present time, electronic dissemination more often than not is an agency's secondary issuance of the product, the primary having been in some conventional paper format (press release, report, etc.). Where this is the case, electronic dissemination is more discretionary than the primary issuance, and agencies may wish to consider additional conditions before deciding for electronic dissemination. The policy statement lists conditions favorable to electronic dissemination.

While electronic products are more frequently the secondary mode of information dissemination, agencies must recognize that this condition is changing. Integration of information technology into the workplace is rapidly reaching the point that both internal agency processing and analysis of information as well as the public's use of information often occur primarily in electronic form. Supplying the information on paper is sometimes practically useless, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use. Moreover, the printed product is often a summary or aggregation of the larger body of information which, although useful in its own right, does not satisfy all legitimate user needs as well as the entire body of information in electronic

medium. Under these conditions, an agency might reasonably conclude that dissemination in electronic medium is necessary for the proper performance of agency functions.

A basic purpose of the Paperwork Reduction Act is "to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government." (44 U.S.C. 3501) Thus, dissemination in electronic media is often highly desirable because, under certain assumptions, the electronic information dissemination product is substantially more useful. Electronic information dissemination products tend to contain more information—often an exact and complete copy of a government electronic database, and to present the information in a format that is more manipulable by the user, and hence more conducive to tailoring to a wide variety of user needs. Agencies can frequently enhance the value of government information as a national resource and increase its usefulness by disseminating information in electronic media.

At the same time, it bears remembering that electronic dissemination is not applicable in all cases. Everyone in the public likely to be interested in the information may not be computer-literate or have access to information technology. Dissemination in the electronic media alone may render the information inaccessible to such users. Similarly, some government information holdings evoke little or no public interest and are not in demand, even when the public is well informed about what the holdings are. Absent statutory or mission mandates, any dissemination, let alone electronic, is of questionable utility in such cases.

As Circular No. A–130 notes, the fact that an agency has created or collected information is not itself a valid reason for creating a program, product, or service to disseminate the information to the public. By the same token, the fact that an agency is capable of offering an information service is not itself a valid reason for offering the service. Agencies should avoid offering dissemination services they know (or should know) to be available in the marketplace. An agency, for example, may have the capability to offer dial-up online access to its databases, but the same capability may also be available from private firms that purchase the agency's databases. For the agency to offer the service will always entail some cost to the government, and the availability of virtually identical services from private firms is a compelling argument against the need for the government to offer the service.

While electronic dissemination is generally desirable, agencies must observe certain boundaries on such activities. As a rule of thumb, Federal agencies should take it as a rebuttable presumption that they are to concentrate dissemination activities on supplying basic information, the provision of which is unique to the government, and to avoid offering value-added products to end users. That is, given a choice between expending resources on disseminating more government information in forms that are usable for general purposes and expending resources on tailoring fewer information dissemination products to specific user needs, agencies should presume they are to choose the former. In effect, agencies should prefer to "wholesale" government information and leave "retail," value-added functions to the private sector, especially when they know that the private sector is ready and able to perform the value-added functions. Indeed, the existence of a private sector, value-added provider is presumptive evidence that, barring extenuating circumstances such as urgent public policy considerations or distorted market forces, the Federal agency need not expend public funds to provide the value-added service.

For example, many agencies are currently planning to issue large databases on CD–ROMs, suitable for processing on microcomputers, and the question arises as to whether the agencies should include on the CD–ROMs the search-and-retrieval software necessary to access the databases. OMB's view is that the agencies should disseminate CD–ROMs that contain only the databases and should not include the software. The first reason for this view is that, as Circular No. A–130 has already noted and the General Accounting Office has frequently pointed out, the practice of developing and maintaining customized computer software is a source of inefficiency in Federal agencies. While the software may make the CD–ROMs more readily accessible by users, its development and maintenance also represent a costly diversion of agency resources, because software development by and large is not part of agencies' information dissemination mandates. The second reason is that the software development is a value-added feature that can be performed by the private sector, and hence a commercial activity that the government neither needs to nor should perform itself. Agencies might better devote their resources to improving the databases themselves or to preparing other databases for dissemination, for these are tasks that only the agencies can perform.

Circular No. A–130 counsels agencies, when using contractors for carrying out dissemination activities, to ensure that contractors are not permitted to exercise monopolistic controls over government information resources. By the same token, agencies themselves must avoid behaving in a monopolistic fashion with respect to their information dissemination products. For example, an agency that sells online access to its databases but refuses to sell copies of the databases themselves may be presumed to be behaving as a monopolist because its practice precludes the possibility of a competitor selling the same service at a lower price. If an agency is willing to provide public access to a database, the agency should be willing to sell copies of the database itself.

By the same reasoning, agencies should behave in an even-handed manner in disseminating information products. If an agency is willing to sell a database or database services to some members of the public, the agency should in principle be prepared to sell the same products under similar terms to other members of the public, absent a statutory basis for acting otherwise. While an agency may have public policy reasons for offering different terms of sale to different groups in the public, the agency should provide a clear statement as to its reasons and their basis.

User Charges

OMB Circular No. A–25, User Charges, (proposed revision published in 52 **Federal Register** 24890, July 1, 1987) implements Title 5 of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), establishing Federal policy regarding fees assessed for government services and for sale or use of government property or resources. The general policy stated in Circular No. A–25 (Section 6) is that a user charge will be assessed against each identifiable recipient for benefits derived from Federal activities beyond those received by the general public.

As Circular No. A–130 notes, the Federal Government possesses much information of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which identifiable recipients derive special benefits, in which case user charges may be applicable. Many agencies that have substantial information

dissemination programs continue not to have consistent, agency-wide policies and procedures for setting user charges for information dissemination products. The proposed policy provides that agencies must establish user charges for the costs of disseminating these products, and recover such costs, where appropriate.

At present, Chapter 17 of Title 44, U.S. Code, reserves to the Public Printer and the Superintendent of Documents the pricing and sale of printed government documents. In practice, therefore, executive agency discretion in the setting of user charges for information dissemination products is limited to those that are not printed, i.e., principally to electronic products.

Circular No. A-130 stated that agencies shall recover only costs of disseminating information products through user charges, where appropriate, in accordance with Circular No. A-25. Circular No. A-130 also balanced the requirement to establish user charges against the need to ensure that government information dissemination products reach the public for whom they are intended. (Section 8a(11)(a)) "If an agency has a positive obligation to place a given product or service in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some receipients from the charge" (Appendix IV). The Circular gave no further guidance as to how agencies should balance these requirements.

Circular No. A-25 also establishes that user charges should be set at a level sufficient to recover the full cost of providing the service, resource, or property. The proposed policy clarifies the application of Circular No. A-25 to information dissemination products. Absent statutory requirements to the contrary, the standard for user charges for information dissemination products should be to recover no more than the full cost of dissemination.

OMB's proposed revision to Circular No. A-25 makes a distinction (in Section 6a(2)(b)) between user charges when the Government is acting as property owner and when the Government is acting as sovereign. In the former case user charges will be based on market prices, and in the latter on full cost. For all instances in which the Government itself creates or collects information, or causes creation or collection through sponsorship, the Government is acting as sovereign. User charges the Government may assess for products resulting from such creation or collection should be no greater than the full cost of dissemination.

The proposed policy, therefore, treats information products as different from other goods and services with respect to user charges. First, statutes such as the Freedom of Information Act and the Government in the Sunshine Act establish that Federal agencies have a broad and general obligation to make government information available to the public and to avoid erecting barriers that impede public access. Circular No. A-130 continues this tradition with its Basic Considerations and Assumptions (Section 7), and with the policy balancing user charges against reaching the intended public. User charges higher than the cost of dissemination are a barrier to public access. Second, given that the Government has sunk the costs of creating and processing the information for governmental purposes, the economic benefit to society is maximized when the information is publicly disseminated at the cost of dissemination.

The full cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing for public dissemination and actually disseminating to the public. For example, an agency may prepare an information product for its own internal use, and costs associated with such production are not recoverable as user charges. When the agency takes the product, prepares it for public dissemination, and actually disseminates it, costs associated with preparation and actual dissemination are recoverable as user charges.

While the proposed policy generally limits user charges to the cost of dissemination, agencies should take care to set charges at the full cost of dissemination, where appropriate. Some agencies apparently limit user charges for information dissemination products, for example, to the costs of reproducing and distributing computer tapes without enunciating a rationale for such limitations. In fact, recoverable costs may be signficantly higher. For example, for an online database service, recoverable cost elements might include personnel, materials, and services associated with the following: telecommunications between the computer system and user terminals; computer usage, online network management; training of personnel operating online services; preparation and distribution of manuals and training materials; and accounting and billing for online services. Cost elements might also include associated administrative overhead costs such as printing, postage, travel, and indirect costs.

In addition, OMB Circular No. A-25 provides for charges for government goods and services that convey special benefits to recipients beyond those accruing to the general public. Where agencies provide custom tailored information services to specific individuals or groups, full cost recovery for such services is appropriate. For example, if an agency prepares special tabulations or similar services from its databases in answer to a specific request from a member of the public, all costs associated with fulfilling the request would be charged, and the requester would be so informed before work was begun. In a few cases agencies engaging in information collection activities augment the information collection at the request of, and with funds provided by, private sector groups. Since the 1920s, the Bureau of the Census has carried out surveys of certain industries at greater frequency or at a greater level of detail than Federal funding would permit, because industry groups have requested more frequent or detailed government data and have paid the additional information collection and processing costs, and the additional information is consistent with Federal purposes. While results of these surveys are disseminated to the public at cost of dissemination, the existence and availability of the additional government data are special benefits to certain recipients beyond those accruing to the public. It is appropriate that those recipients should bear full costs of information collection and processing, as well as dissemination.

At the same time, as Circular No. A-130 points out, the requirement to establish user charges is not intended to make the ability to pay the sole criterion for determining whether the public receives government information. Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended (see OMB Circular No. A-130, section 8a(11)(a)). If an agency has a positive obligation to place a given product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product, or for exempting some

recipients from the charge. Such reductions or eliminations should be the subject of formal agency determinations on a case by case basis and justified in terms of clearcut agency policies.

Small Agencies

The foregoing discussion and proposed policy are written with a view to agencies that have sizable multimedia information dissemination programs. Not all agencies are large, nor have such programs. Formal management control systems, adequate notice procedures, and the administration of electronic information dissemination may be inappropriate for small agencies. The policies themselves, however, are appropriate for all agencies. Smaller agencies should implement the policies with procedures appropriate for their size.

James B. MacRae, Jr.,

Deputy Administrator for Information and Regulatory Affairs.

PROPOSED POLICY

1. *Definitions*

a. The term "periodical" means any publication disseminated or routinely made available to the public by an agency annually or more often with a format, content, and purpose consistent in nature. The term includes internal agency newsletters and annual reports. The term does not include:

—Memoranda, directives, regulations, legal opinions and decisions, proceedings, programs for cermonies, press releases, environmental impact statements and assessments, planning documents, and other purely administrative materials;

—Research and development reports that are the direct result of research contracts and are distributed to Federal Government employees and the contractor involved in the work, and technical books, monographs and journal articles that are published by commercial publishers and professional associations;

—Official instructional/informational documents of a permanent nature, published as a supplement to directive systems of executive branch agencies; and

—Annual update of instructional information publications made available to the public to inform them of laws and regulations and to assist them in complying with reporting requirements.

b. The term "nonrecurring publication" means any publication, including pamphlets, disseminated or routinely made available to the public by an agency on a one-edition basis, or less frequently than annually. The items not included in the term are the same as for the term periodical.

c. The term "information dissemination products" means periodicals, nonrecurring publications, machine-readable data files, software files, online database services, and electronic bulletin boards, issued or disseminated by agencies to the public; the term includes media such as magnetic tape and compact disks but does not include audiovisual activities covered by OMB Circular No. A–114. Dissemination to the public means distributing without restriction as to recipients and entails public announcement of distribution. Distribution restricted to government employees or to agency contractors or grantees is not considered dissemination to the public.

2. *Policy*

a. Agencies shall manage the dissemination of information so as to maximize efficient and effective performance of agency functions, maximize the usefulness of government information, and minimize the cost to the Federal Government.

b. Agencies shall maintain and implement a management control system for all information dissemination products. The management control system shall, at a minimum, perform the following functions:

(1) Monitoring and reviewing information dissemination products to assure that they are certified to be necessary for proper performance of agency functions, or, in the case of periodicals, necessary in the transaction of the public business required by law of the agency;

(2) Establishing and maintaining in electronic format a current and comprehensive inventory of all agency information dissemination products;

(3) Recording actual and proposed spending of funds for information dissemination products;

(4) Providing an annual report to the Director of the Office of Management and Budget according to specifications provided in annual reporting instructions; and

(5) Supporting such other functions as are necessary for effective and efficient management of information dissemination, such as developing aids to locating information disseminated by the agency.

c. Expenditure of funds shall be approved only for periodicals that provide information, the dissemination of which is necessary in the transaction of the public business required by law of the agency.

d. Agencies shall determine which of their existing and proposed information dissemination products are significant for purposes of providing adequate notice, and what constitutes adequate notice for significant information dissemination products; agencies shall disseminate these determinations to the public;

e. Agencies shall establish and implement procedures for providing adequate notice, in accordance with the preceding agency determinations, when initiating or terminating significant information dissemination products; procedures shall include how to determine what information dissemination products are significant, what constitutes adequate notice, and how the public may seek redress for agency violations.

f. Agencies should examine their information dissemination products to determine whether conditions favor the electronic dissemination of information. Conditions favorable to electronic dissemination include:

(1) The agency already maintains the information in electronic medium for its own purposes;

(2) The agency will not incur substantial new costs in disseminating the information electronically;

(3) Existing or potential users of the information have expressed a need for the information in electronic medium; e.g., a documented public demand;

(4) The agency can point to real benefits to the government and/or the public from disseminating the information electronically; e.g., more timely use of information, or the ability for users to manipulate the information in ways not available with other media;

(5) The agency has determined that information dissemination products already available to the public are not so similar that the agency's electronic dissemination would constitute unfair competition with the private sector.

g. Agencies should periodically review their information dissemination products to determine whether the medium of dissemination is appropriate to the product.

h. Agencies shall avoid disseminating information dissemination products that place the Government in unfair competition with the private sector;

i. Agencies shall give perference to disseminating basic electronic information dissemination products, and, absent compelling reasons, avoid disseminating value-added electronic information products;

j. Agencies shall establish consistent, agency-wide policies and procedures, including regulations as necessary, for setting and collecting user charges for information dissemination products.

k. Agencies shall set user charges for information dissemination products at a level sufficient to recover the full cost of dissemination, and exclude from calculation of the charges costs associated with collecting and processing the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects and processes, as well as disseminates, the information for the benefit of a specific identifiable group beyond the benefit to the general public; or

(iii) Where the agency has made a determination that user charges at full cost of dissemination constitute a significant barrier to properly performing the agency's functions and reaching the public whom the agency has an obligation to reach.

3. *Reporting*

a. Within 180 days of the effective date of this policy, the head of each agency shall submit to the Director, Office of Management and Budget:

(1) Copies of policies and procedures for the agency information dissemination management control systems; and

(2) Copies of agency procedures for providing adequate notice when initiating or terminating significant information dissemination products.

(3) Copies of agency policies and procedures for setting and collecting user charges for information dissemination products.

b. Unless otherwise individually directed by OMB, agencies with fewer than 1500 fulltime equivalent employees need only provide certification that the above policies are in effect and that the agency has provided the most recent annual report on information dissemination products.

4. *Approval*

OMB will respond to the agency's annual report on information dissemination products within 45 days of receipt. In its response, OMB will approve or disapprove the periodicals listed for new or continued use, or may request additional information on certain periodicals.

Although new periodicals should be proposed at the annual reporting time whenever possible, periodicals may also be presented to OMB for approval at other times of the year. OMB will respond to these supplemental requests within 45 days of receipt.

[FR Doc. 89-6 Filed 1-3-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16720; 812-6820]

La Caisse centrale Desjardins du Quebec

December 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: La Caisse centrale Desjardins du Quebec.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: La Caisse centrale Desjardins du Quebec (the "Applicant") seeks an order to issue and sell commercial paper notes (the "Commercial Paper Notes") in the United States. In addition, the order would permit the Applicant to issue and sell debt securities other than Commercial Paper Notes ("Other Debt Securities") in the United States. The net proceeds of all offerings made in the United States by the Applicant will be utilized by the Applicant to carry out its function as financial agent for the Desjardins Group, which is a cooperative of savings and credit unions located in Quebec.

Filing Date: The application was filed on August 10, 1987 and amended on December 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. La Caisse centrale Desjardins de Quebec, 1, Complexe Desjardins, South Tower, Suite 2822, Montreal, Quebec H5B1B3.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney at (202) 272-3035 or Stephanie M. Monaco, Branch Chief at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a corporation established by the Quebec Legislature to act as financial agent for the Desjardins Group (the "Group"). The Group is composed of approximately 1,345 savings and credit cooperatives known as caisses populaires and caisses d'economie (collectively the "Caisses") which are located throughout the Province of Quebec. Each Caisse is affiliated with one of eleven regional federations (the "Federations"). The Federations provide technical and financial services to their affiliated Caisses. The Federations together form a confederation, La Confederation des caisses populaire et d'economie Desjardins du Quebec (the "Confederation").

2. The Applicant, as financial agent of the Group, manages a liquidity fund for its members, provides its members with access to financial markets, and offers a range of financial services to large- and medium-size business corporations. Applicant makes loans to (i) members and affiliates of the Group and (ii) business corporations, governmental and paragovernmental entities whose credit needs exceed the capabilities of the individual Caisses. Applicant accepts deposits from the Desjardins Group, from governmental and paragovernmental entities, and from the short-, medium- and long-term Canadian and international capital markets.

3. The Applicant's operations are extensively regulated both by the act under which it was incorporated (the "Incorporating Act") and by other Quebec legislation which is similar to that applicable to Canadian chartered banks governed by the Bank Act (Canada) ("Chartered Banks"), including *inter alia* the Savings and Credit Unions Act of Quebec and the Quebec Deposit Insurance Act. The Caisses and the Federations are governed by the Credit Unions Act. The Confederation is governed by the Credit Unions Act and the Incorporating Act. Under the Quebec Deposit Insurance Act, deposits with the Caisses and with the Applicant are insured to a maximum of $60,000 (all figures contained herein are in Canadian dollars unless otherwise indicated) per depositor.

4. Applicant is subject to the supervision of the Inspector General of Financial Institutions of Quebec (the

"Inspector General"). The Inspector General conducts annual inspections of the Applicant's business. The Applicant must provide the Inspector General with the financial statements prescribed by government regulations and any other financial statements and supplemental information that the Inspector General may deem necessary to ensure that Applicant is complying with the provisions of the Incorporating Act and applicable regulations.

5. Pursuant to the Incorporating Act, the Applicant must maintain a reserve, in the form of either cash on hand or deposits in chartered banks or in similar non-affiliated institutions, that on average during any month shall not be less than 5% of its deposit liabilities. The Applicant must also maintain with such institutions a portfolio of cash, deposits, bonds or other evidence of indebtedness which have an average monthly value of not less than 20% of deposit liabilities.

6. Under the Incorporating Act, the paid-in capital of the Applicant must be at least $25 million. The issuance of securities by the Applicant is subject to provincial securities legislation. For example, a prospectus must be prepared prior to the issuance of non-exempted securities. Under the Incorporating Act, Applicant may not declare or pay a dividend if it would become insolvent or its paid-in capital would be impaired. The Applicant may invest in real estate provided its total investment does not exceed 20% of its assets.

7. Under the Incorporating Act and the Credit Unions Act, the Applicant may acquire shares of any Chartered Bank, savings bank, trust company, insurance company or mutual fund company incorporated in Canada, as well as fully paid shares issued by a Canadian corporation. The Applicant may not invest more than 30% of its assets in such shares.

8. Under the Incorporating Act, the Applicant may guarantee the financial liabilities of its members and of its depositors to the extent that the total guaranteed liabilities do not exceed 10% of its unimpaired capital and accumulated reserves.

9. As of December 31, 1987, the Applicant's loan portfolio totalled $1.9 billion, consisting of $818 million in loans to members and Desjardins Group affiliates, $409 million to public organizations and $680 million to private corporations. As of the same date, the Applicant's securities portfolio totalled $853 million of which 57.3% were negotiable government securities.

10. Total deposits as of December 31, 1987 amounted to $2.37 billion, of which $256 million were deposits from the Canadian Government, $36 million from other governmental organizations, $108 million from members and Desjardins Group affiliates, $365 million from banks and $1.6 billion from the short, medium and long term Canadian and international capital markets (*i.e.*, institutional investors).

11. As of December 31, 1987, the Applicant had total assets of $2.84 billion and the combined assets of the Applicant, the Caisses and the Federations totalled $29.57 billion. On a combined basis, the loan portfolio totalled $24.99 billion. As of December 31, 1987, the Applicant's liabilities totalled $2.84 billion and the combined liabilities of the Applicant, the Caisses and the Federations totalled $29.57 billion, of which total deposits represented $2.37 billion and $27.21 billion, respectively.

12. The Applicant proposes to issue and sell short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") by virtue of section 3(a)(3) thereof (the "Commercial Paper Notes"). The Applicant will publicly offer the Commercial Paper Notes in minimum denominations of $100,000 through one or more major dealers to the types of sophisticated and largely institutional investors in the United States who normally purchase commercial paper. The Commercial Paper Notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves, equally with all other unsecured, unsubordinated indebtedness of the Applicant and superior to the rights of the Applicant's shareholders. The Applicant expects that the average amount of Commercial Paper Notes outstanding in the United States market during the first year will not exceed U.S. $400 million. Prior to their issuance, the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and the Applicant's United States counsel shall have certified the receipt of such rating.

13. The Applicant may, from time to time, offer other debt securities ("Other Debt Securities") for sale in the United States. The net proceeds of the Commercial Paper Notes and the Other Debt Securities issued by the Applicant will be used to fund the Applicant's normal lending activities.

14. The Applicant undertakes that the offering in the United States of the Commercial Paper Notes will be made pursuant to the exemption from registration under the 1933 Act provided by section 3(a)(3) thereof. The Applicant undertakes not to offer the Commercial Paper Notes in the United States unless the Applicant shall have received an opinion of its United States legal counsel that the Commercial Paper Notes will be entitled to such exemption from the registration requirements of the 1933 Act. The Applicant does not request Commission review or approval of this opinion.

15. The Applicant undertakes that each dealer in the Commercial Paper Notes will furnish to each purchaser thereof, at or prior to the time of purchase, a memorandum describing briefly the business of the Applicant and providing the most recent publicly available fiscal year-end balance sheet and profit and loss statement for the Applicant, accompanied by a description of the material differences between the Canadian accounting principles utilized in the preparation thereof and generally accepted accounting principles as applied in the United States. Such memorandum will be updated promptly to reflect material changes in the financial condition of the Applicant and will be at least as comprehensive as memoranda customarily used by United States issuers in offering commercial paper in the United States. The Applicant undertakes that any offering of Other Debt Securities will be effected on the basis of disclosure documents at least as comprehensive as those used in offerings of similar securities by issuers in the United States. In the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration.

16. The Applicant will select a bank or trust company located in the United States to act as issuing and paying agent for the Commercial Paper Notes. The Applicant will, in connection with the issuance of the Commercial Paper Notes and Other Debt Securities, appoint an agent to accept service of process in any suit, action or proceeding brought against the Applicant in any state or federal court with respect to the Commercial Paper Notes and Other Debt Securities. The Applicant will expressly submit to the jurisdiction of any New York State or federal court located in New York County with respect to any such suit, action or proceeding. Such appointment of an agent for service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due with respect to the Commercial Paper Notes and Other Debt Securities have been paid.

17. Prior to their issuance, the Other Debt Securities will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and the Applicant's United States counsel shall have certified the receipt of such rating; however, such a rating will not be required if, in the opinion of the Applicant's United States counsel, an exemption from the 1933 Act's registration requirements is available for the issuance of the Other Debt Securities pursuant to section 4(2) of the 1933 Act or Regulation D promulgated thereunder. The Applicant does not request Commission review or approval of this opinion.

Applicant's Legal Conclusions

1. The Applicant believes that it is excluded from the definition of investment company under section 3(b)(1) of the Act. Because uncertainty exists, however, as to whether foreign financial institutions which carry out operations similar to the Applicant's are "investment companies," the Applicant is filing this application under section 6(c) of the Act.

2. Applicant's business and operations exhibit many of the characteristics of domestic financial institutions which are excluded from the definition of investment company pursuant to section 3(c)(3) of the Act, which excludes any "savings and loan association, building and loan association, cooperative bank * * * or similar institution."

3. A primary aspect of the Applicant's business is making loans and accepting deposits. The Applicant is subject to regulation and supervision under the Incorporating Act and by various Canadian governmental authorities, such as securities commissions and insurance deposit boards. Furthermore, each depositor of the Applicant is accorded deposit insurance protection similar to that accorded a depositor of a Chartered Bank.

4. The Applicant is different from an investment company in purpose, function and role in the economy and is subject to regulation by Canadian laws sufficient to protect investors.

Conditions to the Applicant's Requested Relief

The Applicant consents to any order granting the requested relief being expressly conditioned upon compliance with the undertakings and representations set forth herein and in the application and upon the Applicant issuing and selling the Commercial Paper Notes and Other Debt Securities in the United States only so long as:

1. Its primary business consists of making loans and accepting deposits;

2. It remains subject to a degree of regulation and supervision at least substantially equivalent to that provided under the Incorporating Act; and

3. It is registered under, and subject to, the Quebec Deposit Insurance Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-90 Filed 1-3-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Pricing of Unpriced Options in Section 8(a) Contracts

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) is announcing that it is engaging in efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

ADDRESSES: Rodney Lewis, Deputy Director, Office of Program Development, Minority Small Business and Capital Ownership and Development Program, 1441 L Street, NW., Rm. 620, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rodney Lewis, (202) 653-6549 or Jean Lovejoy, (202) 653-6766.

SUPPLEMENTARY INFORMATION: Section 303(f) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, effective November 15, 1988, requires SBA to engage in substantial and sustained efforts to negotiate prices on unpriced options contained in contracts awarded under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) within 60 days of the effective date of the Act. A concern performing under a section 8(a) contract is eligible to negotiate prices on unpriced options whether or not it is still in the section 8(a) program and whether or not it has become a large business, providing it is performing such contract on or after November 15, 1988. Negotiations must be initiated by January 14, 1989.

During this 60-day period, the statute requires procuring agencies to refrain from procuring such requirements from alternative sources except that no delay may be incurred that would cause substantial harm to a public interest.

This notice pertains only to unpriced options already contained in section 8(a) contracts. It does not authorize the addition of options (priced or unpriced) to such contracts.

Only the section 8(a) concern which was originally awarded the contract containing the unpriced option is eligible to engage in negotiations to price such option.

Date: December 23, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-87 Filed 1-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-51]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 23, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 28, 1988.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 22822.
Petitioner: T.B.M., Inc./Butler Aircraft Company.
Regulations Affected: 14 CFR 91.45.
Description of Relief Sought: To allow ferry flights with one engine inoperative on McDonnell Douglas DC–6 and DC–7 aircraft, without obtaining a special permit for each flight.

Docket No.: 23147.
Petitioner: Boeing Commercial Airplane Company.
Sections of the FAR Affected: 14 CFR 91.195(a)(1).
Description of Relief Sought: To extend Exemption No. 4783 that allows petitioner to permit noise measurement tests, Ground Proximity Warning System research and development, and FAA certification flight tests at altitudes lower than 1,000 feet above the surface. Exemption No. 4783 will expire on April 30, 1989.

Docket No.: 25205.
Petitioner: Robert A. Hoover.
Sections of the FAR Affected: 14 CFR 91.213(a)(2).
Description of Relief Sought: To allow certain single-pilot operations during acrobatic flight demonstrations of North American Sabreliner, NA265–40, Serial No. 282–027, N61RH.

Docket No.: 25743.
Petitioner: Sherwood Forrest Myers.
Sections of the FAR Affected: 14 CFR 121.383(d).
Description of Relief Sought: To allow petitioner to serve as a relief pilot in air carrier operations under Part 121.

Docket No.: 24822.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 121.309(c)(2).
Description of Relief Sought/Disposition: A permanent exemption to allow certain of petitioner's member airlines to operate without one hand fire extinguisher being installed in each upper lobe galley. *Partial Grant. December 19, 1988, Exemption No. 5002.*

Docket No.: 25630.
Petitioner: Director of Transportation of the State of Hawaii.
Sections of the FAR Affected: 14 CFR 45.29(h).
Description of Relief Sought/Disposition: To allow persons operating within the State of Hawaii to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the inner boundary of the Hawaiian Coastal Air Defense Identification Zone (ADIZ). *Grant. December 20, 1988, Exemption No. 5003.*

[FR Doc. 89–34 Filed 1–3–89; 8:45 am]
BILLING CODE 4910–13–M

Maritime Administration

[Docket No. P–002]

Eligibility of Vessels to Carry Preference Cargoes

AGENCY: Maritime Administration, DOT.
ACTION: Policy reconsideration.

SUMMARY: The Maritime Administration ("MARAD") has been requested to reconsider its view that foreign-built vessels need not have been documented under the laws of the United States for a period of three years for eligibility to carry the incremental portion of agricultural cargoes reserved to U.S.-flag commercial vessels under provisions of the Food Security Act of 1985 (Pub. L. 99–198).

DATES: Public comment on this issue is invited. Comments must be received by February 3, 1989.

ADDRESS: Send an original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours at the above address. Commentors wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Karl E. Bakke, Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202)366–5711.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act, 1936 (the "1936 Act"), as amended (46 U.S.C. app. 1241(b)(1)) provides, in pertinent part, that the term "privately owned United States-flag commercial vessels" that are eligible to carry at least 50 percent of the gross tonnage of cargoes subject to the Cargo Preference Act of 1954—

> shall not be deemed to include any vessel which * * * shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States, for a period of three years * * *

In 1985, new sections 901a–901k (46 U.S.C. app. 1241f–1241o) were added to the 1936 Act by section 1142 of the Food Security Act of 1985 (7 U.S.C. 1241). New section 901b(a)(1) provided, in part that—

> In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 901(b) of this Act, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) shall be transported on United States-flag commercial vessels.

New section 901k provided that—

> A United States-flag vessel eligible to carry cargoes under section 901b through 901d means a vessel * * * that is necessary for national security purposes and, if more than 25 years old, is within 5 years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

MARAD has expressed the opinion that eligibility of a foreign-built U.S.-flag commercial vessel to carry agricultural preference cargo under the incremental 25-percent allocation contained in section 901b of the 1936 Act is governed by new section 901k alone.

Counsel for owners of certain U.S.-flag bulk carriers have questioned that opinion, citing new section 901b(c)(1), 46 U.S.C. app. 1241f(c)(1), which provides that–

> The requirement for United States-flag transportation imposed by subsection (a) shall be subject to the same terms and conditions as provided in section 901(b) of this Act [quoted above in pertinent part].

They maintain that, in view of this provision, section 901k simply imposes additional age/national defense conditions for vessels to be eligible to carry the incremental portion of agricultural preference cargoes.

The principal issues presented are (a) whether the 3-year waiting period, which appears in section 901(b) as part of the definition of "privately owned United States-flag commercial vessels" as used in that section, is a "term or condition" within the meaning of section 901b(c)(1); and (b) even if it is, whether it has applicability in the context of section 901b since the defined term to which it relates is not used either in that section or in section 901k.

To date, no vessels which would be eligible under MARAD's expressed interpretation of this particular provision have been identified as transporting cargo under the covered

programs, but there have been indications of interest in future carriage.

Accordingly, MARAD will reconsider its interpretation of the Food Security Act provisions as they relate to vessel eligibility and expressly invites comment from interested parties on the issue.

By Order of the Maritime Administrator.

Dated: December 30, 1988.

James E. Saari,

Secretary.

[FR Doc. 89-153 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 232]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The Taxpayer Ombudsman, Internal Revenue Service, delegates to Problem Resolution Officers and to certain Service officials, the authority under Subtitle J, the "Omnibus Taxpayer Bill of Rights", to issue and to modify or rescind, Taxpayer Assistance Orders.

The text of the delegation order appears below:

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: James Hughes, C:PRP, Room 1023, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone: (202) 566-4946. (not a toll-free telephone number)

Damon O. Holmes,

Taxpayer Ombudsman.

Delegation of Authority To Issue and Authority To Modify or Rescind, Taxpayer Assistance Orders (TAOs)

Pursuant to the authority of the Taxpayer Ombudsman by Section 7811 of the Internal Revenue Code added by the Technical and Miscellaneous Revenue Act of 1988, under Subtitle J, the "Omnibus Taxpayer Bill of Rights", to issue Taxpayer Assistance Orders and the authority to modify or rescind Taxpayer Assistance Orders, is hereby delegated as follows:

1. The authority to issue Taxpayer Assistance Orders

(a) To release property of a taxpayer levied upon (subject to exception set forth in paragraph 3.) or

(b) To cease any action, or refrain from taking any action, with respect to a taxpayer (subject to exception set forth in paragraph 3.) under—

1 Subchapter F of Chapter 1 (relating to exempt organizations)

2 Chapter 24 (relating to the collection of income tax at source on wages and backup withholding)

3 Chapter 64 (relating to collection)

4 Chapter 66 (relating to the statute of limitations)

5 Chapter 68 (relating to the additions to tax, additional amounts, and assessable penalties)

6 Subchapter B of Chapter 70 (relating to bankruptcy and receiverships)

7 Chapter 78 (relating to discovery of liability and enforcement of title)

is delegated to the officials listed below:

Assistant Commissioner (International)
Regional Commissioners
District Directors and Assistant Directors
Service Center Directors and Assistant Directors
Director, Austin Compliance Center and Assistant Director
Regional Problem Resolution Officers
Problem Resolution Officers

2. The authority in paragraph 1.(a) and (b) may be redelegated by the Assistant Commissioner (International), Regional Commissioners, District Directors, Service Center Directors and Director, Austin Compliance Center only to Assistant Problem Resolution Officers.

3. The authority to issue TAOs to release a principal residence of a taxpayer levied upon or to cease any action regarding a principal residence, is delegated to:

Assistant Commissioner (International)
Regional Commissioners.

4. The Authority to Modify or Rescind Any Taxpayer Assistance Order is delegated to the officials listed below:

Assistant Commissioner (International) for the Problem Resolution Officer or Assistant Problem Resolution Officer on his/her staff.

The Regional Commissioner who is the line supervisor of the Regional Problem Resolution Officer or Assistant Regional Problem Resolution Officer who issued the order.

Regional Directors of Appeals for cases in the appeals process in their jurisdiction.

The Director or Assistant Director who is the line supervisor of the Problem Resolution Officer or Assistant Problem Resolution Officer who issued the order.

The Director or Assistant Director, Austing Compliance Center for the Problem Resolution Officer or Assistant Problem Resolution Officer on their staff who issued the order.

5. The authority in paragraphs 3 and 4 may not be redelegated.

Date: December 22, 1988.

Approved:

Damon O. Holmes,

Taxpayer Ombudsman.

[FR Doc. 89-75 Filed 1-3-89; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 13, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Veterans Benefits.

2. Report and Certification of Loan Disbursement.

3. VA Form 26-1820.

4. The form is completed by lenders closing VA Loans under the automatic or prior approval procedure subsequent to issuance of guaranty. This

information collection complies with the provisions of the law which require lenders to report to the Administrator on loans guaranteed or insured.

5. On occasion.
6. Individuals or households.
7. 193,000 responses.
8. 96,500 hours.
9. Not applicable.

[FR Doc. 89-12 Filed 1-3-89; 8:45 am]
BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, January 31 and February 1, 1989. The sessions will begin at 9 a.m. The Committee will be discussing issues related to the administration of veterans' rehabilitation programs.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2888) prior to January 24, 1989.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on February 1, 1989.

Dated: December 23, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-13 Filed 1-3-89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 9, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30263 Filed 12-30-88; 11:31 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and Implementing Regulations

Correction

In rule document 88-11917 beginning on page 20290 in the issue of Friday, June 3, 1988, make the following correction:

On page 20294, in the second column, immediately preceding the last paragraph, insert:

§ 998.36 Indemnification.

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

Correction

In notice document 88-28759 beginning on page 50276 in the issue of Wednesday, December 14, 1988, make the following corrections:

1. On page 50277, in the fifth column, in the fourth footnote, in the second line, "6103.43.30.30" should read "6103.42.20.20"; and in the fifth line "6211.43.00.10" should read "6211.42.00.10".

2. On page 50278, in the first column, in the 25th footnote, in the first line, "all" should read "only"; and "except" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-410-000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Correction

In notice document 88-29842 beginning on page 52475 in the issue of Wednesday, December 28, 1988, make the following correction:

On page 52475, in the third column, under **"3. Texas Gas Transmission Corporation"**, the docket number "DP90-411-000" should read "CP89-411-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP82-114-013]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 88-29044 beginning on page 50998 in the issue of Monday, December 19, 1988, make the following correction:

On page 50998, in the third column, in the headings, the docket number was printed incorrectly and should appear as above.

BILLING CODE 1505-01-D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

Correction

In rule document 88-27423 beginning on page 47929 in the issue of Tuesday, November 29, 1988, make the following corrections:

§ 336.12 [Corrected]

1. On page 47933, in the third column, in § 336.12(c(2), in the first line, "an" should read "any".

§ 336.16 [Corrected]

2. On page 47935, in the second column, in § 336.16(c), in the third line from the bottom of the paragraph, "any" should read "may".

§ 336.17 [Corrected]

3. On page 47936, in § 336.17(b)(1)(i), in the second column, in the second line, "material" should read "martial".

§ 336.24 [Corrected]

On page 47938, in the first column, in the heading for § 336.24, "back" should read "bank".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Til-1]

Truth in Lending; Proposed Update to Offical Staff Commentary

Correction

In proposed rule document 88-27858 beginning on page 48925 in the issue of Monday, December 5, 1988, make the following corrections:

Commentary to Subpart A [Corrected]

1. On page 48927, in the third column, in the paragraph designated 3., in the second line, "changes" should read "charges".

2. On page 48928, in the first column, in the first complete paragraph, in the 12th line, "sole" should read "sold".

3. On the same page , in the second column, in the first complete paragraph, in the 10th line, "single"was misspelled.

4. On the same page, in the third column, in the third complete paragraph, in the fifth line, "balloon"was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

Correction

In rule document 88-25583 beginning on page 44862 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44863, in the first column, in the first complete paragraph, in the sixth line, "prescribed" should read "practiced".

2. On page 44866, in the second column, in the second complete paragraph, in the next to the last line, "stale" should read "stable".

3. On page 44867, in the second column, in the second complete paragraph, in the eighth line, "emergency" should read "emergence".

4. On page 44873, in the 1st column, in the 3rd complete paragraph, in the 14th line, "affects" should read "efforts".

5. On the same page, in the third column, in the second complete paragraph, in the fourth line from the bottom, "168.20 and 168.21" should read "168.120 and 168.121".

§ 184.1854 [Corrected]

6. On page 44876, in the first column, in § 184.1854(b), in the last line, "parity" should read "purity".

§ 184.1859 [Corrected]

7. On the same page, in the second column, in § 184.1859(a), in the fifth line, insert "than" after "more".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 85N-0548]

Proposed Affirmation of GRAS Status of High Fructose Corn Syrup

Correction

In proposed rule document 88-25584 beginning on page 44904 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44904, in the first column, under **ADDRESS**, in the last line, the zip code should read "20857".

2. On the same page, in the 2nd column, in the 2nd complete paragraph, in the 9th line, "syrup" should read "starch". In the 10th line, "hydrolysate" was misspelled, and in the 14th line, "§ 184.1374" should read "§ 184.1372".

3. On page 44906, in the 1st column, in the 3rd complete paragraph, in the 10th line, "complete" should read "comparable".

4. On the same page, in the same column, in the last complete paragraph, in the next to last line, after "sucrose," insert "corn sugar,".

BILLING CODE 1505-01-D

federal register

Wednesday
January 4, 1989

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 247, 882, and 888

Section 8 Certificate Program—Project-Based Assistance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 247, 882, and 888

[Docket No. R-88-1394; FR-2502]

Section 8 Certificate Program—Project-Based Assistance

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

ACTION: Interim rule.

SUMMARY: This interim rule establishes the regulations under which a Public Housing Agency (PHA) may provide Section 8 project-based assistance from assistance provided to the PHA for the Section 8 Certificate Program. The rule implements a recent statutory amendment directing the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 existing housing assistance provided by the PHA. The rule requires that the term of the PHA Contract for the structure not extend beyond the term of the HUD funding commitment, and that the owner must agree to do rehabilitation involving a minimum of $1,000 for each project-based unit.

DATES: Effective date: January 4, 1989. The *comment due date* for this rule will be set in a related interim rule amending 24 CFR Part 882 that will be published by February 6, 1989. See the "Background" under **SUPPLEMENTARY INFORMATION** for more details concerning the related interim rule.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0388. Public reporting burden for each collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

A. The Statute. This rule implements that portion of section 8(d)(2) of the United States Housing Act of 1937 (the 1937 Act) that concerns the attachment of Section 8 assistance to existing structures that have been rehabilitated. Section 208 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA) (Pub. L. 98-181, approved November 30, 1983) amended section 8(d)(2) to permit the attachment of assistance to an existing structure only if (1) the owner agrees to rehabilitate the structure other than with assistance under the 1937 Act, and (2) HUD and the PHA approve the attachment. Section 102(a)(6) of the Housing and Community Development Technical Amendments of 1984 (the Technical Amendments Act) (Pub. L. 98-479, approved October 17, 1984) further amended section 8(d)(2) to clarify that the 1983 amendment's "conditions for tying the assistance to a particular structure or project do not apply to the circumstances under which HUD provides Section 8 existing assistance in connection with loan management property disposition, or conversion from other assistance programs to project-based subsidies administered by HUD nor do they apply to the Section 8(e) moderate rehabilitation program." (H.R. Conf. Rep. No. 1103, 98th Cong., 2d Sess. 22-23 (1984)). The activities enumerated in the Conference Report describe situations where the Department was attaching Section 8 existing housing assistance to structures before the HURRA limitations were imposed. To date, the Department has not authorized the attachment of Section 8 existing housing assistance for other purposes, and thus the limitation on attachment of Section 8 assistance added by HURRA has not been triggered.

Section 146 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988 (HCD Act of 1987)) further amended section 8(d)(2) to require the Secretary to permit a PHA to approve attachment of no more than 15 percent of the assistance provided by the PHA, subject to meeting the statutory rehabiliation requirements.

Section 8(d)(2) was further amended by section 1005 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 McKinney Act)). Section 1005(a) directs the Department to issue regulations that take effect not later than 30 days after date of enactment of the 1988 McKinney Act to implement the amendment made by section 148 of the HCD Act of 1987 (redesignated as section 8(d)(2)(A) of the 1937 Act). The Department was unable to meet the December 7th statutory publication deadline, as a result of issues arising out of the collections of information in this rule. In accordance with section 1005(a), however, the Department, pending effectiveness of this rule, has been ready to consider applications received from PHAs to attach Certificate Program assistance to structures, and to approve applications that met the statutory requirements.

Section 1005(b)(1) of the 1988 McKinney Act adds a new subparagraph (B) to section 8(d)(2) of the 1937 Act to permit attachment of assistance to a newly constructed structure (Section 1005(b)). This amendment is not implemented by this rule. The Department intends to implement this provision in a regulation to take effect within 90 days after enactment of the 1988 McKinney amendments, in accordance with section 1005(b)(2).

Section 8(d)(2)(A), as amended by the sections referred to above, reads as follows:

(2)(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. *Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the*

contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this Act and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met. (The pertinent text is in italic.)

The 1987 Act amendment is derived from section 149(b) of H.R. 4, 100th Cong., 1st Sess. (1987), which differed from the enacted provision only in the applicable percentage (25 percent rather than 15 percent). The accompanying Report of the Committee on Banking, Finance, and Urban Affairs (H. Rep. No. 122, 100th Cong., 1st Sess. 33 (1987)) describes the purpose of the amendment as follows:

> Sec. 149(b) of the bill enables the Secretary to permit public housing agencies to attach up to 25 percent of the Sec. 8 assistance they provide to specific properties, provided that the owners rehabilitate the properties. The Committee has added this authority for the express purpose of facilitating the use of Sec. 8 Certificates in connection with projects which, when matched with the value of Sec. 8 Existing Certificates, would be able to provide decent, affordable housing to very low income people. The Committee is especially interested in seeing this authority used to provide Sec. 8 Certificates for properties which are rehabilitated or constructed using the low-income housing tax credit, and in properties developed as limited-equity, low income cooperatives. In both cases, owners can more easily develop economically feasible projects for very low income occupancy if they can be assured of the availability of Sec. 8 rental assistance for the very low income tenants. The Committee expects HUD to implement this provision as quickly as possible, and to encourage its use by PHAs for these purposes.

B. Justification for Interim Rule. It is Department policy to implement substantive rules by providing notice of proposed rulemaking giving at least 60 days for submission of public comments, unless the Department determines that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest (see 24 CFR 10.1). In addition, section 7(o)(3) of the Department of Housing and Urban Development Act provides that no rule may become effective until after the first period of 30 calendar days of continuous session of Congress following its publication. Under section 7(o)(3), this rule could not take effect until mid-March 1989. The Department cannot comply with section 7(o)(3) and also meet the mandate in section 1005(a) of the McKinney Act to issue regulations that take effect not later than 30 days after the effective date of the Act, *i.e.*, take effect not later than December 7, 1988. The Department is publishing this rule for immediate effect because it interprets the specific mandate in section 1005(a) as implicitly overriding the more general requirements of section 7(o)(3) and the Department's general rulemaking policies.

These regulations, however, are being published as an interim rule in order to permit public comment. The comment due date has been left open, because, as noted above, the Department must publish another rule for effect by February 6, 1989 to implement the new construction component of project-based assistance. That interim rule will announce the comment due date for both interim rules. The Department will then publish a final rule that takes into consideration the public comment received on both interim rules.

C. This Rule. This rule adds a new Subpart G to 24 CFR Part 882 to implement the authority to attach project-based assistance to units. The requirements for project-based assistance have been placed in Subpart G of Part 882 because project-based assistance involves the use of funds derived from the Section 8 Certificate Program, the pertinent rules for which are in Subparts A, B, and F of Part 882. In order to avoid unnecessarily repeating provisions common to both the "finders-keepers" Certificate Program and for project-based assistance, wherever practicable, this Subpart G incorporates by cross-references pertinent provisions in Subparts A and B. Certain provisions in the Section 8 Moderate Rehabilitation Program rules (Subparts D and E of Part 882) are also incorporated by cross-reference.

In general, the modifications of Part 882, Subparts A and B requirements for project-based assistance fall within the following areas: policies needed to determine the 15-percent limit under which the PHA must be permitted to attach assistance to units; policies implementing the statutory rehabilitation requirement; and inapplicability of those Section 8 Certificate Program policies that are unique to a "finders-keepers" program and, therefore, not pertinent to project-based assistance. There follows a section-by-section description of this interim rule.

Section 882.701 Purpose and Applicability

Under the "finders-keepers" policy, a holder of a Certificate of Family Participation is responsible for finding suitable housing and the PHA may not reduce the family's opportunity to choose among available units. In addition, a family assisted under the Section 8 Certificate Program who chooses to move is entitled (subject to certain conditions) to another Certificate. Because under these policies the Section 8 assistance essentially moves with the assisted family, the Certificate Program (as well as the Section 8 Housing Voucher Program) is characterized as providing "tenant-based" assistance. In the Certificate Program, the PHA enters into a HAP Contract and makes assistance payments on behalf of the family after the family locates a suitable unit and an owner willing to execute a HAP Contract with the PHA and a lease with the tenant. By contrast, under project-based assistance, the "finders-keepers" policy does not apply. Certificates are not used. With project-based assistance, the PHA enters a HAP Contract with the owner to make housing assistance payments for a specified term provided the unit is occupied by an eligible family (the unit may be vacant for a limited time). To fill vacant, project-based units, the PHA refers families from its waiting list to the project owner. Because the assistance is tied to the unit, a family that moves from the unit does not have any right to continued assistance. To implement these policies § 882.701(c) expressly makes § 882.103, *"Finders-Keepers" policy;* § 882.208, *Activities to encourage participation by Owners and others;* and § 882.209(m), *Continued participation when Participant Family moves,* inapplicable to project-based assistance provided under this Subpart G.

Section 882.703 Additional Definitions

Subpart G cross-references the definitions in Subpart A of Part 882. It also cross-references the definition of "Agreement to Enter into Housing Assistance Payments Contract", as used in the Moderate Rehabilitation Program. The Agreement is necessary to ensure that the rehabilitation work is performed.

Two new terms are defined: "15-Percent Limit" and "Funding Source."

The former term is defined to mean: Fifteen percent of the total of the number of units for which funding is reserved by HUD for the PHA's Section 8 Certificate Program. This definition uses the number of units reserved for the PHA's Certificate Program in the calculation of the 15-Percent Limit.

Under the ACC, HUD agrees to pay annual contributions for funding

increments (or "projects"), representing successive funding commitments by HUD for the PHA's program. Under the form of ACC used in a PHA's Certificate Program, the ACC terminates on the same day for all funding increments appropriated by Congress before Federal fiscal year 1988. However, for funding increments appropriated in Federal fiscal year 1988 and subsequent Federal fiscal years, there is a separate ACC termination date for each funding increment. The establishment of a separate ACC term for each post-Federal fiscal year 1987 funding increment implements section 8(b)(1) of the 1937 Act, as amended by section 141 of the HCD Act of 1987. A PHA must identify the ACC expiration date for the funding that is the source of the project-based assistance, and must ensure that the HAP Contracts do not extend beyond the applicable ACC expiration date. Because pre-Federal fiscal year 1988 funding increments for the PHA all have the same ACC expiration date, they are treated as one funding source. Accordingly, the definition of "Funding Source" specifies that funding authority provided before Federal fiscal year 1988 constitutes a single funding source.

Section 882.705 Information To Be Submitted to HUD by the PHA

Section 882.705(a) sets out the basic requirements which must be met by a PHA for HUD to approve a PHA's application to attach assistance to units. The requirements are: the number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit; the unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source; and the rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

Section 882.705(b) identifies the information that must be submitted for any PHA request to attach assistance to units. It is limited to the minimum information needed by HUD to ensure that the statutory requirements will be met, in order to permit attachment of assistance to units when the 15-percent limit is not exceeded.

Section 882.707 HUD Review of PHA Plans To Attach Assistance to Units

HUD reviews the information submitted by the PHA under § 882.705(b) and approves the application to attach assistance if the requirements of § 882.705(a) are met. If the requirements have not been met HUD notifies the PHA of the reasons for disapproval.

Section 882.709 Annual Contributions Contract; Schedule of Leasing

This section incorporates by cross-reference § 882.206, but also makes it clear that the schedule of leasing may take into account the time needed to complete the rehabilitation.

Section 882.711 Housing Quality Standards

This section incorporates by cross-reference the housing quality standards in § 882.109. Because rehabilitation is site-specific, this section also incorporates by cross-reference § 882.404(b), the site and neighborhood performance requirements for the Moderate Rehabilitation Program.

Section 882.713 Eligible and Ineligible Properties; Rehabilitation Requirement

This section substitutes for § 882.110, *Types of housing*. A major difference between this section and § 882.110 is that this section implements the rehabilitation requirement in section 8(d)(2) of the 1937 Act. Section 882.713(a) provides that in order for a property to be eligible housing, it must require a minimum expenditure of $1000 per assisted unit, including work on common areas. The rehabilitation must involve:

(1) Upgrading the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repairing or replacing major building systems or components in danger of failure;

(3) Making essential improvements to the property to permit use of the property by handicapped persons; or

(4) Converting or merging units to provide housing for large Families.

Paragraph (b) of § 882.713 identifies specific ineligible housing types that are comparable to the ineligible housing types listed in § 882.401(c) (2)(ii) and (3) for the Moderate Rehabilitation Program. Assistance, however, may be attached to units in subsidized housing projects. Paragraphs (f) and (g) of this section, therefore, contain provisions similar to § 882.111 (e) and (f) to avoid payment of a double subsidy.

Paragraphs (c) and (d), respectively, contain restrictions on when project-based assistance may be attached to a highrise project for families with children and to single room occupancy housing. Again, these requirements are modeled after comparable Moderate Rehabilitation provisions (see § 882.401(c) (5) and (6)).

Section 882.715 Relocation

The relocation requirements are generally modeled on the relocation requirements for the Moderate Rehabilitation Program (§ 882.406), but with a significant difference. Under the Moderate Rehabilitation Program, there may be permanent displacement (and § 882.406 sets out terms under which permanent displacement may occur, including the assistance that must be provided to displacees.) Under this Subpart G, however, permanent displacement is prohibited. The Department believes that a project that cannot be rehabilitated without permanently displacing tenants should not be assisted with project-based assistance, and has prohibited such assistance in § 882.715(a). (Because permanent displacement is prohibited, there is no cross-reference in § 882.715 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.)

Section 882.717 Other Federal Requirements

This section lists the various applicable Federal statutes and other Federal authorities, including civil rights and environmentally-related statutes and authorities.

HUD is reponsible for ensuring compliance with Federal environmental laws and authorities with respect to activities under this Subpart G. Section 882.717(b)(1) encourages PHAs to select projects that will not require, or entail the delay of, compliance with the National Environmental Policy Act or with the authorities listed in 24 CFR 50.4, by setting out the conditions under which a PHA may authorize the rehabilitation of a project in connection with project-based assistance without a prior HUD environmental review. A PHA should contact the environmental officer in the HUD Field Office concerning the type of information a State Historic Preservation Officer may need to respond to a PHA's request about a particular project under § 882.717(b)(1)(ii). A PHA may authorize rehabilitation of a project that exceeds the thresholds in § 882.717(b)(1), but the PHA must first notify HUD so that HUD may carry out the necessary environmental review, as provided in § 882.717(b)(2).

Section 882.719 Initial Contract Rents

This section contains the requirements for establishing the Contract Rents that the PHA must list in the Agreement. The Contract Rents listed on execution of the Agreement, subject to reduction under § 882.731(c),

must be the Contract Rents upon execution of the HAP Contract (i.e., the initial Contract Rents). Unlike the Moderate Rehabilitation Program, there is no authority for increases in the initial Contract Rents during rehabilitation (contrast § 882.408(d)).

This section is based on § 882.106, with modifications reflecting the project-based character of the assistance provided under Subpart G and other differences from the Certificate Program. Thus, HUD, under § 882.719(a), will not authorize an initial Contract Rent exceeding the Fair Market Rents based on grounds permitted in the Certificate Program under paragraphs (iv), (v), or (vi) of § 882.106(a)(4). Those paragraphs authorize the use of an exception rent based, in part, on a showing by the PHA that leasing the unit is necessary to meet the unique needs of a particular family. That basis for allowing an exception rent is not appropriate when the assistance is project-based and does not follow the family.

Paragraph (b)(3) conforms to the purpose of a recent statutory amendment to section 8(c)(2)(C) of the 1937 Act, by providing that, for units that are not subject to local rent control while they are assisted, comparable units used to determine rent reasonableness are other units that are exempt from rent control. A similar revision has been made to § 882.106(b)(2). (See section 142(c)(1) of the HCD Act of 1987 and H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess. 177 (1987).) Wherever the concept of comparability is used in this section, it, of course, means comparable to the assisted unit as it will be *after* it is rehabilitated.

There are no provisions similar to paragraph (f) of § 882.106, which concerns shared housing. Under § 882.713(b)(3), shared housing is not eligible for project-based assistance. This rule makes a conforming change to § 882.106(a)(2) to make it clear that the 20 percent limitation on the number of units for which the PHA may approve initial Gross Rents that exceed applicable FMRs is a limit on the combined total number of units so approved under both the Certificate Program and this project-based assistance. This rule also makes a conforming revision to § 888.111, Fair market rents for existing housing and moderate rehabilitation: applicability, to specify that existing housing Fair Market Rents apply to assistance provided under Subpart G.

Section 882.719(a)(1) also contains provisions concerning utility allowances similar to the provisions in § 882.209(f). These provisions are placed in this section because they involve the determination of the initial Contract Rents.

Section 882.721 Contract Rent Adjustments

This section contains the requirements for adjusting the Contract Rents during the term of the HAP Contract after the Contract Rents have been established by execution of the HAP Contract. This section is based on § 882.108.

Section 882.723 PHA Selection and Initial Inspection of Units

This section provides PHAs with broad discretion in establishing procedures for selecting units to which assistance is to be attached. Under paragraph (a), PHAs must establish written policies for selecting units. In addition, paragraph (a) also encourages PHAs to establish preferences for units to be used as limited equity cooperatives. This provision reflects congressional intent (see H.R. Conf. Rep. No. 122, 100th Cong., 1st Sess. 33 (1987)). The Department has not encouraged PHAs to establish preferences for units receiving tax credits, a preference also referred to in the Conference Report, because the Department is conducting an evaluation of the low-income tax credit, including the issue of the extent to which the tax credit requires additional assistance. This rule, however, does not limit the ability of PHAs to utilize Section 8 project-based assistance in conjunction with the tax credit.

The Department also encourages PHAs to establish preferences for HUD-insured subsidized multifamily housing projects that are financially troubled and to work closely with their HUD Field Office in this regard. The use of project-based assistance for this purpose may prove very helpful in maintaining the supply of subsidized housing.

Section 882.725 Prohibition Against Rehabilitation With 1937 Act Assistance; Pledge of Agreement or HAP Contract

Section 8(d)(2) of the 1937 Act provides that the owner may not use any assistance provided under the 1937 Act to rehabilitate the structure to which assistance will be attached. Section 882.725(a) implements this prohibition by prohibiting attaching assistance to units that have been in the five years before execution of the Agreement, or will be, rehabilitated with other assistance under the 1937 Act. It also identifies examples of 1937 Act assistance that may not be used to rehabilitate the structure.

Paragraph (a) also prohibits the use of flexible subsidy under 24 CFR 219 to finance the rehabilitation of the units. Under the Flexible Subsidy Program, HUD may provide financial assistance to owners of troubled projects that are assisted by HUD under the Section 236, Section 221(d)(3) Below Market Interest Rate, or Rent Supplement Programs. The assistance is to be used to induce and assist owners to maintain the financial soundness and the low- and moderate-income character of the projects by, among other means, physically upgrading the project. A PHA could attach project-based assistance under this Subpart G to these types of projects in order to induce the owner to rehabilitate the project. The Department believes, however, that each Program, by itself, is a sufficient inducement for owners to rehabilitate projects and that permitting the Programs to be used in conjunction would result in fewer projects being rehabilitated.

Paragraph (b) of § 882.725 sets out the conditions under which an owner may pledge its Agreement to Enter into a Housing Assistance Payments Contract or its Housing Assistance Payments Contract as security for financing. The financing documents may not purport to pledge or give greater rights to any party against the PHA than the contractual rights of the Owner under the Agreement or HAP Contract. The financing documents may not include any requirements inconsistent with the Agreement or HAP Contract. The PHA may not be a party to any of the financing documents and may undertake no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing. No modification or alteration may be proposed or made to the Agreement or HAP Contract.

Section 882.727 Owner Selection of Contractor.

This section contains similar policies to those stated in § 882.504(g) for the Moderate Rehabilitation Program.

Section 882.729 Work Write-Ups and Agreement to Enter into Housing Assistance Payment Contract

The work write-up provisions and the requirements for the Agreement are based on similar provisions in the Moderate Rehabilitation Program, although their presentation has been reorganized. HUD is prescribing no specific form or format for the work write-ups. The PHA has the flexibility to

determine the appropriate content and documentation for the work write-ups.

Increases in initial Contract Rents during rehabilitation are not permitted under this section. They are permitted in the Moderate Rehabilitation Program (see § 882.408(d)). Increases are not appropriate when project-based assistance is involved because the initial Contract Rents are established on the basis of a rent reasonableness test, not on the cost of rehabilitation.

Section 882.731 Rehabilitation Period, and Section 882.733 Rehabilitation Completion

These provisions are modeled on the Moderate Rehabilitation Program, §§ 882.506 and 882.507, respectively.

Section 882.735 Housing Assistance Payments Contract (Contract)

This section sets out HAP Contract requirements that are specific to assistance provided under this Subpart G. It provides more flexibility to PHAs to set the term of the Contract than is provided under the Moderate Rehabilitation Program (see § 882.403(c)). (All Moderate Rehabilitation Contracts have 15 year terms.) With project-based assistance, PHAs may set the term between 2 and 15 years, but the Contract term may not exceed the ACC expiration date for the Funding Source.

The owner may also terminate the HAP Contract after two years. If the owner "opts out," the remaining funding authority would again be available for Certificates and the families that had been receiving project-based assistance may be issued Certificates (see § 882.745(e)).

Section 882.737 Reduction of Number of Units Covered by Contract, Section 882.739 Responsibilities of the PHA, § 882.741 Responsibilities of the Owner, and Section 882.743 Obligations of the Family

These sections simply incorporate by cross-reference pertinent provisions under the Certificate Program and Moderate Rehabilitation Program, without making substantive changes.

Section 882.745 Family Participation

This section implements the Certificate Program tenant selection policies in § 882.209, as modified to take into account the fact that the assistance is likely to be used in projects with occupied units and families are assisted in a specific project under a HAP Contract. Paragraph (b) is intended to ensure that an eligible tenant residing in a unit to be assisted is afforded the opportunity to lease that unit or another assisted unit of appropriate size, regardless of whether the family qualifies for a Federal preference. The Department does not believe that Congress intended that project-based assistance and the Federal preferences interact in a way that could result in the displacement of eligible families from units with project-based assistance, only to fill the vacancies created with other eligible families. In addition, to avoid permanent displacement, the PHA and Owner may not select a unit if the unit is occupied by persons not eligible for admission to the program.

A family that is leasing a unit, with Certificate Program assistance, in a project that is to be rehabilitated with project-based assistance and which chooses to move has the right to continued participation in the Certificate Program provided by § 882.209(m). If such a family signs a lease for a project-based unit, the family would no longer be a participant in the Certificate Program.

Section 882.747 Maintenance, operation, and inspections, Section 882.749 Reexamination of Family income and composition, Section 882.751 Overcrowded and underoccupied units, Section 882.753 Informal review or hearing, and Section 882.755 Grounds for denial or termination of assistance

These sections, in general, either incorporate by cross-reference or restate comparable policies in the Certificate Program or the Moderate Rehabilitation Program.

Section 882.757 Termination of Tenancy

This section incorporates by cross-reference Subpart A of 24 CFR Part 247, Evictions from Certain Subsidized and HUD-Owned Projects, which applies to other project-based rental assistance programs administered by HUD. The section also adds provisions that limit the grounds for terminating tenancy for good cause during the first year of the lease. Part 247 may be obtained from HUD Field Offices.

This rule also makes a conforming amendment to Part 247 by revising § 247.1 and by adding reference in § 247.2(e) to this Subpart G. This rule also makes a technical revision to § 247.2(e) to distinguish between those forms of subsidy that are project-wide and those that apply to particular units within a project.

D. Recent Proposed Rulemaking on Section 16(b) Limitations. Section 16 of the 1937 Act limits the number of families that are lower income but are not very low-income that may be initially assisted under several of the 1937 Act programs, including the Section 8 Certificate Program and this project-based component of that Program. Under section 16(b), admission of non-very low-income families is limited to not more than 5 percent of the dwelling units that become available for occupancy under the affected programs. Section 103(a) of the HCD Act of 1987 amended section 16 to require HUD to establish, as appropriate, differing percentage limitations on admission of these families in the separate assistance programs. On April 29, 1988, at 53 FR 15412, the Department published a proposed rule to implement section 103(a). HUD also published, on the same date, a notice (53 FR 15466) proposing the respective percentage limitations for each of the affected programs. The notice proposed a one percent limitation for the Section 8 Certificate Program. The notice did not separately address project-based assistance. (Section 1001(a) of the 1988 McKinney Act amended section 16, but maintains the requirement for percentages for each program.) HUD invites comment on whether the proposed one percent limitation for the Certificate Program should be revised as a result of implementing this Subpart G. Readers, in considering this issue, should bear in mind that any change in the percentage limitation for the Certificate Program may necessitate a change in the percentage limitation for one or more of the other assistance programs subject to section 16, because the sum of the number of non-very low-income families, resulting from the use of these program-specific percentage limitations, may not exceed 5 percent nationally.

E. Other Information. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on

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

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule does not alter the amount of funding a PHA may receive. The rule, in accordance with the statutory mandate, merely permits, but does not require, a PHA to attach a portion of the assistance it provides under the Section 8 Certificate Program to units rather than have the assistance move with the families.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule conforms HUD regulations to a statutory requirement to permit PHAs to provide project-based assistance, for projects that are rehabilitated. To the extent that particular revisions have altered responsibilities, these revisions are in response to statutory changes and have increased the discretion of the non-Federal governmental entities.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule concerns only a PHA's discretion to attach Certificate Program assistance to units. It does not affect the terms and conditions under which a family may qualify for assistance under the Certificate Program. The Certificate Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the OMB Control Number 2502–0388.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

New requirements applicable program ref.	Description of information collection	Form used	No. of respondents + No. of responses per respondent	Hours per response + total annual burden hours	Average cost per PHA or owner per hour	Estimated cost annually
882.707—PHA application for HUD approval to attach assistance to units.	Total No. of units; units proposed for project—based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP contract.	No prescribed form.	200 PHAs	2 hrs. (400 hours)	$13.00 (average cost per hr. for PHA mgmt. staff).	$5,200.00
882.721(a)(2)—Special rent adjustment.	Special adjustments—financial statements submitted by owner to support request for rent increase.	No prescribed form.	10 owners	2 hrs. (20 hrs.)	$13.00 (average cost per hr. for owner property mgmt. staff).	260.00
882.729(a)—Work write-up requirement.	Work write-ups prepared by owners.	No prescribed form.	200 owners	5 hrs. (1,000 hrs.)	$13.00	13,000.00
882.731(d)—Notification of families on waiting list + vacancies.	Notification of families on waiting list of vacant units.	No prescribed form.	50 projects	½ hr. per property (25 hrs.).	$13.00	325.00
882.733(a) + (b)—Owner notification of completion.	Nottification and evidence of completion submitted by owner.	Owner certification and certificate of occupancy.	200 owners	5 hrs. (1,000 hrs.)	$13.00	13,000.00
882.723(a)—PHA selection of units.	Adoption of written selection policy.	No prescribed form.	200 PHAs	5 hrs. (1,000 hrs.)	$13.00	13,000.00

New requirements applicable program reference	Description of information collection	Form used	Estimated No. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.715(b)(1)(i)—relocation.	Relocation notice to family	Letter	10 owners	4 hrs. (40 hrs.)	$13.00	$520.00
882.719(a)(2)—FMR exceptions.	Approval of rents up to 110 percent FMR.	Log or other control mechanism.	40 PHAs	5 mins. or .083 hr. (3.3 hrs.).	13.00	43.00
882.719(a)(3) and (4)—FMR exceptions.	Requests for FMR exception up to 120 percent FMR.	Letter	10 PHAs	8 hrs. (80.00 hrs.)	13.00	1,040.00
882.719(b)—rent reasonableness.	Certification of rent reasonableness (rents are established by projects and not by units.).	No prescribed format for certification.	200 projects	5 mins. or .083 hr.) (16.7 hrs.).	13.00	217.00
882.725—pledging contracts.	Owner submittal of financial documents if pledging agreement or HAP contract as security for financing and PHA review.	Lender documents	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.733 delayed completion.	Written agreement pertaining to items of delayed completion.	No prescribed format	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.735 HAP contract	HAP contract	Prescribed format	200 owners and 200 PHA's.	¼ hr. (50 hrs.) ¼ hr. (50 hrs.)	13.00 13.00	[1] 650.00 [2] 650.00

New requirements applicable program reference	Description of information collection	Form used	Estimated No. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.719(b)(2) HUD approval of rents.	PHA submittal of contract rents for projects of 50 or more units.	Letter	25 PHA's	¼ hr. (6.25 hrs.)	13.00	81.00
882.713(b)(6) eligible properties.	Flood hazards	Record of observation of insurance policy.	25 PHA's	¼ hr. (6.25 hrs.)	13.00	81.00
882.713(c) eligible property.	Highrises ineligibility	Leter request	5 PHA's	¼ hr. (1.25 hrs.)	13.00	16.00
882.717(c)(7) other Federal requirements.	Davis-Bacon	SF308, HUD 4230A, WH Pub 1321, WH-347, WH-348, HUD-11.	150 owners	40 hrs. (6,000 hrs.)	13.00	78,000.00
882.717(b) other Federal requirements.	NEPA and historic preservation.	File documentation	100 PHA's	4 hrs. (400 hrs.)	13.00	5,200.00

[1] Owners.
[2] PHA's.

This rule was listed as Sequence Number 974 in the Department's Semiannual Agenda of Regulations published on October 24, 1988, (53 FR 41974, 41993) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Low and moderate income housing, Mobile homes.

24 CFR Part 888

Rent subsidies.

Accordingly, the Department amends 24 CFR Parts 247, 882, and 888, as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR Part 247 continues to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); Secs. 211, 221, and 236 National Housing Act (12 U.S.C. 1715b, 1715*l*, and 1715z–1); Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section. 247.1 is revised to read as follows:

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted with tenant-based assistance under the Section 8 Existing Housing Certificate or Housing Voucher Program is not subject to this part.)

3. Section 247.2(e) is revised to read as follows:

§ 247.2 Definitions.

* * * * *

(e) "Subsidized project" means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: below-market interest rates under section 221(d) (3) and (5), interest reduction payments under section 236 of the National Housing Act, or below market interest rate direct loans under section 202 of the Housing Act of 1959. For purposes of this Part 247 "subsidized project" also includes those units in a housing project that receive the benefit of rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or housing assistance payments through: Project-Based Assistance under the Section 8 Certificate Program (24 CFR Part 882, Subpart G), Section 8 in connection with Section 202 Loans for Housing for the Elderly or Handicapped (24 CFR Part 885), the Section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) or the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

4. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. The table of contents for Part 882 is revised by adding at the end a new table of contents for Subpart G to read as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

* * * * *

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

Sec.
882.701 Purpose and applicability.
882.703 Additional definitions.
882.705 Information to be submitted to HUD by the PHA.
882.707 HUD review of PHA plans to attach assistance to units.
882.709 Annual Contributions Contract; schedule of leasing.
882.711 Housing quality standards.
882.713 Eligible and ineligible properties; rehabilitation requirement.
882.715 Relocation.
882.717 Other Federal requirements.
882.719 Initial Contract Rents.
882.721 Contract Rent adjustments.
882.723 PHA selection and initial inspection of units.
882.725 Prohibition against rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.
882.727 Owner selection of contractor.
882.729 Work write-ups, Agreement to Enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.
882.731 Rehabilitation period.
882.733 Rehabilitation completion.
882.735 Housing Assistance Payments Contract (Contract).
882.737 Reduction of number of units covered by Contract.
882.739 Responsibilities of the PHA.
882.741 Responsibilities of the Owner.

Sec.
882.743 Obligations of the Family.
882.745 Family participation.
882.747 Maintenance, operations and inspections.
882.749 Reexamination of Family income and composition.
882.751 Overcrowded and underoccupied units.
882.753 Informal review or hearing.
882.755 Grounds for denial or termination of assistance.
882.757 Assisted tenancy and termination of tenancy.

6. In § 882.106, paragraphs (a)(2) and (b)(2) are revised, to read as follows:

§ 882.106 Contract rents.

(a) * * *

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (a)(2) of § 882.719, Initial Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

* * * * *

(b) * * *

(2) For an assisted unit that is subject to local rent control, comparable units are rent controlled units. However, for an assisted unit that is not subject to local rent control while it is assisted (regardless of whether the unit would be subject to such control if it were not assisted), comparable units are units that are not subject to local rent control.

* * * * *

7. In Part 882, a new Subpart G is added to read as follows:

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

§ 882.701 Purpose and applicability.

(a)(1) This Subpart G establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Section 8 Certificate Program. This Subpart G implements section 8(d)(2)(A) of the 1937 Act which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to rehabilitate the structure *other than* with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to upgrade substandard rental housing stock, and make it available to lower income families at rents within the Section 8 Existing Housing Fair Market Rents.

(2) This Subpart G refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under Subparts A, B, C, and F of this Part and also by the Housing Voucher Program under 24 CFR Part 887. With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted family. If the Family moves out of a unit, the assistance contract terminates. And, the family may may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction.

(b) Except as otherwise expressly modified or excluded by this Subpart G, all provisions of Subparts A and B of this Part 882 apply to project-based assistance under this Subpart G.

(c) The following sections in Subparts A and B of this Part 882, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this Subpart G: § 882.103, *"Finders-Keepers" policy;* § 882.208, *Activities to encourage participation by Owners and others;* and § 882.209(m), *Continued participation when Participant Family moves.* Other sections in this Subpart G identify other tenant-based provisions of Subparts A and B that do not apply to project-based assistance under this Subpart G.

§ 882.703 Additional definitions.

The following definitions apply to assistance subject to this Subpart G, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract (Agreement). As defined in § 882.402.

15-Percent Limit. Fifteen percent of the total of the number of units reserved by HUD for a PHA's Section 8 Certificate Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 constitutes a single pre-Federal fiscal year 1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

§ 882.705 Information to be submitted to HUD by the PHA.

(a) *Requirements.* A PHA may attach assistance to units in accordance with this Subpart G if:

(1) The number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit.

(2) The unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source.

(3) The rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

(b) *PHA submission.* Before entering into any Agreements for project-based assistance, the PHA must submit the following information to the HUD Field Office for review. The PHA submission need not specify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently reserved for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated rehabilitation periods and termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.707 HUD review of PHA plans to attach assistance to units.

(a) *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under § 882.705(b) only to determine whether the requirements of § 882.705(a) are satisfied.

(b) *Notice to PHA.* (1) If the requirements of § 882.705(a) are satisfied, the Field Office shall approve the PHA application.

(2) The Field Office shall notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under § 882.705(b) (date

of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the application is approved, the Field Office shall notify the PHA that the PHA may proceed with execution of Agreements for project-based assistance. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of § 882.705(a) are not satisfied, the Field Office shall not approve the PHA application. The Field Office shall notify the PHA by letter of the reasons for disapproval.

§ 882.709 Annual Contributions Contract; schedule of leasing.

Section 882.206, *Annual Contributions Contract; schedule of leasing.* Applies. With respect to units assisted under this Subpart G, the Field Office may authorize the extensions of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the rehabilitation of the units.

§ 882.711 Housing quality standards.

Section 882.404(b), *Site and neighborhood-performance requirements,* applies, in addition to the housing quality standards in § 882.109.

§ 882.713 Eligible and ineligible properties; rehabilitation requirement.

(a) Section 882.110, *Types of housing,* does not apply. Existing structures of various types may be appropriate for attaching assistance to the units under this Subpart G, including single-family housing and multifamily structures. To be an eligible property, the property must require rehabilitation involving a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure;

(3) Make improvements to the property essential to permit use of the property by handicapped persons; or

(4) Convert or merge units to provide housing for large Families.

(b) A PHA may not attach assistance under this Subpart G to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care facilities;

(4) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions.

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barrier Resources Act; or

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) A PHA may attach assistance under this Subpart G to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for the PHA's project-based assistance, in whole or in part, and need not review each building on a case-by-case basis.

(d) A PHA may attach assistance to units under this Subpart G for use as single room occupancy (SRO) housing only if—

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

(e) Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this Subpart G.

(f) For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this Subpart G is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this Subpart G).

(g) In no event may any occupant of a unit with project-based assistance under this Subpart G receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.715 Relocation.

(a) *Prohibition against permanent displacement.* Rehabilitation of units to be subsidized with assistance under this Subpart G may not result in the permanent displacement of residential tenants from the structure or complex.

(b) *Temporary relocation.* The following policies apply to temporary relocation of tenants. The policies apply only to lawful tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's proposal to the PHA. The following policies do not apply to tenants who commence occupancy after the Owner's submission of a proposal if, before they commence occupancy, they are provided adequate notice from the Owner of the impending rehabilitation and possible relocation, or whose tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does not include expiration of the lease term or terminations because of Owner participation in the program.)

(1) Tenants may not be required to move temporarily from the property (building or complex) unless:

(i) The Owner has given the tenants adequate, advance written notice and appropriate advisory services;

(ii) Decent, safe, and sanitary temporary housing is available;

(iii) The temporary relocation period will not exceed 12 months; and

(iv) Tenants will receive reimbursement from the Owner for reasonable out-of-pocket expenses incurred in connection with the

temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(2) The PHA is responsible for ensuring that all the relocation requirements are met. Preliminary or ongoing administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under the program.

(3) Tenants who do not believe they have received relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and must be given an informal hearing on this appeal.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.717 Other Federal requirements.

(a) Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

(b) Activities under this Subpart G are subject to HUD environmental regulations at 24 CFR Part 50. PHA's shall assist HUD in ensuring compliance with Part 50 requirements as follows:

(1) A PHA may authorize rehabilitation of a project in connection with project-based assistance approved by HUD under § 882.707 without further HUD approval only if the PHA documents in its file why the rehabilitation activity will not:

(i) Exceed the thresholds in § 50.20 (a) or (c) of this title for categorical exclusion from the NEPA requirements of Part 50 of this title. However, the PHA must notify HUD if it has reason to believe that notwithstanding inclusion in these categorical exclusion thresholds, the project might have a significant environmental effect because of extraordinary circumstances; in that case, HUD shall review the project and the PHA must await approval to proceed under paragraph (b)(2) of this section;

(ii) Based on information from the State Historical Prevention Officer, involve alterations to a property that: is listed on the National Register of Historical Places; is located in an historic district or is immediately adjacent to a property that is listed on the Register; or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register. A PHA is not required to contact the State Historic Preservation Officer if it documents in its file:

(A) For any property that involves only interior rehabilitation, that the property is not on the National Register of Historic Places and is not 50 years old or older; or

(B) For any property that involves exterior rehabilitation, that the property and all immediately adjacent properties are not on the National Register of Historic Places and are not 50 years old or older;

(iii) Take place in any 100-year floodplain designated by map by the Federal Emergency Management Agency; or

(iv) Conflict with HUD environmental standards in 24 CFR Part 51 or with the State's Coastal Zone Management plan.

(2) If further HUD approval is required under paragraph (b)(1) of this section, a PHA may authorize rehabilitation of a project in connection with project-based assistance only if:

(i) The PHA requests HUD to perform an environmental review of the project under Part 50 of this title, including the applicable related laws and authorities under § 50.4, HUD completes the environmental review required by Part 50, and HUD notifies the PHA that it may proceed; or

(ii)(A) The PHA informs HUD that an environmental review of the area in which the proposed rehabilitation is to be located:

(*1*) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and

(*2*) Addressed properties, activities, and effects comparable to those proposed for assistance under this part;

(B) HUD finds that the prior review applies to the proposed activities; and

(C) HUD notifies the PHA that it may proceed.

(c) The PHA and Owner must agree to comply with the requirements of the following, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR Part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.719 Initial Contract Rents.

Section 882.106, *Contract Rents*, does not apply.

(a) *Fair Market Rent and Agreement limitation.* (1) The initial Contract Rent plus any applicable Utility Allowance (Gross Rent) for any unit approved under this Subpart G shall not exceed the Section 8 Existing Housing Fair Market Rent applicable to the unit on the date the Agreement is executed, except as provided in this paragraph (a). (See also § 882.729(c), *Contract Rents in Agreement.*)

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (a)(2) of § 882.106, Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in the maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum

Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section, except for the last sentence of that paragraph.

(b) *Rent reasonableness limitation.* Because the Fair Market Rents are established for a geographic area, within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit.

(1) The PHA shall certify for each unit it approves for project-based assistance under this Subpart G that the initial Contract Rent for the rehabilitated unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) If a PHA proposes to project-base assistance for fifty or more units, the PHA must obtain HUD Field Office approval of the Contract Rents before executing the Agreement.

(3) For a rent-controlled unit, comparable units must be units that are rent-controlled; for a unit that is not subject to rent control, comparable units must be units that are not rent-controlled.

(c) *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(d) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(2) A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent, or the Family's income eligibility.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(e) *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraphs (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e. 90 percent) of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(f) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.721 Contract Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a)(1) and (a)(2) of this section, upon request of the Owner. The unit, however, must be in Decent, Safe, and Sanitary condition, and the Owner must otherwise be in compliance with the terms of the Lease and the Contract. Subject to § 882.719(b) (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (Part 886 of this chapter) most recently published by HUD in the **Federal Register**.

(ii) Contract Rents may be adjusted upward or downward, as may be appropriate. In no case, however, shall the adjusted rent be less than the Contract Rent on the effective date of the Contract (subject to post-audit change of Contract Rent in accordance with HUD requirements, including the correction of errors in establishing the initial Contract Rent).

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in actual and necessary expenses of owning and maintaining the unit that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided in paragraph (a)(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.719(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.723 PHA selection and initial inspection of units.

(a) *PHA selection policy.* The PHA must adopt a written policy establishing criteria and procedures for selecting units to which assistance is to be attached under this Subpart G and must make this policy known to interested Owners. A PHA must select units in accordance with its written selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, and for units to be used as limited equity cooperatives.

(b) *Initial inspection and determination of unit eligibility.* (1) Before selecting a unit, the PHA must inspect the property to determine that the property meets the $1000 per assisted unit rehabilitation requirement under § 882.713(a). If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in § 882.711 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement.

(2) In addition to ascertaining whether the property meets the above repair requirement, the PHA must also consider whether the property is eligible housing within the meaning of § 882.713; meets the other Federal requirements in § 882.717 and the site and neighborhood standards cross-referenced in § 882.711; can be repaired without causing permanent displacement (see § 882.715); and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 887.725. The PHA must also determine the number of current tenants that are lower income families.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.725 Prohibition against rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.

(a) Assistance may not be attached to any unit which was in the five years before execution of the agreement, or will be, rehabilitated with other assistance under the U.S. Housing Act of 1937 (e.g., public housing (development or modernization), rental rehabilitation programs under 24 CFR 511, housing development grants under 24 CFR 850, or other Section 8 programs). In addition, a unit to which assistance is to be attached under this Subpart G may not be rehabilitated with flexible subsidy assistance under Part 219 of this chapter. HUD may approve attachment of assistance to a unit rehabilitated with public housing modernization funds before conveyance to a resident management corporation if attachment of project-based assistance would facilitate sale of the public housing project to the corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

(b) If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that:

(1) The financing documents do not purport to pledge or give greater rights or payments to any party against the PHA than are provided to the Owner under the Agreement or HAP Contract and do not contain any requirements inconsistent with the Agreement or HAP Contract;

(2) The PHA is not a party to any of the financing documents and undertakes no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing; and

(3) No modification or alteration is proposed or made to the Agreement or HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.727 Owner selection of contractor.

The Owner is responsible for selecting a competent contractor to undertake the rehabilitation. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR Part 24 or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5. The PHA must promote opportunities for minority contractors to participate in the program.

§ 882.729 Work write-ups, Agreement to Enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.

(a) *Work write-ups.* The Owner must prepare work write-ups and, where determined necessary by the PHA, specifications and plans. The PHA has flexibility to determine the appropriate documentation to be submitted by the Owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the PHA under § 882.723(b)(1).

(b) *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this Subpart G. The Agreement must be executed before the start of any rehabilitation. Under the Agreement, the Owner agrees to complete rehabilitation of units in accordance with the work write-ups, as approved by the PHA. These work write-ups must be attached to the Agreement as an exhibit.

(c) *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.719, *Initial Contract Rents*) that will apply to the units after they are rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as reduced under § 882.713(c), shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.721).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.731 Rehabilitation period.

(a) *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The PHA must inspect during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the levels of workmanship and materials specified in the work write-ups.

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from the work-specified in the Agreement that would alter the design or the quality of the required rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on a reduction of the initial Contract Rents in the amount determined by the PHA. If the Owner makes any changes without prior PHA approval, the PHA may reduce Contract Rents in the amount determined by the PHA, and may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason.

(d) *Notification of vacancies.* Sixty days before the scheduled completion of

the rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also §§ 882.723 and 882.745).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.733 Rehabilitation completion.

(a) *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To evidence completion of the work the Owner must furnish the PHA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) The unit(s) is in good and tenantable condition;

(iii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iv) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(v) Any unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(vi) The Owner has complied with any applicable labor standards requirements in the Agreement.

(c) *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality Standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.735 Housing Assistance Payments Contract (Contract).

(a) *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this Subpart G.

(b) *Term of Contract.* The Contract term may not be less than two years and may not extend beyond the ACC expiration date for the Funding Source. Within these limitations, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1988, that Contract could have a fixed term of 2 to 15 years. The Contract shall include a provision giving the Owner the right to terminate the Contract at the Owner's sole option after two years.

(c) *Renewal of Contracts.* A Contract that is attached to a structure under this Subpart G shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

(d) *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under § 882.733. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.737 Reduction of number of units covered by Contract.

Section 882.512, *Reduction of number of units covered by Contract*, applies.

§ 882.739 Responsibilities of the PHA.

Section 882.116, *Responsibilities of the PHA*, applies, except paragraphs (d), (f), and (j). The PHA must also:

(a) Brief the Family in accordance with § 882.745(d);

(b) Obtain requests for participation from Owners, and select projects;

(c) Establish initial Contract Rents in accordance with § 882.719, approve rent adjustments, and make rent reasonableness determinations;

(d) Inspect the project before, during, and upon completion of, rehabilitation; and

(e) Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 882.741 Responsibilities of the Owner.

Section 882.117, *Responsibilities of the Owner*, applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

§ 882.743 Obligations of the Family.

Section 882.118, *Obligations of the Family*, applies; however, § 882.118(a) (4) and (5), which pertain to shared housing do not apply (because shared housing is not an eligible housing type under this Subpart G).

§ 882.745 Family participation.

Section 882.209, *Selection and participation*, does not apply, except as it is expressly made applicable by this section.

(a) *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (4)(ii), (4)(iii), and (6). For purposes of this Subpart G, a Family becomes a participant when the Family and Owner execute a Lease for a unit with project-based assistance.

(b) *Determining eligibility of in-place Families.* Before a PHA selects a

specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the waiting list. (The PHA is authorized, under § 812.3(b)(1) of this chapter and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of the conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the Owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this Subpart G keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the Owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

(d) *Briefing of Families.* When a Family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and Contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires;

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition;

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under § 882.753), and of the procedure for requesting a hearing.

(e) *Continued assistance for a Family when the Contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unles the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with § 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

(f) *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner,* applies.

(g) *Lease requirements.* The Lease between the Family and the Owner must be in accordance with § 882.757 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

§ 882.747 Maintenance, operation and inspections.

Section 882.211, *Maintenance, operation and inspections,* does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections,* apply.

§ 882.749 Reexamination of Family income and composition.

Section 882.212, *Reexamination of Family income and composition,* does not apply. Instead, § 882.515, *Reexamination of Family income and composition,* applies.

§ 882.751 Overcrowded and underoccupied units.

(a) Section 882.213, *Overcrowded and underoccupied units,* does not apply.

(b) If the PHA determines that a Contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded or that Contract unit is larger than appropriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for this reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA (if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in the PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contract be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that the PHA judges to be acceptable.

§ 882.753 Informal review of hearing.

(a) Section 882.216(a), *Informal review of PHA decision on application for participation,* applies, except §§ 882.216(a)(3)(ii), (iii), and (iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

(b) Section 882.216(b), *Informal hearing on PHA decision affecting participant Family,* applies, except § 882.216(b)(1)(iv) does not apply because there is no right to continued

participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

§ 882.755 Grounds for denial or termination of assistance.

Section 882.210, *Grounds for denial or termination of assistance*, applies, except that for purposes of this Subpart G the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

§ 882.757 Assisted tenancy and termination of tenancy.

(a) Section 882.215, *Assisted tenancy*, does not apply.

(b) *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

(c) *Termination of tenancy.* (1) Subpart A of Part 247 of this title, *Eviction from Certain Subsidized and HUD-Owned Projects*, applies, except § 247.4(d).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under § 247.3(a)(3)).

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

8. The authority citation for 25 CFR Part 888 continues to read as follows:

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 888.111 is revised to read as follows:

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRS) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program (Part 882, Subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Certificate Program (Part 882, Subpart F), the Section 8 Moderate Rehabilitation Program (Part 882, subparts D and E), Section 8 existing housing project-based assistance (Part 882, Subpart G), and Section 8 existing housing assisted under part 886, Subparts A and C (Section 8 loan management and property disposition programs).

Dated: December 28, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

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Part III

Environmental Protection Agency

40 CFR Parts 122, 123, 124, 125, 130 and 403

National Pollutant Discharge Elimination System Permit Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 125, 130 and 403

[FRL 3405-2]

National Pollutant Discharge Elimination System Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 4, 1987, Congress enacted the Water Quality Act of 1987 (WQA), which revised the Clean Water Act (CWA). This new statute makes a number of changes to EPA's existing National Pollutant Discharge Elimination System (NPDES) permit and pretreatment programs under section 402 of the CWA, and includes modifications to other CWA provisions as well. Today's rules revise EPA's existing NPDES, pretreatment, and water quality regulations to reflect statutory changes which supplement or supersede existing regulatory requirements.

These rules also change existing NPDES regulations to reflect recent court decisions and contain corrections of typographical errors, incorrect cross-references, and inadvertent omissions or additions of language in previous regulations implementing the NPDES permit program. These earlier regulations were published at 50 FR 6939 (February 19, 1985), 49 FR 37998 (September 26, 1984), 49 FR 31840 (August 8, 1984), 48 FR 39611(September 26, 1983), 48 FR 14146 (April 1, 1983), and 47 FR 53685 (November 26, 1982).

EFFECTIVE DATE: These rules become effective January 4, 1989.

ADDRESSES: Comments should be addressed to: David Greenburg, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this rulemaking will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Greenburg at (202) 475-9524, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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I. Background

On February 4, 1987, Congress enacted the Water Quality Act of 1987 (WQA), which amends the Clean Water Act (CWA). The Water Quality Act makes a number of adjustments to the NPDES program.

Many of the changes necessitate revisions to the NPDES regulations. This rule contains changes which incorporate specific provisions from the Water Quality Act into existing NPDES regulations. Today's rulemaking also makes revisions to the NPDES regulations in response to recent court decisions by the U.S. Court of Appeals for the District of Columbia Circuit.

In addition to today's final rule, EPA is also preparing companion rulemakings which will propose modifications to existing regulations to implement other provisions of the WQA and court orders. These companion proposals will supplement the new provisions, as well as codify the remaining statutory language. EPA has codified in this rulemaking only those statutory provisions which can stand alone and out of context. In some cases, implementation of specific provisions of the WQA amendments will involve both codification of explicit statutory requirements and notice and comment rulemaking to implement those parts of the statute where the Agency has discretion to act. Where these are inextricably intertwined, EPA has decided to defer codification in favor of a combined notice and comment rulemaking. This will avoid confusion which may arise from a piecemeal approach. Because the principal purpose of today's rule is to codify the new statutory requirements of the WQA, today's rulemaking is properly classified as an interpretive rule, *see, United Technologies Corporation v. EPA*, 821 F. 2d 714, 718 (D.C. Cir. 1987), in that it "simply states what (EPA) thinks the [underlying] statute means and only 'reminds' affected parties of existing duties." quoting *Citizens to Save Spencer County v. EPA*, 600 F. 2d, 844, 876 n. 153 (D.C. Cir. 1979). It does not intend "to create new law, rights or duties." *Id.*

If the rule is based on specific statutory provisions, and its validity stands or falls on the correctness of the agency's interpretation of those provisions, it is an interpretative rule. If, however, the rule is based on an agency's power to exercise its judgment as to how best to implement a general statutory mandate, the rule is likely a legislative one. *United Technologies, supra*, at 719-20.

Today's final rule conforms to the Court's definition of an interpretative rule by revising existing regulations to implement the new statutory provisions. In most instances, EPA has codified the relevant statutory language. EPA recognizes that many of these provisions raise interpretive questions. EPA has avoided adding regulatory language to resolve interpretive questions. This is in keeping with EPA's view that the principal purpose of today's rule is to codify the new statutory requirements. EPA has articulated in the preamble, however, its view of what Congress intended these new requirements to be. Such statements of statutory interpretation are derived from legislative history and EPA's view of Congressional purposes for the new requirements.

The Administrative Procedure Act (APA) specifically excludes "interpretative" rules from its notice and comment procedures. 5 U.S.C. 553(b)(A) (1982). In addition, while EPA recognizes the importance of public comment in its rulemaking activity, the Agency believes that notice and comment is unnecessary because the "good cause" exception to the APA notice and comment requirement is applicable. The Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, specifically recognizes that there will be situations where an administrative agency need not go

through a round of public comment before issuing a rule. Under 5 U.S.C. 553(b)(B), a rule is exempt from notice and public comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest."

The Administrative Conference of the United States has summarized the case law on the issue of the "good cause" exemption, saying in relevant part that the exemption is warranted where: "* * * delay in promulgation will cause an injurious inconsistency between an agency rule and a newly enacted statute or judicial decision." ACUS Rec. 83–2: The "Good Cause" Exemption from APA Rulemaking Requirements, 1 CFR Part 305.83–2 (1984).

EPA believes the good cause exemption from the notice and comment requirements of the EPA is properly invoked here for the following reasons. The limited objective of this rule is to assure that the Code of Federal Regulations (CFR) accurately reflects the current requirements of the Water Quality Act. This serves important public policy and regulatory objectives. It eliminates any confusion on the part of the regulated community, which relies on the CFR as an accurate reflection of the controlling statutory requirements. It assures that the regulated community is aware of the new requirements and fully understands the impact of the requirements upon permitted facilities. In addition, many permits include citations to specific provisions of the federal regulations. Many State regulatory programs are modeled after EPA's regulations; some States even incorporate EPA's regulations by reference.

Today's rulemaking will eliminate many questions concerning implementation of the WQA, and will clarify in a number of areas which parts of the existing regulations are superseded by new requirements.

Moreover, it is essential to the Agency's enforcement program that the CFR accurately reflect the statutory requirements imposed on the regulated community by the WQA. Immediate codification of WQA requirements will put regulated parties on notice of their legal responsibilities and potential liabilities, without the potential for confusion that might arise in the event that a conflict is perceived between the requirements of the Act and those contained in the CFR. By reducing confusion about the program and clarifying permittees' responsibilities under the CWA, EPA is ultimately serving the basic purposes of the statute—the protection of human health and the environment. It also promotes certainty and encourages efforts by responsible segments of the regulated community to move ahead to meet their responsibilities. By the same token, it prevents other members of the regulated community from using confusion as an excuse not to comply with the law.

For the reasons discussed above, EPA has concluded that to the extent this rule is deemed a legislative rule rather than an interpretive rule there is good cause to issue it without receiving public comment in accordance with 5 U.S.C. 553(b)(B), because under the circumstances, notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. For the same reasons, EPA believes that it has good cause to make today's rule immediately effective, as provided in 5 U.S.C. 553(d)(3).

II. Analysis of Regulatory Changes

A. Definitions

1. Point Source

Prior to passage of the WQA, the definition of "point source" in the CWA was very broad, encompassing any discharge of pollutants from a "discernible, confined and discrete conveyance." EPA has in practice interpreted this definition to include landfill leachate collection systems, since they channel runoff from landfills. Section 507 of the WQA confirmed EPA's interpretation by amending the statutory definition of point source to explicitly include landfill leachate collection systems. Accordingly, today's rulemaking revises EPA's existing definition of point source in § 122.2 by inserting the phrase "landfill leachate collection system."

2. Agricultural Storm Water Discharges

Section 503 of the WQA amended section 502(14) of the CWA to expressly exclude from the definition of point source agricultural storm water discharges. Thus, these discharges are not subject to NPDES permit requirements. Today's rule amends the existing definition of point source in § 122.2 to incorporate this statutory exclusion.

EPA's regulations had previously excluded certain agricultural and silvicultural discharges, which EPA defined as non-point, from the requirement to obtain an NPDES permit (see § 122.3(e)). This exclusion had been challenged by the Natural Resources Defense Council (NRDC) in *NRDC v. EPA*, No. 80–1607 (filed June 3, 1980) as being beyond EPA's authority. In view of the new statutory exclusion for agricultural storm water discharges, the U.S. Court of Appeals for the District of Columbia Circuit dismissed NRDC's challenge to § 122.3(e) as moot.

Today's revision clarifies that the exclusion in § 122.3(e) includes agricultural and silvicultural storm water discharges. Silvicultural point source discharges under § 122.27 are still required to obtain NPDES permits. For consistency, EPA is also adding a reference to § 122.3(e) in the definition of point source.

3. State

Section 502 of the WQA amends the definition of "State" in § 502(3) of the CWA to include the Commonwealth of the Northern Mariana Islands. The rule promulgated today implements this statutory provision by revising EPA's existing definition in 40 CFR §§ 122.2 and 124.2 to include the Commonwealth of the Northern Mariana Islands. The Northern Marianas will be treated like any State under the Clean Water Act and can apply to administer the NPDES program.

B. Storm Water Permit Requirements

Sections 401 and 405 of the WQA address the NPDES permit program for storm water discharges and amend section 402 of the CWA by modifying paragraph (1) and adding a new paragraph (p). Today's rule incorporates both the statutory language of section 402(1)(2) relating to storm water runoff from oil, gas, and mining operations as well as the provisions of section 402(p)(1)–(p)(3) regarding municipal and industrial storm water discharges. This rulemaking codifies these WQA amendments as new regulatory provisions at § 122.26. The previous storm water provisions at § 122.26 and accompanying deadline provisions at § 122.21(c)(2) were recently withdrawn by the Agency in response to a D.C. Circuit Court of Appeals order in *NRDC v. EPA*, No. 80–1607 (December 4, 1987) (See 53 FR 4157, February 12, 1988). EPA has recently proposed NPDES application and designation requirements for storm water discharges under sections 402(p) (4) and (6) at 53 FR 49416 (December 7, 1988).

1. Section 402(1)(2)

Section 402(1)(2) prohibits EPA from requiring an NPDES permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows

which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and, which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. Today's rule codifies this limitation on NPDES permitting authority at § 122.26(a)(3).

The legislative history accompanying this provision explains that "[w]ith respect to oil or grease or hazardous substances, the determination of whether storm water is contaminated by contact with such materials, as established by the Administrator, shall take into consideration whether these materials are present in such storm water runoff in excess of reportable quantities under section 311 of the Clean Water Act or section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or in the case of mining operations, above natural background levels." (Conference Report, H 10574 *Cong. Rec.*, (daily ed. Oct. 15, 1986). The Agency will address the scope of this provision in future rulemaking.

2. Section 402(p)

Section 402(p) contains a number of important provisions and requirements relating to the issuance of NPDES permits for municipal and industrial storm water discharges. Today's rule codifies subsection 402(p)(1) at § 122.26 and provides that neither federally-administered nor approved State NPDES programs may require a permit for discharges composed entirely of storm water prior to October 1, 1992, unless the discharge falls within a list of five exceptions set forth in subsection 402(p)(2). These exceptions are also codified in today's rule and include the following storm water discharges:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge which the Administrator or the State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The last exception at 402(p)(2)(E) provides the Administrator or the State, as the case may be, with authority to designate storm water discharges for a permit on a case-by-case basis. This authority can be used to require a designated storm water discharge associated with industrial activity or a discharge from a municipal separate storm sewer system serving a population of greater than 100,000 to obtain a permit prior to the development of permit application requirements for the particular class of storm water discharges in question. In addition, the authority applies to designated storm water discharges that are not otherwise required to obtain a permit prior to October 1, 1992 under section 402(p)(1).

In determining that a storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States for the purpose of a designation under Section 402(p)(2)(E) of the amended CWA, the legislative history for the Water Quality Act provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria [of section 402(p)(2)(E)] are met, and should require additional sampling as necessary to determine whether on not these criteria are met." Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, EPA intends to require designated storm water dischargers to submit permit applications in accordance with the requirements of 40 CFR 122.21. The Agency will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollutants to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. As noted above, EPA has proposed a rulemaking to address NPDES application and designation requirements for storm water discharges. These factors are included in that rulemaking.

Until EPA conducts additional rulemaking under § 405 of the Water Quality Act, case-by-case designations of storm water discharges requiring a permit will be modeled on existing regulatory procedures found at § 124.52 [for permits required on a case-by-case basis]. The procedures at § 124.52 require the Regional Administrator to notify the discharger in writing of the decision that the discharge requires a permit and the reasons for the decision. In addition, an application form is to be sent with the notice. Deadlines for submitting permit applications will be established on a case-by-case basis. Although the 60 day period provided for submitting a permit application under § 124.52 may be appropriate for many designated storm water discharges, additional time may be necessary depending upon site specific factors. For example, due to the complexities associated with determining whether a municipal, separate storm sewer system requires a permit, the Regional Administrator may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

The WQA also adds subsection 402(p)(3)(B)(i) to clarify that permits for municipal storm sewer discharges may be issued on a system or jurisdiction-wide basis. Today's rule codifies this clarification at § 122.26(a)(2).

A number of other provisions of Section 402 are not being codified in today's rule but still warrant discussion.

Section 402(p)(4) requires EPA to promulgate final regulations governing storm water application requirements for storm water discharges associated with industrial activity and discharges from municipal storm sewer systems serving a population of 250,000 or more by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). This provision also requires EPA to promulgate final regulations governing storm sewer permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (i.e., no later than February 4, 1991).

In addition, section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium-sized municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992).

NPDES permits for all other storm water discharges are not required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is

contributing to a violation of a water quality standard.

In addition, EPA, in consultation with the States, is required under section 402(p)(5) to conduct two studies on storm water discharges. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992 and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. This study was due by October 1, 1988. The second study will establish procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. This study was due by October 1, 1989. Based on the two studies, EPA, in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992 which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. The program must, at a minimum, (A) establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

C. Deadline Extensions

1. Compliance Dates

Section 301 in the WQA revises the compliance deadlines in § 301 of the CWA for the technology-based requirements of the CWA. The NPDES regulations in § 125.3 currently reflect compliance deadline requirements prior to the WQA. Under the existing rules, the compliance date for limits based on best practicable control technology currently available (BPT) is the date of permit issuance. For conventional pollutants subject to limitations based upon best conventional pollutant control technology (BCT) and for all toxic pollutants identified under CWA section 307(a) (listed at 40 CFR 401.15) and subject to limitations based upon best available technology economically achievable (BAT), compliance was required by July 1, 1984. For all other toxic pollutants subject to effluent limitations based on BAT, compliance was required no later than three years after the date such effluent limitations were incorporated into an NPDES permit. For BAT effluent limitations on other pollutants (i.e. nonconventionals), compliance was required no later than three years after the date such effluent limitations were incorporated into an NPDES permit, or July 1, 1984, whichever was later, but in no case later than July 1, 1987.

The WQA revises certain deadlines for compliance with permits containing effluent limitations based upon BPT, BAT and BCT. Compliance with permit effluent limitations established based on BAT or BCT is required as expeditiously as practicable but in no case later than three years after the date such limitations are instituted, and in no case later than March 31, 1989.

The deadline for BPT effluent limitations continues to be July 1, 1977. However, the WQA sets a later deadline where EPA promulgates an effluent limitation after January 1, 1982 and the revised limitation requires a level of control substantially greater or is based on fundamentally different control technology than required in permits issued for the industrial category prior to January 1, 1982. Compliance for this second category of BPT effluent limitations is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989.

For permits based upon best professional judgment (BPJ) issued after enactment of the WQA (February 4, 1987), compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989. For BPJ permits issued before enactment of the WQA, compliance continues to be required in accordance with the Section 301(b)(1)(A), 301(b)(2)(A) and 301(b)(2)(E) deadlines in effect when the permit was issued.

Today's rule implements the statutory amendment by revising EPA's existing § 125.3(a)(2)(i)–(v) to extend the compliance deadline for each of the above mentioned categories.

2. POTW Application Deadline

Section 304 of the WQA reopens, for 180 days after enactment, the deadline for POTWs to apply under section 301(i)(1) of the CWA for extensions of the 1978 date by which secondary treatment and water quality standards in effect prior to 1977, must be achieved. The Administrator may extend this compliance deadline until no later than July 1, 1988. Many eligible POTWs applied for the 301(i) extension in 1977 and 1978. Congress enacted section 304 of the WQA to allow POTWs that did not apply in a timely manner for a 301(i) extension another chance to submit an application. Treatment works on a compliance schedule established by a court order or final Agency (or State) order prior to February 4, 1987 were not eligible to apply for an extension under WQA section 304.

Even though the deadline for this extension is past, EPA is amending the existing regulations to conform to the statute in Section 301(i). This will assure that the regulations accurately reflect the statute. This statutory provision is implemented in today's rule by revising existing §§ 122.21(n)(2) and 122.21(m)(3). Section 122.21(n)(2) is revised to change the POTW filing deadline for a 301(i)(1) extension, from June 26, 1978 to August 3, 1987. Thus, the change in the application deadline effectively changes § 122.21(m)(3) by reopening the time period in which an industrial facility planning to discharge through a municipal treatment works that has requested an extension under 301(i) can apply for a 301(i)(2) extension. The deadline for these industrial dischargers is extended to January 30, 1988 (180 days after the POTW can request a 301(i) extension for delay in construction under § 122.21(n)(2)).

3. Innovative Technology

This codification incorporates WQA changes with respect to facilities proposing to use innovative technology to meet applicable BAT effluent limitations. Prior to passage of the WQA, the deadline for compliance with such effluent limitations by facilities using innovative technology under § 301(k) of the CWA was July 1, 1987. This date is currently found at 40 CFR 125.21, 125.23, 125.24 and 125.27. Section 305 of the WQA amends section 301(k) of the CWA, to allow the Administrator (or the State with an approved program, in consultation with the Administrator) to establish a date for compliance no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable. This codification changes §§ 125.21, 125.23, 125.24, and 125.27 to reflect the statutory change.

Prior to the 1987 amendments, the 301(k) deadline extension was available only for compliance with BAT limits. Many facilities subject to BAT also were required to meet limits for conventional pollutants based upon best conventional pollutant control technology (BCT) and used the same treatment equipment in meeting both limits. These facilities were essentially barred from obtaining 301(k) extensions because of the requirement to meet BCT. The WQA expands the scope of section 301(k) to allow an extension where the permittee

is using innovative technology for compliance with BCT. EPA is not, however, revising Subpart C of Part 125 to reflect these changes in today's rulemaking. These revisions will be addressed along with a number of additional issues in connection with section 301(k) in subsequent notice and comment rulemaking. In that rulemaking, EPA plans to define the term "significantly greater effluent reduction" for purposes of BCT. As part of that rulemaking, EPA also plans to propose regulations addressing the amendment to section 307(e) of the CWA (§ 309 WQA) which authorizes a compliance deadline extension for indirect dischargers who install an innovative technology. In addition, EPA will address specific substantive criteria for evaluating 301(k) compliance extensions. EPA proposed these criteria in 1985 pursuant to a remand in *NRDC v. EPA*, No. 84–1500 (D.C. Circuit, April 16, 1985). See 50 FR 49904, December 5, 1985. That earlier proposal was not finalized, however, and will be reproposed as part of the upcoming more general notice and comment rulemaking.

D. Industrial Variances

1. General Note on Fundamentally Different Factors Variances

Regulations establishing Fundamentally Different Factors (FDF) variances for BPT, BAT, BCT, and PSES are found at 40 CFR 125, Subpart D and 40 CFR 403.13. In the WQA, the Congress established an explicit statutory scheme for FDFs, as applied to BAT, BCT and PSES. In a future rulemaking, EPA intends to propose amendments to the substantive criteria for FDF variances consistent with the requirements of section 301(n) of the CWA for direct (40 CFR Part 125, Subpart D) and indirect (40 CFR 403.13) dischargers. The Agency will also address the regulatory authority for granting variances from BPT. However, because the legislative history of the WQA indicated that Congress intended the FDF variance provisions to be self-implementing (Conference Report, 132 H.10567, *Cong. Rec.*, Oct. 15, 1986) EPA is using the new FDF statutory criteria under section 306 of the WQA, when appropriate, on a case-by-case basis in addressing FDF variance requests.

2. Application Requirements for Fundamentally Different Factors Variance Requests

The existing NPDES regulation at § 122.21(m)(1) requires that a Fundamentally Different Factors (FDF) variance request be submitted by the close of the public comment period on the draft permit. The existing filing deadline will continue to be used for FDF variance requests from BPT effluent guidelines. However, where variances are requested from best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT), the WQA establishes a new filing deadline in section 301(n)(2) of the CWA. The statute requires submission of an FDF application within 180 days after the date that the limitation from which the variance is sought is established or revised; EPA considers the date of the establishment of such limitation as the date the guideline or standard is published in the **Federal Register**. This is consistent with the Conference Report (132 H.10566, Oct. 15, 1986) which states that "an application under this section shall be submitted within 180 days after the publication of the initial guideline or standard" and EPA's handling of requests for relief under sections 301(c) and 301(g) of the Act (40 CFR 122.21(m)(2)) within 270 days after promulgation of an effluent guideline.

The statute is not clear when BAT and BCT FDF variance requests are due for those effluent guidelines established or revised before February 4, 1987. Such facilities previously were guided by EPA's regulations which, as stated above, allowed FDF requests to be submitted by the close of the public comment period on the draft permit. EPA will provide a period, not to exceed 180 days after publication of this final rule, to allow such facilities to file a request. (Only facilities for which the previously applicable filing deadline has not passed can make these FDF requests. The previously applicable filing deadline is the close of the draft permit's comment period.) This time period mirrors the time period for filing established by the statute, and will allow those whose time period to file a FDF variance request has not otherwise passed an opportunity to file such a request. EPA has modified the second sentence of the previously applicable provision and designated the sentence as § 122.21(m)(1)(ii), to indicate that FDF variance requests shall explain how applicable regulatory and/or statutory criteria are satisfied.

The general pretreatment regulations at 40 CFR 403.13(g) previously also contained application deadlines for FDF variance requests for indirect dischargers. Therefore, EPA has made changes to these regulations, as well, to reflect the statutory provision. Included in these changes is the provision requiring the submission of an application within 180 days after the date an applicable categorical pretreatment standard is established or revised. As indicated above, EPA considers the date of the establishment as the date the standard is published in the **Federal Register**; this is a change from the previous regulatory requirement which was based upon the effective date of the categorical pretreatment standard.

3. Availability of Section 301(g) Variances

Section 302 of the WQA modified section 301(g) of the CWA to limit section 301(g) variance requests to five specific non-conventional pollutants (ammonia, chlorine, color, iron and total phenols (4AAP) (when the Administrator determines total phenols to be a pollutant covered by CWA section 301(b)(2)(F)). Additional non-conventional pollutants may be added to this group by the Administrator in response to petitions, under a new listing procedure specified in section 301(g)(4) of the CWA. Section 122.21(m)(2) is being revised to reflect this amendment. The current regulation does not list the five specific non-conventional pollutants and allows variances "pursuant to section 301(g) of the CWA, because of certain environmental considerations, when those requirements were based on effluent guidelines." The WQA did not revise application deadlines for section 301(g) applications which are based on section 301(j)(1)(B) of the CWA.

It has been brought to the Agency's attention that Congress did not specify how the time limit for filing the petitions for listing referenced above was to be applied to currently-pending 301(g) variance requests. EPA is only aware of one pending 301(g) variance application which requested relief for a non-conventional pollutant which was not one of the five listed pollutants. EPA will deal with this, and any other dischargers in a similarly situated position, on a case-by-case basis.

The WQA specifies deadlines for EPA decisionmaking. For example, section 301(j)(4) requires EPA to make a final decision on 301(g) applications within 365 days of filing a submission under 301(g). Because an application may be filed without being complete, the deadline for decisionmaking could pass without a complete application ever being filed. It is only logical to imply a deadline for completion of the application before EPA's decision must be made. Therefore, EPA is revising § 122.21(m)(2)(i)(B) to clarify that the complete application must be filed in

sufficient time, as determined by the Regional Division Director, to allow compliance with the decision timing requirement contained in section 301(j)(4) of the CWA. Generally, this period will require submission of the complete application no later than 180 days before the deadline for EPA to issue a decision.

EPA notes that it proposed, but has not to date finalized, substantive criteria regulations (40 CFR Part 125, Subpart F) for section 301(g) on August 7, 1984 (49 FR 31462).

4. State Concurrence on Fundamentally Different Factors and Section 301(g) Variances

Sections 301(g) and 301(n) of the CWA require State concurrence on sections 301(g) and 301(n) variance approvals. The NPDES regulations at § 124.62(e) are being revised to indicate that EPA will act on FDF or 301(g) variance requests which have been submitted to the State Director only after approval of the request by the State Director. EPA notes that in the case of a State that does not have the NPDES program, the variance request should be submitted to EPA, which will then forward the request to the appropriate State agency for concurrence; State concurrence must be obtained before EPA can approve either a 301(g) or 301(n) variance.

The general pretreatment regulation at § 403.13(k) does not authorize a State Director to forward a FDF variance request for an indirect discharger without a recommendation of approval, which EPA interprets to be the State's concurrence. Therefore, no change has been made to this provision. EPA again notes that in the case of a State that is not approved to administer the pretreatment program, State concurrence must be obtained before EPA will finally approve the FDF variance request.

E. Penalties

The WQA makes a number of changes to the civil and criminal penalty provisions of the CWA and adds an administrative penalty provision. The WQA adds CWA § 405 to the list of sections for which criminal penalties are applicable, and confirms the availability of civil and criminal penalties for violations of pretreatment requirements. Section 313 of the WQA amends CWA § 309(d) to provide that violators of CWA sections 301, 302, 306, 307, 308, 318 or 405, or any condition or limitation in an NPDES permit, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8), are subject to a maximum civil penalty of "$25,000 per day for each violation," in contrast to the previous maximum of "$10,000 per day of such violation."

Section 312 of the WQA amends section 309(c)(1) of the CWA, increasing the penalty for any person who negligently violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8). Negligent violations of these provisions are subject to criminal penalties of $2,500 to $25,000 per day of violation or up to one year in prison, or both. A second offense under these provisions may be subject to penalties of not more than $50,000 per day of violation or imprisonment of up to two years, or both.

Section 312 of the WQA also amends section 309(c) of the CWA by increasing the criminal penalties for knowing violations of sections 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such section in an NPDES permit, or any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8). Knowing violations of these provisions are subject to criminal penalties of $5,000 to $50,000 per day of violation or up to three years in prison, or both. A second offense under these paragraphs may be subject to penalties of not more than $100,000 per day of violation or imprisonment of up to six years, or both.

The WQA also creates a new class of knowing violations. In the event of a knowing violation placing another person in imminent danger of death or serious bodily injury, individuals are subject to penalties of up to 15 years in prison or fines of up to $250,000, or both. Organizations are subject to fines of up to $1 million. Individuals committing a second offense under this paragraph may be subject to penalties of not more than $500,000 or 30 years in prison, or both. Organizations are subject to fines of up to $2 million. Section 309(c)(3)(B)(iii) of the CWA defines the term "organization" for the purpose of this provision.

Section 314 of the WQA adds section 309(g) to the CWA. This provision allows the Administrator to assess administrative penalties against persons violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any such section in a permit issued under section 402. Section 314 also provides administrative penalty authority for violations of State-issued permits under CWA section 404. Today's rulemaking, however, does not address penalty authority for violations of section 404. Section 314 creates two classes of penalties. Penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount not to exceed $125,000.

EPA is revising § 122.41(a) (2) and (3) to reflect these changes. Section 122.41 sets out standard conditions that must be included in all permits. This language merely puts permittees on notice as to the applicable enforcement provisions of the CWA.

Section 312(c)(4) of the WQA increases the maximum penalty for knowingly making any false statements from six months to two years. The existing fine of not more than $10,000 for first time false statements remains unchanged, but maximum penalties are doubled for second offenses. EPA is revising the language set out in § 122.41(j)(5) to reflect the requirements of the WQA.

F. Anti-Backsliding

EPA regulations in § 122.44(l) have generally prohibited the issuance of a permit with limitations less stringent than those in the previous permit, except in certain circumstances. The primary application of these rules has been to prohibit backsliding from permits written on a case-by-case basis under CWA section 402(a)(1) using best professional judgment (BPJ) to less stringent subsequently promulgated effluent limitations guidelines (see § 122.44(l)(2)).

In section 404 of the WQA, Congress added section 402(o) to the CWA to clarify the Congressional intent that backsliding from BPJ limits to such subsequent guidelines was prohibited. Congress also listed several exceptions to the prohibition. In general, these exceptions tracked the existing NPDES anti-backsliding rules applicable to BPJ permits. However, some of the exceptions have been changed or limited by the amendment and today's rulemaking is revising §§ 122.44(l)(2) and 122.62(a) to reflect these differences. Specifically, § 122.62(a)(15) which allowed a BPJ permit to be modified due to excessive costs is not authorized by the statute and is being deleted. The other exceptions in § 122.44(l)(2) are being conformed to the amendment. In addition, EPA is adding the limitation from CWA section 402(o)(3) prohibiting the issuance of a permit less stringent than existing effluent guidelines or

applicable State water quality standards.

The WQA also adds a prohibition against backsliding from water quality-based permits except in limited circumstances. Today's revision does not implement this prohibition. EPA plans to propose rules to implement the prohibition against backsliding from water quality-based permit limits in the near future. EPA's regulation at § 122.44(l)(1) restricts backsliding in cases not covered by the WQA amendments. EPA is not planning any rulemaking to revise this broader prohibition.

G. Inspection and Entry

In Section 310 of the WQA (amending § 308 of the CWA) Congress confirms EPA's practice of allowing contractors to represent the Administrator for purposes of entering and inspecting permitted facilities. The rule promulgated today revises EPA's existing standard permit conditions on entry and inspection under Section 308 (§ 122.41(i) of the regulations) to insert the statutory language from Section 310.

H. Sewage Sludge

Previously, the CWA regulated sludge through the NPDES program only when the sludge was discharged into surface water from a point source. In the case of publicly owned treatment works, the CWA prohibited disposal of sludge except in accordance with national criteria controlling disposal. Section 406 of the WQA amends section 405 of the CWA to expand the applicability of the sewage sludge criteria promulgated under this section to include sludge from any treatment works that treats domestic sewage, whether publicly or privately owned. Further, the amendments direct that any NPDES permits issued must include the sewage sludge criteria. Today's rulemaking revises existing § 122.44(o) by inserting a phrase to specify all treatment works treating domestic sewage are subject to national regulations controlling its disposal. Two future rulemakings will establish EPA's sludge management program. One rulemaking will propose technical standards for the use and disposal of sewage sludge; the other will establish sludge permitting requirements and requirements for approving state sludge management programs. A proposal for this second rulemaking appeared at 53 FR 7642 (March 9, 1988).

I. Partial NPDES Programs

Section 403 of the WQA amends CWA section 402 to allow States to seek partial NPDES approval in certain circumstances. Partial approval is approval of a program which does not include NPDES, pretreatment and federal facilities authority over all facilities in the State subject to these programs. The amendment provides for two types of partial program approval. The first is intended for circumstances where jurisdiction over all direct and indirect wastewater discharges in the State is split between two or more State agencies. The amendment requires the program to cover at a minimum administration of a major category of discharges into the navigable waters of the State. The partial program must also represent a significant and identifiable part of the State program required by CWA § 402(b), and encompass all discharges under the jurisdiction of the State agency or agencies. The second type of partial program authorized is the "partial and phased" program. This requires initial approval of a major component of a State program (which also must represent a significant and identifiable part of the State program), with the State assuming the remaining program elements in phases. A State choosing this latter approach must submit a plan for assumption of the full program by a specified date not more than 5 years after submission of the partial program. To distinguish between the two types of partial programs authorized by the WQA, EPA will refer to the first as "partial" and the latter as "phased" in this and subsequent rules.

The existing regulation at § 123.1(g) expressly prohibits EPA from approving partial programs. As a first step towards implementing the amendment, today's rule deletes the existing regulatory provision prohibiting partial programs in § 123.1(g) and revises that provision to clarify that EPA will not accept partial or phased program submissions.

EPA will propose additional rules that will explain how a State can apply for and receive partial or phased program authority in a future rulemaking.

J. 304(l) Toxic Control Strategies

Section 308 of the WQA amends CWA section 304 by creating a new section 304(l). This provision requires States to develop lists of impaired waters, identify point sources and amounts of pollutants they discharge that cause violations of water quality standards and develop and implement individual control strategies for each such point source. The Agency is preparing a companion rulemaking that will address more completely the requirements of § 304(l).

1. Identification of Polluted Waters

Paragraph (A) of Section 304(l)(1) requires States to submit to EPA two lists of waters. These lists include those waters within the State which, after application of BAT or BCT, cannot reasonably be anticipated to attain or maintain (i) State water quality standards adopted under section 303(c)(2)(B), due to toxic pollutants; or, (ii) the water quality goals of the CWA.

The list prepared under paragraph (A)(ii) includes all waters affected by toxic, conventional, and non-conventional pollutants from point and non-point sources. It includes all waters whose designated uses are less than the fishable/swimmable goals of the CWA as well as those that are not meeting water quality standards for established, designated uses. The list prepared under paragraph (A)(i) is a subset of the list required by paragraph (A)(ii) and identifies only segments where promulgated State water quality standards are not being met due to toxic pollutants. These two lists must be submitted to EPA not later than February 4, 1989.

Paragraph (B) of section 304(l)(1) requires each State to submit a list of waters for which the State does not expect the "applicable standard" under section 303 of the CWA to be achieved after the requirements of technology-based treatment standards are met due entirely or substantially to the point source discharge of any toxic pollutants listed under section 307(a) of the CWA. This list is also a subset of the (A)(ii) list.

Paragraph (C) of section 304(l)(1) requires States to determine, for each water body on the paragraph (B) list, the specific point source discharges of toxic pollutants believed to be preventing or impairing water quality. The States must also identify the amount of each pollutant discharged by each point source identified in paragraph (C). Like the three lists developed under paragraphs (A) and (B), the point sources identified under paragraph (C) must be submitted to EPA no later than February 4, 1989.

Paragraph (D) of section 304(l)(1) requires States to submit individual control strategies for each segment identified on the list required by paragraph (B) to EPA by February 4, 1989. The amendment requires that these control strategies contain effluent limitations which will result in achievement of the applicable water quality standard as soon as possible, but in no event later than 3 years after establishment of the strategy (June 4, 1992 at the latest). At section 304(l)(2), the amendment requires the Administrator to approve or disapprove

control strategies submitted by States by no later than June 4, 1989.

Today's rulemaking codifies the requirements contained in section 304(l)(1) (A), (B) and (C) at § 130.10 of the regulations. Section 304(l) (1)(D) and (2) is codified by today's rulemaking in a new section of the regulations at § 123.46.

In order to meet the deadline in paragraphs (A), (B) and (C) of section 304(l)(1), a draft final EPA guidance document, "Implementation of Requirements under Section 304(l) of the Clean Water Act As Amended" (Sept. 1987) allows States to use existing and readily available data to develop the required lists of waters. At the same time, States should continue to gather new data under existing programs where important information gaps exist. The toxics control program will continue to address emerging problems and ensure prevention of water quality impairment due to toxicity even after section 304(l) deadlines have been met.

2. EPA Review of Individual Control Strategies

Section 304(l)(3) addresses EPA review of State individual control strategies and is codified at § 123.46(b). Section 304(l)(3) requires EPA to implement the requirements of section 304(l)(1) where a State fails to submit a control strategy or where EPA does not approve a control strategy submitted by the State. The statute requires EPA to perform these tasks within one year and 120 days after the date States are required to submit individual control strategies to EPA. Thus, where EPA action is required under this provision, the Agency must carry out these tasks by June 4, 1990.

Where EPA implements the requirements of section 304(l)(1), EPA must also consider listing those waters for which any person submits a petition for listing. Today's rule adds a new provision at § 123.46 to implement this requirement.

K. New Source—Preconstruction Ban

EPA's existing regulation at § 122.29(c) (4) and (5) addresses requirements for new sources and new dischargers. Section (c)(4)(i) prohibits on-site construction of a new source for which an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) is required prior to final Agency action in issuing an NPDES permit. Section (c)(5) provides that violation of the on-site construction ban is grounds for permit denial.

The United States Court of Appeals for the District of Columbia Circuit recently ruled on the validity of the on-site construction ban for new sources in *Natural Resources Defense Council v. Environmental Protection Agency*, 822 F. 2d 104 (D.C. Cir., 1987). The court held that the construction ban exceeded the agency's authority under either the Clean Water Act or NEPA, and that EPA therefore lacks authority to ban construction of new sources pending permit issuance. Accordingly, the court granted the petition for review of this issue.

In response to the decision of the Court of Appeals for the D.C. Circuit, EPA is removing § 122.29(c) (4) and (5) from the existing NPDES regulations. EPA will address these issues in subsequent rulemaking.

L. Corrections

Today's rulemaking also corrects inadvertent omissions, erroneous internal cross-references, and typographical errors in the regulations.

III. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. The regulation promulgated today is not a major rule, and therefore is not subject to the Regulatory Impact Analysis (RIA) requirement. This rule does not make changes in the existing law, but merely inserts the WQA provisions into the rules. This package does not incur more than $100 million in costs and fails to qualify as a "major" rule under that standard.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a Regulatory Flexibility Analysis (RFA) when it promulgates a final rule. (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulations will have on small entities and examine alternatives that may reduce these effects. EPA has determined the Agency does not have to prepare a RFA to determine the impact of today's regulation on State NPDES programs and the waste-discharging industries because today's rule is merely a technical amendment implementing those provisions in the 1987 WQA that do not require additional interpretation or comments. EPA has concluded that these amendments will not cause a significant impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. There are no information collection requirements triggered by this rule except for the listing requirements for State waters required by CWA section 304(l)(1) and implemented in today's rulemaking at 40 CFR 123.46. The public will have the opportunity to comment on this information collection requirement in a companion rulemaking more fully implementing the requirements of section 304(l).

List of Subjects

40 CFR Part 122

Administrative practice and procedure; Air pollution control; Hazardous materials; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control; Water supply; Confidential business information.

40 CFR Part 123

Hazardous materials; Indians-lands; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control; Water supply; Intergovernmental relations; Penalties; Confidential business information.

40 CFR Part 124

Hazardous materials; Waste treatment and disposal; Water pollution control; Water supply; Indians-lands.

40 CFR Part 125

Water pollution control; Water treatment and disposal.

40 CFR Part 130

Water quality standards.

40 CFR Part 403

Confidential business information; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control.

Date: December 15, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Chapter I of Title 40 of the Code of the Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 is amended by revising the definition of "point source" and "state" to read as follows:

§ 122.2 Definitions.

* * * * *

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

* * * * *

3. Section 122.3 is amended by revising paragraph (e) to read as follows:

§ 122.3 Exclusions.

* * * * *

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

* * * * *

4. Section 122.21 is amended by revising paragraphs (m)(1), (m)(2), (m)(3), (m)(4), (n)(2) and (o) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, § 123.25)

* * * * *

(m) * * *

(1) *Fundamentally different factors.*

(i) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

(A) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under § 124.10.

(B) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(*1*) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(*2*) 180 days after the date on which an effluent limitation guideline is published in the **Federal Register** for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

(ii) The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant which the Administrator lists under section 301(g)(4) of the CWA) must be made as follows:

(i) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(A) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(*1*) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(*2*) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(B) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met. Notwithstanding this provision, the complete application for a request under section 301(g) shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period).

(ii) For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with paragraph (m)(2)(i)(B) of this section and need not be preceded by an initial request under paragraph (m)(2)(i)(A) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in section 301 (b)(1)(A) or (b)(1)(C) of the CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under paragraph (n)(2) of this section, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology or 301(b)(2)(E) for best conventional pollutant control technology, based on the use of innovative technology may be reqested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A) or 301(b)(2)(E). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

* * * * *

(n) * * *

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of the statutory deadlines in CWA section 301 (b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

(3) * * *

(o) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (m) and (n) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a

condition of consideration of any potential variance request to submit a request explaining how the requirements of Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under paragraph (m)(2)(i)(B) or (m)(2)(ii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

* * * * *

5. Section 122.26 is added to read:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see Section 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity;

(iii) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(iv) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000;

(v) A discharge which the Administrator or the State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Permits for discharges from municipal separate storm sewers may be issued on a system or jurisdiction-wide basis.

(3) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(b) [Reserved].

§ 122.29 [Amended]

6. Section 122.29 is amended by removing subparagraphs (c) (4) and (5).

7. Section 122.41 is amended by revising paragraphs (a)(2), (i) introductory text, and (j)(5) and by adding paragraph (a)(3) to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25)

* * * * *

(a) * * *

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

* * * * *

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

* * * * *

(j) * * *

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

* * * * *

8. Section 122.44 is amended by revising paragraphs (l)(2) and (o) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(l) * * *

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions—A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if—

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(*1*) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(*2*) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) *Limitations.* In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

* * * * *

(o) *Sewage sludge.* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

* * * * *

§ 122.62 [Amended]

9. Section 122.62 is amended by amending paragraph (a) to remove existing paragraph (15); and redesignating existing paragraphs (16), (17), and (18) as (15), (16), and (17) respectively.

PART 123—STATE PROGRAM REQUIREMENTS

10. The authority citation for Part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

11. Section 123.1 is amended by revising paragraph (g) to read as follows:

§ 123.1 Purpose and scope.

* * * * *

(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the CWA.

* * * * *

12. Section 123.46 is added to read as follows:

§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Administrator for review, approval, and implementation an individual control strategy for each waterbody identified by the State pursuant to section 304(l)(1)(B) of the Act which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

(b) The Administrator shall approve or disapprove the control strategies submitted by any State pursuant to paragraph (a) of this section, not later than June 4, 1989. If a State fails to submit control strategies in accordance with paragraph (a) of this section or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (a), then, not later than June 4, 1990, the Administrator in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of CWA section 304(l)(1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under CWA section 304(l)(1) any navigable waters for which any person submits a petition to the Administrator for listing not later than October 1, 1989.

PART 124—PROCEDURES FOR DECISIONMAKING

13. The portion of the authority citation for Part 124 relating to the Clean Water Act continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 124.62 is amended by revising paragraph (e) introductory text to read as follows:

§ 124.62 Decision on variances.

* * * * *

(e) The State Director may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

* * * * *

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

15. The authority citation for Part 125 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

16. Section 125.3 is amended by revising paragraph (a)(2) to read as follows:

§ 125.3 Technology-based treatment requirements in permits.

* * * * *

(a) * * *

(2) For dischargers other than POTWs except as provided in § 122.29(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—

(A) For effluent limitations promulgated under Section 304(b) after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989;

(B) For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) under Section 402(a)(1)(B) of the Act in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

(C) For all other BPT effluent limitations compliance is required from the date of permit issuance.

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—

(A) For effluent limitations promulgated under Section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For effluent limitations established on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)—

(A) For effluent limitations established under Section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on BAT—

(A) For effluent limitations promulgated under Section 304(b) compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT—

(A) For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989.

* * * * *

17. Section 125.21 is revised to read as follows:

§ 125.21 Statutory authority.

Section 301(k) provides that the Administrator (or a State with an approved NPDES program, in consultation with the Administrator) may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

18. Section 125.23 is amended by revising the introductory paragraph to read as follows:

§ 125.23 Request for compliance extension.

The Director shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable, to a discharger that demonstrates:

* * * * *

19. Section 125.24 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 125.24 Permit conditions.

The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:

(a) * * *

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

20. Section 125.27 is amended by revising paragraph (a) to read as follows:

§ 125.27 Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in §§ 124.62 and 124.63. In addition, notwithstanding § 122.21(m)(4), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

21. The authority citation for Part 130 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

22. Section 130.10 is amended by adding paragraph (d) to read as follows:

§ 130.10 State submittals to EPA.

* * * * *

(d) Not later than February 4, 1989, each State shall submit to EPA for review, approval, and implementation—

(1) A list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of the CWA cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of the CWA, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(2) A list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(3) For each segment of navigable waters included on such list, a determination of the specific point source discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

23. The authority citation for Part 403 is revised to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

24. Section 403.13 is amended by revising paragraph (g)(2) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) * * *

(2) In order to be considered, a request for a variance must be submitted no later than:

(i) July 3, 1989, for a request based on a categorical Pretreatment Standard promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(ii) 180 days after the date on which a categorical Pretreatment Standard is published in the **Federal Register** for a request based on a categorical Pretreatment Standard promulgated on or after February 4, 1987.

* * * * *

Corrections

§ 122.3 [Amended]

25. Section 122.3(d) is amended by substituting "300" for "1510" and inserting "Contingency" before "Plan".

§ 122.28 [Amended]

26. Section 122.28 is amended by removing paragraph 122.28(b)(2)(i)(A) and redesignating the existing paragraphs (B), (C), (D), (E) and (F) as (A), (B), (C), (D) and (E) respectively.

§ 122.29 [Amended]

27. Section 122.29(c)(4)(i) is amended by revising the word "coditions" to read "conditions".

§ 122.45 [Amended]

28. Section 122.45(a) is amended by revising the reference to "§ 122.44(j)(2)" to read "§ 122.44(k)."

§ 122.62 [Amended]

29. Section 122.62 is amended by revising the reference to "paragraph (c) of this section" contained in the introductory paragraph to read "§ 124.5(c)".

PART 123—[AMENDED]

§ 123.27 [Amended]

30. Section 123.27, second note, is amended by revising the reference to "(a)(3)(iii)(B)" to read "(a)(3)(ii)".

PART 124—[AMENDED]

§ 124.10 [Amended]

31. Section 124.10(c)(2)(i) Note is amended by revising "NPDES of 404" to read "NPDES or Section 404."

§ 124.12 [Amended]

32. Section 124.12(a)(2) is amended by inserting a "," after "whenever".

§ 124.56 [Amended]

33. Section 124.56(a) is amended by revising the reference to "§ 122.4" to read "§ 122.44."

§ 124.59 [Amended]

34. Section 124.59(b) is amended by revising the reference to "§ 122.47" to read "§122.49".

§ 124.62 [Amended]

35. Sections 124.62 (c) and (d), are amended by revising the references to "EPA Deputy Assistant Administrator for Water Enforcement" to read "EPA Office Director for Water Enforcement and Permits", and the reference in (d) to "Deputy Assistant Administrator" is revised to read "Office Director".

§ 124.65 [Amended]

36. Section 124.65 is removed and reserved.

[FR Doc. 89-64 Filed 1-3-89; 8:45 am]
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Wednesday
January 4, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 73

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action establishes warning areas in airspace subject to FAA jurisdiction, in order to reflect recent presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the U.S. coast. The warning areas are established in the same location as non-regulatory warning areas previously designated over international waters. The Department of Defense (DOD) will conduct hazardous military flight activities in these areas. The areas are established for a period of 1 year, to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

A Presidential Proclamation, signed on December 27, 1988, extends the sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast. By final rule issued this date, the FAA has amended Parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast.

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of Part 91 operating rules to this airspace, DOD would be prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An exemption would permit the continuation of military operations, but would not in itself adequately inform the general flying public of the existence of these activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. Accordingly, the FAA is establishing regulatory warning areas, by special rule, to permit the continuation of current military training activities in the same areas where those activities are now being conducted. During the 1-year term of this SFAR, the FAA will consider the need for rulemaking action to meet military training needs in this airspace.

The warning areas established by this special rule are unique airspace designations intended solely to allow the continuation of military training activity *and* maintain the right of nonparticipating aircraft to fly through such areas. Controlled flights will not be affected by this special rule; such flights will continue to be routed around active warning areas. This SFAR will expire 1 year from the effective date.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For **Federal Register** citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR Part 73.

Prior to the expiration of this SFAR, the FAA will consider initiating further rulemaking action as necessary. The public will be given the opportunity to comment on any proposed rules affecting the airspace overlying the waters between 3 and 12 nautical miles from the United States coast.

Effective Date of Final Rule

Extension of the U.S. territorial sea for international purposes necessitates an immediate amendment to Part 73 of the Federal Aviation Regulations. If this action were not taken coincident with the effectiveness of the extension, essential military training operations would be adversely affected. For these reasons, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days to coincide with the effectiveness of the Proclamation.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while maintaining the right of nonparticipating pilots to fly through such areas. Accordingly, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because of the minimal impact on all operators, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983); 14 CFR 11.69.

2. By adding Special Federal Aviation Regulation No. 53 to read as follows:

Special Federal Aviation Regulation No. 53—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. *Applicability.* This rule establishes warning areas, for a period of 1 year from the effective date of this special regulation, in the same location as non-regulatory warning areas previously designated over international waters. This special regulation does not affect the validity of any non-regulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States.

2. *Definition—Warning area.* A warning area established under this special rule is airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. Part 91, Subpart B, is applicable within the airspace designated under this special rule.

Non-regulatory warning area. A non-regulatory warning area is airspace of defined dimensions designated over international waters that contains activity which may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger.

3. *Participating aircraft.* Each person conducting an aircraft operation within a warning area designated under this special rule and operating with the approval of the using agency may deviate from the rules of Part 91, Subpart B, to the extent that the rules are not compatible with approved operations.

4. *Nonparticipating aircraft.* Nonparticipating pilots, while not excluded from the warning areas established by this SFAR, are on notice that military activity, which may be hazardous to nonparticipating aircraft, is conducted in these areas.

Issued in Washington, DC, on December 27, 1988.

Norbert Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 88-30249 Filed 12-29-88; 12:38 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
January 4, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Docket No. 25768; Amdt. Nos. 71-12, 91-207]

Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action extends controlled airspace and the applicability of certain air traffic rules to coincide with certain limits of territorial jurisdiction adopted by the United States. This action is taken in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the U.S. coast.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Rule

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

A Presidential Proclamation extending the territorial sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast, was signed on December 27, 1988. By its terms, this Proclamation does not extend the jurisdiction of any state or federal law and, therefore, does not alter the geographical boundaries of the United States (i.e., national borders and territorial waters within 3 miles of the U.S. coast) for domestic purposes. As a result, the definition of the United States contined in section 101(41) of the Federal Aviation Act of 1958 (49 U.S.C. 1301) (FAAct) is not changed by the Proclamation and does not encompass the area between 3 and 12 nautical miles from the U.S. coast. Accordingly, the extension of the territorial sea to 12 nautical miles does not automatically extend the application of the FAAct beyond 3 nautical miles.

Article 12 of the Chicago Convention on International Civil Aviation obligates each Contracting State to adopt measures to insure that every person operating an aircraft within its territory shall comply with its air traffic rules and Annex 2, "Rules of the Air," of the Chicago Convention when over the high seas. The article further obligates each Contracting State to enforce the applicable regulations. In the United States, such obligations are reflected in 14 CFR 91.1, which requires that operators of aircraft comply with U.S. operating rules when in the United States and that operators of U.S.-registered aircraft comply with Annex 2 when over the high seas. With the issuance of the Proclamation, the airspace overlying the area between 3 and 12 nautical miles will no longer be part of the high seas. However, since the definition of United States contained in the FAAct has not been expanded to include this area, this airspace would not be considered a part of the United States.

The air traffic control services in the airspace beyond 3 nautical miles from the U.S. coast are currently provided by the FAA pursuant to the International Civil Aviation Organization (ICAO) Regional Supplementary Procedures through Annex 2. These procedures will continue to be applicable in the airspace between 3 and 12 nautical miles from the U.S. coast. However, when the Proclamation is issued, there will be no U.S. regulatory obligation on operators of aircraft to comply with air traffic procedures and regulations in the area between 3 and 12 nautical miles from the coast of the United States, because that area will neither be a part of the United States (for purposes of the FAAct) nor a part of the high seas.

Consequently, in order to continue to fulfill its international obligations and in order to maintain a safe environment in this area, it is necessary for the United States to extend its domestic air traffic control authority, under Title III of the FAAct, over the airspace extending from 3 to 12 nautical miles from the coast of the United States.

Section 1110 of the FAAct makes provision for the extension of the application of the Act, and FAA jurisdiction, to airspace beyond 3 nautical miles from the U.S. coast (49 U.S.C. 1510). By Executive Order 10854 (issued November 27, 1959; 24 FR 9565, as amended by E.O. 11382, 32 FR 16247), the authority in Section 1110 has been exercised with respect to areas in which the U.S. Government has appropriate jurisdiction or control to the extent necessary for the Secretary of Transportation to accomplish the purposes and objectives of Title III of the FAAct (49 U.S.C. 1341-1355) and Title XII of the Act (49 U.S.C. 1521-1523). The Department of Transportation has decided that the extension of the application of the FAAct to 12 nautical miles from the U.S. coast is necessary to accomplish the purposes and objectives of Titles III and XII of the FAAct. The extension will be effective on December 27, 1988. The FAA has issued appropriate Notices to Airmen (NOTAMs) advising the pilots of any changes relating to the extension.

In order for the FAA to exercise immediate jurisdiction over the expanded territorial sea, for purposes of regulations promulgated under Titles III and XII of the FAAct, this rule extends controlled airspace and extends the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. The rule adopted is limited to the amendment of certain sections of FAR Part 71, Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; and FAR Part 91, General Operating and Flight Rules; all of which fall under Title III of the Act.

The FAA will consider the need, in view of the extension of FAAct applicability to 12 nautical miles from the U.S. coast, for additional rulemaking action to amend other Federal Aviation Regulations, including: Part 73, Special Use Airspace; Part 75, Establishment of Jet Routes and Area High Routes; Part 95, IFR Altitudes; Part 99, Security Control of Air Traffic; Part 101, Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Ballons; Part 103, Ultralight Vehicles; and Part 105, Parachute Jumping. Other matters, such as the redesignation of Flight Information Region (FIR) boundaries, will also be considered at a later date.

The Rule

This action amends Parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. Specifically, the Continental Control Area, as described in FAR 71.9, and the Continental and Alaska Positive Control Areas, as described in § 71.193, are extended to 12 nautical miles from

the U.S. coast. The existing exclusion of airspace in the Alaska Positive Control Area above the Alaska Peninsula west of longitude 160°00'00" W. is not affected, nor is the exclusion of airspace in the Continental Positive Control area over the Farallon Islands, and the portion south of latitude 25°04'00" N.

The transition area in effect in the vicinity of the Hawaiian Islands is deemed sufficient for air traffic control in that region, and no change in controlled airspace in and around Hawaii is adopted at this time. Within airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast that has not been designated controlled airspace, the FAA will exercise jurisdiction to the same extent as in uncontrolled airspace within the United States.

In Part 91, §§ 91.1 and 91.61 are amended to extend the applicability of (1) Subpart A, §§ 91.1 through 91.43 inclusive and (2) Subpart B in its entirety, to 12 nautical miles from the U.S. Coast.

Effective Date of Final Rule

Extension of the U.S. territorial sea necessitates an immediate amendment to Parts 71 and 91 of the Federal Aviation Regulations. This action must coincide with the effectiveness of the extension in order to ensure the FAA's authority to control air traffic, and to implement the flight rules under which pilots must operate in the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. This action is necessary to provide for the safe and efficient use of the airspace within the newly designated area. For these reasons, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days to coincide with the effectiveness of the Proclamation.

Regulatory Evaluation

Air Traffic control (ATC) services are currently provided by the FAA in the nine-nautical mile strip of airspace affected by this rule. While the jurisdictional basis for the services is changed, there will be no change in the ATC services, and no impact on ATC system users. In this airspace, operators will be required to comply with FAA flight rules rather than ICAO Rules of the Air. The rules are similar for all effective purposes, and operators will incur no additional cost from compliance. Therefore, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. The rule is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, because the costs of the rule adopted are virtually nonexistent, it is also certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 71

Aviation safety, Continental control area, Positive control areas, Moored balloons, Kites, Unmanned rockets, Unmanned free balloons.

14 CFR Part 91

Aviation safety, General operating and flight rules.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 91 of the Federal Aviation Regulations (14 CFR Parts 71, 91) are amended, as follows:

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying: the 48 contiguous States including the waters within 3 nautical miles of the coast; the waters between 3 and 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska including the waters within 3 nautical miles of the coast; and the waters between 3 and 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 160°00'00" W.; but does not include—

(a) The airspace less than 1,500 feet above the surface of the earth; or

(b) Prohibited and restricted areas, other than restricted areas listed in Subpart D of this part.

3. Section 71.193 is revised as follows:

§ 71.193 Designation

The areas of airspace described below are designated as positive control areas.

Alaskan Positive Control Area

That airspace overlying the state of Alaska, including the waters within 3 nautical miles of the coast, and the waters between 3 and 12 nautical miles from the coast of Alaska, from 18,000 feet MSL to and including FL 600 but not including the airspace less than 1,500 feet above the surface of the earth or the Alaska Peninsula west of longitude 160°00'00"W.

Continental Positive Control Area

That airspace within the continental control area from 18,000 feet MSL to and including FL 600 overlying: the 48 contiguous states, including the waters within 3 nautical miles of the coast; the District of Columbia; and the waters between 3 and 12 nautical miles from the coast of the 48 contiguous states; but excluding Santa Barbara Island, the Farallon Islands, and the portion south of latitude 25°04'00"N.

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. No. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. No. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983).

5. Section 91.1 is amended by redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part

describes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with Subpart A, §§ 91.1 through 91.43, and Subpart B of this part.

* * * * *

6. Section 91.61 is revised as follows:

§ 91.61 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

Issued in Washington, DC, on December 27, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-30250 Filed 12-29-88; 12:38 pm]

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federal register

Wednesday
January 4, 1989

Part VI

Environmental Protection Agency

Biotechnology Science Advisory Committee; Notice of Open Meeting

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00098; FRL-3502-4]

Biotechnology Science Advisory Committee; Subcommittee on Use of Antibiotic Resistance Genes; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee; Subcommittee on Use of Antibiotic Resistance Genes. The meeting will be open to the public. The Subcommitee will review scientific issues relating to the common practice of utilizing introduced antibiotic resistance as a means of enhancing or enabling monitoring of genetically engineered microorganisms, especially under circumstances of field testing or other environmental releases.

DATE: The meeting will be held on Thursday, January 19, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: Crystal Mall #2, Room 1112, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 27, 1988.

Victor J. Kimm,

Acting Assistance Administrator, for Pesticides and Toxic Substances.

[FR Doc. 89-190 Filed 1-3-89; 11:07 am]

BILLING CODE 6560-50-M

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).